

**SECTION 301
RIGHT-OF-WAY MANAGEMENT**

301.01 FINDINGS AND PURPOSE

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

The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such person receives revenue and/or profit through their use of public property.

In response to the foregoing facts, the City hereby enacts this new Chapter of this Code relating to right-of-way permits and administration, together with an ordinance making necessary revisions to other Code provisions. This Chapter imposes reasonable regulations on the placement and maintenance of 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 Chapter, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this Chapter provides for recovery of out-of-pocket and projected costs from person using the public rights-of-way.

301.02 DEFINITIONS

The following definitions apply in this Chapter of this Code. References hereafter to “sections” are, unless otherwise specified, references to this Chapter. Defined terms remain defined terms whether or not capitalized.

- (a) “Applicant” means any person requesting permission to excavate a right-of-way.
- (b) “City” means the City of Tonka Bay, Minnesota. For purposes of section 301.28, city means its elected officials, officers, employees and agents.
- (c) “City Cost” means the actual cost incurred by the City for public rights-of-way management; including, but not limited to, costs associated with

registering applicants, issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; and revoking right-of-way permits and performing all other tasks required by this Chapter, including other costs the city may incur in managing the provisions of this Chapter.

- (d) “Degradation” means the accelerated depreciation 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 did not occur.
- (e) “Department” means the Department of Public Works of the City.
- (f) “Department Inspector” means any person authorized by the City to carry out inspections related to the provisions of this Chapter.
- (g) “Emergency” means a condition that (1) poses a clear and immediate danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.
- (h) “Equipment” means any tangible thing in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person’s property and the street curb.
- (i) “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way, except horticultural practices of penetration the boulevard area to a depth of less than 12 inches.
- (j) “Excavation Permit” means 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.
- (k) “Excavation Permit Fee” means money paid to the City by an applicant to cover the costs as provided in Section 301.10.
- (l) “In”, when used in conjunction with “right-of-way”, means over, above, in, within, on or under a right-of-way.
- (m) “Local Representative” means 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.

- (n) "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Chapter.
- (o) "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have equipment in any right-of-way.
- (p) "Registrant" means any person who (1) has or seeks to have its equipment located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment in the right-of-way.
- (q) "Repair" means the temporary construction work necessary to make the right-of-way useable for travel.
- (r) "Restoration Bond" means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in both a timely and quality manner.
- (s) "Restore or Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before the commencement of the work.
- (t) "Restoration Cost" means an amount of money paid to the City by a permittee to cover the cost of restoration.
- (u) "Right-of-Way" means the surface and space above and below a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city.
- (v) "Right-of-Way Permit" means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Chapter.
- (w) "Service" or "Utility Service" includes, but is not limited to, (1) those services provided by a public utility as defined in Minn. Stat. 216.B.02, subds, 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. 300.03; (4)

the services provided by a district heating or cooling system, and (5) cable communications systems as defined in Minn. Stat. Chapter 238.

- (x) "Supplementary Application" means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.
- (y) "Telecommunication Right-of-Way User" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way that is used or is intended to be used for transporting telecommunication of other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under Minn. Stat. Chapter 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.
- (z) "Unusable Equipment" means equipment in the right-of-way which has remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the equipment.

301.03 ADMINISTRATION

The City Council shall be responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Council may delegate any or all of the duties hereunder to the City Administrator.

301.04. REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

1. Registration. Each person who occupies, uses, or seeks to occupy or use the right-of-way or any equipment in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment in any right-of-way must register with the City. Registration will consist of providing application information and paying a registration fee.
2. Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or any part thereof in any right-of-way without first being registered with the City.
3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any

other requirements for planting or maintaining such boulevard plantings or gardens under this Chapter. However, excavations deeper than 12 inches are subject to the permit requirements of section 301.07 of this Chapter.

301.05 REGISTRATION INFORMATION

1. Information Required. The information provided to the City at the time of registration shall include, but not be limited to:

(a) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(c) A certificate of insurance or self-insurance:

(1) Shall be on a form approved by the city;

(2) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or is covered by self insurance which the City determines to provide the city with protections equivalent to that of a Minnesota licensed insurance company, legally independent from the registrant;

(3) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of equipment in the right-of-way by registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property;

(4) 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;

- (5) Requiring that the City be notified thirty (30) days in advance of cancellation of the policy; and
 - (6) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City in amounts sufficient to protect the City and carry out the purposes and policies of this Chapter.
- (d) If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.
 - (e) A copy of the person's certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
 - (f) Such other information as the City may require.
2. Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the City Administrator information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

301.06 REPORTING OBLIGATIONS

1. Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan with the City Administrator. Such plan shall be submitted using a format designated by the City and shall contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:
- (a) The locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this section, a "Next-year Project"); and
 - (b) The tentative locations and estimated beginning and ending dates for all Projects contemplated for the five years following the next calendar year (in this section, a "Five-year Project").

The term "project" in this section shall include both Next-year Projects and Five-year Projects

By January 1 of each year the City Administrator will have available for inspection at City Hall, a composite list of all Projects of which the City has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any Project in its list of Next-year Projects, and must notify the City Administrator and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a Next-year Project of another registrant listed by the other registrant.

2. Additional Next-year Projects. Notwithstanding the foregoing, the City may, for good cause shown, allow a registrant to submit additional Next-year Projects. Good cause includes, but is not limited to, the criteria set forth in Section 301.16 concerning the discretionary issuance of permits.

301.07 PERMIT REQUIREMENT

1. Permit Required. Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City Council to do so.
 - (a) Excavation permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein, to the extent and for the duration specified therein.
 - (b) Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein.
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.
3. Permit Display. Permits issued under this Chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection.

301.08 PERMIT APPLICATIONS

Application for a permit is made to the City Administrator. 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 existing and proposed equipment;
- (c) Payment of all money due to the City for
 - (1) permit fees and costs,
 - (2) prior obstructions or excavations;
 - (3) any loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;
 - (4) franchise fees, if applicable.
- (d) When an excavation permit is requested for purposes of installing additional equipment, and the posting of a restoration bond for the additional equipment is insufficient, the posting of an additional or larger restoration bond for the additional equipment may be required.

301.09 ISSUANCE OF PERMIT; CONDITIONS

- 1. Permit Issuance. If the City Council determines that the applicant has satisfied the requirements of this Chapter, the City Administrator may issue a permit.
- 2. Conditions. The City Council may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

301.10 PERMIT FEES

- 1. Excavation Permit Fee. The Excavation Permit Fee shall be established by the City Council in an amount sufficient to recover the following costs:
 - (a) the City cost;

- (b) degradation cost, if applicable.
- 2. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of such fees before the issuance of such a permit. All permit fees shall be doubled during a probationary period.
- 3. Non refundable. Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 301.20 are not refundable.
- 4. Use of Permit Fees. All excavation permit fees shall be used solely for city management, construction, maintenance and repair costs of the right-of-way.

301.11. RIGHT-OF-WAY REPAIR AND RESTORATION

- 1. Timing. The work to be done under the excavation permit, and the repair 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 extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 301.14.

In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for thirty-six (36) months thereafter.

- 2. Repair and Restoration. Permittee shall repair its own work. In addition, the permittee must restore the right-of-way itself.
 - (a) City Restoration. If, during the thirty-six (36) months 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, the cost of repairing said pavement.
 - (b) Permittee Restoration. The permittee shall at the time of application for an excavation permit post a restoration bond in an amount determined by the City Council to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, thirty-six (36) months after completion of the restoration of the right-of-way, the City determines that the right-of-way has been properly restored, the surety on the restoration bond shall be released.

3. Standards. The permittee shall perform repairs and restoration according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations:
 - (a) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
 - (b) The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
 - (c) The pre-excavation condition of the right-of-way; the remaining life-expectancy of the right-of-way affected by the excavation;
 - (d) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and
 - (e) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.
4. Guarantees. The permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period it shall, upon notification from the City, 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 unseasonal or unreasonable under Section 301.14.
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 restoration bond.
6. Degradation Fee. A permittee shall pay to the city a degradation fee to cover city costs associated with a decrease in the useful life of a public right-of-way caused by excavation and repairs. Payment of a degradation

fee does not relieve permittee of the obligation to make necessary right-of-way repairs.

301.12 JOINT APPLICATIONS

1. Joint Application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
2. 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 degradation portions of the permit fee.
3. Shared Fees. Registrants who apply for permits for the same excavation, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

301.13 SUPPLEMENTARY APPLICATIONS

1. Limitation on Area. A right-of-way permit valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (1) make application for a permit extension and pay any additional fees required thereby, and (2) be granted a new permit or permit extension.
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 done before the permit end date.

301.14 OTHER OBLIGATIONS

1. 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 any other City, County, State or Federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. 216D.01-.09 (“One Call Excavation Notice System”). A permittee shall

perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

2. Prohibited Work. Except in an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when seasonably prohibited or when conditions are unreasonable for such work.
3. Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage for water through the gutters or other waterways shall be interfered with. Private vehicles may not be parked within or next to a permit area. The loading or unloading of trucks next to a permit area is prohibited unless specifically authorized by the permit.

301.15 DENIAL OF PERMIT

1. Mandatory Denial. Except in an emergency, no right-of-way permit will be granted:
 - (a) To any person required by Sec. 301.05 to be registered who has not done so;
 - (b) To any person required by Sec. 301.08 to file an annual report but has failed to do so;
 - (c) For any Next-year Project not listed in the construction and major maintenance plan required under Section 301.08.
 - (d) For any project which requires the excavation of any portion of a right-of-way which was constructed or reconstructed within the preceding five years;
 - (e) To any person who has failed within the past three (3) years to comply, or is presently not in full compliance with the requirements of this Chapter;
 - (f) To any person as to whom there exists grounds for the revocation for a permit under Sec. 301.21; or
 - (g) If, in the discretion of the City Council, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The City, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way,

and by considerations relating to the public health, safety and welfare.

2. Permissive Denial. The City may deny a permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The City Council, in its discretion, may consider one or more of the following factors:
 - (a) The extent to which right-of-way space where the permit is sought is available;
 - (b) the competing demands for the particular space in the right-of-way;
 - (c) The availability of other locations in the right-of-way or in other rights-of-way for the equipment of the permit applicant;
 - (d) the applicability of ordinance or other regulations of the right-of-way that affect location of equipment in the right-of-way;
 - (e) the degree of compliance of the applicant with the terms and conditions of its franchise, this Chapter, and other applicable ordinances and regulations;
 - (f) the degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
 - (g) the condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; and
 - (h) the balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.
3. Discretionary Issuance. Notwithstanding the provisions of Sec. 301.15 subd. 1, (c) and (d), the City may issue a permit in any case where the permit is necessary (a) to prevent substantial economic hardship to a customer of the permit applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow a new economic development project, or otherwise required by law; and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when said applicant was required to submit its list of Next-year projects.

4. Permits for Additional Next-year Projects. Notwithstanding the provisions of Section 301.15 subd. 1 (c) above, the City may issue a permit to a registrant who was allowed under Section 301.06 Subd. 2, to submit an additional Next-year Project, such permit to be subject to all other conditions and requirements of law, including such conditions as may be imposed under Section 301.09.

301.16 INSTALLATION REQUIREMENTS

The excavation, backfilling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the Current Minnesota D.O.T. Standard Specifications for Street Openings and at a location as required by Section 301.22.

301.17 INSPECTION

1. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall notify the City Administrator.
2. Site Inspection. Permittee shall make the work-site available to the City Administrator and any other City employee or City designee and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. Authority of City Administrator. At the time of inspection the City Administrator may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well being of the public. The City Administrator may issue an order to the registrant for any work which does not conform to the 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 registrant shall present proof to the City Administrator that the violation has been corrected. If such proof has not been presented within the required time, the City Administrator may revoke the permit pursuant to Sec. 301.20.

301.18 WORK DONE WITHOUT A PERMIT

1. Emergency Situations. Each registrant shall immediately notify the City Administrator of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the emergency.

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

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, pay double the normal fee for said permit, pay double all the other fees required by this Code, deposit with the City Administrator the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.

301.19 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 Administrator of the accurate information as soon as this information is known.

301.20 REVOCATION OF PERMITS

1. Substantial Breach. Registrants hold permits issued pursuant to this Chapter as a privilege and not as a right. 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 condition of the permit. A substantial breach by permittee shall include, but 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 facts in the application for a right-of-way permit;
 - (d) The failure to maintain the required bonds and/or insurance;
 - (e) The failure to complete the work in a timely manner; or
 - (f) The failure to correct a condition indicated on an order issued pursuant to Sec. 301.17.

2. Written Notice of Breach. If the City Administrator 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 Administrator 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. Further, a substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit.
3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, permittee shall contact the City Administrator with a plan, acceptable to the City, for its correction. Permittee's failure to so contact the City Administrator, or the permittee's failure to 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.
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 the permit.
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.
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.

301.21 MAPPING DATA

1. Information Required. Except as provided in subd. 2 of this section, each registrant shall provide to the City Administrator information indicating the horizontal and vertical location, relative to the boundaries of the right-of-way, all equipment which it owns or over which it has control and which is located in any right-of-way ("Mapping Data"). Mapping Data shall be provided with the specificity and in the format requested by the City Administrator for inclusion in the mapping system used by the City.

Within six (6) months after the acquisition, installation, or construction of additional equipment or any relocation, abandonment, or disuse of existing equipment, each registrant shall supplement the Mapping Data required herein.

Each registrant shall, within six (6) months after the date of passage of this Chapter, submit a plan to the City Council specifying in detail the steps it will take to comply with the requirements of this Section. Said plan shall provide for the submission of all Mapping Data (a) for the Business District within two (2) years after the date of passage of this Chapter, and (b) for the remainder of the City as early as may be reasonable and practical, but not later than five (5) years after the date of passage of this Chapter.

Notwithstanding the foregoing, Mapping Data shall be submitted by all registrants for all equipment which is to be installed or constructed after the date of passage of this Chapter at any time permits are sought under these ordinances.

After six (6) months after the passage of this Chapter, a new registrant, or a registrant which has not submitted a plan as required above, shall submit complete and accurate Mapping Data for all its equipment at the time any permits are sought under these circumstances.

2. Telecommunication Equipment. Information on existing facilities and equipment of telecommunications right-of-way users need only be supplied in the form maintained by the telecommunications right-of-way user.
3. Trade Secret Information. At the request of any registrant, any information requested by the City Administrator, which qualifies as a "trade-secret" under Minn. Stat. § 13.37(b) shall be treated as trade secret information as detailed therein. With respect to the provision of mapping data, the city may consider unique circumstances from time to time required to obtain mapping data.

301.22 LOCATION OF EQUIPMENT

1. Undergrounding. Unless otherwise permitted by an existing franchise or Minnesota Stat. 216B.34, or unless existing above-ground equipment is repaired or replaced, new construction and the installation of new equipment and replacement of old equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes.

2. Corridors. The City Council may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation or other permits issued by the City involving the installation or replacement of equipment shall designate the proper corridor for the equipment at issue.

Any registrant whose equipment is 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 its equipment is located, move that equipment to its assigned position within the right-of-way, unless this requirement is waived by the City Council 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.

3. Nuisance. One year after the passage of this Chapter, any equipment found in a right-of-way that has 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 equipment and restoring the right-of-way to useable condition.
4. Limitation of Space. To protect health and safety, the City Council shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the City Council 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 equipment 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.

301.23 RELOCATION OF EQUIPMENT

A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its equipment and facilities in the right-of-way whenever the City requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal and relocation. The City may make such request to prevent interference by the Company's equipment or facilities with (i) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) an

economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its equipment from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

301.24 PRE-EXCAVATION EQUIPMENT LOCATION

In addition to complying with the requirements of Minn. Stat. §§ 216D.01-.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said equipment. Any registrant whose equipment is less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its equipment and the best procedure for excavation.

301.25 DAMAGE TO OTHER EQUIPMENT

When the City does work in the right-of-way and finds it necessary to maintain, support, or move a registrant’s equipment to protect it, the City Administrator shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing.

Each registrant shall be responsible for the cost of repairing any equipment in the right-of-way which it or its equipment damages. Each registrant shall be responsible for the cost of repairing any damage to the equipment of another registrant caused during the City’s response to an emergency occasioned by that registrant’s equipment.

301.26 RIGHT-OF-WAY VACATION

1. Reservation of Right. If the City vacates a right-of-way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant or permittee equipment, the City shall reserve, to and for itself and all registrants having equipment in the vacated right-of-way, the right to install, maintain and operate any equipment in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining, or repairing the same.

2. Relocation of Equipment. If the vacation requires the relocation of registrant or permittee equipment; and (a) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the city, the registrant or permittee must pay the relocations costs unless otherwise agreed to by the city and the registrant or permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocations costs.

301.27 INDEMNIFICATION AND LIABILITY

1. Limitation of Liability. By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability (a) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.
2. Indemnification. By registering with the City Administrator, a registrant agrees, or by accepting a permit under this Chapter, a permittee is required, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its equipment, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf, including but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the City; and the registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

301.28 FUTURE USES

In placing any equipment, or allowing it to be placed, in the right-of-way the City is not liable for any damages caused thereby to any registrant's equipment which is already in place. No registrant is entitled to rely on the provisions of this Chapter, and no special duty is created as to any registrant. This Chapter is enacted to protect the general health, welfare and safety of the public at large.

301.29 ABANDONED AND UNUSABLE EQUIPMENT

1. Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:
 - (a) Provide information satisfactory to the City Administrator that the registrant's obligations for its equipment in the right-of-way under this Chapter have been lawfully assumed by another registrant; or
 - (b) Submit to the City Administrator a proposal and instruments for transferring ownership of its equipment to the City. If a registrant proceeds under this clause, the City may, at its option:
 - (1) purchase the equipment; or
 - (2) require the registrant, at its own expense, to remove it; or
 - (3) require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the equipment.
2. Abandoned Equipment. Equipment of a registrant who fails to comply with Section 301.29 Subd. 1, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned equipment is 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, (1) abating the nuisance, (ii) taking possession of the equipment and restoring it to a useable condition, or (iii) requiring removal of the equipment by the registrant, or the registrant's successor in interest.
3. Removal. Any registrant who has unusable and abandoned equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the City.

301.30 RESERVATION OF REGULATORY AND POLICE POWERS

The City by granting of a right-of-way permit, or by registering a person under this Chapter does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter granted to the City under the Constitution and statutes of the State of Minnesota to regulate the

use of right-of-way by the permittee; and the permittee by its acceptance of a right-of-way permit or of registration under this Chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of a registration or of a right-of-way permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

301.31 SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Chapter or any portions of this Chapter is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit, right or registration shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the City Council to issue such revocable permit and the power to revoke it. 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.

DEGRADATION FEE

The Degradation Fee is calculated as follows:

Street cost per square yard (based on average daily traffic) X Depreciation of Street X Area of street patch

Plus Overlay cost per square yard x depreciation of overlay x Area of street patch

Plus Sealcoat cost per square foot x depreciation of sealcoat x Area of Street patch

DEPRECIATION SCHEDULES (1)

AGE	Street/Alley
1	100%
2	96%
3	92%
4	88%
5	84%
6	80%
7	76%
8	72%
9	68%
10	64%
11	60%
12	56%
13	52%
14	48%
15	44%
16	40%
17	36%
18	32%
19	28%
20	24%
21	20%
22	16%
23	12%
24	8%
25	4%

Age	Overlays
1	100%
2	90%
3	80%
4	70%
5	60%
6	50%
7	40%
8	30%
9	20%
10	10%

Age	Sealcoats
1	100%
2	80%
3	60%
4	40%
5	20%

2000 Cost A. (2) Cost/Square Yard (3)

Traffic Count	Cost
10,000 and over	\$100.00
1,000 – 10,000	71.00
Under 1,000	42.00
Overlays	15.00
Sealcoats	5.00