

ORDINANCE NO. 971

**AN ORDINANCE OF THE CITY OF SHAKOPEE, MINNESOTA AMENDING
SHAKOPEE CITY CODE CHAPTER 90, STREETS AND SIDEWALKS**

THE CITY COUNCIL OF THE CITY OF SHAKOPEE, MINNESOTA, ORDAINS:

Section 1, Chapter 90.30 through 90.99 of the Shakopee City Code is amended to read as follows:

CHAPTER 90: STREETS AND SIDEWALKS

Section

Right-of-Way Management

- 90.30 Findings, purpose, and intent
- 90.31 Election to manage the public right-of-way
- 90.32 Definitions
- 90.33 Administration
- 90.34 Utility Coordination Committee
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- 90.36 Reporting obligations
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- 90.99 Penalty

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RIGHT-OF-WAY MANAGEMENT

§ 90.30 FINDINGS, PURPOSE, AND INTENT.

(A) To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

(B) Accordingly, the city enacts this new subchapter relating to right-of-way permits and administration. This subchapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the city's rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this subchapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(C) This section shall be interpreted consistently with 1997 Session Laws, Ch. 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act"), and 2017 Session laws, Chapter 94 amending the Act as they may be amended from time to time, and the other laws governing applicable rights of the city and users of the right-of-way. This subchapter shall also be interpreted consistent with Minn. Rules 7819.0050 through 7819.9950 where possible. To the extent that any provision of this subchapter cannot be interpreted consistently with the Minn. Rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended. This section shall not be interpreted to limit 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.
(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.31 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

Pursuant to the authority granted to the city under state and federal statutory, administrative, and common law, the city elects pursuant M.S. § 237.163, subd. 2(b), as it may be amended from time to time, to manage rights-of-way within its jurisdiction.
(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.32 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. References to "subdivisions" are, unless otherwise specified, references to subdivisions in this subchapter.

ABANDONED FACILITY. A facility no longer in service or 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.

APPLICANT. Any person requesting permission to excavate or obstruct a right-of-way.

CITY. The City of Shakopee, Minnesota. For purposes of § 90.54, **CITY** means its elected officials, officers, employees, and agents.

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: See, Minn. Stat. § 237.162, Subd. 10.

COMMISSION. The Minnesota Public Utilities Commission.

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 using hand digging to expose the existing lateral facilities in conformance with M.S. § 216D.04, subd. 3, as it may be amended from time to time, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under M.S. § 15.73, as it may be amended from time to time;
- (4) Letter of credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city; and
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

DEGRADATION. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

DEGRADATION COST. Subject to Minn. Rules 7819.1100, means the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn Rules 7819.9900 to 7819.9950.

DEGRADATION FEE. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

DELAY PENALTY. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

DEPARTMENT. The Department of Public Works of the city.

DEPARTMENT INSPECTOR. Any person authorized by the city to carry out inspections related to the provisions of this subchapter.

DIRECTOR. The Director of the Department of Public Works of the city, or the Director's designee.

EMERGENCY. A condition that:

- (1) Poses a danger to life or health, or of a significant loss of property; or
- (2) Requires immediate repair or replacement of facilities in order to restore service to a customer.

EQUIPMENT. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

EXCAVATE. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

EXCAVATION PERMIT. The permit which, pursuant to this subchapter, 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 such permit.

EXCAVATION SUBDIVISION PERMIT FEE. Money paid to the city by an applicant to cover the costs as provided in § 90.39.

FACILITY or FACILITIES. Tangible asset in the public right-of-way required to provide utility service. The term does not include facilities to the extent the location and relocation of such facilities are preempted by M.S. § 161.45, as it may be amended from time to time, governing utility facility placement in state trunk highways.

FIVE-YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next 5 years.

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.

HOLE. An excavation in the right-of-way, with the excavation having a length less than the width of the pavement or adjacent pavement.

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 subchapter.

MANAGEMENT COSTS. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with 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. **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 State Session Laws 1997, Ch. 123; M.S. §§ 237.162 or 237.163, as they may be amended from time to time, or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to § 90.57.

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.

OBSTRUCTION PERMIT. The permit which, pursuant to this subchapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein, including a blanket permit for a period of time and for types of work specified by the Director, if deemed appropriate in Director's discretion.

OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in § 90.39.

PATCH or **PATCHING**. A method of pavement replacement that is temporary in nature. A **PATCH** consists of:

- (1) The compaction of the sub-base and aggregate base; and
- (2) The replacement, in kind, of the existing pavement for a minimum of 2 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 5-year project plan.

PAVEMENT. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

PERMIT. Has the meaning given "right-of-way permit" in M.S. § 237.162, as it may be amended from time to time.

PERMITTEE. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this subchapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

PROBATION. The status of a person that has not complied with the conditions of this subchapter.

PROBATIONARY PERIOD. One year from the date the permittee has been notified in writing that it has been placed on probation.

PUBLIC RIGHT-OF-WAY **OR RIGHT-OF-WAY**. Has the meaning given it in M.S. § 237.162, subd. 3, as it may be amended from time to time.

REGISTRANT. Any person who:

- (1) Has or seeks to have its equipment or facilities located in any right-of-way; or
- (2) 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.

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.

RESTORATION COST. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minn. Rules 7819.1100, subp. 1, on file with the Director.

RIGHT-OF-WAY PERMIT. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this subchapter.

RIGHT-OF-WAY USER.

- (1) A telecommunications right-of-way user as defined by M.S. § 237.162, subd. 4, as it may be amended from time to time; or
- (2) 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.

SERVICE or **UTILITY SERVICE**. Includes:

- (1) "Services provided by a public utility" as defined in M.S. § 216B.02, subs. 4 and 6, as it may be amended from time to time;
- (2) Services of a telecommunications right-of-way user, including transporting of voice or data information;

(3) “Services of a cable communications system” as defined in M.S. § 238.02, subd. 3, as it may be amended from time to time;

(4) Natural gas or electric energy or telecommunications services provided by a local government unit;

(5) Services provided by a cooperative electric association organized under M.S. Ch. 308A; and

(6) Water, sewer, steam, cooling, or heating services.

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.

SMALL WIRELESS FACILITY. A wireless facility that meets both of the following qualifications:

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

(2) 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.

SUPPLEMENTARY APPLICATION. An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

TELECOMMUNICATIONS RIGHT-OF-WAY USER. A person owning or controlling a facility in the right-of-way, or 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 subchapter, a cable communication system defined and regulated under M.S. Ch. 238, as it may be amended from time to time, and telecommunication activities related to providing natural gas or electric energy services ~~whether provided by~~ a public utility as defined in M.S. § 216B.02, as it may be amended from time to time, a municipality, a municipal gas or power agency organized under M.S. Chs. 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under M.S. Ch. 308A, as it may be amended from time to time, are not **TELECOMMUNICATIONS RIGHT-OF-WAY USERS** for purposes of this subchapter except to the extent such entity is offering wireless service.

TEMPORARY SURFACE. The compaction of sub-base 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 2-year plan, in which case it is considered full restoration.

TRENCH. An excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement or adjacent pavement.

TWO-YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next 2 years.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000; Ord. 760, passed 5-25-2006)

UTILITY POLE. A pole that is used in whole or in part to facilitate telecommunications or electric service.

Note: Minn. Stat. § 237.162, Subd. 12.

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, wireline 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.

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.

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.

§ 90.33 ADMINISTRATION.

The Director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.34 UTILITY COORDINATION COMMITTEE.

The city may create an Advisory Utility Coordination Committee. Participation on the Committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such Committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.35 REGISTRATION; RIGHT-OF-WAY OCCUPANCY AND REGISTRATION INFORMATION.

(A) *Registration and right-of-way occupancy.*

(1) *Registration generally.* Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way,

including persons with installation and maintenance responsibilities by lease, sub-lease, or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(2) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.

(3) *Exceptions.*

(a) Nothing in this subchapter shall be construed to repeal or amend the provisions of a city ordinance establishing the rights of and limitations placed on persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb.

(b) Persons shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements under this subchapter for the following:

1. Planting or maintaining boulevard plantings or gardens;
2. Other surface landscaping works;
3. Maintenance of driveways and parking lots unless such maintenance requires excavation work in the right-of-way;
4. Construction or maintenance of street furnishings, bus stop benches, shelters, or posts and pillars;
5. Snow removal activities;
6. Construction and maintenance of irrigation systems provided that the system does not connect directly to water mains in the right-of-way; and
7. Nothing herein relieves a person from complying with the provisions of the M.S. Ch. 216D, as it may be amended from time to time, also known as the Gopher One-Call Law.

(B) *Registration information.*

(1) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to:

(a) Each registrant's name, 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 accessible for consultation 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 authorized to do business in the state or a form of self insurance acceptable to the city;

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:

a. Use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees; and

b. 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 Minn. Rules 7819.1250;

4. Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and

5. Indicating comprehensive liability coverage, automobile liability coverage, worker's compensation, and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this subchapter.

6. If the person is a corporation, a copy of the certificate is required to be filed under Minn. Stat. Sec. 300.06 as recorded and certified to by the Secretary of State.

7. 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 said commission or other state or federal agency.

(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 Minn. Rules 7819.1250; and

(e) Such evidence as the Director may require that the person is authorized to do business in the state.

(2) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change. (2013 Code, § 7.17) (Ord. 570, passed 8-24-2000; Ord. 578, passed 9-14-2000)

§ 90.36 REPORTING OBLIGATIONS.

(A) Operations.

(1) Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

(2) The plan shall include, but not be limited to, the following information:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the 5 years following the next calendar year (in this subchapter, a 5-year project).

(3) The term **PROJECT** in this section shall include both next-year projects and 5-year projects.

(4) By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(B) *Additional next-year projects.* Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.37 PERMITS.

(A) *Permit required.*

(1) Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so.

(a) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such 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 by a registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment 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 revoked.

Note: Minn. Stat. § 237.163, Subd. 13.

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

(a) Such person makes a supplementary application 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 ~~permit~~penalty.*

(a) In accordance with Minn. Rules 7819.1000, subp. 3, and notwithstanding § 90.31, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.

(b) The delay penalty shall be established from time to time by City Council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(4) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(B) *Permit applications.* Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Registration with the city pursuant to this subchapter;

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

(3) Payment of money due the city for:

(a) Permit fees, estimated restoration costs, and other management costs;

(b) Prior obstructions or excavations; or

(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,

(4) (a) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing; and

(b) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.38 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this subchapter, the city shall issue a permit.

(B) *Conditions.* The city 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. In addition, a permittee must comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

~~(2013 Code)~~(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

(C) *Small Wireless Facility Purpose and Findings.* The City desires high quality services to accommodate the needs of residents and businesses. At the same time, the City strives

to minimize the negative impacts that small wireless facilities can create. These negative impacts include, but are not limited to, interference with right-of-way user sight lines, impacts to right-of-way user circulation, incompatible aesthetics with the surrounding area, fall zone risk, clear zone risk, creating navigation obstacles, interference with future travel way expansion plans, interference with the delivery of other utility services, interference with stormwater management facilities, and increased noise pollution. To minimize these negative impacts, the city will consider impacts to the public health, safety, and welfare when reviewing a small wireless permit application and a request to enter into a small wireless facility collocation agreement. The public health, safety, and welfare can be best accommodated by locating small wireless facilities in the following order, which affords the greatest protection of the public:

(1) Locate outside of the right-of-way.

(2) Locate in the right-of-way on or adjacent to Principal Arterial, other Arterial, or Major/Minor Collector roads, as classified by the Metropolitan Council Functional Classification System.

(3) Collocate on existing wireless support structures within the right-of-way.

(4) Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure of the same height.

(5) Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure whose height is less than or equal to 50 feet.

(6) Locate on a new wireless support structure within the right-of-way whose height is similar to nearby structures.

(7) Locate on a new wireless support structure within the right-of-way whose height is less than or equal to 50 feet.

The city will also consider factors such as aesthetic compatibility of the small wireless facility with surrounding structures, ability to eliminate, underground, or screen ground-mounted equipment, dangers within the small wireless facility fall zone, distance of the small wireless facility from roads, sidewalks, trails and bicycle lanes, and future roadway, pedestrian, bicycle, water, wastewater, and stormwater improvement plans for the site before issuing small wireless facility permit or entering into a standard small wireless facility collocation agreement.

(D) *Small Wireless Facility Conditions.* In addition to sections B and C above, 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:

(1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specification, and at the height indicated in the applicable permit application.

(2) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height above ground level 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.

(3) No wireless facility may extend more than 10 feet above its wireless support structure.

(4) Where an applicant proposes to install a new wireless support structure in the right-of-way, a 600 feet minimum separation is required between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

(5) 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.

(6) 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. The diameter of the new wireless support structure that replaces an existing wireless support structure shall not exceed the diameter of the existing wireless support structure by more than 50 percent.

(7) The small wireless facility shall have limited exposed cabling and mounting hardware. It shall also match the wireless support structure it is attached to in color and, as close as practicable, in material and design.

(8) The small wireless facility shall not interfere with public safety wireless telecommunications.

(9) A small wireless facility attached to an existing wireless support structure shall not block light emanating from the wireless support structure and shall not otherwise interfere with the original use or intent of the wireless support structure.

(10) Ground mounted equipment associated with the small wireless facility is prohibited unless the applicant can show that ground-mounted equipment is necessary for operation of the small wireless facility. If ground-mounted equipment is necessary, it shall comply with other provisions of the city Ordinance and the following:

a. Ground-mounted equipment shall be placed below grade unless not technically feasible;

b. Ground-mounted equipment shall not disrupt traffic or pedestrian circulation and shall not interfere with vehicle and pedestrian intersection sight lines and clear zones;

c. Ground-mounted equipment shall not create a safety hazard;

d. If placed above grade, ground-mounted equipment shall be separated from the nearest ground-mounted equipment on the same block by a minimum of 330 feet unless the equipment is placed underground, or unless waived by the Director;

e. If placed above grade, ground-mounted equipment shall be limited to 3 feet in height and 28 cubic feet in cumulative size.

(11) Exemptions. No small wireless facility permit is required to conduct the following activities in the right-of-way:

a. Routine maintenance of small wireless facility;

b. Replacement of a small wireless facility that is substantially similar or smaller in size, weight, height, and wind or structural loading that the small wireless facility being replaced; or

c. Installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

Note: Minn. Stat. § 237.163, Subd. 3b.

(E) *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 rent and maintenance associated with the collocation. Electric service will not be provided by the City. The standard collocation agreement shall be in addition to, and not 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 applicant.

Note: Minn. Stat. § 237.163, Subd. 6(g).

(E) *Action on Small Wireless Facility Permit Application,*

(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 a local government unit, 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 application 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.

§ 90.39 PERMIT FEES.

(A) *Fee schedule and fee allocation.* The city's permit fee schedule shall be available to the public and established in advance where reasonably possible. The permit fees shall be

designed to recover the city's actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the city.

(B) *Excavation permit fee.* The city shall ~~establish~~impose an excavation permit fee in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(C) *Obstruction permit fee.* The city shall ~~establish~~impose an obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

(D) *Small Wireless Facility Fee.* The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

- (1) management costs, and;
- (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

(E) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow the applicant to pay such fees within 30 days of billing, or on some other payment plan agreed to by the Director at the Director's discretion.

(EF) *Non-refundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in § 90.49 are not refundable.

(FG) *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.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.40 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *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 under § 90.43.

(B) *Patch and restoration.* The permittee must patch its own work. The city may choose either to have the permittee restore the surface and subgrading portions of the right-of-way or to restore the surface portion of the right-of-way itself.

(1) *City restoration.* If the city restores the surface portion of the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.

(2) *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 Minn. Rules 7819.3000.

(3) *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 replacing and compacting the subgrade and aggregate based material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules 7819.1100.

(D) *Duty to correct defects.* The permittee shall correct defects in patching, restoration performed by permittee or its agents. Upon notification from the city, the permittee shall correct all restoration work to the extent necessary, using the method required by the city. Unless otherwise agreed to by the Director, said work shall be completed within 5 calendar days of receipt of the notice from the city, 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 under § 90.43.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee 10 days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the Director. In the event the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond. (2013 Code, § 7.17) (Ord. 570, passed 8-24-2000) Penalty, see § 90.99

§ 90.41 JOINT APPLICATIONS.

(A) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(B) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(C) *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by 2 or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required. (2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.42 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.*

(1) 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.

(2) Any permittee which 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.

(B) *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 permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date. (2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.43 OTHER OBLIGATIONS.

(A) *Compliance with other laws.*

(1) 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, M.S. §§ 216D.01 through 216D.09, as they may be amended from time to time, (Gopher One-Call Excavation Notice System) and Minn. Rules 7560.

(2) 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.

(B) *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.

(C) *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, unless otherwise approved by the Director. 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.

(D) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in M.S. Ch. 216D, as it may be amended from time to time, and Minn. Rules 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Director. Trenchless excavations deeper than 5 feet will not be permitted without written approval from the Director.

(E) *Traffic control.* A permittee shall implement traffic-control measures in the area of the work and shall use traffic-control procedures in accordance with the most recent manuals on uniform traffic-control, traffic-control devices, and traffic zone layouts published by the state. (2013 Code, § 7.17) (Ord. 570, passed 8-24-2000; Ord. 760, passed 5-25-2006)

§ 90.44 DENIAL OR REVOCATION OF PERMIT.

(A)—*Reasons for Denial.* The city may deny a permit for failure to meet the requirements and conditions of this subchapter or 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.

(B) *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, Subds. 4(c) and 5(f)
(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.45 INSTALLATION REQUIREMENTS.

(A) The excavation, backfilling, patching, and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the M.S. §§ 237.162 and 237.163, as they may be amended from time to time.

(B) Installation of service laterals shall be performed in accordance with Minn. Rules Ch. 7560 and this subchapter. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits, city specifications, city design criteria, and agreements referenced in § 90.50.
(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000; Ord. 760, passed 5-25-2006)

§ 90.46 INSPECTION.

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

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

(C) *Authority of Director.*

(1) 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.

(2) The Director may issue an order to the permittee to correct any work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a “substantial breach” within the meaning of M.S. § 237.163, subd. 4(c), as it may be amended from time to time, the order shall state that failure to correct the violation will be cause for revocation of the permit after a specified period determined by the Director. The permittee shall present proof to the Director that the violation has been corrected within the time period set forth by the Director in the order. Such proof shall be provided no later than the next

business day following the day of completion. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to § 90.49. (2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.47 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each registrant shall immediately notify the Director of any event regarding its facilities that the registrant considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One-Call regarding an emergency situation does not fulfill this requirement. Within 2 business days after the occurrence of the emergency the registrant 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 subchapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(B) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way, must subsequently obtain a permit, pay an unauthorized work permit fee in an amount established from time to time by the City Council, 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 subchapter.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000; Ord. 760, passed 5-25-2006)

§ 90.48 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 city of the accurate information as soon as this information is known.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.49 REVOCATION OF PERMITS.

(A) *Substantial breach.*

(1) 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.

(2) A substantial breach by permittee shall include, but shall not be limited to, the following:

(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 § 90.46(C)(2).

(B) *Written notice of breach.* If the city determines 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 city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within a time established by the Director following the permittee's receipt of notification of the breach, the permittee shall provide the city with a plan to cure the breach, acceptable to the city. The permittee's failure to submit a timely and acceptable plan, or the permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit. Further, the permittee's failure to contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, may result in probation for up to 1 full year.

(D) *Cause for probation.* The city may establish a list of conditions of the permit, that if breached, will be grounds to place the permittee on probation. The city shall not enforce a probation program unless and until it has established such conditions, which it may amend from time to time.

(E) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.50 MAPPING DATA.

(A) *Information required.* Each registrant and permittee shall provide mapping information in a form required by the city in accordance with Minn. Rules 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the Director accurate maps and drawings certifying the "as-built" location of all equipment installed, owed, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as a condition imposed by the Director. Failure to provide maps and drawings pursuant to this division (A) shall be grounds for revoking the permit holder's registration.

(B) *Service laterals.*

(1) All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules 7560.0150, subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the Director reasonably required it.

(2) Permittees or their subcontractors shall submit to the Director evidence satisfactory to the Director of the installed service lateral locations. Compliance with this division (B) and with applicable Gopher State One-Call law and Minn. Rules governing service laterals installed after December 31, 2005 shall be a condition of any city approval necessary for:

(a) Payments to contractors working on a public improvement project including those under M.S. Ch. 429, as it may be amended from time to time; and

(b) City approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462, as it may be amended from time to time. The Director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may ~~result in the revocation of the permit issued~~ for the work or for future permits to the offending permittee or its subcontractors.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000; Ord. 760, passed 5-25-2006)

§ 90.51 UNDERGROUNDING.

(A) Purpose.

(1) The purpose of this section is to promote the health, safety, and general welfare of the public and is intended to foster:

(a) Safe travel over the right-of-way;

(b) Non-travel related safety around homes and buildings where overhead feeds are connected; and

(c) Orderly development in the city. Location and relocation, installation and reinstallation of facilities in the right-of-way must be made in accordance with this division (A).

(2) This section intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to M.S. §§ 161.45, 237.162, 237.163, 301B.01, 222.37, 238.084, and 216B.36, and Minnesota Rules 7819.3100, 7819.5000, and 7819.5100, as they may be amended from time to time, and the Telecommunications Act of 1996, 47 U.S.C. § 253, to the extent the rules do not limit authority otherwise available to cities.

(B) *Undergrounding of facilities.* Facilities newly installed, constructed, or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this subchapter and in accordance with applicable construction standards, subject to the exceptions below.

Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers, and service connection pedestals shall be allowed. The requirements of this division (B) shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulations, or comprehensive planning as may now or in the future be allowed by law.

(C) *Exceptions to undergrounding.* The following exceptions to the strict application of this section shall be allowed upon the conditions stated.

(1) *Transmission lines.* Above-ground installation, construction, or placement of those facilities commonly referred to as “high voltage transmission lines” upon which a conductor’s normal operating voltage equals or exceeds 23,000 volts (phase to phase) shall be allowed only by prior approval of the Council; provided, however, that 60 days prior to commencement of construction of such a project, the city shall be furnished notice of the proposed project and, upon request, the right-of-way user involved shall furnish all relevant information regarding such project to the city. This provision shall not be construed as waiving the requirements of any other ordinance or regulation of the city as the same may apply to any such proposed project.

(2) *Technical and economic feasibility.* Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial, and industrial areas where the Council, following consideration and recommendation by the Planning Commission, finds that:

(a) Underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights; or

(b) Underground placement is impractical or not technically feasible due to topographical, sub-soil, or other existing conditions which adversely affect underground facilities placement.

(3) *Temporary service.* Above-ground installation, construction, or placement of temporary service lines shall only be allowed:

(a) During new construction of any project for a period not to exceed 24 months;

(b) During an emergency in order to safeguard lives or property within the city; and

(c) For a period of not more than 7 months when soil conditions make excavation impractical.

(D) *Undergrounding of permanent replacement, relocated, or reconstructed facilities.*

(a) If the city finds that 1 or more of the purposes set forth in division (A) above would be promoted, the city may require a permanent replacement, relocation, or reconstruction of a facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this subchapter,

RECONSTRUCTION means any substantial repair of or any improvement to existing facilities.

(b) Undergrounding may be required whether a replacement, relocation, or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the city in connection with:

1. The present or future use by the city or other local government unit of the right-of-way or other public ground for a public project;

2. The public health or safety; or

3. The safety and convenience of travel over the right-of-way.

(E) *Retirement of overhead facilities.* The City Council may determine whether it is in the public interest that all facilities within the city, or facilities within certain districts designated by the city, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to division (B) above (new facilities) and

division (D) above (replacement facilities). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected (2 weeks published: 30 days written.) At the hearing, the Council must consider items in division (G) below and make findings. Undergrounding may not take place until City Council has, after hearing and notice, adopted a plan containing items in division (H) below.

(F) *Public hearings.* A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether facilities in the right-of-way in the city, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under divisions (B) and (D) above.

(G) *Public hearing issues.*

(1) The issues to be addressed at the public hearings include, but are not limited to:

(a) The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way;

(b) The feasibility and cost of undergrounding all facilities by a date certain as determined by the city and the affected utilities;

(c) The tariff requirements, procedure, and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the city; and

(d) Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

(2) Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either city-wide or within districts designated by the city.

(H) *Undergrounding plan.*

(1) If the Council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way or in non-right-of-way public ground, the Council must establish a plan for such undergrounding.

(2) The plan for undergrounding must include at least the following elements:
(a) Timetable for the undergrounding;
(b) Designation of districts for the undergrounding unless the undergrounding plan is city-wide;

(c) Exceptions to the undergrounding requirement and procedure for establishing such exceptions;

(d) Procedures for the undergrounding process, including, but not limited to, coordination with city projects and provisions to ensure compliance with nondiscrimination requirements under the law;

(e) A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility; and

(f) Penalties or other remedies for failure to comply with the undergrounding.

(I) *Facilities location.*

(1) (a) In addition to complying with the requirements of M.S. §§ 216D.01 through 216D.09, as they may be amended from time to time (“One-Call Excavation Notice System”), before the start date of any right-of-way excavation, each registrant who has facilities located in the area to be excavated shall mark the horizontal placement of all said facilities.

(b) To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of its facilities to excavators upon request.

(c) Nothing in this division (I) is meant to limit the rights, duties, and obligations of facility owners or excavators as set forth in M.S. §§ 216D.01 through 216D.09, as they may be amended from time to time. Any right-of-way user whose facility is less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish and mark the exact horizontal and vertical location of its facility and the best procedure for excavation.

(2) All facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate, all utilities shall be installed, constructed, or placed within the same trench.

(J) *Limitation of Space.* To protect the health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the city 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 city 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 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.

(K) *Responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this section, and prior to final approval of any plat or development plan, shall submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such facilities have been made. (2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.52 RELOCATION OF FACILITIES.

A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection with:

- (A) A present or future city use of the right-of-way for a public project;
- (B) The public health or safety; or
- (C) The safety and convenience of travel over the right-of-way.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.53 INTERFERENCE BY OTHER FACILITIES.

When the city does work in the right-of-way in its governmental right-of-way management function and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging registrant's facilities, the city shall notify the local representative as early as is reasonably possible. The city costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.54 RIGHT-OF-WAY VACATION; RESERVATION OF RIGHT.

If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules 7819.3200.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.55 INDEMNIFICATION AND LIABILITY.

By registering with the city, or by accepting a permit under this subchapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules 7819.1250.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.56 ABANDONED AND UNUSABLE FACILITIES.

(A) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this subchapter have been lawfully assumed by another registrant.

(B) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.57 APPEAL.

- (A) A right-of-way user that:
- (1) Has been denied registration;
 - (2) Has been denied a permit;
 - (3) Has had permit revoked;
 - (4) Believes that the fees imposed are not in conformity with M.S. § 237.163, subd. 6, as it may be amended from time to time; or

(5) Disputes a decision of the Director regarding the mapping data required by § 90.50 may have the denial, revocation, decision, or fee imposition reviewed, upon written request, go to the City Administrator.

(B) 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 in writing and supported by written findings establishing the reasonableness of the decision.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000; Ord. 760, passed 5-25-2006)

§ 90.58 RESERVATION OF REGULATORY AND POLICE POWERS.

A permittee's or registrant'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.

(2013 Code, § 7.17) (Ord. 570, passed 8-24-2000)

§ 90.99 PENALTY.

(A) Every person violates a section, subdivision, paragraph, or provision of this chapter when the person performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as follows.

(1) *Misdemeanor.* Where the specific section, subdivision, paragraph, or provision specifically makes violation a misdemeanor, the person shall be punished as for a misdemeanor; where a violation is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property, the person shall be punished as for a misdemeanor; where the person stands convicted of violation of any provision of this chapter, exclusive of violations relating to the standing or parking of an unattended vehicle, within the immediate preceding 12-month period for the third or subsequent time, the person shall be punished as for a misdemeanor.

(2) *Petty misdemeanor.* As to any violation not constituting a misdemeanor under the provisions of division (A)(1) above, the person shall be punished as for a petty misdemeanor.

(2013 Code, § 7.99)

(B) Each day that any person continues in violation of § 90.08 shall be a separate offense, and punishable as such.

(2013 Code, § 7.08)

(Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992; Ord. 570, passed 8-24-2000)

Adopted in regular session of the City Council of the City of Shakopee, Minnesota held this 3rd day of October 2017.

Mayor of the City of Shakopee

Attest:

_____,
City Clerk

Published in the Shakopee Valley News on the _____ day of _____, 2017.

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