

## ORDINANCE NO. 277

### AN ORDINANCE REGARDING STREETS AND RIGHTS-OF-WAY, RIGHT-OF-WAY MANAGEMENT AND LOCATING OF UNDERGROUND FACILITIES

The City Council of Braham Ordains:

#### PARAGRAPH 1. STREETS AND RIGHTS-OF-WAY, RIGHT-OF-WAY MANAGEMENT AND LOCATING OF UNDERGROUND FACILITIES.

- 1.1 FINDINGS, PURPOSE AND INTENT: The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have a substantial investment of public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases necessary and proper use of the right-of-way, the City must regulate and manage such uses for the common good.

To provide for the health, safety and well-being of its citizens and to ensure the structural integrity of its streets and the appropriate use of rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population funds the majority of the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

In order to fulfill its duties imposed by the Minnesota Office of Pipeline Safety under Minnesota Rules Chapter 7560 to maintain information regarding the location of privately owned and installed underground facilities within a public right-of-way and to protect the public health, safety and welfare from any dangers posed by underground facilities the location of which is not of record, the City shall require private property owners and their private utility contractors, excavators and installers to provide the City with up to date, accurate information of all underground equipment installed in the public right-of-way or in any public ground or on any property where the facility or equipment is now or in the future to be connected to the City's facilities.

This Ordinance imposes regulations on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. Under this Ordinance, persons excavating, disturbing or obstructing the rights-of-way will bear a share of the financial responsibility for their work through the recovery of out-of-pocket and projected costs for maintaining the integrity of the public rights-of-way.

This Ordinance also provides for recovery of the City's costs associated with managing its rights-of-way.

This Ordinance shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086, as they may be amended from time to time (the "Act"), and 2017 Session Laws, Chapter 94 amending the Act, and the other laws governing applicable rights of the City and users of the right-of-way. This Ordinance shall also be interpreted consistently with Minnesota Rules 7819.0050 through 7819.9950, as applicable.

- 1.2 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 M.S. § 237.163, subd. 2(b), as it may be amended from time to time, to manage rights-of-way within its jurisdiction.

**PARAGRAPH 2. DEFINITIONS.** The following words, terms and phrases, as used herein, have the following meanings unless the context clearly indicates otherwise.

- 2.1 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.
- 2.2 Applicant. Any person requesting permission to excavate or obstruct a right-of-way.
- 2.3 City. The City of Braham, Minnesota.
- 2.4 City Management Costs. The actual costs incurred by the City for public rights-of-way management; including, but not limited to, costs associated with registering applicants seeking permission to excavate or obstruct a right-of-way; issuing, processing and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and opportunity to correct the work; mapping of "as-built" locations of facilities located in rights-of-way; and revoking right-of-way permits and performing all other functions required by this Ordinance, including other costs the City may incur in managing the provisions of this Ordinance.
- 2.5 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.
- 2.6 Commission. Minnesota Public Utilities Commission.
- 2.7 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.

- 2.8 Construction Performance Bond. Any of the following forms of security provided at Planner's option:
- (1) Individual project bond, including a "license and permit" 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; or
  - (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.
- 2.9 Data Conversion Fee. The fee covering the City's cost of converting each submission of data required by this Ordinance into the City's electronic format, which shall apply separately to each set of data required, including without limitation the permit application, scaled drawings and mapping data.
- 2.10 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.
- 2.11 Degradation Cost. Subject to Minnesota 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 (located in Appendix A), set forth in Minnesota Rules parts 7819.9900 to 7819.9950.
- 2.12 Degradation Fee. The 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.
- 2.13 Delay Penalty. The penalty imposed as a result of unreasonable delays in the permitted work within the right-of-way including construction, excavation, obstruction, patching or restoration as established by a permit.
- 2.14 Department. The department of public works of the City.
- 2.15 Director. The director of the department of public works of the City, or her/his designee.
- 2.16 Discontinued Facility. (1) 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; or (2) a facility that is deemed discontinued by the right-of-way user.

- 2.17 Emergency. A condition that: (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.
- 2.18 Emergency Hole. Excavation of a hole necessitated by a condition creating a clear and immediate threat to life, health, safety or property or requiring immediate repair or replacement in order to restore service to a customer.
- 2.19 Equipment. Any tangible asset used to install, repair or maintain facilities in any right-of-way.
- 2.20 Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- 2.21 Excavation Permit. A permit which must be obtained before a person may excavate in a right-of-way. An EXCAVATION PERMIT allows the holder to excavate in that part of the right-of-way described in the permit.
- 2.22 Excavation Permit Fee. Money paid to the city by an applicant to cover the costs as provided in Section 5.12.
- 2.23 Facility or Facilities. Any tangible asset in the 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.
- 2.24 Five-Year Project Plan. Shows projects adopted by the city for construction within the next five years.
- 2.25 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.
- 2.26 Hole. An excavation in the right-of-way having a length that is equal to or less than the width pavement or adjacent pavement of the right-of-way for the section of the roadway where the work is occurring.
- 2.27 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 the registrant regarding all matters within the scope of this chapter.
- 2.28 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 Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 1.30 of this chapter

- 2.29 Obstruct. To place any tangible object upon a public right-of-way so as to hinder free and open passage over that or any part of the right-of-way for an aggregate period of eight hours or more in conjunction with the issuance of a right-of-way permit.
- 2.30 Obstruction Permit. A permit which 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 by placing equipment described therein on the right-of-way for the duration specified in the permit including a blanket permit for a period of time and for types of work specified by the Planner.
- 2.31 Obstruction Permit Fee. Money paid to the city by a permittee to cover the costs as provided in Section 5.12.
- 2.32 Patch or Patching. 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.
- 2.33 Pavement. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with paver blocks, bituminous, concrete, aggregate or gravel.
- 2.34 Permit. Has the meaning given "right-of-way permit" in Minnesota Statutes Section 237.162.
- 2.35 Permit Holder. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Ordinance.
- 2.36 Permittee. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.
- 2.37 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. Examples include:

- (1) A business or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier or utility and any successor or assignee of any of them;
- (2) A social or charitable organization; and
- (3) Any type or combination of political subdivision, which includes the executive, judicial or legislative branch of the state, a local government unit or a combination of any of them.

2.38 Planner. The City's Planner or designee.

2.39 Potholing. Excavating the area above an underground facility to determine the precise location of the underground facility without damage to it, before excavating within two feet of the marked location of the underground facility, as required in M.S. Chapter 216D, as it may be amended from time to time.

2.40 Probation. The status of a person that has not complied with the conditions of this chapter.

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

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

2.43 Registrant. Any person required to register pursuant to § 3 of this Ordinance:

- (1) Who has or seeks to have its facilities or equipment 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.

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

2.45 Restoration Cost. The amount of money paid to the City by a permit holder to achieve the level of restoration according to City.

2.46 Right-of-Way Permit. An excavation permit, obstruction permit or a utility permit, or any combination thereof, depending on the context required by this Ordinance.

- 2.47 Right-of-Way Permit Processing Fee. The portion of the right-of-way permit fee covering the City's cost of processing the permit application that is not subject to refund upon withdrawal of the application.
- 2.48 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 public right-of-way that is used or is intended to be used for providing utility service, and who has a right under the law, franchise or Ordinance to use the public right-of-way.
- 2.49 Service or Utility Service. Includes, but is not limited to: (1) those services provided by a public utility as defined in M.S. § 216B.02, subds. 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) natural gas or electric energy or telecommunications services provided by a governmental unit; (4) pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy or power services; (5) the services provided by a corporation organized for the purposes set forth in M.S. § 301B.01, as it may be amended from time to time; (6) the services provided by a district heating or cooling system; and (7) cable communication systems as defined in M.S. Chapter 238, as it may be amended from time to time.
- 2.50 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.
- 2.51 Small Wireless Facility. A wireless facility that meets both of the following qualifications:
- (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
  - (ii) 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.
- 2.52 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.
- 2.53 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 Ordinance, a cable

communication system defined and regulated under M.S. Chapter 238, as it may be amended from time to time, and telecommunication activities related to providing natural gas or electric energy services, 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. Chapters 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under M.S. Chapter 308A, as it may be amended from time to time, are not TELECOMMUNICATIONS RIGHT-OF-WAY USERS for purposes of this chapter except to the extent such entity is offering wireless service.

- 2.54 Temporary Surface. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation.
- 2.55 Trench. An excavation having a length that is in excess of the width of the right-of-way for the sections of roadway where the work is occurring, including a directional bore.
- 2.56 Two Year Project Plan. Shows projects adopted by the city for construction within the next two years.
- 2.57 Utility Pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.
- 2.58 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.
- 2.59 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.
- 2.60 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.
- 2.61 Wireless Telecommunication Facility. A tangible asset used to provide wireless telecommunication or data services, including all antennas, support devices, equipment including ground equipment, associated cables and attachments.

### **PARAGRAPH 3. REGISTRATION.**

3.1 Registration Required Prior to Work. No person shall construct, install, repair, remove, relocate or perform any work within any right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, without first being registered pursuant to this section. Such registration shall be made on an application form provided by the City and shall be accompanied by the registration fee set forth in Resolution 11-7A. Registration, and the accompanying fee, shall be required on an annual basis. A service or utility service operating under a franchise with the City shall register pursuant to this section but need not provide the registration information required by subsection (c) below if such information has been submitted pursuant to the franchise agreement. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from payment of a registration fee. Nothing in this section relieves a person from complying with the provisions of M.S. Chapter 216D, the Gopher State One-Call Law, as it may be amended from time to time.

3.2 Exceptions. The following are not subject to the requirements of this section, but may be subject to regulation by other sections of this City ordinance:

- (1) Persons planting or maintaining boulevard surface plantings or gardens;
- (2) Persons erecting fences, mail boxes, installing driveways, sidewalk, curb and gutter, or parking lots;
- (3) Persons engaged in snow removal activities;
- (4) Persons installing street furnishings, bus stop benches and shelters;
- (5) Persons installing irrigation systems;
- (6) City other than sewer and water utilities; and
- (7) Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this section.

3.3 Registration Information. The registrant shall provide, at the time of registration and within 15 days following the date the registrant becomes aware of any change thereto, the following information:

- (1) Registrant's name, address, telephone number, facsimile number and Gopher One Call registration certificate number if required by state law;
- (2) Name, street address, e-mail address, telephone number and facsimile number of the person responsible for fulfilling the obligations of the registrant;
- (3) A certificate of insurance from a company licensed to do business in the State of Minnesota providing minimum coverage in the following amounts:

*General liability:*

Public liability, including premises, products and complete operations:

Bodily injury liability: \$1,000,000 each person , \$3,000,000 each occurrence; and  
Property damage liability: \$3,000,000 each occurrence.

In lieu of subsections (1) and (2), bodily injury and property damage combined:  
\$3,000,000 single limit.

*Comprehensive:*

Automobile liability insurance, including owned, non-owned and hired vehicles:  
Bodily injury liability: \$1,000,000 each person , \$3,000,000 each occurrence; and  
Property damage liability: \$3,000,000 each occurrence.

In lieu of (1) and (2), bodily injury and property damage combined: \$3,000,000  
single limit.

Such certificate shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permit holders; and (ii) placement and use of equipment or facilities in the right-of-way by the registrant, its officers, agents, employees and permit holders , including, but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property. Such certificate shall also name 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. Such certificate shall require that the Planner be notified 30 days prior to cancellation of the policy.

- (4) Twenty-four hour emergency number;
- (5) An acknowledgment by the registrant of the indemnification pursuant to § 24 of this ordinance;
- (6) Certificate of authority to do business in the state and in the City, if applicable;
- (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; and
- (8) Such additional information as the City may require.

**PARAGRAPH 4. REPORTING OBLIGATIONS.** 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 Planner. Such plan shall be submitted using a format designated by the Planner and shall contain the information determined by the Planner to be necessary to facilitate coordination and reduction in the frequency of excavations and obstructions of rights-of-way. If by December 1 of any year the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the City as soon thereafter as it is developed.

4.1 The plan shall include, but not be limited to, the following information:

- (a) To the extent known, the locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year; 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.

The Planner will have available for inspection in the Planner's office a composite list of all projects of which the Planner has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Each registrant must notify the Planner immediately of any change in its list of projects.

**PARAGRAPH 5. PERMIT REQUIRED.**

- 5.1 Permit Required. Except as otherwise provided in this ordinance, no registrant may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having been issued the appropriate permit pursuant to this section and conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.
- 5.2 Excavation Permit. An excavation permit is required by the registrant to excavate that part of the right-of-way described in each permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities therein, to the extent and for the duration specified in the permit.
- 5.3 Obstruction/Aerial/Interduct Permit. An obstruction/aerial/interduct permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein within the right-of-way, to the extent and for the duration specified in the permit. An obstruction/aerial/interduct permit is not required if a registrant has been issued a valid excavation permit for the same project.
- 5.4 Pole Attachment Permit. A pole attachment permit is required by the registrant in order to attach a wireless telecommunication facility to an existing public utility structure in the public right-of-way. A pole attachment permit is not required if a registrant has been issued a valid excavation permit for the same project.
- 5.5 Permit Reprocessing Fee. No registrant may excavate or obstruct the right-of-way beyond the date or dates specified in the permit or do any work outside the area specified in the permit unless: (1) the registrant makes a supplementary application for an extension of the permit or a new permit before expiration of the initial permit, pays the applicable permit fee as set forth in Resolution 11-7A; and (2) is granted a new permit or an extension of the initial permit by the Planner.
- 5.6 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.

Verbal extensions of the initial permit may be granted by the Planner for a period of no greater than 48 hours or for emergencies without additional fee.

- 5.6 Diligence in Performance Work; Delay Penalty. Work shall progress in an expeditious manner as permitted by weather conditions until completion in order to avoid unnecessary inconvenience to the public. If the work is not done in an expeditious manner, the City may, after 72-hour notice to the permit holder, fill the excavation or repair the street. The holder upon demand made by the City shall pay the entire cost of such work. In accordance with Minnesota Rules 7819.1000, subpart 3, and notwithstanding subsection (b) above, the City shall establish and impose a delay penalty where excavating or obstruction work in the right-of-way is not completed within the time specified in the permit and no supplementary application has been made for a permit extension or a new permit prior to the expiration date of the permit where the delays in right-of-way excavation, obstruction, patching or restoration are unreasonable. 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.
- 5.7 Application and Fee. An application for a right-of-way permit shall be made on forms provided by the City and shall be accompanied by the fees set forth in Resolution 11-7A and which are established to reimburse the City for City costs. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from the payment of permit fees. All applications must be in the name of the registrant. No joint applications will be accepted. If the work is to be performed by an agent, contractor or subcontractor on behalf of the registrant, such application shall be signed by the registrant. The application shall also be accompanied by the following:
- (1) Scaled drawings showing the location of all facilities and improvements proposed by the applicant. The applicant will be requested to submit in English measurement two paper copies at 50 scale plans and one copy in Auto CAD format with X, Y, Z dimensions to one foot accuracy electronic plan. The plans must be dimensional and show existing utilities, curb and gutter, sidewalks, bikeways, signal poles, driveways, boxes and structures. If the applicant chooses to submit this data in a different format, it shall be responsible for the additional payment of the data conversion fee set forth in Resolution 11-7A;
  - (2) A description of the methods that will be used for installation;
  - (3) A proposed schedule for all work;
  - (4) The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work;
  - (5) A description of methods for restoring any public improvements disrupted by the work; and
  - (6) Any other information reasonably required by the City.
- 5.8 Security. A performance bond, letter of credit or cash deposit in an amount determined by the Planner shall be required from each applicant. The Planner shall have the right to determine the form of security that must be filed. The applicant, at its option, may post security sufficient to cover all projects contemplated for a one-year period. Any performance bond or letter of credit must be approved by the City Attorney as to form. Security required pursuant to this subsection (e) shall be conditioned that the holder will

perform the work in accordance with this Ordinance and applicable regulations, will pay to the City any costs incurred by the City in performing work pursuant to this Ordinance, and will indemnify and save the City and its officers, agents and employees harmless against any and all claims, judgment or other costs arising from any excavation and other work covered by the right-of-way permit or by reason of any accident or injury to persons or property through the fault of the permit holder, either in improperly guarding the excavation or for any other injury resulting from the negligence or willful actions of the permit holder. The bond, letter of credit or cash deposit shall be released by the City upon completion of the work and compliance with all conditions imposed by the right-of-way permit, specifically including full compliance with § 16 of this City ordinance. For permits allowing excavations within public streets, such bond, letter of credit or cash deposit shall be held for a period of not less than 24 months to guaranty adequacy of all restoration work.

- 5.9 Permit Issuances; Conditions. The Planner shall grant a right-of-way permit upon finding the work will comply with the requirements of this Ordinance. The Planner may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to ensure completion of restoration of the right-of-way within a specified period, to protect the property and safety of other users of the right-of-way and to minimize the disruption and inconvenience to the traveling public. No right-of-way permit shall be issued to any person who has failed to register pursuant to § 3 of this Ordinance.
- 5.10 Small Wireless Facility Conditions. In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions: A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- (1) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
  - (2) No wireless facility may extend more than 10 feet above its wireless support structure.
  - (3) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
  - (4) 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.

- (5) 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.

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

- (1) Up to \$150 per year for rent to collocate on the city structure.
- (2) \$25 per year for maintenance associated with the collocation;
- (3) A monthly fee for electrical service as follows:
  - (i) \$73 per radio node less than or equal to 100 maximum watts;
  - (ii) \$182 per radio node over 100 maximum watts; or
  - (iii) The actual costs of electricity, if the actual cost exceed the foregoing.

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

5.12 Actions on Small Wireless facility Permit Applications.

- (1) *Deadline for Action.* The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
- (2) *Consolidated Applications.* An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
  - (i) are located within a two-mile radius;
  - (ii) consist of substantially similar equipment; and
  - (iii) 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:

- (i) 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.
- (ii) 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 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.
- (iii) The city and a small wireless facility applicant agrees in writing to toll the review period.

5.13 Excavation Permit Fee. The city shall impose an excavation permit fee in an amount sufficient to record:

- (1) management costs;
- (2) degradation costs, if applicable.

5.14 Obstruction Permit Fee. The city shall impose an obstruction permit fee in an amount sufficient to recover management costs.

5.15 Small Wireless Facility Permit 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 collocatio of small wireless facilities.

5.16 Exceptions. No permit shall be required for the following:

- (1) Surface landscaping work;
- (2) Driveways, sidewalks, curb and gutter, and parking lots, street furnishings, bus stop benches, shelters, posts and pillars;
- (3) Snow removal activities;
- (4) Irrigation systems provided that the system does not connect directly to water mains in the right-of-way;
- (5) Activities of the City except sanitary sewer and water utilities; and
- (6) Routine obstruction of the right-of-way for less than eight hours in total duration, including, without limitation, switching, fuse replacement, transformer replacement, line guard placement, leak surveys, anode installations and inspections.

**PARAGRAPH 6. TIMELINESS OF WORK/SUPPLEMENTARY NOTIFICATION.** The work to be done under the right-of-way 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 permit holder or when work was prohibited as unseasonal or unreasonable. If the obstruction or

excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permit holder must notify the City by a supplementary application of the accurate information as soon as the permit holder knows this information.

**PARAGRAPH 7. STANDARDS FOR CONSTRUCTION OR INSTALLATION.**

7.1 General Standards. The excavation, backfilling, patching and restoration and all other work performed in the right-of-way must be done in conformance with all applicable Minnesota Rules, including without limitation Rules 7819.1100, 7819.500 and 7819.5100, as well as all of the requirements of this City ordinance and its other conditions and requirements in so far as they are not inconsistent with M.S. §§ 237.162 through 237.163, as they may be amended from time to time. Installation of service laterals must be performed in accordance with Minnesota Rules Chapter 7560 and this City ordinance. The permit holder shall comply with the following standards when performing the work authorized under the permit:

- (1) Take such precautions as are necessary to avoid creating unsanitary conditions. Observe and comply with all laws, rules and regulations of the state and City;
- (2) Conduct the operations and perform the work in a manner as to ensure the least obstruction to and interference with traffic;
- (3) Take adequate precautions to ensure the safety of the general public and those who require access to abutting property;
- (4) Notify adjoining property owners prior to commencement of work which may disrupt the use of and access to such adjoining properties;
- (5) Comply with the *Uniform Traffic Manual for Traffic Control* at all times during construction or installation;
- (6) Exercise precaution at all times for the protection of persons, including employees and property;
- (7) Protect and identify excavations and work operations with barricade flags and, if required, by flaggers in the daytime and by warning lights at night;
- (8) Provide proper trench protection as required by OSHA when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation;
- (9) Protect the root growth of trees and shrubbery;
- (10) If possible, provide for space in the installation area for other telecommunication right-of-way users and companies which install facilities in public rights-of-way;
- (11) Maintain access to all properties and cross streets as possible during construction and installation and maintain emergency vehicle access at all times;
- (12) Maintain alignment and grade unless otherwise authorized by the City. Changes not approved by the City will require removal and reconstruction;
- (13) During plowing or trenching of facilities, a warning tape must also be placed at a depth of 12 inches above copper cables with over 200 pairs and above fiber facilities;
- (14) Below concrete or bituminous paved road surfaces, directional bore facilities must be installed in conduit of a type determined by the permit holder;

- (15) The placing of all telecommunications facilities must comply with the National Electric Safety Code, as incorporated by reference in M.S. § 326B.35, as it may be amended from time to time;
- (16) Locate property lines near right-of-way lines and replace any destroyed property corners. A Minnesota licensed surveyor must be used;
- (17) Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability and as directed by the City;
- (18) Excavating, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage;
- (19) All backfilling must be placed in six-inch layers at optimum moisture and compacted with the objective of attaining 95% of Standard Proctor. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate;
- (20) Backfill material shall be subject to the approval of the Planner. The Planner may permit backfilling with the material from the excavation provided such material is granular in nature and acceptable to the Planner;
- (21) Compacted backfill shall be brought to bottom of the gravel of the approved street section;
- (22) Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit;
- (23) No lugs damaging to roadway surfaces may be used;
- (24) Dirt or debris must be periodically removed during construction; and
- (25) Other reasonable standards and requirements of the Planner.

7.2 Standards for Installation of Underground Utilities. The permit holder shall comply with the following standards when installing facilities underground:

- (1) Underground facilities must be placed as far off the roadway as possible to provide access from outside of the paved area.
- (2) Buried fiber facilities shall be at a minimum depth of three feet and a maximum depth of four feet unless an alternate location is approved in advance by the Planner. Buried copper facilities below concrete or bituminous paved road surfaces must be placed at no less than three feet but no more than four feet deep. Other buried copper facilities must be placed at a minimum depth of 30 inches and a maximum depth of four feet.
- (3) Crossing of streets and hard surfaced driveways shall be directional bored unless otherwise approved by the Planner.
- (4) If construction is open cut, the permit holder must install the visual tracers within 12 inches and over buried facilities. If other construction methods are used, substitute location methods will be considered.
- (5) The permit holder shall register with Gopher State One Call and comply with the requirements of that system.
- (6) Compaction in trench shall be 95% of Standard Proctor and copies of test results will be submitted to the Planner. Tests will be required at the discretion of the Planner. Tests must be conducted by an independent testing firm at locations

approved by the Planner. Re-compaction and new tests will be required if densities are not met.

- (7) The facilities shall be located so as to avoid traffic signals and signs which are generally placed a minimum of four feet behind the curb.
- (8) When utilizing trenchless installation methods to cross an area in which a municipal utility is located, and when directed by the City, the permit holder shall excavate an observation hole over the utility to ensure that the City utility is not damaged.
- (9) All junction boxes or access points shall be located no closer than ten feet from City hydrants, valves, manholes, lift stations or catch basins unless an alternate location is approved by the City.
- (10) Underground facilities shall not be installed between a hydrant and an auxiliary valve.
- (11) Underground facilities shall not be installed within five feet of hydrants, valves, lift stations or manholes in areas where utility easements exist beyond the right-of-way. In those areas in which no utility easement exists, placement of an underground facility shall be between the edge of pavement and no closer than three feet to an existing City utility appurtenance unless an alternate location is approved by the City.
- (12) Buried telecommunication facilities must have a locating wire or conductive shield, except for di-electric cables.
- (13) Buried fiber facilities must be placed in a conduit of a type determined by the right-of-way user unless the permit holder obtains a waiver from the City.

7.3 Standards for Installation of Overhead Facilities. The permit holder shall comply with the following standards when installing facilities overhead: (1) All wires must be a minimum of 18 feet above ground and at a location that does not interfere with traffic signals, overhead signs or street lights.

7.4 Standards for Wireless Telecommunications Facilities.

7.4.1 Purpose. The City desires high quality wireless communication services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that wireless telecommunication facilities can have on aesthetics and public safety. Due to the many services that must be delivered within its limited area, the City also strives to avoid unnecessary encumbrances within the public right-of-way. The City allows and regulates wireless telecommunication facilities outside of the public right-of-way through performance standards and height limits. The purpose of this section is to regulate wireless telecommunication facilities within the public right-of-way in a manner that balances desire for service with aesthetic, public safety and right-of-way flexibility concerns.

Public rights-of-way are appropriate locations for wireless telecommunication facilities that present minimal impacts (i.e., small pole attachments that do not require new poles, do not require pole extensions, and do not have associated

ground mounted equipment). Wireless telecommunication facilities that require greater heights than can be afforded by existing poles in the public right-of-way and that require ground mounted equipment are more appropriately sited outside the public right-of-way in accordance with adopted performance standards (§ 19.63.05 of this ordinance). However, the City recognizes that as wireless technology advances, some residential areas of the City may be hard to serve with wireless technology due to the lack of siting alternatives in the immediate vicinity. In such areas, where no alternative non-right-of-way locations are available, wireless telecommunication facilities that require pole extensions and ground equipment will be allowed in the public right-of-way subject to the requirements of this section which are meant to protect the public health, safety and welfare.

- 7.4.2 Wireless Telecommunication Facilities as Pole Attachments. Wireless that complies with the following requirements may be attached to existing public utility structures within the right-of-way after issuance of a pole attachment permit.
- A. The wireless telecommunication facility shall not extend above the top of the existing public utility structure and the height of the existing public utility structure shall not be increased to accommodate the wireless telecommunication facility.
  - B. If the public utility structure must be replaced to structurally accommodate the wireless telecommunication facility, the replacement public utility structure height shall not exceed the existing public utility structure height and the replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50%.
  - C. The wireless telecommunication facility shall not be larger than three cubic feet and shall have no individual surface larger than four square feet.
  - D. The wireless telecommunication facility shall not extend outward from the existing pole or tower or arm thereof by more than two and one-half feet, except that an antenna one-half inch in diameter or less may extend an additional six inches.
  - E. The wireless telecommunication facility shall include no ground mounted equipment within the planned widened rights-of-way.
  - F. The wireless telecommunication facility shall not interfere with public safety communications.
  - G. Wireless telecommunication facilities in the right-of-way shall be removed and relocated at City request subject to the provisions of this Ordinance.

H. The wireless telecommunication facility shall not block light emanating from the public utility structure and shall not otherwise interfere with the original use of the public utility structure.

7.4.3 Wireless Telecommunication Facilities as pole Extensions or with Ground Mounted Equipment. *Wireless* that require increased public utility structure height or that have ground mounted equipment may be erected in the public right-of-way only when in compliance with the following provisions and after issuance of a pole attachment permit or excavation permit.

- A. The applicant shall demonstrate to the satisfaction of the Planner or designee that the wireless telecommunication facility cannot be placed in a code complying location outside the right-of-way within one-quarter mile of the proposed location.
- B. The replacement public utility structure, including lightning rods and all other attachments, shall not exceed the height of the existing public utility structure by more than 15 feet. Once the height of a public utility structure has been increased under the provisions of this section, the height shall not be further increased.
- C. The replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50%.
- D. The wireless telecommunication facility shall not extend outward from the public utility structure by more than two feet.
- E. If feasible and desirable, as determined by the Planner or designee, the replacement public utility structure shall match the original and surrounding public utility structures in materials and color.
- F. The wireless telecommunication facility shall not interfere with public safety communications.
- G. A pole attachment or excavation permit for a wireless telecommunication facility that has ground mounted equipment will be issued only if the issuing authority finds the following:
  - (i) The ground mounted equipment will not disrupt traffic or pedestrian circulation;
  - (ii) The ground mounted equipment will not create a safety hazard;
  - (iii) The location of the ground mounted equipment minimizes impacts on adjacent property; and
  - (iv) The ground mounted equipment will not adversely impact the health, safety or welfare of the community.

- H. Ground mounted equipment associated with the wireless telecommunication facility shall meet the following performance standards:
- (i) Be set back a minimum of ten feet from the planned widened rights-of-way;
  - (ii) Be separated from a sidewalk by a minimum of three feet;
  - (iii) Be set back a minimum of 50 feet from the nearest intersecting right-of-way line;
  - (iv) Be separated from the nearest ground mounted wireless telecommunication equipment installation on the same block face by a minimum of 330 feet unless the equipment is placed underground;
  - (v) If located adjacent to residential uses, ground mounted equipment shall be limited to three feet in height above grade and 27 cubic feet in cumulative size;
  - (vi) If located adjacent to nonresidential uses, ground mounted equipment shall be limited to five feet in height above grade and 81 cubic feet in cumulative size;
  - (vii) Ground mounted equipment located outside the planned widened public right-of-way; and
  - (viii) Vegetative or other screening compatible with the surrounding area shall be provided around the ground mounted equipment if deemed necessary by the Planner or designee.
- I. Wireless telecommunication facilities in the right-of-way shall be removed and relocated at City request subject to the provisions of this Ordinance.

7.4.4 New Poles. The erection in the right-of-way of a new pole to support wireless telecommunication facilities is not allowed, except as a replacement of an existing public utility structure subject to the requirements of this section.

7.4.5 Charges. In addition to the permit fees outlined in Resolution 11-7A, the City reserves the right to charge telecommunication providers for their use of the public right-of-way to the extent that such charges are allowed under state law. Telecommunication providers shall be responsible for payment of property taxes attributable to their equipment in the public right-of-way.

**PARAGRAPH 8. PATCHING AND RESTORATION OF RIGHT-OF-WAY.** The permit holder shall patch its own work. 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 unless the permit holder is granted a new permit or an extension of the initial permit by the Planner pursuant to § 5(b) of this Ordinance.

8.1 City Restoration. If the City restores the right-of-way, the permit holder shall pay the costs thereof within 30 days of billing. If, during the 24 months following such

restoration, the pavement settles due to the permit holder's improper backfilling, the permit holder shall pay to the City, within 30 days of billing, all costs associated with having to correct the defective work. At the time of initial permit application, the permit holder must indicate whether or not they are electing to pay the degradation fee in lieu of restoration.

- 8.2 Holder Restoration. If the holder restores the right-of-way, it shall at the time of application for a right-of-way permit post security in the form determined by the Planner, such as a performance bond, letter of credit or cash deposit in an amount determined by the Planner to be sufficient to cover the cost of restoration. Any performance bond or letter of credit must be approved by the City Attorney. If, within 24 months after completion of restoration of the right-of-way, the Planner determines the right-of-way has been properly restored, the posted security will be released.
- 8.3 Standards. The permit holder shall perform patching and restoration.
- 8.4 Guarantees. If the permit holder performs the restoration work, the permit holder shall guarantee such work and its maintenance for 24 months following its completion. During this 24-month period it shall, upon notification from the Planner, correct all restoration work to the extent necessary, using the method required by the Planner commencing the restoration work within two days of receipt of the notice and completing the restoration work within 14 days thereafter, 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 in the determination of the Planner.
- 8.5 Failure to Restore. If the permit holder 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 permit holder in writing of the specific alleged failure or failures and shall allow the permit holder five business days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the Planner. In the event the permit holder fails to cure, the City may at its option perform the necessary work and permit holder shall pay to the City, within 30 days of billing, the cost of restoring the right-of-way, including all staff and administrative costs, their overhead and fringe benefits. If permit holder fails to pay as required, the City may recover its costs from the posted security.
- 8.6 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.

**PARAGRAPH 9.** Reserved

**PARAGRAPH 10. OTHER OBLIGATIONS.**

- 10.1 Compliance with Other Laws. The permit holder must obtain all other necessary permits, licenses and approvals and pay all fees required. The permit holder shall comply with all requirements of local, state and federal laws, including but not limited to M.S. §§ 216D.01 through 216D.09 (“Gopher State One Call Excavation Notice System”), as they may be amended from time to time, and Minnesota Rules Chapter 7560. A permit holder 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. Applicants obtaining the county or State Department of Transportation excavating permits for facilities in their rights-of-way located within the City must provide a copy of each permit to the Planner.
- 10.2 Prohibited Work. Except in an emergency, and with the approval of the Planner, no right-of-way excavation or obstruction may be done when seasonally prohibited or when conditions are unreasonable for such work.
- 10.3 Interference with Right-of-Way. A permit holder 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 approved by the Planner. 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 and unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- 10.4 Traffic Control. A permit holder 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.
- 10.5 Trenchless Excavation. As a condition of all applicable permits, permit holders employing trenchless excavation methods, including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in M.S. Chapter 216D, as it may be amended from time to time, and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Planner, in order to determine the precise location of marked underground utilities before excavating. In addition, permit holders employing trenchless excavation methods, shall not install facilities at a depth greater than four feet below grade, unless specifically approved by the Planner.

**PARAGRAPH 11. DENIAL OR REVOCATION OF PERMIT.**

- 11.1 Reasons for Denial. The city may deny a permit for failure to meet the requirements and conditions of this chapter 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.

The Planner may deny a permit based on any of the following grounds:

- (1) Failure to register pursuant to § 3 of this ordinance;
- (2) The applicant is subject to revocation of a prior permit issued pursuant to this Ordinance;
- (3) The proposed schedule for work would conflict or interfere with an exhibition, celebration, festival or any other similar event;
- (4) The proposed schedule conflicts with scheduled or total or partial reconstruction of the right-of-way;
- (5) The applicant fails to comply with the requirements of this Ordinance or other provisions of this ordinance;
- (6) The proposed excavation within a street or sidewalk surface has been constructed or reconstructed within the preceding five years, unless the Planner determines that no other locations are feasible or that an emergency exists necessitating the excavation;
- (7) The Planner determines that the right-of-way would become unduly congested with the installation of the proposed facilities and equipment associated therewith;
- (8) Adjacent or nearby business or residential uses would be unreasonably disrupted; and
- (9) The Planner determines that denial is necessary to protect the health, safety and welfare of the public or protect the right-of-way and its current use.

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

**PARAGRAPH 12. EMERGENCIES AND WORK DONE WITHOUT A PERMIT.** Each registrant shall immediately notify the Planner, in addition to Gopher State One-Call, of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. If the registrant has not been issued the required permit, within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the permit fees and fulfill the remaining requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the emergency.

If the Planner becomes aware of an emergency regarding a registrant's facilities, the Planner shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The Planner may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

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 and as a penalty pay double the normal fee for the permit and shall deposit with the Planner the fees requested to correct any damage to the right-of-way and to comply with all of the requirements of this Ordinance.

**PARAGRAPH 13. INSPECTION.**

13.1 Site Inspection. The permit holder shall make the work site available to the Planner and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

13.2 Authority of Planner.

- (1) At the time of inspection, the Planner 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 Planner may issue an order to the permit holder for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation within a stated deadline will be cause for revocation of the permit. If the violation is not corrected within the stated deadline, the Planner may revoke the permit. If the work failure constitutes a substantial breach of the terms and conditions of state law, City ordinance, rule or regulation or any material condition of the permit, the order shall state that failure to correct the violation and provide proof thereof within the period of time specified by the Planner will result in revocation of the permit.

**PARAGRAPH 14. REVOCAION OF PERMITS.**

14.1 Substantial Breach. The Planner or designee may revoke a right-of-way permit, without a fee refund, if there is a substantial breach of the terms or conditions of any statute, this ordinance, rule or regulation, or any condition of the permit. A substantial breach of a permit holder shall include, but not limited to, the following:

- (1) The violation of any material provision of the permit;
- (2) Any material misrepresentation of fact in the application for a permit;
- (3) The failure to maintain the required bonds or other security and insurance;
- (4) The failure to complete the work in a timely manner;
- (5) The failure to correct, in a timely manner, work that does not conform to applicable standards, conditions or codes, upon inspection and notification by the City of the faulty condition;
- (6) 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; and

- (7) The failure to comply with the terms and conditions of any applicable federal, state and local laws, rules and regulations, including any provision of this Ordinance.
- 14.2 Notice of Breach. If the Planner or designee determines that a permit holder has committed a substantial breach of a term or condition of any statute, this ordinance, rule or regulation or any condition of the permit, the Planner shall make a written demand upon the permit holder to remedy such violation and provide proof thereof within the period of time specified or be subject to potential revocation of the permit. The Planner may impose additional or revised conditions on the permit to mitigate or remedy the breach.
- 14.3 Reimbursement of City Costs. If a permit is revoked, the permit holder shall reimburse the City for its reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees incurred in connection with the revocation.

**PARAGRAPH 15. APPEAL.**

- 15.1 Filing of Appeal. Any person aggrieved by: (i) the denial of a permit application; (ii) the denial of a registration; (iii) the revocation of a permit; (iv) the application of the fee schedule imposed by Resolution 11-7A; or (v) disputes a determination of the Planner regarding the method of providing accurate information about the location of service laterals installed on the property pursuant to § 16 of this City ordinance, may appeal to the City Council by filing a written notice of appeal with the City Clerk. Said notice must be filed within 20 days of the action causing the appeal.
- 15.2 Notice of Hearing. The City Council shall hear the appeal at its next regularly scheduled meeting, unless the time is extended by agreement of the parties. Notice of the date, time, place and purpose of the hearing shall be mailed to the appellant.
- 14.3 Hearing and Decision. The City Council shall, at the hearing, consider any evidence offered by the appellant, the Planner and any other person wishing to be heard. The Council shall issue a written decision within 30 days of the completion of the hearing supported by written findings.

**PARAGRAPH 16. MAPPING DATA.**

- 16.1 Information Required. Each registrant, permit holder or any other person installing any underground facility or equipment that is now or in the future to be connected to the City's underground facilities must provide to-scale engineering plans certifying the "as-built" location of all equipment installed, owned or maintained by the registrant, permit holder or other underground installer in a form required by the Planner. Such maps and drawings must include the horizontal and vertical location of all facilities and equipment in a manner that is consistent with the City's electronic mapping system whenever practical or when ordered by the Planner. Failure to provide the maps and drawings required by this section shall, in addition to other remedies, constitute adequate grounds

for revocation of the permit holder's registration and any permit issued under this Ordinance of the City. No security required pursuant to § 5(e) of this City ordinance shall be released until the information required under this section is provided. The maps and drawings must include the following information:

- (1) Scaled drawings showing the exact location of all facilities and improvements installed by the applicant. The applicant will be requested to submit, in English measurement: two paper copies of 50-scale plans and one electronic plan in AutoCAD format with X, Y, Z dimensions to one-foot accuracy. The plans must be dimensional and show all utilities, curb and gutter, sidewalks, bikeways, signal poles, driveways, boxes and structures. If the applicant chooses to submit this data in a different format, it shall be responsible for the additional payment of the data conversion fee set forth in Resolution 11-7A;
- (2) The type and size of the utility;
- (3) A description showing above-ground appurtenances;
- (4) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and
- (5) Any facilities to be abandoned, if applicable, in conformance with M.S. § 216D.04, subd. 3, as it may be amended from time to time.

#### 16.2 Submittal Requirement.

- (1) Within 30 days after the acquisition, installation or construction of additional equipment or facilities or any relocation, abandonment or disuse of existing equipment or facilities, each registrant shall submit the mapping data required herein.
- (2) Within two years after the effective date of this section, all telecommunication right-of-way users shall submit detailed plans, if available, in accordance with subsection (a) above, for all facilities and equipment installed, used or abandoned within the public right-of-way.
- (3) Notwithstanding the foregoing, mapping data shall be submitted by all registrants for all equipment and facilities which are to be installed or constructed after the effective date of this section at any time any permits are sought pursuant to this Ordinance.
- (4) Six months after the effective date of this section, a new registrant or a registrant which has not submitted a plan as required under subsection (b)(2) above shall submit complete and accurate mapping data for all its equipment and facilities at the time any permits are sought pursuant to this Ordinance.

16.3 Trade Secret Information. At the request of any registrant, information requested by the City which qualifies as "trade secret" data under M.S. § 13.37, as it may be amended from time to time, shall be treated as trade secret information as detailed therein.

16.4 Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the use of appropriate means of establishing the vertical and horizontal locations of installed

service laterals, to the extent technically feasible, as determined by the Planner. Permit holders or their subcontractors must submit to the Planner evidence satisfactory to the Planner of the installed service lateral locations. Compliance with this subsection (d) and with applicable Gopher State One-Call Law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition to City approval of: 1) payment to contractors working on a City improvement project including those under M.S. Chapter 429, as it may be amended from time to time; and 2) City approval of performance under development agreements, or other subdivision or site plan approval under M.S. Chapter 462, as it may be amended from time to time. Each utility shall utilize the appropriate means and methods of providing to the City accurate location of the newly-installed, or applicable repair to, service laterals, subject to the approval of the Planner. Failure to provide prompt and accurate information on the service laterals installed may result in the City's withholding of applicable approvals or in the revocation of the permit issued for the applicable work or for future permits to the offending permit holder or its subcontractor.

**PARAGRAPH 17. LOCATION OF FACILITIES - UNDERGROUNDING.** Within the City where the City determines that underground location and relocation, installation and reinstallation of facilities in the right-of-way or in or on other public ground promotes the safe travel of the public over the right-of-way, the safety of homes and buildings in the vicinity or the orderly development of the City, the City may direct that any construction and installation of new facilities and the replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes. Telecommunications right-of-way users may attach equipment and facilities to existing poles and structures maintained by a service or utility service. This section of the City ordinance is 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, as they may be amended from time to time, and the Telecommunications Act of 1996, 47 U.S.C. §§ 253 et seq.

**PARAGRAPH 18. UNDERGROUNDING OF FACILITIES.**

- 18.1 Purpose. The City Council finds it is in the public interest and necessary for the comfort and convenience of the City that all equipment or facilities newly installed, re-installed, located or re-located or newly constructed or re-constructed facilities in the public right-of-way or in other public property be placed underground in order to promote and preserve the health, safety and general welfare of the public and to assure the orderly development of the City except for antenna and pole mounted equipment.
- 18.2 Undergrounding Required. Where directed by the City, newly installed, re-installed, located or re-located or newly constructed or re-constructed facilities 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 section and in accordance with applicable construction standards, subject to the following exceptions: above-ground installation, construction, modification or replacement of meters, gauges,

transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals.

- 18.3 Exceptions to Undergrounding. The following exceptions to the strict application of this section may be allowed, at the discretion of the City upon the conditions stated.
- (1) *Transmission lines.* Above-ground 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.* Above-ground installation, construction or placement of facilities shall be allowed in residential, commercial and industrial areas where the Council, finds that:
    - (i) 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;
    - (ii) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground facilities placement; or
    - (iii) Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under this section would be advanced by underground placement of facilities on the project in question, or the City determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.
  - (3) *Temporary service.* Above-ground installation, construction or placement of temporary service lines shall only be allowed:
    - (i) During new construction of any project for a period not to exceed three months;
    - (ii) During an emergency in order to safeguard lives or property within the City; or
    - (iii) For a period of not more than seven months when soil conditions make excavation impractical.
- 18.4 Appeal. Within 30 days after a decision by the Planner requiring the undergrounding of utilities, equipment or facilities, any person requesting a waiver based upon one of the foregoing exceptions may appeal to the City Council for a determination. Any such appeal must be in writing and filed in the office of the City Administrator. If no timely appeal is made, the decision of the Planner shall become final.
- 18.5 Existing Utilities. The City Council may from time to time conduct public hearings to ascertain whether the public necessity, convenience, health or safety requires the removal

of poles and overhead lines and associated overhead structures from some designated areas of the City. For this purpose the City shall notify all affected property owners as shown in the last recorded tax roll of the City affected by such utility by mail of the time and place of such hearing at least 30 days prior to the date thereof. If after such hearing, the City Council finds that the public necessity, convenience, health or safety requires the removal, the Council shall by Ordinance amending this City ordinance declare such an area as an underground utility district. Such Ordinance shall include a description of the area comprising such district and shall fix the time within which such poles and overhead lines and associated overhead structures must be removed and within which affected property owners must be ready to receive underground service. The Council shall allow a reasonable time for such removal, having due regard for the availability of necessary labor, material and equipment for such removal and for the installation of such underground facilities as may be occasioned thereby. After the hearing described herein and adoption of the resulting Ordinance, the City shall cause to be delivered to all affected persons notice of the requirements of the Ordinance.

**PARAGRAPH 19. RELOCATION OF FACILITIES.**

- 19.1 Rule. When directed by the City, a right-of-way user shall promptly and at his, her or 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: (1) a present or future City use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way. The registrant shall restore any rights-of-way to the condition it was in prior to removal and relocation. Placement, location and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- 19.2 Relocation Schedule Notification Procedure. The Planner shall notify the registrant or permit holder at least three months in advance of the need to relocate existing facilities. The Planner shall provide a second notification to the registrant or permit holder one month before the date by which the relocation must be completed. To the extent technically feasible, all utilities must be relocated within one month or in a time frame determined by the Planner.
- 19.3 Delay to City Project. If the owner fails to meet the relocation schedule due to circumstances within the utility's control, the City may charge the utility owner for all costs incurred by the City because the relocation is not completed in the scheduled timeframe.
- 19.4 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 conformance with Minnesota Rules part 7819.5100, subd. 2, governing safety standards.

- 19.5 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 facilities that are 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 Planner's office. This section 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 Minnesota Rules part 7819.3100 or other applicable law.

- 19.6 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.

**PARAGRAPH 20. PRE-EXCAVATION FACILITIES LOCATION**. In addition to complying with the requirements of M.S. §§ 216D.01 through 216D.09 ("One Call Excavation Notice System"), as they may be amended from time to time, and Minnesota Rules 7560.0150 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 section is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in M.S. §§ 216D.01 through 216D.09, as they may be amended from time to time.

**PARAGRAPH 21. DAMAGE TO OTHER FACILITIES**. When the Planner does work in the right-of-way and finds it necessary to maintain, support or move a registrants' facilities to carry out the work while reducing the likelihood of damage to the registrant's facilities, the City shall notify the registrant as soon as reasonably possible. The City's costs associated therewith will be billed to the 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 damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrants' facilities.

**PARAGRAPH 22. RIGHT-OF-WAY VACATION.**

- 22.1 Reservation of Right. If the City vacates a right-of-way which contains the equipment or facilities of a registrant or permit holder, and if the vacation does not require the relocation of the registrant's or holder's equipment or facilities, the City shall reserve, to and for itself and all registrants or permit holders having equipment and facilities in the vacated right-of-way, the right to install, maintain and operate any equipment and facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.
- 22.2 Relocation of Facilities. If the vacation requires the relocation of the registrant's or holder's equipment or facilities; and (i) if the vacation proceedings are initiated by the registrant or permit holder, the registrant or permit holder must pay the relocation costs;(ii) if the vacation proceedings are initiated by the City, the registrant or permit holder must pay the relocation costs unless otherwise agreed to by the City and the registrant or permit holder; or (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, such person or persons must pay the relocation costs.

**PARAGRAPH 23. DISCONTINUED AND UNUSABLE EQUIPMENT AND FACILITIES.**

- 23.1 Discontinued Operations. A registrant who has determined to discontinue operations in the City must either:
- (1) Provide information satisfactory to the Planner that the registrant's obligations for its equipment and facilities in the right-of-way under this Ordinance have been lawfully assumed by another registrant; or
  - (2) Submit to the Planner an action plan for the removal or discontinuance of equipment and facilities. The Planner shall require removal of such equipment and facilities if the Planner determines such removal is necessary to protect the public health, safety and welfare. The Planner may require the registrant to submit a surety consisting of an irrevocable letter of credit or a cash deposit to be held in escrow in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the equipment and facilities.
- 23.2 Discontinued Facilities. A right-of-way user shall notify the City when facilities are to be discontinued. A right-of-way user that has discontinued facilities in a right-of-way shall remove them from that right-of-way during the next scheduled City excavation if required in conjunction with other right-of-way repairs, excavation or construction, unless this requirement is waived by the City.

**PARAGRAPH 24. INDEMNIFICATION AND LIABILITY.** By registering with the Planner or by accepting a permit granted under this Ordinance, a registrant or permit holder agrees as follows:

- 24.1 Limitation of Liability. By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability: (i) for injuries to persons, damage to property or loss of service claims by parties other than the registrant or the City; or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permit holders or activities of registrants or permit holders.
- 24.2 Indemnification. A registrant or permit holder shall indemnify, keep and hold the City, its officials, employees and agents, free and harmless from any and all costs, liabilities and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permit holder or the City and the registrant or permit holder, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

If the registrant or permit holder is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permit holder may not settle the litigation without the consent of the City. Such consent will not be unreasonably withheld.

**PARAGRAPH 25. FRANCHISE HOLDERS.** If there is a conflict in language between the franchise of a person holding a franchise agreement with the City and this Ordinance, the terms of the franchise shall prevail.

**PARAGRAPH 26. PENALTIES.** Violations of any provision of this Ordinance shall be punishable as a misdemeanor under state law. In addition, violations may result in future permit or registration revocation and ineligibility. Failure to pay all applicable fees incurred hereunder shall be grounds for registration or permit revocation and ineligibility.

**PARAGRAPH 27. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Ordinance or any portions of this Ordinance 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 Ordinance precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Adopted by the Braham City Council this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Sally A. Hoy, Clerk/Administrator