

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Chapter 62

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

*State law reference—General powers relative to streets, sidewalks and public grounds, Minn. Stats. § 412.221, subds. 6, 7, 18; roads generally, Minn. Stats. ch. 160; bridges generally, Minn. Stats. ch. 165.

ARTICLE I. IN GENERAL

Secs. 62-1—62-10. Reserved.

ARTICLE II. PRIVATE STRUCTURES AND PRIVATE CONSTRUCTION ACTIVITIES ON PUBLIC LAND

Sec. 62-11. Special permits for certain structures on public land.

(a) *Construction on public land.* Construction of any kind on any public way, park or commons, or the alteration of the natural contour of any public way, park, or commons, is unlawful unless a special construction on public land permit is issued as provided in this article. Any proposed construction, special use or land alteration shall require the applicant to provide necessary drawings to scale, specifications of materials to be used, proposed costs, and purpose for change. All special permits shall require a survey by a registered land surveyor before a special permit will be issued. Survey shall comply with the city's survey requirements. Copies of such surveys, drawings, specifications of materials, proposed costs and statements of purpose shall be furnished to the city and kept on file in the city offices. No special permit shall be issued unless approved by the Councilmember.

(b) *Types of construction requiring a special construction on public land.* All stairways, retaining walls, fences, temporary structures, stone work, concrete forming, or any type of construction shall require a special permit. No special construction permit shall be issued for construction of boathouses or other buildings on public land under this article or any other ordinance of the city.

(c) *Public land repair.* No person shall conduct any structural repair on any boathouse or other structure on public land without first receiving a special repair permit from the city in accordance with this subdivision. Staff recommendations for structural repair shall be consistent with current applicable zoning regulations. Applications for repairing existing boathouses or other structures may be obtained from the city. All applications for special repair permits shall be reviewed by the City Council. The Council shall determine if the repair permit shall be granted or denied, and may order any structure to be removed. The Council shall have the right to impose any reasonable conditions it may deem advisable to protect the public's use of the public shoreline.

(d) *Land alteration.* A special land alteration permit shall be required from the city before any alterations are made on public lands:

- (1) Which would result in any changes to the following:
 - a. Shoreline;
 - b. Drainage;
 - c. Grade;
 - d. Pitch;
 - e. Slope; or
 - f. Trees;
- (2) Which require the removal or placement of any fill; or
- (3) Which eliminates, adds or develops any access road or land.

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This section specifically includes any alterations to uses which are nonconforming on the date the ordinance from which this article is derived became effective. No special permit shall be issued unless approved by the Council. Structures located on public lands that are ordered removed by the City Council or by the building official under any code or law may proceed under the supervision and direction of the city without the necessity for obtaining removal permits from the City Council.

(e) *Exceptions to City Council approval.*

(1) The installation of a stairway to provide access to an approved dock location is a recognized need, and does not require the prior approval of the City Council. The city may approve permits for the installation, replacement, and maintenance of stairways for individual dock site holders. All stairways shall be constructed according to the building code as approved by the city. A building permit may be required with a fee to be charged according to the building permit fee schedule in effect at the time of the permit issuance. General public access stairways are not exempt and require City Council approval.

(2) Maintenance or replacement of landscaping, stairs, steps, retaining walls or similar appurtenances in the same size and in the same location which are normal and customary for a residential property shall not require City Council approval.

(3) Property owner request for removal of any tree, or any portion thereof, on public property that is dead, diseased, or deemed to be a hazard or nuisance as determined by the Public Works Director or designee shall not require City Council approval.

(4) Removal of any tree, or any portion thereof, on public property that is dead, diseased, or deemed to be a hazard or nuisance as determined by the Public Works Director or designee shall not require City Council approval.

(5) Removal of or control of noxious weeds, invasive species, or volunteer sapling/small diameter, low-value (i.e., Soft Maple, Cottonwood, Boxelder) trees in native, natural, or unmaintained areas shall not require City Council approval.

Nothing in the aforementioned Sections 62-11 (e) above shall prevent Staff from requiring the submittal and processing of a Public Lands Permit application if it is determined that it is in the public's best interest that a formal review process be undertaken. This process may require review of the submitted application by the Planning Commission, the Parks Commission, or Docks and Commons Commission prior to the City Council taking action.

(f) *Street excavation permit required.* Any permit issued under the provisions of this article is in addition to and not in lieu of any street excavation permit which may be required under the provisions of article III of this chapter.

(g) *Certain encroachments to continue.* All encroachments (structures, buildings, boathouses, decks, sheds, retaining walls, fences, flagpoles, birdhouses, and other miscellaneous items) existing on April 1, 1976, or that have received prior written City Council approval (approval consists of a permit or recognition by City Council resolution or other written city approval), are hereby recognized and allowed to continue subject to the following:

- (1) The building official shall conduct an inspection of each public commons not more frequently than every four years on a rotating basis and evaluate the permitted encroachments for safety and condition. The city shall issue correction notices as needed.
- (2) The city shall follow up with a complete status report to the City Council to be completed each year by the end of June at which time the Council may advise any corrective action.

(Code 1987, § 320.01; Ord. No. 54-1991, 12-23-1991; Ord. No. 62-1993, 4-19-1993; Ord. No. 108-2000, 7-16-2000; Ord. No. 04-2014, 4-20-2014; Ord. No. 04-2015, 11-22-2015)

Secs. 62-12—62-22. Reserved.

ARTICLE III. EXCAVATIONS

Sec. 62-23. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person making written application to the City Manager for an excavation permit hereunder.

Excavation work means the excavation and other work permitted under an excavation permit and required to be performed under this article.

Permittee means any person who has been granted and has in full force and effect an excavation permit issued hereunder.

(Code 1987, § 605.01)

Sec. 62-24. Routing of traffic.

The permittee shall take appropriate measures to ensure that during the performance of the excavation work traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public, provided that the city may permit the closing of streets to all traffic for a period of time prescribed by him if in his opinion it is necessary. The permittee shall route and control traffic including its own vehicles as directed by the city Police Department. The following steps shall be taken before any highway may be closed or restricted to traffic:

- (1) The permittee must receive the approval of the City Manager and the Police Department therefor;
- (2) The permittee must notify the city of any street so closed;
- (3) Upon completion of construction work, the permittee shall notify the city and city Police Department before traffic is moved back to its normal flow so that any necessary adjustments may be made;
- (4) Where flaggers are deemed necessary by the city, they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the city will designate detours. The city shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee, but in case there are not existing highways, the permittee shall construct all detours at its expense and in conformity with the specifications of the city. The permittee will be responsible for any unnecessary damage caused to any highways by the operation of its equipment.

(Code 1987, § 605.30)

Sec. 62-25. Clearance for fire equipment.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free of piles of material or other obstructions.

(Code 1987, § 605.35)

Sec. 62-26. Protection of traffic.

The permittee shall erect and maintain suitable barriers to confine earth from trenches or other excavations in order to encroach upon highways as little as possible.

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(Code 1987, § 605.40)

Sec. 62-27. Protection of adjoining property.

The permittee shall at all times and at the expense of the permittee preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license or waiver from the owner of such private property for such purpose. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this article. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner, or in the case of public property, the city.

(Code 1987, § 605.50)

Sec. 62-28. Protective measures.

The permittee shall erect such fence, railing, or barriers about the site of the excavation work as shall prevent danger to persons using the city street or sidewalks, and such protective barriers shall be maintained until the work is completed or the danger removed. At twilight, there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets, suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers, or any lights provided there for the protection of the public.

(Code 1987, § 605.55)

Sec. 62-29. Attractive nuisance.

It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment, or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health.

(Code 1987, § 605.60)

Sec. 62-30. Care of excavated material.

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the City Manager shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

(Code 1987, § 605.65)

Sec. 62-31. Damage to existing improvements.

All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered, the permittee fails to furnish the necessary labor and materials for such repairs, the city engineer shall have the authority to cause said necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee. The permittee shall also be liable on the bond provided therefor.

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(Code 1987, § 605.70)

Sec. 62-32. Cleanup.

As the excavation work progresses, all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock, and other debris resulting from such work. All cleanup operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the City Manager. From time to time as may be ordered by the city engineer, and in any event immediately after completion of said work, the permittee shall at the permittee's expense clean up and remove all refuse and unused materials of any kind resulting from said work and upon failure to do so within 24 hours after having been notified to do so by the City Manager, said work may be done by the city, or by a contractor chosen by the city, and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

(Code 1987, § 605.80)

Sec. 62-33. Protection of watercourses.

The permittee shall provide for the flow of all watercourses, sewers, or drains intercepted during the excavation work and shall replace the same in as good a condition as it found them or shall make such provisions for them as the city engineer may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, mulch, silt, slickings, or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

(Code 1987, § 605.85)

Secs. 62-34—62-54. Reserved.

ARTICLE IV. RIGHT-OF-WAY USE BY TELECOMMUNICATION PROVIDERS AND UTILITIES

DIVISION 1. GENERALLY

Sec. 62-55. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned facility means 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 means any person requesting permission to excavate or obstruct a right-of-way.

City means the City of Mound, Minnesota. For the purposes of section 62-68, the term "city" means its elected officials, officers, employees and agents.

Commission means the Minnesota Public Utilities Commission.

Congested right-of-way means 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 Minn. Stats. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

Construction performance bond means any of the following forms of security provided at the permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security in a form listed or approved under Minn. Stats. § 15.73, subd. 3;

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- (4) Letter of credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;
- (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 means 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 pt. 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 pts. 7819.9900—7819.9950.

Degradation fee means 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 means the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Department means the Public Works Department of the city.

Department inspector means any person authorized by the city to carry out inspections related to the provisions of this article.

Director means the Public Works Director of the city, or his designee.

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

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Excavation permit means the permit which, pursuant to this article, 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 means money paid to the city by an applicant to cover the costs as provided in section 62-139.

Facility or *facilities* means tangible asset in the public right-of-way required to provide utility service. The term "facility" does not include facilities to the extent the location and relocation of such facilities are preempted by Minn. Stats. § 161.45, governing utility facility placement in state trunk highways.

Five-year project plan shows projects adopted by the city for construction within the next five years.

High-density corridor means 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 means 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 means a local person or designee of such person authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this article.

Management costs means 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-

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of-way 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 permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minn. Stats. §§ 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 62-146.

Obstruct means 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 means the permit which, pursuant to this article, 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 his discretion.

Obstruction permit fee means money paid to the city by a permittee to cover the costs as provided in section 62-139.

Patch or *patching* means a method of pavement replacement that is temporary in nature. A patch consists of:

- (1) The compaction of the subbase and aggregate base; and
- (2) 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 five-year project plan.

Pavement means 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 the term "right-of-way permit" in Minn. Stats. § 237.162.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this article.

Public right-of-way has the meaning given it in Minn. Stats. § 237.162, subd. 3.

Registrant means 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* means 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 the excavation.

Right-of-way permit means either the excavation permit or the obstruction permit, or both, depending on the context, required by this article.

Right-of-way user means:

- (1) A telecommunications right-of-way user as defined by Minn. Stats. § 237.162, subd. 4; 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* means and includes:

- (1) Services provided by a public utility as defined in Minn. Stats. § 216B.02, subds.

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4 and 6;

- (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 Minn. Stats. § 238.02, subd. 3;
- (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 Minn. Stats. ch. 308A; and
- (6) Water, sewer, steam, cooling or heating services.

Supplementary application means 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.

Telecommunication right-of-way user means 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 transporting telecommunications or other voice or data information. For purposes of this article, a cable communications system defined and regulated under Minn. Stats. ch. 238, and telecommunications activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stats. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stats. chs. 453 and 453A, or a cooperative electric association organized under Minn. Stats. ch. 308A, are not telecommunications right-of-way users for purposes of this article.

Temporary surface means 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.

Trench means 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 two years.
(Ord. No. 11-2002, § 655.15, 7-21-2002)

Sec. 62-56. Severability.

If a regulatory body or a court of competent jurisdiction should determine by a final, nonappealable order that any permit, right or registration issued under this article or any portions of this article is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days' written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this article precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

(Ord. No. 11-2002, § 655.165, 7-21-2002)

Sec. 62-57. 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 the ordinance from which this article is derived relating to right-of-way permits and administration. This article imposes reasonable regulations 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

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this article, 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 article shall be interpreted consistently with Minn. Stats. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the Act) and the other laws governing applicable rights of the city and users of the right-of-way. This article shall also be interpreted consistent with Minn. Rules pts. 7819.0050—7819.9950 where possible. To the extent that any provision of this article cannot be interpreted consistently with the state rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended.

(Ord. No. 11-2002, § 655.05, 7-21-2002)

Sec. 62-58. Election to manage the public rights-of-way.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city elects pursuant to Minn. Stats. § 237.163, subd. 2(b), to manage rights-of-way within its jurisdiction.

(Ord. No. 11-2002, § 655.10, 7-21-2002)

Sec. 62-59. 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.

(Ord. No. 11-2002, § 655.160, 7-21-2002)

Sec. 62-60. 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.

(Ord. No. 11-2002, § 655.20, 7-21-2002)

Sec. 62-61. 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.

(Ord. No. 11-2002, § 655.25, 7-21-2002)

Sec. 62-62. 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 section 62-141.

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

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bond in accordance with the provisions of Minn. Rules pt. 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 pt. 7819.1100.

(d) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Upon notification from the city, 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 five 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 section 62-141.

(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 and shall allow the permittee ten 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 the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(Ord. No. 11-2002, § 655.65, 7-21-2002)

Sec. 62-63. Installation requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules pts. 7819.1100, 7819.5000 and 7819.5100 and other applicable local requirements, in so far as they are not inconsistent with Minn. Stats. §§ 237.162 and 237.163.

(Ord. No. 11-2002, § 655.90, 7-21-2002)

Sec. 62-64. Mapping data.

Each registrant and permittee shall provide mapping information in a form required by the city in accordance with Minn. Rules pts. 7819.4000 and 7819.4100.

(Ord. No. 11-2002, § 655.115, 7-21-2002)

Sec. 62-65. Undergrounding.

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

- (1) Safe travel over the right-of-way;
- (2) Nontravel related safety around homes and buildings where overhead feeds are connected; and
- (3) Orderly development in the city.

Location and relocation, installation and reinstallation of facilities in the right-of-way or in or on other public ground must be made in accordance with this section. This section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including, but not limited to, Minn. Stats. §§ 161.45, 216B.36, 222.37, 237.162, 237.163, 238.084 and 300.03 and the Telecommunications Act of 1996, 47 USC 253.

- (b) *Undergrounding—Facilities.* Facilities newly installed, constructed or otherwise placed in

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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 article and in accordance with applicable construction standards, subject to the exceptions in subsection (d) of this section. Aboveground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, reclosers and service connection pedestals shall be allowed. The requirements of this section shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

(c) *Same—Permanent replacement, relocated or reconstructed facilities.* If the city finds that one or more of the purposes set forth in subsection (a) of this section 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 article, reconstruction means any substantial repair of or any improvement to existing facilities. 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.

(d) *Same—Exceptions.* The following exceptions to the strict application of this section shall be allowed upon the conditions stated:

- (1) *Transmission lines.* Aboveground installation, construction, or placement of those facilities commonly referred to as "high voltage transmission lines" shall be allowed unless the Council requires undergrounding of the facilities after providing the right-of-way user notice and an opportunity to be heard. 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/economic feasibility; promotion of policy.* Aboveground 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;
 - b. Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground facilities placement; or
 - c. Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under subsection (a) of this section would be advanced by underground placement of facilities on the project in question.
- (3) *Temporary service.* Aboveground 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

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city;

- c. For a period of not more than seven months when soil conditions make excavation impractical.

(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 subsection (b) of this section (new facilities) and subsection (d) of this section (replacement facilities). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected. (Two weeks' published; 30 days' written.) At the hearing the Council must consider the requirements of subsection (g) of this section and make findings. Undergrounding may not take place until the City Council has, after hearing and notice, adopted a plan that contains the requirements of subsection (h) of this section.

(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 subsection (b) and (d) of this section.

(g) *Public hearing issues.* The issues to be addressed at the public hearings include, but are not limited to:

- (1) The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way.
- (2) The feasibility and cost of undergrounding all facilities by a date certain as determined by the city and the affected utilities.
- (3) 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.
- (4) 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.

Upon completion of the hearing, 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 citywide or within districts designated by the city.

(h) *Undergrounding plan.* 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. The plan for undergrounding must include at least the following elements:

- (1) Timetable for the undergrounding.
- (2) Designation of districts for the undergrounding unless the undergrounding plan is citywide.
- (3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions.
- (4) 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.
- (5) 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.

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

(i) *Developer 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 the installation of such facilities have been made.

(Ord. No. 11-2002, § 655.120, 7-21-2002)

Sec. 62-66. Location and relocation of facilities.

(a) *Compliance with state law, etc.* Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. Rules pts. 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

(1) *Relocation notification procedure.* The director shall notify the utility owner at least three months in advance of the need to relocate existing facilities so the owner can plan the relocation. The director shall provide a second notification to the owner one month before the owner needs to begin relocation. The utility owner shall begin relocation of the facilities within one month of the second notification. To the extent technically feasible, all utilities shall be relocated within one month or in a time frame determined by the director. The director may allow a different schedule if it does not interfere with the city's project. The utility owner shall diligently work to relocate the facilities within the above schedule.

(2) *Delay to city project.* The director shall notify the utility owner if the owner's progress will not meet the relocation schedule. The city may charge the utility owner for all costs incurred and requested by a contractor working for the city who is delayed because the relocation is not completed in the scheduled timeframe and for all costs incurred by the city due to the delay.

(3) *Joint trenching.* 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 and no safety hazards are created, all utilities shall be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in separate trenches.

(b) *Corridors.* The city may assign a specific area 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 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. A typical crossing section of the location for utilities may be on file at the director's office. This article is not intended to establish high density corridors. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city may remain at that location until the city requires facilities relocation to the corridor pursuant to relocation authority granted under Minn. Rules pt. 7819.3100 or other applicable law.

(c) *Limitation of space.* To protect the public 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 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. 11-2002, § 655.125, 7-21-2002)

Sec. 62-67. Pre-excavation facilities location.

In addition to complying with the requirements of Minn. Stats. §§ 216D.01—216D.09 (one call excavation notice system) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall be responsible to mark the horizontal placement of all said facilities, to the extent technically feasible. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of their facilities to excavators upon request. Nothing in this article is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in Minn. Stats. §§ 216D.01, 216D.02. Any registrant whose facilities may be 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.

(Ord. No. 11-2002, § 655.130, 7-21-2002)

Sec. 62-68. 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.

(Ord. No. 11-2002, § 655.135, 7-21-2002)

Sec. 62-69. 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 pt. 7819.3200.

(Ord. No. 11-2002, § 655.140, 7-21-2002)

Sec. 62-70. Abandoned facilities.

(a) *Discontinued operations.* A registrant who has decided 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 article have been lawfully assumed by another registrant.

(b) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove them from that right-of-way pursuant to Minn. Rules pt. 7819.3300, unless the requirement is waived by the director.

(Ord. No. 11-2002, § 655.150, 7-21-2002)

Secs. 62-71—62-98. Reserved.

DIVISION 2. REGISTRATION

Sec. 62-99. Right-of-way occupancy; application; fee.

(a) *Required.* 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, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(b) *Prior to commencement of 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.

(c) *Exceptions.* Nothing in this article 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. Persons shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or

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satisfy any other requirements under this article for the following:

- (1) Planting or maintaining boulevard plantings or gardens;
- (2) Other surface landscaping works;
- (3) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots, except repairs or restoration necessitated by utility cuts or other work;
- (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.

(d) *Gopher One Call Law.* Nothing herein relieves a person from complying with the provisions of the Minn. Stats. ch. 216D, the Gopher One Call Law.

(Ord. No. 11-2002, § 655.30, 7-21-2002)

Sec. 62-100. Contents.

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

- (1) Each registrant's name, gopher one-call facility owner code number or other one-call identifier registration certificate number, if available, address and email address if applicable, and telephone and facsimile numbers.
- (2) The name, address and email 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.
- (3) A certificate of insurance or self insurance:
 - a. 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;
 - b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:
 1. Use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees; and
 2. 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.
 - c. Either naming the city as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage 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 pt. 7819.1250;
 - d. Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

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- e. Indicating comprehensive liability coverage, automobile liability coverage, workers 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 article.
 - (4) 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 pt. 7819.1250.
 - (5) Such evidence as the director may require that the person is authorized to do business in the state.
- (b) *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.

(Ord. No. 11-2002, § 655.35, 7-21-2002)

Sec. 62-101. Reporting obligations.

(a) *Operations.* 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. If by December 1 the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the city thereafter as soon as it is developed.

- (1) 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 five years following the next calendar year (in this section, a five-year project).
- (2) The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year and subject to Minn. Stats. ch. 13, the Minnesota Data Practices Act, 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 March 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 subsection (a) of this section, 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.

(Ord. No. 11-2002, § 655.40, 7-21-2002)

Sec. 62-102. Work done without a permit.

(a) *Emergency situations.* 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. Within two 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 article for the actions

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it took in response to the emergency. If the director concludes that a registrant is required to perform work at the facility solely because of an emergency created by another registrant and the work is performed in the immediate area of the emergency work, the director may waive the permit otherwise required by the registrant called to the emergency created by another party. 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) *Nonemergency 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 which shall be double the cost of an excavation permit as set forth in the adopted fee schedule, 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 article.

(Ord. No. 11-2002, § 655.100, 7-21-2002; Ord. No. 02-2005, 1-30-2005)

Sec. 62-103. Indemnification and liability.

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

(Ord. No. 11-2002, § 655.145, 7-21-2002)

Secs. 62-104—62-134. Reserved.

DIVISION 3. PERMIT

Sec. 62-135. Required.

(a) *Types of right-of-way permits.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city or appropriate agency to do so.

- (1) *Excavation.* 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.
- (2) *Obstruction.* 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.
- (3) *Installation, repair, etc., to be obstruction permits.* Permits for installation, repair or otherwise work on aboveground facilities within the meaning of Minn. Stats. § 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand dug for the purpose of placing a pole type structure.

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

- (1) Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and
- (2) A new permit or permit extension is granted.

(c) *Delay penalty.* In accordance with Minn. Rules pt. 7819.1000, subd. 3, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. 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

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weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(d) *Display.* Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(e) *Routine obstruction and excavation.* The director may approve a permit plan which, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for such projects. Projects that do not involve the excavation of a paved surface and that last less than eight hours in duration may be included in such a plan.

(Ord. No. 11-2002, § 655.45, 7-21-2002)

Sec. 62-136. Applications.

(a) Application for a permit is made to the city. A right-of-way permit application 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 article;
- (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 owned or operated by the applicant;
- (3) 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 the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city.
- (4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 100 percent of the amount owing.

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

(Ord. No. 11-2002, § 655.50, 7-21-2002)

Sec. 62-137. Joint applications.

(a) *Registrants may jointly apply.* 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 two 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.

(Ord. No. 11-2002, § 655.70, 7-21-2002)

Sec. 62-138. Issuance; conditions.

(a) *Issuance.* If the applicant has satisfied the requirements of this article, the city shall issue a permit.

(b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit

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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.

(c) *Screening.* The permittee shall screen all aboveground facilities as required by the director. Screening methods shall include the use of shrubs, trees and/or landscape rock or installation using stealth or camouflaged forms of the facility.

(Ord. No. 11-2002, § 655.55, 7-21-2002)

Sec. 62-139. Fees.

(a) *Schedule and 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.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

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

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

(d) *Payment.* 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 his discretion.

(e) *Nonrefundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in section 62-145 are not refundable.

(f) *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. 11-2002, § 655.60, 7-21-2002)

Sec. 62-140. Supplementary applications.

(a) *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 which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

- (1) Make application for a permit extension and pay any additional fees required thereby; and
- (2) 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.

(Ord. No. 11-2002, § 655.75, 7-21-2002)

Sec. 62-141. Other obligations.

(a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve the 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

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requirements of local, state and federal laws, including Minn. Stats. §§ 216D.01—216D.09 (Gopher One Call Excavation Notice System). 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) *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.

(Ord. No. 11-2002, § 655.80, 7-21-2002)

Sec. 62-142. Denial.

The city may deny a permit for failure to meet the requirements and conditions of this article 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.

(Ord. No. 11-2002, § 655.85, 7-21-2002)

Sec. 62-143. Inspection.

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

(b) *Site inspection.* 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 Minn. Stats. § 237.163, subd. 4(c), 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 section 62-145.

(Ord. No. 11-2002, § 655.95, 7-21-2002)

Sec. 62-144. Supplementary notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

(Ord. No. 11-2002, § 655.105, 7-21-2002)

Sec. 62-145. Revocation of permits.

(a) *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 permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) 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;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) 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
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 62-143(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 permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

(d) *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.

(Ord. No. 11-2002, § 655.110, 7-21-2002)

Sec. 62-146. Appeal.

(a) A right-of-way user that:

- (1) Has been denied registration;
- (2) Has been denied a permit;
- (3) Has had permit revoked; or
- (4) Believes that the fees imposed are not in conformity with Minn. Stats. § 237.163, subd. 6;

may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council.

(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.

(Ord. No. 11-2002, § 655.155, 7-21-2002)

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES