

CITY OF DEEPHAVEN  
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## CHAPTER 7. VEHICLES, TRAFFIC AND STREETS

### SECTION 700 VEHICULAR TRAFFIC AND PARKING

700.01 Highway Traffic Regulation Act. Chapter 169 of the Minnesota Statutes, as amended, known as the Highway Traffic Regulation Act, is adopted as a traffic ordinance regulating the use of streets and is incorporated and made a part of this Code as completely as if set out in full in this Code.

700.02 Unnecessary Exhibition of Speed. No person may operate a motor vehicle with unnecessary exhibition of speed on any street or other public or private driveway, parking lot or way within the City limits. Prima facie evidence of unnecessary exhibition of speed is any of the following: (a) unreasonable squealing or screeching sounds emitted by tires; (b) the throwing of sand or gravel by tires; (c) unreasonable skid, sway or slide upon acceleration or stopping.

700.03 Load Restrictions. The City Director of Public Works is authorized to designate all or any portions of streets upon which travel by vehicles having a gross weight on any single axle in excess of 8,000 pounds is prohibited. The Director of Public Works will have signs plainly indicating the prohibition or restriction at each end of that portion of the street so designated. No person may operate a vehicle on such posted streets in violation of the restrictions stated.

700.04 Special Permits. The Zoning Coordinator or their authorized agent, may in their discretion, issue a written permit authorizing the moving of a vehicle having a gross weight on any single axle exceeding 8,000 pounds on designated streets. The application must be in writing showing good cause for the permit. The required fee as outlined in Chapter 4 of this code must be paid prior to the permit being valid. In addition, the application must specifically describe the vehicle or vehicles, loads to be moved, particular streets for which the permit is requested and the period of time for which the permit is requested. If a permit is issued, limitations and conditions of operation of the vehicle or vehicles may be prescribed to prevent undue damage to streets. The permit must be carried in the vehicle to which it refers and the vehicle will be open to inspection by any police officer or authorized agent of the Chief of Police.

700.05 Parking Regulations.

Subd. 1. 24-Hour Parking. No person may leave any vehicle on any public street or City parking lot for a consecutive period of more than 24 hours.

Subd. 2. Prohibited Parking After Snowfall. No person may park or leave unattended any vehicle on any public street or City parking lot in the City after two inches or more of snow has fallen until the street has been completely plowed. In addition to any other penalties imposed for violation of this Section, the Chief of Police is authorized to cause any vehicle parked or left unattended in violation of this Section to be towed from the street at the expense of the owner of the vehicle.

Subd. 3. Trucks Prohibited in Residential Zone. No truck in excess of 9,000 pounds licensed gross weight may be parked on streets in districts designated as residential under the City's Zoning Ordinance except for the time necessary for loading or unloading.

Subd. 4. No Parking and Limited Parking Zones. The Police Chief may permit the parking of vehicles in a no parking zone for a limited time period for special events if no other feasible

alternative exists. Persons requesting a permit from the Police Chief to park in a no parking zone for a limited duration shall submit a written request stating the reason for the request, the time period vehicles will be parked in the no parking zone, and a map indicating the area and number of parking spaces that will be utilized. The Police Chief may deny the request if it is found that there is endangerment to safe vehicular traffic on the street or public safety.

Subd. 5. No U Turns. No person may turn a vehicle so as to reverse its direction on a curve or hill where the vehicle cannot be seen by the driver of a vehicle within 1000 feet approaching from either direction, or in any places designated by Council resolution as no U turn zones.

Subd. 6. Vehicles Prohibited in Parks. No person may stop, park or operate a motorized vehicle, or ride a horse, except in compliance with the directions of a police officer, on park property or other public grounds within the City. Bicycles may be operated on park property or public lands except where signs prohibit their operation.

Subd. 7. Trailers. The Council may, by motion or resolution designate portions of streets, or other municipally controlled land as zones in which the parking of boat trailers and other types of trailers is prohibited. Upon such designation, the City will cause the zones to be marked or posted with appropriate signs. The location of the signs will be prima facie evidence that the Council has by proper motion or resolution established the area as a zone in which trailer parking is prohibited. No person may leave or park a boat trailer or any other type of trailer within such a posted zone, even though the person has been issued a permit for vehicle parking within the zone.

Subd. 8. Parking Adjacent to Beaches, Boat Launching or Docking Areas and Other Public Grounds. No person may leave or park a vehicle on any street or municipally controlled land within the posted area adjacent to any public bathing beach, boat launching or docking area, or other public grounds within the City during the period from May 1 to October 1 of each year without having attached to the vehicle a permit issued under Section 450.

Subd. 9. Temporary No Parking Areas. The Chief of Police or his designee may designate temporary no parking areas within the City and may provisionally post these areas with a "NO PARKING" sign.

Subd. 10. City Parking Lot Restrictions. In order to facilitate parking lot maintenance, parking is prohibited between the hours of 2 a.m. and 5 a.m. daily November 1<sup>st</sup> through March 31<sup>st</sup> in all City owned parking lots without written permission from the Police Chief.

Subd. 11. Restricted Parking Zones Authorized. The Council may, by motion or resolution, designate certain streets or portions of streets as no parking zones or limited parking zones and shall cause these zones to be marked by appropriate signs. The location of signs limiting parking shall be prima facie evidence that the Council has by proper motion or resolution authorized the establishment of these no parking or limited parking zones. The Council shall make a determination of no parking zones or limited parking zones on the basis of convenience and safety to the public and traffic hazards. No person shall park any vehicle in a no parking zone or any limited parking zone for a period longer than is specified on the signs marking the zones.

700.06. Penalty. Any violation of a provision of Section 700 or of the statutes adopted by reference in Section 700.01 is a misdemeanor except violations of the parking regulations in

Section 700.04, which are a petty misdemeanor, and except as provided in Minnesota Statutes, Sections 169.89 and 169.891 regarding petty misdemeanors.

## **SECTION 705 SNOWMOBILE AND ALL TERRAIN VEHICLE (ATV) REGULATIONS**

705.01 General. No person may own or operate a snowmobile or ATV in the City in violation of, or contrary to, any provision of this Code.

705.02 Adoption by Reference.

Subd. 1. Minnesota Statutes Applicable. The application of Minnesota Statutes, Sections 84.81 through 84.89, regarding snowmobile operation is hereby confirmed.

Subd. 2. State Department of Natural Resources Rules and Regulations Applicable. The application of the Rules and Regulations of the State Department of Natural Resources relating to snowmobiles, Chapter 5, NR 51 through 59 (1973 Edition), is hereby confirmed.

Subd. 3. Lake Minnetonka Conservation District Code of Ordinances Applicable. The application of Lake Minnetonka Conservation District Code of Ordinances relating to motorized vehicles, Ordinance No. 7, Sections 4.34 through 4.40, is hereby confirmed.

705.03 Prohibitions. Except as otherwise specifically permitted and authorized by Section 705.02, it is unlawful to operate a snowmobile or ATV:

- (a) On a public sidewalk or walkway provided or used by pedestrian traffic.
- (b) On private property of another without the operator of the snowmobile or ATV having in possession the written consent of the owner or occupant of the property.
- (c) On any publicly owned lands and frozen waters, including, but not limited to, school grounds, park property, playgrounds, recreation areas and golf courses, except areas previously listed or authorized for such use by the proper public authority when traversing to or from an approved snowmobile or ATV area by the shortest legal route.
- (d) Between the hours of 11:00 p.m. and 7:00 a.m. of each day, except in traveling without delay to or from a final destination.
- (e) On City streets, except when traversing to or from Lake Minnetonka, when it is frozen, to an approved snowmobile or ATV area by the shortest legal route.
- (f) So as to tow any person or thing on a street, except through the use of a rigid tow bar attached to the rear of the snowmobile or ATV.
- (g) In any manner prohibited under the laws, ordinances and regulations referred to in Section 705.02 as if such prohibitions were assumed to apply to all public and private property in the City.

## **SECTION 710 BICYCLES**

710.01 Designation of Bicycle Lanes. Under Minnesota Statutes, Section 160.263, the City designates as bicycle lanes those portions of the following streets which are separated from the motor vehicle lanes by painted lines:

- (a) Vine Hill Road from State Highway No. 7 to the intersection of Vine Hill Road with Minnetonka Boulevard.
- (b) Minnetonka Boulevard from its intersection with Vine Hill Road to its intersection with the city limits of the City of Shorewood.
- (c) Minnetonka Boulevard from its intersection with Vine Hill Road to its intersection with Northome Boulevard.

710.02 No Parking on Bicycle Lanes. No person may place or park any motorized vehicle, trailer, bicycle or other vehicle on a bicycle lane.

710.03 Motorized Vehicles. No person may operate any automobile, truck, motorcycle, "motorized bicycle" as defined in Minnesota Statutes, Section 169.011, Subd. 27, or other motorized vehicle on a bicycle lane.

710.04 Operation of Bicycles. For purposes of this Section, the term "bicycle" has the meaning given that term in Minnesota Statutes, Section 169.01, Subd. 51. Any person operating a bicycle on any street or bicycle lane must comply with Minnesota Statutes, Section 169.222. No person may ride a bicycle on the central portion of a street adjoining a bicycle lane except to cross the street on a course generally perpendicular to the street. A person riding a bicycle in a bicycle lane may travel only in the same direction as the motor vehicle traffic in the motor vehicle lane adjoining the bicycle lane.

710.05 Registration. For purposes of this Section 710.05, the term "bicycle" has the meaning given that term in Minnesota Statutes, Section 168C.02, Subd. 2. Any resident of the City who owns a bicycle that is ridden on any street or bicycle lane in the City must register that bicycle pursuant to Minnesota Statutes, Chapter 168C and must display on the bicycle the license plate issued pursuant to Minnesota Statutes, Section 168C.07.

## **SECTION 715 STREET NAMES AND NUMBERING**

715.01 Street Names. The City Clerk-Treasurer will keep on file at City Hall a book or register of all streets in the City listed by name and location.

715.02 Address Numbering. The City Clerk-Treasurer will keep on file at City Hall a book or register of all address numbers in the City listed by street name.

715.03 Display. All private residences and commercial establishments must display a number on the principal building or in such location as to be visible from the access road.

## **SECTION 720 ADMINISTRATION AND REGULATION OF PUBLIC RIGHT-OF-WAY IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS**

### **720.01 Election to Manage the Public Right-of-Way**

In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage rights-of-way within its jurisdiction.

### **720.02. Definitions.**

The following definitions apply in this chapter of this code. References hereafter to “sections” are, unless otherwise specified, references to sections in this chapter. 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 Deephaven, Minnesota. For purposes of section 700.28, city also means its elected officials, officers, employees and agents.

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

**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 Minnesota Statutes, section 216D.04. subdivision 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. Sec. 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 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, set forth in Minnesota Rules 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.

**Department Inspector.** Any person authorized by the city to carry out inspections related to the provisions of this chapter.

**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.

**Encroachment Permit.** An encroachment permit is required to use the publicly owned right-of-way within the city for any private use or purpose other than the primary purpose of public travel, whether such use constitutes substantial or incidental use. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter as long as plantings are located at least five feet from the street edge and do not include trees, boulders, fences or other structures.

**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 chapter, 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 Section 720.12.

**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 registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

**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, assess 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 720.30 of this chapter.

**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 chapter, 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 Section 720.07

**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 Minnesota Statutes, section 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 chapter.

**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.

**Registrant.** Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

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

**Restoration Cost.** The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of 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 nonwire 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 chapter.

**Right-of-Way User.** (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 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 system as defined in Minn. Stat. Chapter. 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., Chapter 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 and 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.

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

**Two Year Project Plan.** Shows projects adopted by the city for construction within the next two years.

**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, wireless backhaul 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.

### **720.03 Permit Requirement**

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

- (a) ***Excavation Permit.*** An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (b) ***Obstruction Permit.*** An obstruction permit is required 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.
- (c) ***Small Wireless Facility Permit.*** A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
- (d) ***Encroachment Permits***

Subd. 1 Purpose. It is recognized that limited private use or encroachment into the right-of-way is not necessarily inconsistent with public use. It is the purpose of this ordinance to provide for lawful incidental private use of publicly owned right-of-way not inconsistent with public use.

Subd. 2. Permit. Any person may apply to the City Council for a permit to keep or maintain private property within a publicly owned right-of-way. The application shall be in writing and must describe with specificity the private property and right-of-way involved, and the nature and extent of the requested encroachment. The City Council may grant the permit if it is determined that the use applied for is incidental and not inconsistent with safe and efficient public use. However, no permit will be issued until the applicant has agreed in writing to waive any right to recover from the city for damage occurring to the property located within the right-of-way which may result from the performance of the city or its agents of its public duties required by law.

Subd. 3. Setback. Other than mailboxes, no structure shall be placed closer than five (5) feet from the street edge, unless the City Council finds that the request is incidental and not inconsistent with safe and efficient public use of the right-of-way.

Subd. 4. Revocation. The city reserves the right to revoke any permit granted under this section as may be required by the public interest.

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

**Subd. 3. *Delay Penalty.*** In accordance with Minnesota Rule 7819.1000 subp. 3, and notwithstanding subd. 2 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.

**Subd. 4. *Permit Display.*** Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the director.

#### **720.04 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) Registration with the city pursuant to this chapter;
- (b) 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.
- (c) Payment of money due the city for:
  - 7
  - (1) Permit fees, estimated restoration costs and other management costs;
  - (2) Prior obstructions or excavations;
  - (3) Any undisputed loss, damage, or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city.
  - (4) Franchise fees or other charges if applicable.
- (d) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- (e) Posting an additional or larger construction performance bond for additional facilities when applicant requests and excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.
- (f) A certificate of insurance or self-insurance verifying that an insurance policy has

been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the city.

## **720.05 Issuance of Permit; Conditions**

**Subd. 1. *Permit Issuance.*** If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

**Subd. 2. *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 Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

### **Subd. 3. *Small Wireless Facility Conditions.***

- (a) 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.
- (b) No new wireless support structure installed within the right-of-way shall exceed 30 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 30 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- (c) No wireless facility may extend more than 10 feet above its wireless support structure.
- (d) 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.
- (e) 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.
- (f) 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.

**Subd. 4 *Small Wireless Facility Agreement.*** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation

agreement with the city. The standard collocation agreement may require payment of the following:

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

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

**Subd. 5. *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 Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

## **720.06 Action on Small Wireless Facility Permit Applications**

**Subd. 1. *Deadline for Action.*** The city shall approve or deny a small wireless facility permit application within 90 days after filing of such an 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.

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

- (a) are located within a two-mile radius;
- (b) consist of substantially similar equipment; and
- (c) are to be placed on similar types of wireless support structures.

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

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

- (a) The city receives applications from one or more applicants seeking approval of permits

for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

- (b) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt of the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.
- (c) The city and a small wireless facility applicant agree in writing to toll the review period.

#### **720.07 Permit Fees**

**Subd. 1. *Excavation Permit Fees.*** The city shall impose an excavation permit fee in an amount sufficient to recover:

- (a) the city management costs;
- (b) degradation costs, if applicable.

**Subd. 2. *Obstruction Permit Fee.*** The city shall impose an obstruction permit Fee in an amount sufficient to recover the city management costs.

**Subd. 3. *Small Wireless Facility Permit Fee.*** The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

- (a) Management costs, and;
- (b) City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

**Subd. 4. *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.

**Subd. 5. *Non refundable.*** Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 720.11 are not refundable.

**Subd. 6. *Application to franchises.*** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

#### **720.08 Right-of-Way Patching and Restoration**

**Subd. 1. *Timing.*** The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 720.10.

**Subd. 2. 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.

- (a) **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 having to correct the defective work.
- (b) **Permittee Restoration.** If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
- (c) **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

**Subd. 3. Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100

**Subd. 4. Duty to correct defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. 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 under Section 720.10.

**Subd. 5. 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.

#### **720.09 Joint Applications**

**Subd. 1. Joint Application.** Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

**Subd. 2. Shared Fees.** Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

**Subd. 3. With City Projects.** Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

## **720.10 Supplementary Applications**

**Subd. 1. *Limitation on Area.*** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee 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.

**Subd. 2. *Limitation on Dates.*** A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the 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.

## **720.11 Denial or Revocation of Permit**

**Subd. 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.

**Subd. 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.

## **720.12 Installation Requirements**

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Secs. 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and there ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 720.17 subd. 2 of this ordinance.

## **720.13 Inspection**

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

**Subd. 2. *Site Inspection.*** Permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

### **Subd 3. Authority of Director.**

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

(b) The director may issue an order to the permittee for any work 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 Sec. 720.16.

### **720.14 Work Done Without a Permit**

**Subd. 1. Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Excavator's notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the Emergency.

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

**Subd. 2. 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 as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

### **720.15 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 director of the accurate information as soon as this information is known.

### **720.16 Revocation of Permits**

**Subd. 1. 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:

- (a) The violation of any material provision of the right-of-way permit;
- (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 720.11.

**Subd. 2. *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 might 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.

**Subd. 3. *Response to Notice of Breach.*** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, which will cure the breach. Permittee's failure to so contact the city, or the 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. Further, permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

**Subd. 4. *Cause for Probation.*** From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

**Subd. 5. *Automatic Revocation.*** If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

**Subd. 6. *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.

## **720.17 Mapping Data**

**Subd. 1. *Information Required.*** Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the city 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 city. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

**Subd. 2. 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 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 city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence satisfactory to the city 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 December 31, 2005, shall be a condition of any city approval necessary for:

- a) Payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and
- b) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

#### **720.18 Location of Facilities**

**Subd. 1.** 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.

**Subd. 2. Corridors.** The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities 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.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

**Subd. 3. Nuisance.** One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

**Subd. 4. Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the director shall have the power to prohibit or director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city

plans for public improvements and development projects which have been determined to be in the public interest.

#### **720.19 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 registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. 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 registrant's facilities.

#### **720.20 Right-of-Way Vacation**

**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 Minnesota Rules 7819.3200.

#### **720.21 Indemnification and Liability**

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

#### **720.22 Abandoned Facilities**

**Removal of Abandoned Facilities.** Any registrant who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

#### **720.23 Appeal**

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. 237.163, Subd. 6; or (5) disputes a determination of the city regarding Section 720.16 subd. 2 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 writing and supported by written findings establishing the reasonableness of the decision.

#### **720.24 Reservation of Regulatory and Police Powers**

A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

#### **720.25 Severability**

If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to the requirements set forth herein.