

Section 91-030 Definitions

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

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

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

City: The city of Nevis, Minnesota. For purposes of section 1.29, city also means the City’s elected officials, officers, employees, and agents.

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

Commission: The State Public Utilities Commission.

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

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

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

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

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

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

Department: The department of public works of the city.

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

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

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

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

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

Excavation Permit Fee: Money paid to the city by an applicant to cover the costs as provided in Section 91-130.

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

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

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

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

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

Management Costs: The actual costs the city incurs in managing its rights of way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right of way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right of way work; determining the adequacy of right of way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right of way or small wireless facility permits. Management costs do not include payment by a telecommunications right of way user for the use of the right of way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 91-310 of this chapter.

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

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

Obstruction Permit Fee: Money paid to the city by a permittee to cover the costs.

Patch or Patching: A method of pavement replacement that is temporary in nature. A patch consists of (1) the

compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

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

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

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

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

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

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

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

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

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

Public Right of Way or Right of Way: The area on, below, or above a public roadway, highway, street, cart-way, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights of way for travel purposes and utility easements of the city. A right of way does not include the airwaves above a right of way with regard to cellular or other non-wire telecommunications or broadcast service. Note: this definition does not include other public grounds that may be the subject of other city requirements.

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

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

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

including service laterals, steam, cooling, or heating services.

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

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

1. Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
2. All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Supplementary Application: An application made to excavate or obstruct more of the right of way than allowed in, or to extend, a permit that had already been issued.

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

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

Telecommunications Right of Way User: A person owning or controlling a facility in the right of way, or seeking to own or control a facility in the right of way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Ch. 308A, are not telecommunications right of way users for purposes of this chapter except to the extent such entity is offering wireless service.

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

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

Wireless Facility: Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

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

including cable service.

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