

**CHAPTER 7. STREETS AND SIDEWALKS**

**Section 700 - Construction and Excavation**

**700.01 Council Improvement Order.** The City Council may by a resolution adopted by two-thirds of all the members elected to the City Council direct and order the construction or improvement of any street or alley, or the building or repairing of any sidewalk. The resolution shall describe the kind and character of the improvement and the material of which it shall be constructed and the time within which, and the street or place along which the improvement shall be constructed.

**700.02 Petitions.** Upon the petition for building or repairing of any street, alley or sidewalk by two-thirds of the owners of the property to be charged with the cost thereof, the Council shall order and direct the same to be done by resolution specifying the improvement as in Subsection 700.01.

**700.03 Curb Line and Grade.** The curb line of all sidewalks on Broadway Street shall be eight feet and four inches from the outer line of the street, and on all other streets six feet from the outer line of the street and the grade for all sidewalks shall be one foot above the established grade of the street directly opposite where the sidewalk may be.

**700.04 Base Level of Grade.** The datum line or base of levels for establishing the grades of all streets within the corporate limits of the City shall be the top of the five inch pipe of well in the center of Broadway, at the crossing of Washburn Street, and shall be indicated by the following benchmark to wit: The top of the water table at the southeast corner of the brick building on lot

fourteen (14) block ten (10) in the City is 10.5 feet above datum line. The grades established by this Section that may be hereafter established shall be calculated from the datum line established of Subsection 5 of this Section, and shall be calculated for the middle of the several streets in which they are established.

The elevation of Broadway above datum line at a point 380 feet south of the center of Washburn Street 2.6 feet fifty feet north of the point is 3.4 feet 100 feet north of the point is 4.2 feet 150 feet north of the point is 5 feet 200 feet north of the point is 5.8 feet 250 feet north of the point is 6.6 feet 300 feet north of the point is 7.4 feet 350 feet north of the point is 8.0 feet 600 feet north of the point is 5.6 feet 950 feet north of the point is 4.0 feet.

**700.05 Permit and License Required.** No person other than a City employee or contractor shall engage in the business or activity of laying, relaying, repairing, or reconstructing concrete sidewalks or curb and gutters for hire in the City without first having applied for and received from the City a license to do so, nor shall any person lay, relay, repair or reconstruct any concrete sidewalk or curb and gutter upon any public street of the City without such a license or without complying with the terms of this Section. Each person desiring a license shall make application to the City Clerk/Treasurer stating his or her name, age and the number of years in which he or she has been engaged in the business of constructing sidewalks and curb and gutters. If a partnership, the application shall be signed by each person comprising the partnership and the above information shall be given relative to each person. Applicant shall pay an annual license fee of \$10.00 for each person and the license shall show the individuals comprising the partnership to whom license shall be granted. No license shall be granted under a trade name. The applicant, or applicants, shall also file with the City

Clerk-Treasurer a Surety Bond in the penal sum of \$1,000.00 payable to the City for the use and benefit of the City and/or any person, or persons, who employ the holders of a license E in the business of laying or relaying sidewalks or curb and gutters in the City and who may be damaged by the failure of the licensed person, or persons, to comply with the provisions and terms of this Section or because of poor materials or workmanship furnished by the licensee of his or her employees.

In addition to furnishing the Bond, each person desiring a license shall file with the Recorder a policy of insurance condition to protect the City for any acts or omission of a licensee. The insurance policy shall be a property protection of \$5,000.00 and a public liability protection of \$15,000.00. No policy shall be subject to cancellation except upon fifteen days' notice given in writing by the insurance company to the City. Cancellation of the Bond or of the insurance company shall automatically cancel the license granted in this Section.

**700.06 Special Permit.** A special permit may be granted and issued without a charge to any owner of property within the corporate limits of the City by the City Council, upon written application therefor, authorizing the property owner to lay, relay, repair, or reconstruct a sidewalk fronting on the owner's property only. Each property owner granted a special permit shall be subject to all provisions of the plans and specifications to which reference is herein made such other conditions as may be imposed by the City Council upon recommendation of the Engineer and the property owner shall be wholly responsible for an personally defend any legal action that may be instituted for any damage arising from sidewalk constructing or operations incident thereto performed by the owner.

**700.07 Standards.** All sidewalks laid, relayed, repaired or reconstructed hereunder shall be so laid as to conform to the grade as established by the City Council and as furnished to the licensee or special permit holder by the Engineer. All work shall be subject to the supervision and control of the Engineer, his or her Street Commissioner or other proper officer, or employee, and he or she shall see that the requirements of this Section shall be enforced. During progress of any work, suitable and proper barricade shall be erected by the licensee or special permit holder together with the proper warning signs and lights and the licensee and holder of a special permit shall further see that any street upon which work has been done shall be replaced in as good condition as it was prior to the time work was commenced. All sidewalk and curb and gutter construction shall conform to the plans and specifications approved and ordered by the City Council to be placed on file with the City Recorder. The plans and specifications may be amended at any time, by motion duly made and passed by the City Council, without the formality of a resolution or the necessity of publishing the motion.

**700.08 Assessments.** Whenever any curb and gutter improvements or repair or replacement thereof shall be deemed needed and necessary and following a public hearing therefore, all costs of the improvement shall be assessed back to the individual property owner for each parcel of land so improved as provided by law.

**700.09 Violation.** Violation of any of the provisions of this Section 700 shall be a misdemeanor.

**Section 710 - Street Directions and Names**

**710.01 Measurements.**

- A. The definition, measurements and directions of all streets, alleys and public areas shall be as indicated on the official city map.
  
- B. The designation by name and number shall be as indicated on the official city map.
  
- C. The distance and course of the streets, alleys, public areas and thoroughfares shall be as indicated on the official city map.

**710.02 Naming Streets.** Renaming the streets, alleys, public thoroughfares and public areas shall be named and designated in accordance with the designation established by plat hereto attached and marked Exhibit "A".

**710.03 Boundaries.** The boundaries of the lots, blocks, streets, public thoroughfares and public areas shall be accepted as boundaries for purposes of legal descriptions.

**710.04 City Responsibility.** The City shall assume no responsibility for the accuracy in the delineating of distances, direction or areas of either streets, llots, blocks or plats of public areas insofar as change of title is concerned.

**Section 720 - Right-of-Way Management**

**720.01 Findings and Purpose.**

A. To provide for the health and safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. 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.

B. Right-of-way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel or shopping plans because of them and has a detrimental effect on commerce. Persons whose equipment is within the right-of-way are the primary cause of these frequent obstructions.

C. 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 recognized that some persons, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property.

D. In response to the foregoing facts, the City hereby enacts this new Section of this Code relating to right-of-way permits and administration, together with an ordinance making necessary revision to other code provisions. This Section imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be places therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this Section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

**720.02 Definitions.** Unless the context clearly indicates otherwise, the following words and phrases have the meaning given them in this Section.

**Subd.1 Abandoned Facility.** "Abandoned facility" means a facility no longer in service and 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.

**Subd. 2 Applicant.** "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

**Subd. 3 City.** "City" means the City of New Richland, Minnesota. For purposes of 1720.25, city means its elected officials, officers, employees, and agents.

**Subd. 4 City Management Cost.** "City management cost" means the actual cost incurred by the City in managing its public rights-of-way management, including, but not limited to costs associated with issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects, maintaining, supporting, protecting, or moving user facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and opportunity to correct; and performing all other tasks required by this Section, including other costs the city may incur in managing the provisions of this Section.

**Subd. 5 Construction Performance Bond.** "Construction performance bond," as referenced in Minnesota Statutes ' 237.162, subdivision 8(2), means any of the following forms of security provided at the permittee's option:

- A. individual project bond;
- B. cash deposit; .
- C. security of a form listed or approved under Minn. Stat. ' 15.73, subd. 3;
- D. letter of credit, in a form acceptable to the City;
- E. self-insurance, in a form acceptable to the City; and



F. 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.

**Subd. 6 Degradation.** "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.

**Subd. 7 Degradation Cost.** "Degradation Cost" 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 described in the applicable Rule of the Minnesota Public Utilities Commission.

**Subd. 8 Degradation Fee.** "Degradation Fee" means 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 excavation, and which equal the degradation cost.

**Subd. 9 Delay Penalty.** "Delay Penalty " means the penalty imposed as a result of unreasonable delays in right-of-way construction or obstruction.

**Subd. 10 Department.** "Department" means the Department of Public Works of the City.

**Subd.11 Department Inspector.** "Department Inspector" means any person authorized by the City Council to carry out inspections related to the provisions of this Section.

**Subd.12 Emergency.** "Emergency" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property; or requires immediate repair or replacement of facilities in order to restore service to a customer.

**Subd.13 Equipment.** "Equipment" means any tangible asset used to install, repair or maintain facilities in any right-of-way.

**Subd. 14 Excavate.** "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 penetrating the boulevard area to a depth of less than 12 inches.

**Subd. 15 Excavation Permit.** "Excavation Permit" means the permit with, pursuant to this Section, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right of way described in such permit.

**Subd. 16 Excavation Permit Fee.** "Excavation Permit Fee" means money paid to the City by an applicant to cover the costs as provided in ' 720.08.

**Subd. 17 Facility.** "Facility" means any tangible asset in the public right-of-way required to provide utility services.

**Subd.18 In.** "In", when used in conjunction with "right-of-way", means over, above, in within, on or under a right-of-way.

**Subd. 19 Local Representative.** "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 Section.

**Subd. 20 Obstruct.** "Obstruct" means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

**Subd. 21 Obstruction Permit.** "Obstruction Permit" means the permit which, pursuant to this Section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing equipment described therein on the right-of-way for the duration of specified therein.

**Subd. 22 Obstruction Permit Fee.** "Obstruction Permit Fee" means any money paid to the city by the applicant to cover the costs as provided in ' 720.08.

**Subd. 23 Patch.** "Patch" means a method of pavement replacement that is temporary in nature. A patch consists of the compaction of the subbase and aggregate base, and the replacement, in kind, of existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

**Subd. 24 Permittee.** "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Section.

**Subd. 25 Person.** "Person" means 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.

**Subd. 26 Right-of-Way.** "Right-of-way" has the meaning given it in Minnesota Statutes 1 237.162.

**Subd. 27 Repair.** "Repair" means the temporary construction work necessary to make the right-of-way useable for travel.

**Subd. 28 Restoration Bond.** "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.

**Subd. 29 Restore or Restoration.** "Restore or Restoration" means the process by which an excavated right-of-way and surrounding, including pavement and foundation, is returned to the same condition that existed before the commencement of the work.

**Subd. 30 Restoration Cost.** "Restoration Cost" means an amount of money paid to the City by a permittee to cover the cost of restoration according to this Section and any applicable rules of the Minnesota Public Utilities Commission.

**Subd. 31 Right-of-Way Permit.** "Right-of-Way Permit" means either the excavation permit

or the obstruction permit, or both, depending on the context, required by this Section.

**Subd. 32 Service or Utility Service.** "Service" or "Utility Service" includes but is not limited to those services provided by a public utility as defined in Minn. Stat. ' 216B.02, subs. 4 and 6; telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; the services provided by a corporation organized for the purposes set forth in Minn. Stat. ' 300.03; the services provided by a district heating or cooling system; cable communications systems as defined in Minn. Stat. Chap. 238; and a telecommunications right-of-way user as defined below.

**Subd. 33 Supplementary Application.** "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.

**Subd. 34 Telecommunications Rights-of-Way User.** "Telecommunications Rights-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 telecommunications or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.

**720.03 Administration.** The City Council is the principal City official 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.

**720.04 Permit Requirement.**

**Subd. 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 necessary right-of-way permit from the City Council to do so.

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 equipment 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.

**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 makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or

permit extension is granted.

**Subd. 3 Delay Penalty.** 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 Section shall be conspicuously displayed at all times at the incited work site and shall be available for inspection by the Director.

**720.05 Permit Applications.** Application for a permit is made to the City Council. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

A. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment;

B. Payment of all money due to the city for:

1. permit fees, and other city 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 or user fees if applicable.

**720.06 Permit Information.**

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

- A. Each applicant'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 application.
- 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 applicant by an insurance company licensed to do business in the State of Minnesota, or is covered by self insurance which the City Council determines to provide the city with protections equivalent to that of a Minnesota licensed insurance company, legally independent from the applicant;
3. Verifying that the applicant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the applicant, its officers, agents, employees and permittees, and placement and use of equipment in the right-of-way by the applicant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property;
4. Naming the city as an additional insured as to whom the coverage's required herein are in force and applicable and from whom defense will be provided as to all such coverage's;
5. Requiring that the City Council 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 the City Council in amounts sufficient to protect the City and carry out the purposes and policies of the Section.

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.

**Subd. 2 Notice of Changes.** The applicant shall keep all of the information listed above current at all times by providing to the City Council information as to changes within fifteen (15) days following the date on which the applicant has knowledge of any change.

**720.07 Issuance of Permit; Conditions.**

**Subd. 1 Permit Issuance.** If the City Council determines that the applicant has satisfied the requirements of this Section, the City Council shall issue a permit.

**Subd. 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 health, safety and welfare, or when necessary to protect the right-of-way and its current use.

**720.08 Permit Fees.**

**Subd. 1 Excavation Permit Fee.** The excavation permit fee shall be established by the City Council in an amount sufficient to recover the following costs: the City management cost; degradation cost, if applicable.

**Subd. 2 Obstruction Permit Fee.** The obstruction permit fee shall be established by the City Council and shall be in an amount sufficient to recover the City management cost.

**Subd. 3 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. 4 Non-refundable.** Permit fees that were paid for a permit that the City Council has revoked for a breach as stated in ' 720.18 are not refundable.

**Subd. 5 Use of Permit Fees.** All obstruction and excavation permit fees shall be used solely for city management, construction, maintenance and repair costs of the right-of-way.

**720.09 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 extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under ' 720.12.

**Subd. 2 Patching 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, 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, 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 an amount determined by the City Council to be sufficient to cover the cost of restoration. If within thirty-six (36) months after completion of the restoration of the right-of-way, the City Council determines that the right-of-way has been properly restored, the surety on the

restoration bond shall be released. Said release shall in no way relieve the permittee of its ongoing obligation to restore, patch and/or patching the right-of-way under the Rules of the Minnesota Public Utilities Commission.

**Subd. 3 Standards.** The permittee shall perform patching and restoration according to the standards and with the material specified by the City Council. The City Council 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 Council 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 carded 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.

F. Any uniform statewide standards adopted by the Minnesota Public Utilities Commission.

**Subd. 4 Guarantees.** By choosing to repair the right-of-way itself, the permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this thirty-six (36) month period it shall, upon notification from the City Council correct all restoration work to the extent necessary, using the method required by the City Council. Said work shall be completed within five (5) calendar days of the receipt of notice from the City Council, not including days during which work cannot be done because of circumstances constituting force or days when work is prohibited as unseasonable or unreasonable under ' 720.12.

**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 Council, or fails to satisfactorily and timely complete all restoration required by the City Council, the City Council 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.

**Subd. 6 Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a

right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

**720.10 Joint Applications.**

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

**Subd. 2 With City Projects.** Applicants who join in a scheduled obstruction or excavation performed by the City Council, whether or not it is a joint application by two or more applicants or a single application, are not required to pay the obstruction and degradation portions of the permit fee.

**Subd. 3 Shared Fees.** Applicants who apply for permits for the same obstruction or excavation, which the City Council does not perform, may share in the payment of the obstruction or excavation permit fee. Applicants must agree among themselves as to the portion each will pay and indicate the same on their applications.

**720.11 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 make application for a permit extension and pay any additional fees required thereby, and 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 done before the permit end date.

**720.12 Other Obligations.**

**Subd. 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") and Minnesota Statutes Section 237. 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.

**Subd. 2. Prohibited Work.** Except in an emergency, and with the approval of the City Council, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

**Subd. 3. Interference with Right-of-Way.** A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles 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.

**720.13 Denial of Permit.** The City Council may deny a permit for failure to meet the requirements and conditions of this Section or if the City Council 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.

**720.14 Installation Requirements.** The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with the engineering

standards adopted by the Minnesota Public Utilities Commission or other applicable local requirements, in so far as they are not inconsistent with the PUC rules.

### **720.15 Inspection.**

**Subd. 1 Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall notify the City Council and furnish a completion certificate in accordance with the Rules of Minnesota Public Utilities Commission.

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

**Subd. 3 Authority of City Council.** At the time of inspection, the City Council 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 Council may issue an order to the applicant 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 applicant shall present proof to the City Council that the violation has been corrected. If such proof has not been presented within the required time, the City Council may revoke the permit pursuant to ' 720.18.

**720.16 Work Done Without a Permit.**

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

If the City Council becomes aware of an emergency regarding an applicant's equipment, the City Council may attempt to contact the local representative of each applicant affected, or potentially affected, by the emergency. In any event, the City Council may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the applicant whose equipment 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, pay double the normal fee for said permit, pay double all the other fees required by the Legislative Code, deposit with the City Council the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Section.

**720.17 Supplementary Notification.** If the obstruction or excavation of the right-of-way begins

later or ends sooner than the date given on the permit, the permittee shall notify the City Council of the accurate information as soon as this information is known.

**720.18 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 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 of its citizens;
- C. Any material misrepresentation of fact 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 ' 720.15.

**Subd. 2 Written Notice of Breach.** If the City Council 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 Council 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 Council, at his or her discretion, to place additional or revised conditions on the permit.

**Subd. 3 Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, the permittee shall contact the City Council with a plan, acceptable to the City Council, for its correction. The permittee's failure to so contact the City Council, 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 so contact the City Council, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

#### **720.19 Mapping Data.**

**Subd. 1 Information Required.** Each applicant shall provide to the City Council mapping information defined in the Rules of the Minnesota Public Utilities Commission.

**Subd. 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.

**Subd. 3 Trade Secret Information.** At the request of any applicant, any information requested by the City Council, 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 provisions of mapping data, the city may consider unique circumstances from time to time required to obtain mapping data.

#### **720.20 Location of Equipment.**

**Subd. 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.

**Subd. 2 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 applicants 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.

**720.21 Relocation of Facilities.** A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the City, in connection with a present or future City use of the right-of-way for a public project; the public health or safety; or the safety and convenience of travel over the right-of-way.

**720.22 Pre-Excavation Facilities Location.** In addition to complying with the requirements of Minn. Stat. ' 216D.41...-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each applicant who has equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said equipment. Any applicant 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.

**720.23 Damage to Other Facilities.** When the City Council does work in the right-of-way and finds it necessary to maintain, support, or move an applicant's equipment to protect it, the City Council shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that applicant and must be paid within thirty (30) days from the date of billing. Each applicant shall be responsible for the cost of repairing any facilities in the right-of-way, which it or its equipment damages. Each applicant shall be responsible for the cost of repairing any damage to the facilities of another applicant caused during the City's response to an emergency occasioned by that applicant's equipment.

**720.24 Right-of-Way Vacation.**

**Subd.1 Reservation of Right.** If the City vacates a right-of-way which contains the facilities of an applicant, and if the vacation does not require the relocation of applicant or permittee facilities, the City shall reserve, to and for itself and all applicants 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.

**Subd. 2. Relocation of Facilities.** If the vacation requires the relocation of applicant or permittee equipment; and if the vacation proceedings are initiated by the applicant or permittee, the applicant or permittee must pay the relocation costs; if the vacation proceedings are initiated by the city, the applicant or permittee must pay the relocation costs unless otherwise agreed to



by the city and the applicant or permittee; or if the vacation proceedings are initiated by a person or persons other than the applicant or permittee, such other person or persons must pay the relocation costs.

**720.25 Indemnification and Liability.** By accepting a permit under this Section, an applicant or permittee agrees as follows:

**Subd.1 Limitation of Liability.** By reason of the grant of a right-of-way permit, the City does not assume any liability for injuries to persons, damage to property, or loss of service claims by parties other than the applicant or the City, or for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by permittees or activities of permittees.

**Subd. 2 Indemnification.** As a condition for the use of a permit issued by the City authorizing permittee to obstruct or excavate on or within a right-of-way for the installation, maintenance, or repair of permittee's facilities in a right-of-way, the permittee shall defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons or property damage in which the claims: allege negligent or otherwise wrongful acts or omissions of the permittee or its employees, agents or independent contractors in installing, maintaining or repairing the permittee's facilities; or are based on the City's negligence or otherwise wrongful act or omission in issuing such permit or in failing to properly or adequately inspect or enforce compliance with the terms, conditions, or purposes of the permit or permits

## City of New Richland Chapter 7 Streets and Sidewalks

granted to permittee. Applicant or permittee shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to the person or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of applicant's or permittee's facilities located in the right-of-way.

Except to the extent authorized above regarding the issuance of permits or inspection of enforcement thereof, or unless otherwise provided in an applicable franchise agreement, the City shall not be indemnified for losses or claims occasioned by the negligent or otherwise wrongful act or omission by the City.

**Subd. 3 Defense.** If a suit is brought against the City under circumstances where the applicant or permittee is required to indemnify, the applicant or permittee, at its sole cost and expense, shall defend the City in the suit if written notice of the suit is promptly given to the applicant or permittee within a period in which the applicant or permittee is not prejudiced by the lack or delay of notice.

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

This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the City:

In defending an action on behalf of the City, the applicant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the City could assert in its own behalf.

#### **720.26 Abandoned Facilities.**

**Subd.1 Discontinued Operations.** A right-of-way user who has determined to discontinue its operations in the City must either (a) notify the City Council that the users obligations for its facilities in the right-of-way have been lawfully assumed by another person or (b) submit a proposal for transferring ownership of the facilities to the City. If the user proceeds under clause (b) herein, the City may either purchase the facilities, require the user, at its own expense, to remove it, or require the user to post a bond in a sufficient amount to reimburse the City for its reasonably anticipated costs to be incurred in removing said facilities.

**Subd. 2 Removal.** Any user who has abandoned facilities in any right-of-way shall remove them from the right-of-way, at its own expense, during the next scheduled excavation, unless this requirement is waived by the City Council.

**720.27 Appeal Rights.** A telecommunications right-of-way user that: has been denied registration; has been denied a right-of-way permit; has had its right-of-way permit revoked; or believes that the fees imposed on the user by the local government unit do not conform to the requirements of this

ordinance or Minnesota Statutes Chapter 237, shall have the appeal rights provided by Minnesota Statutes ' 237.163, subd. 5.

**720.28 Reservation of Regulatory and Police Powers.**

A. A right-of-way user, applicant or 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.

B. 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.

**720.29 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Section 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 Section or any portions of this Section is illegal or unenforceable, then any such permit, right or resignation granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty

(60) days written notice to the other. The 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 Section precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

