

City Code Chapter 32

Public Right-of-Way

Article 1. General Conditions, §§ 32-1--24

Article 1. General Conditions

Sec. 32-1. Election to Manage the Public Right-of-Way.

In accordance with the authority granted under State and Federal statutory, administrative, and common law, the City hereby elects under Minnesota Statutes, Section 237.163, Subdivision 2(b), and 2017 Session Laws, Chapter 94 amending the Act, to manage rights-of-way within its jurisdiction. (Ord. No. 661, 10-26-99; Code of 2001; Ord. 853, 7-25-2017)

Sec. 32-2. Definitions.

The definitions of this Section shall apply when these words and phrases are used in this Chapter.

(1) **Abandoned Facility.** A facility that is no longer in service or which is physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

(2) **Applicant.** Any person requesting permission to excavate or obstruct a right-of-way.

(3) **City.** The City of New Brighton, Minnesota and its elected officials, officers, employees, and agents.

(4) **Collocate or Collocation.** To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the City or other governmental unit.

Note: Minn. Stat. § 237.162, subd. 10

(5) **Commission.** The Minnesota Public Utilities Commission.

(6) **Congested Right-of-Way.** A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without use of hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, Section 216D.04, Subdivision 3 over a continuous length in excess of 500 feet.

(7) **Construction Performance Bond.** Any of the following forms of security provided at the permittee's option:

- A. Individual project bond.
- B. Cash deposit.
- C. Security of a form listed or approved under Minnesota Statutes, Section 15.73, Subdivision 3.
- D. Letter of Credit in a form acceptable to the City.

E. Self-insurance in a form acceptable to the City.

F. A blanket bond for projects within the City or other form. Such bond shall be for a time specified and in a form acceptable to the City.

(8) **Degradation.** A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way which results in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

(9) **Degradation Cost.** Subject to Minnesota Rules 7819.1100, the cost to achieve a level of restoration as determined by the City at the time the permit is issued. Such cost shall not exceed the maximum restoration shown in the City's Street Restoration Procedures for Utility Holes and Trenches, plate 1, set forth in Minnesota Rules 7819.9900 to 7819.9950.

(10) **Degradation Fee.** The estimated fee to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation. This fee shall be established by the City at the time of permitting and shall equal the degradation costs.

(11) **Department.** The City's Public Works Department.

(12) **Department Inspector.** Any person authorized by the Director to carry out inspections related to the provisions of this Chapter.

(13) **Director.** The Director of the Public Works Department or a designee.

(14) **Delay Penalty.** The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as requested by permit.

(15) **Emergency.** A condition that:

A. Poses a danger to life or health, or of a significant loss of property; or

B. Requires immediate repair or replacement of facilities in order to restore service to a customer.

(16) **Equipment.** Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

(17) **Excavate.** To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

(18) **Excavation Permit.** The permit required by this Chapter which must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in the permit.

(19) **Excavation Permit Fee.** Payment made by an applicant to cover the costs provided in Section 32-7 (1).

(20) **Facility or Facilities.** Any tangible asset in the right-of-way required to provide utility service.

(21) **Five Year Project Plan.** A plan adopted by the City which shows projects to be constructed within the next five years.

(22) **High Density Corridor.** A designated portion of the public right-of-way within which

telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

(23) **Hole.** An excavation in the pavement with the excavation having a length less than the width of the pavement.

(24) **Local Representative.** A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter.

(25) **Management Costs.** The actual costs the City incurs in managing its rights-of-way. Such costs, if incurred, include those associated with:

A. Registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits.

B. Management costs do not include: Payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the City including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the City, the fees and cost of litigation relating to the interpretation of Minnesota Laws 1997, Chapter 123; Minnesota Statutes, Sections 237.162 or 237.163, or any ordinance enacted under those sections; or the City fees and costs related to appeals taken pursuant to Section 32-22. (Ordinance 853, 07-25-2017)

(26) **Obstruct.** To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

(27) **Obstruction Permit.** The permit required by this Chapter must be obtained before a person may obstruct a right-of-way which allow the holder to hinder-free and open passage over the specified portion of that right-of-way for the duration specified therein.

(28) **Obstruction Permit Fee.** Payment made by a permittee to cover the costs as provided in Section 32-7 (2).

(29) **Patch or Patching.** A method of pavement replacement that is temporary in nature. A patch consists of:
A. The compaction of the subbase and aggregate base, and
B. The replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's long-range plan.

(30) **Pavement.** Any type of improved surface that is within the public right-of-way that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

(31) **Permit.** The meaning given "right-of-way permit" in Minnesota Statutes, Section 237.162.

(32) **Permittee.** Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Chapter.

(33) **Person.** An individual or entity subject to the laws and rules of this State, however organized, whether public or private, domestic or foreign, for profit or nonprofit, or natural, corporate, or political.

(34) **Probation.** The status of a person that has not complied with the conditions of this Chapter.

(35) **Probationary Period.** One year from the date that a person has been notified in writing that they have been put on probation.

(36) **Registrant.** Any person who:

A. Has or seeks to have its equipment or facilities located in any right-of-way, or

B. In any way occupies or uses or seeks to occupy or use the right-of-way or place its facilities or equipment in the right-of-way.

(37) **Restore or Restoration.** The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

(38) **Restoration Cost.** The amount of money paid to the City by a permittee to achieve the level of restoration according to the City's Street Restoration Procedures for Utility Holes and Trenches, plate 1.

(39) **Public Right-of-Way or Right-of-Way.** The area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

(40) **Right-of-Way Permit.** Either the excavation permit or the obstruction permit, or both, depending on the context, required by this Chapter.

(41) **Right-of-Way User.**

A. A telecommunications right-of-way user as defined by Minnesota Statutes, Section 237.162, Subdivision 4; or

B. A person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service and who has a right under law, franchise, or ordinance to use the public right-of-way.

(42) **Service Lateral.** An underground facility that is used to transmit, distribute or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises. (Ord. 853, 7-25-2017)

(43) **Service or Utility Service.** Includes:

A. Those services provided by a public utility as defined in Minnesota Statutes, Section 216B.02, Subdivisions 4 and 6;

B. Services of a telecommunications right-of-way user, including transporting of voice or data

information;

C. Services of a cable communications system as defined in Minnesota Statutes, Chapter 238;

D. Natural gas or electric energy or telecommunications services provided by the City;

E. Services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and

F. Water, sewer, steam, cooling, or heating services.

(44) ***Small Wireless Facility.*** A wireless facility that meets both of the following qualifications:

A. Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

B. All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Note: Minn. Stat. § 237.162, subd. 11.

(45) ***Supplementary Application.*** An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that has already been issued.

(46) ***Temporary Surface.*** The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the City's two-year plan, in which case it is considered full restoration.

(47) ***Trench.*** An excavation in the pavement with the excavation having a length equal to or greater than the width of the pavement.

(48) ***Telecommunications Rights-of-Way User.*** A person owning or controlling a facility in the right-of-way, or who is seeking to own or control a facility in the right-of-way, that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this Chapter, the following are not considered telecommunications right-of-way users except to the extent such entity is offering wireless service:

A. A cable communication system defined and regulated under Minnesota Statutes, Chapter 238,

B. Telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, Section 216B.02,

C. A municipality, a municipal gas or power agency organized under Minnesota Statutes, Chapters 453 and 453A, or

D. A cooperative electric association organized under Minnesota Statutes, Chapter 308A. (Ord. 853, 7-25-2017)

(49) **Two Year Project Plan.** A plan which shows projects adopted by the City for construction within the next two years. (Ord. No. 661, 10-26-99; Code of 2001)

(50) **Utility Pole.** A pole that is used in whole or in part to facilitate telecommunications or electric service.

Note: Minn. Stat. §237.162, subd. 13.

(51) **Wireless Facility.** Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wire line backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

Note: Minn. Stat. §237.162, subd. 13.

(52) **Wireless Service.** Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

(53) **Wireless Support Structure.** A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the City.

Note: Minn. Stat. §237.162, subd. 16.
(Ordinance 853, 7-25-2017)

Sec. 32-3. Administration.

The Director is the principal City official responsible for administration of the Rights-of-Way, Right-of-Way Permits, and the ordinances related thereto. The Director may delegate any or all of these duties. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-4. Permit Requirements.

(1) **Permit Required.** Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way or install or place facilities within the right-of-way without first having obtained the appropriate permit from the City.

A. **Excavation Permit.** An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder-free and open passage over the specified portion of the right-of-way by placing facilities described therein to the extent and for the duration specified therein.

B. **Obstruction Permit.** An obstruction permit is required to hinder-free and open passage over the specified portion of right-of-way by placing equipment and/or materials described therein on the right-of-way to the extent and for the duration specified therein. An obstruction permit is not required

if a person already possesses a valid excavation permit for the same project.

C. *Small Wireless Facility Permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully removed.

Note: Minn. Stat. §237.163, subd. 13.
(Ord. 853, 7-25-2017)

(2) **Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:

- A. A supplementary application is filed for another right-of-way permit before the expiration of the initial permit, and
- B. A new permit or permit extension is granted.

(3) **Delay Penalty.** In accordance with Minnesota Rule 7819.1000, Subpart 3 and notwithstanding Section 32-4 (2), the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The penalty amount shall be established from time to time by ordinance. (Ord. No 751, 11-13-2007)

(4) **Permit Display.** Permits issued under this Chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-5. Permit Application.

An application for a permit shall contain:

(1) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

- A. Each permittee's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
- B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- C. A certificate of insurance or self-insurance:
 - 1. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota or a form of self insurance acceptable to the Director;
 - 2. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its

officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

3. Either naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages or otherwise providing evidence satisfactory to the Director that the City is fully covered and will be defended through registrant's insurance for all actions included in Minnesota Rules Subpart 7819.1250;

4. Requiring that the Director be notified thirty days in advance of cancellation of the policy or material modification of a coverage term; and

5. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Chapter.

D. The City may require a copy of the actual insurance policies if necessary to ensure the Director that the policy provides adequate third party claim coverage and City indemnity and defense coverage for all actions included in the indemnity required by Minnesota Rules Subpart 7819.1250.

E. Such evidence as the Director may require that the person is authorized to do business in Minnesota.

F. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable State or Federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from the Commission or other State or Federal agency.

(2) Payment of money due the City for:

A. Permit fees, estimated restoration costs, and other management costs.

B. Prior obstructions or excavations.

C. Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City.

D. Franchise fees or other charges, if applicable. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-6. Conditions for Issuance of a Permit.

(1) **Permit Issuance.** If the applicant has satisfied the requirements of this Chapter, the Director shall issue a permit.

(2) **Conditions.** The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. (Ord. No. 661, 10-26-99; Code of 2001)

(3) **Small Wireless Facility Conditions.** In addition to subdivision (2), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way shall be subject to the following conditions: A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

A. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, provided that the City may impose a lower

height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

B. No wireless facility may extend more than 10 feet above its wireless support structure.

C. Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

D. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.

E. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

Note: Minn. Stat. §237.163, subd. 3b

(4) ***Small Wireless Facility Agreement.*** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City, or any other City asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the City. The standard collocation agreement may require payment of the following:

A. Up to \$150 per year for rent to collocate on the City structure.

B. \$25 per year for maintenance associated with the collocation.

C. A monthly fee for electrical services as follows:

1. \$73 per radio node less than or equal to 100 maximum watts;
2. \$182 per radio node over 100 maximum watts; or
3. The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the City and the applicant.

Note: Minn. Stat. §237.163, Subd. 6(g).
(Ord. 853, 7-25-2017)

Sec. 32-7. Action on Small Wireless Facility Permit Applications.

(1) ***Deadline for Action.*** The City shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the City fails to approve or deny the application within the review periods established in this section.

(2) ***Consolidated Applications.*** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the City, provided that all small wireless facilities in the application:

- A. Are located within a two-mile radius;
- B. Consist of substantially similar equipment; and
- C. Are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the City may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

(3) ***Tolling of Deadline.*** The 90 day deadline for action on a small wireless facility permit may be tolled if:

A. The City receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the City may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

B. The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within 30 days of receipt of the application. Upon submission of additional documents or information, the City shall have ten days to notify the applicant in writing of any still-missing information.

C. The City and a small wireless facility applicant agree in writing to toll the review period.

Note: Minn. Stat. §237.163, subd. 3c.
(Ord. 853, 7-25-2017)

Sec. 32-8. Permit Fees.

(1) ***Excavation Permit Fee.*** The City shall impose an excavation permit fee in an amount sufficient to recover the following costs:

- A. The City's management costs.
- B. Degradation costs, if applicable.

(2) ***Obstruction Permit Fee.*** The City shall impose an obstruction permit fee and shall be in an amount sufficient to recover the City's management costs.

(3) ***Small Wireless Facility Permit Fee.*** The City shall impose a small wireless facility permit fee in an

amount sufficient to recover:

- A. Management costs, and;
- B. City engineering, make-ready, and construction costs associated with collocation of small wireless facilities. (Ord. 853, 7-25-2017)

(4) **Payment of Permit Fees.** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The permit fee shall be paid at the time the excavation or obstruction permit is requested.

(5) **Non Refundable.** Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 32-15 are not refundable.

(6) **Application to Franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-9. Right-of-Way Patching and Restoration.

(1) **Timing.** The work to be done under the excavation permit and the patching and restoration of the right-of-way as required herein must be completed within the dates specified in the permit increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable.

(2) **Patch and Restoration.** The permittee shall patch its own work. The City may choose either to restore the right-of-way itself or have the permittee restore the right-of-way.

A. **City Restoration.** If the City restores the right-of-way, the permittee shall pay the costs thereof within thirty days of the billing. If the pavement settles following restoration due to the permittee's improper backfilling, the permittee shall pay to the City all costs associated with having to correct the defective work. Payment shall be made within thirty days of the billing.

B. **Permittee Restoration.** If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules Part 7819.3000.

C. **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(3) **Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rules Part 7819.1100.

(4) **Duty to Correct Defects.** The permittee shall correct defects in patching or restoration performed by the permittee or its agents. The permittee upon notification from the Director shall correct all restoration work to the extent necessary using the method required by the Director. Said work shall be completed within five calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable.

(5) **Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the Director or fails to satisfactorily and timely complete all restoration required by the Director, the Director has the option to complete such work. In that event, the permittee shall pay to the City the cost of restoring the right-of-way within thirty days of billing. If the permittee fails to pay as required, the City may exercise its rights under the construction performance bond. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-10. Other Obligations.

(1) **Compliance with Other Laws.** Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09. (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(2) **Prohibited Work.** Except in an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(3) **Interference with Right-of-Way.** A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(4) **Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Direction Drilling, shall follow all requirements set forth in Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director. (Ord. 853, 7-25-2017)

Sec. 32-11. Supplementary Applications.

(1) **Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit except as provided herein. Any permittee that determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

- A. Make application for a permit extension and pay any additional fees required thereby, and
- B. Be granted a new permit or permit extension.

(2) **Limitation on Dates.** A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the end date for the original permit, no work shall be undertaken until a supplemental permit has been issued. The supplementary application must be submitted before the permit end date. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-12. Denial or Revocation of a Permit.

(1) *Reasons for Denial.* The City may deny a permit for failure to meet the requirements and conditions of this Chapter; if the City determines that the denial is necessary to protect the health, safety, and welfare; or when necessary to protect the right-of-way and its current use. (Ord. No. 661, 10-26-99; Code of 2001)

(2) *Procedural Requirements.* The denial or revocation of a permit must be made in writing and must document the basis for the denial. The City must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the City and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny the resubmitted application within 30 days after submission.

Note: Minn. Stat. §237.163, subs. 4(c) and 5(f).
(Ord. 853, 7-25-2017)

Sec. 32-13. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules Part 7819.1100, the City's Street Restoration Procedures for Utility Holes and Trenches, plate 1, and other applicable local requirements in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-14. Inspection.

(1) *Notice of Completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.

(2) *Site Inspection.* The permittee shall make the work-site available to City personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(3) *Authority of Director.*

A. At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well being of the public.

B. The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 32-15. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-15. Work Done Without a Permit.

(1) *Emergency Situations.* Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may

proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the emergency.

If the City becomes aware of an emergency regarding facilities, the City will attempt to contact the local representative of each facility owner affected or potentially affected by the emergency and direct them to take whatever action may be necessary to respond to the emergency. If the facility owner fails to respond to the emergency in a timely manner, the City will take whatever action it deems necessary to respond to the emergency. The cost shall be borne by the person whose facilities occasioned the emergency.

(2) ***Non-Emergency Situations.*** Except in an emergency, any person who obstructs or excavates a right-of-way without first obtaining a permit must subsequently obtain a permit and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this Code, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Chapter. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-16. Supplementary Notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Director of the accurate information as soon as this information is known. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-17. Revocation of Permits.

(1) ***Substantial Breach.*** The City reserves its right to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited to:

- A. The violation of any material provision of the right-of-way permit;
- B. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- C. Any material misrepresentation of fact in the application for a right-of-way permit;
- D. The failure to complete the work in a timely manner unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- E. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 32-12 (3).

(2) ***Written Notice of Breach.*** The City shall make a written demand upon the permittee to remedy the violation if it is determined that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit. The demand shall state that continued violations may be cause for revocation of the permit. As stated in Section 32-15 (1), a substantial breach will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(3) ***Response to Notice of Breach.*** The permittee shall provide the City with an acceptable plan that will cure the breach within 24 hours of receiving notification of the breach. The permittee's failure to so contact the

City or the permittee's failure to submit an acceptable plan or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit.

(4) **Reimbursement of City Costs.** If a permit is revoked, the permittee also shall reimburse the City for the City's reasonable costs including restoration costs, the costs of collection, and reasonable fees incurred for attorney services. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-18. Mapping Data.

Each permittee shall provide mapping information required by the City in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100. Such mapping information shall include:

- (1) Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the locations based on:
 - A. Offsets from property lines, distances from the centerlines of the public right-of-way, curb lines as determined by the City;
 - B. Coordinates derived from the coordinate system being used by the City; or
 - C. Any other system agreed upon by the right-of-way user and the City.
- (2) The type and size of the utility facility.
- (3) A description showing aboveground appurtenances.
- (4) A legend explaining symbols, characters, abbreviations, scale, and other data shown on the map.
- (5) Any facility to be abandoned. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-19. Location of Facilities.

(1) **Undergrounding.** Unless otherwise agreed in a franchise between the applicable right-of-way user and the City, facilities in the right-of-way must be located or relocated and maintained underground in accordance with Section 7-126 of the City Code.

(2) **Corridors.** The City may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

(3) **Limitation of Space.** To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-20. Damage to Other Facilities.

When the City does work in the right-of-way and finds it necessary to maintain, support or move facilities to protect it, the Director shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its equipment damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another facility owner caused during the City's response to an emergency occasioned by that owner's facilities. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-21. Right-of-Way Vacation.

If the City vacates a right-of-way which contains the facilities of a permittee, the permittee's rights in the vacated right-of-way are governed by Minnesota Rules Part 7819.3200. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-22. Indemnification and Liability.

By applying for and accepting a permit under this Chapter, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rules Part 7819.1250. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-23. Abandoned Facilities.

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Director. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-24. Appeal.

Upon written request, a right-of-way user that as been denied registration, has been denied a permit, has had a permit revoked, or believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be written and supported by written findings establishing the reasonableness of the decision. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-25. Reservation of Regulatory and Police Powers.

A permittee's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public. (Ord. No. 661, 10-26-99; Code of 2001)

Sec. 32-26. Severability.

If any portion of this Chapter is for any reason held invalid by any court of competent jurisdiction, such

portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Ord. No. 661, 10-26-99; Code of 2001)

**Editor's Comments
Chapter 32-City Code
Public Right-of-Way**

This Chapter was very recently created through the adoption of Ordinance 661. In incorporating the Ordinance into the Code, the following changes have been made:

The Chapter has been renumbered to be consistent with the numbering system used throughout the Code.

The source notation "(Ord. No. 661, 10-26-99)" has been added to the end of each section.

Margaret A. Egan
Finance Director/
City Clerk

December 2, 1999