

*CHAPTER 6*  
*Streets and Public Places*

*Section - Right-of-Way Regulation*

- 6.1 *Election.* The City hereby elects to manage rights-of-way within its jurisdiction.
- 6.2 *Definitions.* The definitions in Minn. Stat. §237.162, Minnesota Rules 7819.0100 subps. 1-23, and Minnesota Rules 7560.0100 subps. 1-12, together with any amendments thereto, are hereby adopted by reference and incorporated into this ordinance.
- 6.3 *Permit Requirements.* Except as provided in this ordinance, no person may excavate any right-of-way without first having obtained a permit from the City.
- Subd. 1. Excavation Permit.* An excavation permit is required to excavate any part of a right-of-way and which may hinder free and open passage over a specified portion of the right-of-way to the extent and for the duration specified in the permit.
- Subd. 2. Permit Extensions.* No person may excavate the right-of-way beyond the date specified in the permit unless such person: (i) makes a supplementary application for another right-of-way permit before expiration of the initial permit; and (ii) a 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 may establish and impose, by appropriate resolution, a delay penalty for unreasonable delays in right-of-way excavation, patching, or restoration.
- Subd. 4.* Permits issued under this chapter shall be available at all times at the indicated work site and available for inspection.
- 6.4 *Permit Applications.* An application for a permit shall contain the following information and materials:
- (A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project, and the location of all known existing and proposed facilities, and the following information:

- (1) Each permittee's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (B) A certificate of 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, which includes the following terms:
  - (1) The permittee 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 permittee, its officers, agents, and employees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, and employees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
  - (2) Naming the City as an additional insured; and
  - (3) Requiring that the City be notified promptly as to cancellation of the policy or material modification of the coverage term.
- (C) 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.
- (D) A copy of the person's order granting a 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.
- (E) Payment of money due the City for permit fees, estimated restoration costs and other management costs; prior obstructions or excavations; any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the right-of-way or any emergency actions taken by the City; and, applicable franchise fees or other charges.

6.5 *Issuance of Permit.* If the applicant has satisfied the requirements of this ordinance, the City shall issue a permit.

*Subd. 1. Conditions.* The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant to protect the health, safety and welfare of persons or property, or when necessary to protect the right-of-way and its current use. A permittee shall comply with all requirements of local, state, and federal laws.

*Subd. 2. Trenchless Excavation.* Permittees employing trenchless excavation methods, such as Horizontal Directional Drilling, shall follow all requirements set forth in Minn. Stat. Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating as may be determined by the City.

6.6 *Permit Fees.* The City shall establish by resolution a permit fee in an amount sufficient to recover city management costs and degradation costs, if applicable. Permit fees paid for a permit that the City has revoked are not refundable. Unless otherwise agreed to, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user.

6.7 *Right-of-Way Restoration.*

*Subd. 1. Time.* All work to be done under the excavation permit, including restoration of the right-of-way, 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.

*Subd. 2. Patching and Restoration.* The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(A) If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing.

(B) If the permittee restores the right-of-way itself, it may be required by City to post a construction performance bond.

*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. Upon notification from the City, permittee shall correct all defective restoration work consistent with the terms stated by City. Work shall be completed within five (5) calendar days of receipt of the notice, 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.

*Subd. 5. Failure to Restore.* If permittee fails to restore the right-of-way in the manner and to the condition required by City, or fails to satisfactorily and timely complete all restoration, the City at its option may do such work. In that event, 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 a construction performance bond.

#### 6.8 *Supplementary Applications.*

*Subd. 1. Area.* A right-of-way permit is valid only for the area specified in the permit. No permittee may do any work outside the specified area. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in the greater area (i) make application for a permit extension and pay any additional fees, 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 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. If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known.

6.9 *Denial of permit:* The City may deny a permit for failure to meet the requirements and conditions of this ordinance or if the City determines that the denial is necessary to protect the health, safety, and welfare of person or property or when necessary to protect the right-of-way and its current use.

6.10 *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 other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat. §237.162 and 237.163.

*Subd. 1.* All work done under the provisions of this Chapter, and any permit issued therein, shall be done only by a licensed and insured contractor who maintains all required current licensing or permits in connection with such work.

#### 6.11 *Inspection.*

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

*Subd. 2.* Permittee shall make the work-site available to City personnel and to all others as authorized by law for inspection at all reasonable times.

*Subd. 3.* The City 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 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 City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit consistent with this ordinance.

#### 6.12 *No Permit Work.* No excavation permit shall be required in the following instances:

*Subd. 1. Emergency.* Each person with facilities in the right-of-way shall immediately notify the City of any event considered an emergency. The owner of the facilities may take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the required fees, and fulfill the rest of the requirements necessary to bring itself into compliance.

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

*Subd. 2. Utility Pole.* Any excavation made by a public utility company for the sole purpose of installing a utility pole, anchor or guide wire. The utility company shall notify City of the location of any such installation.

Any person who, without having the appropriate permit, 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 ordinance, 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 ordinance.

6.13 *Revocation of Permits.* The City reserves the right to revoke any right-of-way permit 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;
- (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 permittee's control; or
- (E) The failure to correct, in a timely manner, non-conforming work as duly noticed by the City.

*Subd. 1. Written Notice.* The City shall make a written demand upon the permittee to remedy any violation. The demand shall state that continued violations might be cause for revocation of the permit. A substantial breach will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and/or remedy the breach.

- Subd. 2. Response.* Within two days 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 submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- Subd. 3. Reimbursement.* If a permit is revoked, the permittee shall also reimburse the City for the City's costs, including restoration costs and the costs of collection, and reasonable attorney fees incurred in connection with such revocation.

6.14 *Mapping Data.*

- Subd. 1.* Each permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100.
- Subd. 2.* 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 of the installed service lateral locations. Compliance with this subdivision and 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 (i) payments to contractors working on a public improvement project, and (ii) 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.

6.15 *Location of Facilities.* Placement, location, and relocation of facilities must comply with all appropriate law including Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to Cities.

- Subd. 1.* The City may assign specific corridors within the right-of-way, or any particular segment thereof, for each type of facility that is or 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.
- Subd. 2.* To protect health, safety, and welfare of person or property or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit a facility within the right-of-way. The City shall attempt to accommodate all existing and potential users of the right-of-way. The City shall be guided primarily by considerations of the public interest, the public's need 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.
- 6.16 *Damage to Other Facilities.* When the City finds it necessary to maintain, support, or move facilities within the right-of-way to protect the facility, the City shall promptly notify owner. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost or repairing of any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.
- 6.17 *Right-of Way Vacation.* 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.
- 6.18 *Indemnification and Liability.* By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rules 7819.1250.
- 6.19 *Abandoned Facilities.* Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with right-of-way repair, excavation, or construction, unless the City waives this requirement.
- 6.20 *Appeal.* A right-of-way user that: (i) has been denied a permit; (ii) has had a permit revoked; (iii) believes that the fees imposed are invalid; or (iv) disputes a determination of the City, may have the denial, revocation, fee imposition, or decision reviewed upon written request by the Council. The Council shall act in a timely written request at its next regularly scheduled meeting. A decision by the Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.
- 6.21 *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 ordinance



necessary to protect the health, safety and welfare of the public.

### *Section - Sidewalks*

- 6.40 *Obligation.* The owner of any property abutting any municipal or public sidewalk in the City shall have the obligation of all maintenance, repair, ice and snow removal; removal of debris, branches, litter; and elimination of any other obstruction, accumulation of material, or dangerous condition whatsoever. No such owner shall allow ice, snow, debris, branches, or litter to remain on the sidewalk for more than 24 hours after the fall or accumulation thereof.
- 6.41 *Liability.* Any property damage or personal injury which is caused by any condition upon any municipal or public sidewalk within the City which is declared to be negligent, hazardous or dangerous, entitling any person, firm, corporation, or entity to damages, shall be the sole responsibility and liability of the adjacent owner of the property as set forth in this Section; and further, the owner shall have the obligation of indemnifying the City for any such damages which the City is required to pay.
- 6.42 *Repairs/Removal by City.* In the event the City determines that public sidewalks within the City are unsafe, or in need of repair, it shall serve notice by certified mail or personal service upon the owner of the property and the occupant, ordering the owner to have the sidewalk repaired and made safe within thirty (30) days. If the owner fails to do so, the City shall make the repair and the expenses thereof shall be paid by the owner. If unpaid, the City may assess the property by assessment as allowed by law.
- 6.43 *Costs.* The Administrator shall keep a record of all costs for removal of matter or repairs, which costs shall be paid by the owner of the property adjacent to the sidewalk.
- Subd. 1.* Prior to September 1<sup>st</sup> of each year, the Administrator shall report to the Council a list of all unpaid charges for removal of snow, ice, debris, litter, branches or sidewalk repairs as specified in this Section. The Council may extend as a special assessment against the property those costs and shall submit the list to the county auditor to be certified for collection with other special taxes and assessments in the manner required by law.

### *Section - Snow Emergency*

6.50 *Declaration of "Snow Emergency"*. If, in the judgement of the City, or its designated representative, intensive unobstructed snow removal is necessary, the Administrator shall declare a snow emergency and give notice to the public that the parking of motor vehicles on certain streets shall be prohibited at the times specified in the public notice.

*Subd. 1.* No person shall park a motor vehicle on any street on which parking has been prohibited for a snow emergency.

*Subd. 2.* Any motor vehicle parked in violation of this Section may be removed by the City without notice to the owner or operator, and the cost of removal and storage of any vehicle removed under this section shall be assessed against the owner of or operator of the vehicle. These costs shall be a lien against the vehicle.