

CHAPTER 13 – STREETS AND OTHER PUBLIC WAYS

13.01 MISCELLANEOUS RESTRICTED PARKING.

1. Definitions. The following words and phrases when used in this Chapter shall have the meanings respectively ascribed to them in Minnesota Statutes Section 169.011 unless otherwise indicated.
 - A. “Parking” means the standing of a vehicle upon a street whether accompanied or unaccompanied by an operator.
2. Snow Emergencies and Winter Parking.
 - A. Winter Parking Ban. No person shall park any vehicle on any public street from November 1 through April 1 between the hours of 1:00 a.m. and 7:00 a.m. No person shall park a vehicle on any public street at any time when the snow depth exceeds three inches (3”) until the streets are fully cleared.
 - B. Snow Emergency. No person shall park any vehicle on any public street when a snow emergency has been declared.
3. Double Parking. No person shall double park any vehicle on any street except to briefly load or unload passengers or merchandise, and then only for such time as may be necessary to load or unload.
4. Vehicles for Sale. No person shall leave any vehicle parked on any street for the purpose of displaying it for sale.
5. Parked Vehicles.
 - A. Brakes Applied or Engine in Gear. No person shall leave any motor vehicle unattended without the emergency brake applied or with the motor vehicle in gear or running.
 - B. One-way roadway. Persons may park a vehicle with the left hand wheels adjacent to and within twelve (12) inches of the left hand curb of a one-way street.
 - C. Sidewalks. No person shall drive or park any vehicle upon any sidewalk or within the intersection of any streets.
 - D. Time Limit. No person may place, park, permit to remain, store or leave any vehicle in any one location upon any City street for more than seventy two (72) hours. For the purposes of this Subdivision, a vehicle moved to another location within one hundred (100) feet of the first location is deemed to have remained stationary.

6. Immovable Motor Vehicles. No person shall leave any motor vehicle parked upon any street in the City with the wheels chained, locked, or fastened in such manner that such motor vehicle cannot easily be moved in case of necessity or emergency. A person may lock his or her motor vehicle provided the vehicle can be moved by hand.
7. Restricted Parking Violation is a Petty Misdemeanor. Any violation of the restricted parking ordinance provisions of this Section 13.01 shall constitute a petty misdemeanor violation as defined by Chapter 1, Section 1.15, 2.

13.02 NO PARKING ZONES.

1. No Parking Zones Established. The City Council may establish and modify no parking zones or limited time parking zones within the City. A complete listing of all no parking zones shall be maintained in the office of the City Administrator.
2. No Parking at Any Time. No person shall, at any time, stop, stand, or park any vehicle in any no parking zone, including limited parking zones or zones subject to temporary parking restrictions, except when necessary to avoid conflict with other traffic, in compliance with the directions of a police officer or other recognized emergency authority, or in obedience to a traffic control device.
3. Hours. No parking zones shall be in effect twenty-four (24) hours of every day unless otherwise provided.
4. Signs. The Public Works Director shall erect or remove no parking signs so as to clearly indicate the parking designation.
5. Exceptions to No-Parking Requirements.
 - A. Special Permits Required. The City Administrator may grant special permits to allow persons to temporarily park in a no-parking zone for specific activities or events which require extra parking. Such activities and events may include, but are not limited to, receptions for weddings, funerals, or graduations; holiday gatherings; family reunions; and similar social events.
 - B. Application. To obtain City permission for temporary parking in a no-parking zone, an applicant shall file an application with the City Administrator at least four (4) business days prior to the date for which the temporary parking permit is requested. The application shall be on a form provided by the City Clerk which contains the name and address of the applicant, a description of the activity or event causing the need to park in a no-parking zone, the exact location of the no-parking zone to be used, the date and hours in which the no-parking zone will be used for parking, and such other information as may reasonably be requested.

The City Administrator shall grant or deny any such permit within three (3) business days after receipt of the application. The City Administrator shall deny any application for a permit, or shall modify the permit as necessary if he or she reasonably determines that to allow parking at the times or locations proposed would be burdensome to the area in which the no-parking zone is located, would pose a threat to public safety, or upon any other reasonable basis for the denial or modification of the application. Temporary permits shall not allow parking at street intersections, fire hydrants, loading or unloading areas, or in a manner that blocks driveways.

The City Administrator shall promptly forward a copy of any special permit issued to the office of the Washington County Sheriff.

6. No Parking Zone Violation is a Petty Misdemeanor. Any violation of the no parking zone ordinance provisions of this Section 13.02 shall constitute a petty misdemeanor violation as defined by Chapter 1, Section 1.15, 2.

13.03 LIMITED PARKING ZONES.

1. Limited Parking Zones Established. The City Council may establish and modify limited parking zones within the City. A complete listing of all limited parking zones shall be maintained in the office of the City Administrator.
2. Signs. The Public Works Director shall erect limited parking signs so as to clearly indicate the parking designation.
3. Holidays. The limited parking restrictions established pursuant to this section shall not apply on Sundays or upon the following holidays: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.
4. Limited Parking Zone Violation is a Petty Misdemeanor. Any violation of the limited parking zone ordinance provisions of this Section 13.03 shall constitute a petty misdemeanor violation as defined by Chapter 1, Section 1.15, 2.

13.04 ONE-WAY STREETS.

1. One Way Streets Established. The Council may designate any street or portion of a street as a one-way street where necessary to preserve the free flow of traffic, prevent accidents, or achieve other public safety goals, and may add or modify such designations. A complete listing of all one-way streets shall be maintained in the office of the City Administrator. No trunk highway may be designated as a one-way street unless the consent of the commissioner of the Minnesota Department of Transportation is first obtained.

2. Signs. The Public Works Director shall post appropriate signs at locations that will reasonably inform the driving public of the designation of the street or portion of the street as a one-way street. A person must not operate a vehicle contrary to the directions on these signs.

13.05 TURNS.

The Council may designate an intersection as one where the turning of vehicles to the left or to the right, or both, and/or the making of u-turns, is to be restricted at all times or during specified hours. The Public Works Director must mark by appropriate traffic control signs an intersection so designated. A person must not turn a vehicle at an intersection contrary to the directions on these signs. No intersection on a trunk highway may be so designated unless the consent of the Commissioner of the Minnesota Department of Transportation is first obtained.

13.06 STOP INTERSECTIONS.

The Council may designate an intersection as a stop intersection. The Public Works Director must mark by appropriate traffic control signs an intersection so designated. Every driver of a vehicle must bring his or her vehicle to a full stop before entering a stop intersection properly designated and posted. No intersection on a trunk highway may be designated as a stop intersection unless the consent of the Commissioner of the Minnesota Department of Transportation is first obtained.

13.07 GENERAL PROVISIONS.

1. Sliding. No person shall slide upon sleds, skates, or in any other manner upon any street, alley, or public way in the City.
2. Interference with Signs. No person shall move, destroy, deface, change the wording of, or otherwise interfere with any sign erected or established by the City.
3. Prima Facie Violations. The presence of any motor vehicle on any street when standing or parked in violation of this Chapter is prima facie evidence that the registered owner of the vehicle committed or authorized the commission of the violation.
4. Violation. Every person convicted of violating any provision of Sections 13.01 through 13.07 shall be guilty of a petty misdemeanor unless State Statutes make such a violation a misdemeanor.

13.08 TEMPORARY MAINTENANCE AND SAFETY PARKING RESTRICTIONS.

1. Conditions of Public Ways. No person shall maintain or allow to remain on public ways or other public easements that cross their real property, any

conditions which shall annoy, injure, or endanger the safety, health, comfort, or repose of any other person.

2. Temporary Parking Restrictions. Whenever it is necessary to restrict parking on any street, alley, or other public way to allow for the maintenance of the street, alley, or other public way, due to a condition that may be hazardous to the public health or welfare, or when necessary to allow for the safe passage of fire, police, or other emergency vehicles, the City Administrator is hereby authorized to establish temporary parking restrictions for maintenance and safety purposes. The City Administrator is also authorized to direct and impose temporary parking prohibitions for longer time periods for debilitated or hazardous areas pending major repair or reconstructive public improvements. The City Administrator and/or Public Works Director shall cause such areas to be posted with appropriate signs and marking devices until such time as it is determined that the required maintenance or safety improvements have been completed. (added 4/16/02)

13.09 OBSTRUCTION AND ENCROACHMENT.

1. Obstructions and Encroachments – Prohibited.
 - A. Obstructions in General. No person shall place, throw, or leave, or cause to be placed or left any encroachment, obstruction, or encumbrance upon any street or sidewalk except authorized by this Code.
 - B. Enclosures Extending Over Streets. No person shall make or cause to be made any enclosure, fence, arched way, or building of any kind extending over or across any street or sidewalk.
 - C. Trees, Shrubs, Weeds and Similar Vegetation.
 - i. No person shall allow any trees, shrubs, bushes, weeds, or plants upon his or her premises adjacent to a street in such a manner as to obstruct the view and endanger traffic conditions.
 - ii. Every owner or occupant of any dwelling house or other building shall, at all times, keep the sidewalks in front of or adjoining such house or building free and clear from dirt, branches, and weeds or other obstructions so as to allow pedestrians the safe and unobstructed use of the same.
 - D. Persons. No person shall occupy or encumber any sidewalk or street by standing, sitting, or remaining upon the same so as to prevent or obstruct the free and convenient passage of persons along and across such sidewalk or street.

- E. Snow and Ice. No person shall deposit snow or ice plowed or removed from private property onto a street or sidewalk.

13.10 RIGHT OF WAY MANAGEMENT.

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

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

This section shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Minn. Laws, ch. 94, art. 9, amending the Act, and the other laws governing applicable rights of the City and users of the right of way. This section shall also be interpreted consistent with Minn. R. 7819.0050-7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this section cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This section shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

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 hereby elects, pursuant to Minn. Stat. 237.163 subd. 2(b), to manage rights of way within its jurisdiction.
3. Definitions. The following definitions apply in this section of this code. References hereafter to "subdivisions" are, unless otherwise specified, references to numbered subdivisions in this section. Defined terms remain defined terms, whether or not capitalized.

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

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

City. The City of Mahtomedi, Minnesota. For purposes of subd. 22, city also means the City's elected officials, officers, employees, and agents.

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

Commission. The State Public Utilities Commission.

Congested Right of Way. A crowded condition in the subsurface of the public right of way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stat. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

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

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
- Letter of Credit, in a form acceptable to the City;
- Self-insurance, in a form acceptable to the City;
- A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

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

Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.

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

Department. The department of public works of the City.

Director. The director of the department of public works of the City, or her or his designee.

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

Emergency. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

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

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

Excavation permit. The permit which, pursuant to this section, must be obtained before a person may excavate in a right of way. An Excavation permit allows the holder to excavate that part of the right of way described in such permit.

Excavation Permit Fee. Money paid to the City by an applicant to cover the costs as provided in subd. 9.

Facility or Facilities. Any tangible asset in the right of way required to provide Utility Service.

Five-Year Project Plan. Shows projects adopted by the City for construction within the next five years.

High Density Corridor. A designated portion of the public right of way within which telecommunications right of way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

Hole. An excavation in the pavement, with the excavation having a length less than the width of the pavement.

Local Representative. A local person or persons, or designee of such person or persons, authorized by a facility owner to accept service and to make decisions for that facility owner regarding all matters within the scope of this section.

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; Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to subd. 24 of this section.

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

Obstruction Permit. The permit which, pursuant to this section, must be obtained before a person may obstruct a right of way, allowing the holder to hinder free and open passage over the specified portion of that right of way, for the duration specified therein.

Obstruction Permit Fee. Money paid to the City by a permittee to cover the costs as provided in subd. 9.

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.

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

Permit. Has the meaning given "right of way permit" in Minn. Stat. §237.162.

Permittee. Any person to whom a permit to excavate or obstruct a right of way has been granted by the City under this section.

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

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

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

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

Restoration Cost. The amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

Public Right of Way or Right of Way. The area on, below, or above a public roadway, highway, street, cartway, 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 non-wire telecommunications or broadcast service.

Right of Way Permit. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this section.

Right of Way User. (1) A telecommunications right of way user as defined by Minn. Stat., § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right of way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right of way.

Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right of way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the City; (5) services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.

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

Small Wireless Facility. A wireless facility that meets both of the following qualifications:

- 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.

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.

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

Trench. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

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 section, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right of way users for purposes of this section except to the extent such entity is offering wireless service.

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

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 back haul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

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

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

4. Adoption of General Specifications and Standard Detail Plates for Street and Utility Construction. The “City of Mahtomedi General Specifications and Standard Detail Plates for Street and Utility Construction” as prepared by the City Engineer and as hereafter amended is hereby adopted and incorporated by reference. All work done in the right-of-way shall conform with the specifications and requirements of the latest version of the publication available at the time. A copy is on file in the office of the City Administrator.

5. Permit Requirement.
 - A. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right of way, or install or place facilities in the right of way, without first having obtained the appropriate right of way permit from the City to do so.
 - I. Excavation Permit. An excavation permit is required by a facility owner to excavate that part of the right of way described in such permit and to hinder free and open passage over the specified portion of the right of way by placing facilities described therein, to the extent and for the duration specified therein.
 - II. Obstruction Permit. An obstruction permit is required by a facility owner to hinder free and open passage over the specified portion of right of way by placing equipment described therein on the right of way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
 - III. Small Wireless Facility Permit. A small wireless facility permit is required by an facility owner 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 or 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.
 - B. Permit Extensions. No person may excavate or obstruct the right of way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right of way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.
 - C. Delay Penalty. In accordance with Minn. Rule 7819.1000 subd. 3 and notwithstanding subd. 5, B, of this Section, the City shall establish and impose a delay penalty for unreasonable delays in right of way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

- D. Permit Display. Permits issued under this section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.
6. Permit Applications. Application for a permit is made to the City. Right of way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:
- A. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- i. Each permittee's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
 - ii. The name, address, and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - iii. A certificate of insurance or self-insurance:
 - a. Verifying that an insurance policy has been issued to the applicant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the City;
 - b. Verifying that the applicant 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 applicant, its officers, agents, employees, and permittees, and (ii) placement and use of facilities and equipment in the right of way by the applicant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;
 - c. Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - d. Requiring that the City be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - e. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage (as may

be required by the City) in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this section.

f. Agreeing that the City may require a copy of the actual insurance policies.

iv. Payment of money due the City for:

a. Permit fees, estimated restoration costs, and other management costs;

b. Prior obstructions or excavations;

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

d. Franchise fees or other charges, if applicable.

e. Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.

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

7. Issuance of Permit; Conditions.

A. Permit Issuance. If the applicant has satisfied the requirements of this section, the City shall issue a permit.

B. Conditions. The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right of way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

C. 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:

- i. 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.
- ii. 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 permittee 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.
- iii. No wireless facility may extend more than 10 feet above its wireless support structure.
- iv. 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.
- v. 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.
- vi. 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.

8. Action on Small Wireless Facility Permit Applications.

- A. **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.
- B. **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.

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

9. Permit Fees. The City Council shall establish permit fees which will be listed in the Fee Schedule.

A. Excavation Permit Fee. The City shall impose an Excavation Permit Fee in an amount sufficient to recover City management costs and degradation costs, if applicable.

B. Obstruction Permit Fee. The City shall impose an obstruction permit fee in an amount sufficient to recover the City management costs.

C. Small Wireless Facility Permit Fee. The City shall impose a small wireless facility permit fee in an amount sufficient to recover City management costs and City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

D. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The City may allow applicant to pay such fees within thirty (30) days of billing.

E. All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.100.

10. Right of Way Patching and Restoration.

A. Timing. The work to be done under the excavation permit, and the patching and restoration of the right of way as required herein, must be completed within the dates

specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable.

- B. Patch and Restoration. Permittee shall patch its own work. The City may choose either to have the permittee restore the right of way or to restore the right of way itself.
- i. City Restoration. If the City restores the right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with correcting the defective work.
 - ii. Permittee Restoration. If the permittee restores the right of way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.
- C. Standards. In addition to the standards and materials specified by the "City of Mahtomedi General Specifications and Standard Detail Plates for Street and Utility Construction," the permittee shall perform excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the City and shall comply with Minn. Rule 7819.1100.
- D. Duty to Correct Defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.
- E. Failure to Restore. If the permittee fails to restore the right of way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right of way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

11. Supplementary Applications.

- A. Limitation on Area. A right of way permit is valid only for the area of the right of way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

- B. Limitation on Dates. A right of way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

12. Other Obligations.

- A. Compliance with Other Laws. Obtaining a right of way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.O 1-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right of way pursuant to its permit, regardless of who does the work.
- B. Prohibited Work. Except in an emergency, and with the approval of the City, no right of way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. Interference with Right of Way. A permittee shall not so obstruct a right of way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right of way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- D. Trenchless excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

13. Denial or Revocation of Permit.

- A. Reasons for Denial. The City may deny a permit for failure to meet the requirements and conditions of this section or if the City determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right of way and its current use.
- B. Procedural Requirements. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The City must notify the applicant or right- of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may

address the reasons for denial identified by the City and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny the resubmitted application within 30 days after submission.

14. Inspection.

- A. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300.
- B. Site Inspection. Permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- C. Authority of City.
 - i. At the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.
 - ii. The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to subd. 17.

15. Work Done Without a Permit.

- A. Emergency Situations. Each person with facilities in the right of way shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this section for the actions it took in response to the emergency.

If the City becomes aware of an emergency regarding facilities, the City will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

B. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right of way must subsequently obtain a permit and deposit with the City the fees necessary to correct any damage to the right of way, and comply with all of the requirements of this section.

16. Supplementary Notification. If the obstruction or excavation of the right of way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known. Notification shall also be provided to affected property owners on the form provided by the City.

17. Revocation of Permits.

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

- i. The violation of any material provision of the right of way permit.
- ii. 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.
- iii. Any material misrepresentation of fact in the application for a right of way permit.
- iv. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control.
- v. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.20.

B. Written Notice of Breach. If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit, the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

C. Response to Notice of Breach. Within forty-eight (48) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. Permittee's failure to so contact the City, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

- D. Reimbursement of City costs. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

18. Mapping Data.

- A. Information Required. Each permittee shall provide mapping information required by the City in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City's electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.
- B. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any City approval necessary for: (1) payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429, and (2) City approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The director shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

19. Location and Relocation of Facilities.

- A. Facilities. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- B. Corridors. The City may assign a specific area within the right of way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right of way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

- C. Limitation of Space. To protect the health, safety, and welfare of the public, 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.
20. Damage to Other Facilities. When the City does work in the right of way and finds it necessary to maintain, support, or move facilities to protect it, the City shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right of way which it or its facilities damage. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.
21. Right of Way Vacation.
- A. Reservation of right. If the City vacates a right of way that contains facilities, the facility owner's rights in the vacated right of way are governed by Minn. R. 7819.3200.
- B. Relocation in Right of Way. Relocation of facilities located in the right of way shall be done in conformity with the requirements of Minn. R. 7819.3100.
22. Indemnification and Liability. By applying for and accepting a permit under this section, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minn. Rule 7819.1250.
23. Abandoned and Unusable Facilities.
- A. Discontinued Operations. A facility owner who has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the facility owner's obligations for its facilities in the right of way under this section have been lawfully assumed by another facility owner.
- B. Removal. Any facility owner who has abandoned facilities in any right of way shall remove it from that right of way if required in conjunction with other right of way repair, excavation, or construction, unless this requirement is waived by the City.
24. Appeal. A right of way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6; or (5) disputes a determination of the director regarding subd. 18 B of this ordinance may have the denial, revocation, fee

imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right of way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

25. Reservation of Regulatory and Police Powers. A permittee's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.
26. Severability. If any portion of this section is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this section precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.