

ORDINANCE NO. \_\_\_\_\_

CITY OF LAKEVILLE  
DAKOTA COUNTY, MINNESOTA

AN ORDINANCE AMENDING THE LAKEVILLE CITY CODE.

THE CITY COUNCIL OF THE CITY OF LAKEVILLE, MINNESOTA ORDAINS:

**Section 1.** Chapter 15 of the city code is hereby amended as shown below:

CHAPTER 15

RIGHT-OF-WAY MANAGEMENT

SECTION:

- 7-15-1: Application And Scope
- 7-15-2: Election To Manage The Public Right-Of-Way
- 7-15-3: Definitions
- 7-15-4: Administration
- 7-15-5: Franchise
- 7-15-6: Registration And Right-Of-Way Occupancy
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- 7-15-9: Permit Requirement
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- 7-15-18: Installation Requirements
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- 7-15-21: Supplementary Notification
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#### 7-15-1: APPLICATION AND SCOPE:

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

Accordingly, the City hereby enacts this chapter relating to right-of-way permits and administration. This chapter imposes regulation on the placement and maintenance of facilities and 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 excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out of pocket and projected costs from persons using the public rights-of-way. (Ord. 990, 12-4-2017)

#### 7-15-2: ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY:

Pursuant to the authority granted to the City under State and Federal statutory, administrative and common law, the City hereby elects pursuant to Minnesota Statutes 237.163 subdivision 2(b), to manage rights-of-way within its jurisdiction. All right-of-way users, including the City, are subject to the provisions in this chapter. The City is exempt from the obligation of paying for permits or other fees imposed by this chapter. This chapter shall be interpreted consistently with the 1997 Session Laws, chapter 123 and 2017 Session Laws, chapter 94, substantially codified in Minnesota Statutes sections 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086 (the "Act"), Minnesota Statutes chapter 216D and other laws governing applicable rights of the City and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 - 7819.9950 and Minnesota Rules chapter 7560 where possible. To the extent any provisions of this chapter cannot be interpreted consistently with Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit 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. (Ord. 990, 12-4-2017)

#### 7-15-3: DEFINITIONS:

The following definitions apply in this chapter and shall have the meanings ascribed to them. 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 any other facility that is in use or still carries service. A facility is not abandoned unless declared so by the owner of the facility.

**APPLICANT:** Any person requesting permission to excavate, place a utility service or obstruct a right-of-way.

**AS BUILT RECORD DRAWINGS:** The plan set incorporating all changes made in the field during construction to the approved construction plan drawings.

**CITY:** The City of Lakeville, Minnesota. For purposes of section 7-15-28 of this chapter, City means its elected officials, officers, employees and agents.

**COLLOCATE OR COLLOCATION:** To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by the City or other governmental unit.

**COMMISSION:** The State Public Utilities Commission.

**CONGESTED RIGHT-OF-WAY:** A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes section 216D.04, subdivision 3, over a continuous length in excess of five hundred feet (500').

**CONSTRUCTION PLANS:** A plan set proposing the construction design for streets, water main, sanitary sewer, storm sewer, drain tile, sidewalks, trails, small utility conduit crossings and service laterals.

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

**DEGRADATION COST:** Subject to Minnesota Rules 7819.1100, means the cost to achieve a level of restoration as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

**DELAY PENALTY:** The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit. A delay penalty will not be imposed if the delay in project completion is due to circumstances constituting force majeure or when work is prohibited as unseasonable or unreasonable under section 7-15-16 of this chapter.

**EMERGENCY:** A condition that: a) immediately endangers the life or safety of persons; b) will cause an immediate threat of significant loss or injury to property; or c) requires immediate repair or replacement in order to restore service to customers.

**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 issued by the City, prior to any work commencing, authorizing the permittee to excavate in a right-of-way as specifically described in the permit.

**EXCAVATION PERMIT FEE:** Money paid to the City by a permittee to cover the costs as provided in section 7-15-12 of this chapter.

**FACILITY OR FACILITIES:** Any tangible asset, including equipment, in the right-of-way which is required to provide utility service.

**FIVE YEAR CIP:** Identifies projects adopted by the City for construction within the next five (5) years.

**HIGH DENSITY CORRIDOR:** A designated portion of the 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 having a length less than the width of the roadway where the work is occurring.

**LOCAL REPRESENTATIVE:** A local person or persons, or designee of such person or persons authorized by a registrant to accept legal notice or service and to accept communications and to make decisions for that registrant regarding all matters within the scope of this chapter.

**MANAGEMENT COSTS:** The actual costs incurred by the City for managing its public rights-of-way, including, but not limited to, costs 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, including turf, sidewalks, trails and pavement, after providing notice and the opportunity to correct the work; revoking right-of-way or small wireless facility permits; and creating and updating mapping systems. 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 as part of managing public right-of-way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for the City; or the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 2017, chapter 94, Minnesota Session Laws 1997, chapter 123; Minnesota Statutes section 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 7-15-30 of this chapter.

**MAPPING INFORMATION:** The information required in section 7-15-23 of this chapter.

**MICRO WIRELESS FACILITY:** A small wireless facility that is no larger than twenty four inches (24") long, fifteen inches (15") wide, and twelve inches (12") high, and whose exterior antenna, if any, is no longer than eleven inches (11").

**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 issued by the City, prior to any obstruction commencing, authorizing the permittee to obstruct a right-of-way as specifically described in the permit, for the duration specified therein.

**OBSTRUCTION PERMIT FEE:** Money paid to the City by a permittee to cover the costs as provided in section 7-15-12 of this chapter.

**PATCH OR PATCHING:** A method of roadway surface replacement or restoration that consists of: a) the compaction of the subbase and aggregate base; and b) the replacement, in-kind, of the existing roadway surface for a minimum of two feet (2') beyond the edges of the excavation in all directions.

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

**PERMIT:** Has the meaning given "right-of-way permit" in Minnesota Statutes section 237.162 and includes a small wireless facility permit.

**PERMITTEE:** Any person to whom an excavation permit or obstruction permit, or small wireless facility permit has been issued by the City under this chapter.

**PERSON:** Any 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.

**PUBLIC RIGHT-OF-WAY OR RIGHT-OF-WAY:** The area on, below, or above any public roadway, street, path/trail/sidewalk, highway, easement or similar property or waters within the City owned by or under control of the City, or dedicated or otherwise conveyed to the City for general public use, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining utility service facilities. No reference herein to a "public right-of-way" or "right-of-way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining utility service or small wireless facilities.

**PUBLIC RIGHT-OF-WAY USER:** A. A telecommunications right-of-way user as defined by Minnesota Statutes section 237.162, subdivision 4; or

B. A person or entity 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 right-of-way.

**REGISTRANT:** Any person who: a) has or seeks to have its facilities located in any right-of-way, or b) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities in the right-of-way.

**RESTORATION COST:** The amount of money paid to the City by a permittee to achieve restoration requirements in accordance with plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

**RESTORE OR RESTORATION:** The process, including patching, by which a disturbed right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before it was disturbed.

**RIGHT-OF-WAY PERMIT:** Has the same meaning as "permit", defined herein and includes a small wireless facility permit.

**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.

**SERVICE OR UTILITY SERVICE:** A service provided by: a) a public utility as defined in Minnesota Statute 216B.02, subs. 4 and 6; b) a telecommunications right-of-way user, including transporting of voice or data information; c) a cable communication system as defined in Minnesota Statute 238; d) natural gas or electric energy or telecommunications services provided by the City; e) services provided by a cooperative electric association organized under Minnesota Statute 308A; and f) water and sewer, including services laterals, drain tile, community antenna television, fire and alarm communications, steam, cooling or heating services.

**SMALL WIRELESS FACILITY:** A. A wireless facility that meets both of the following qualifications:

1. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six (6) cubic feet; and
2. All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than twenty eight (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 connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment; or

B. A micro wireless facility.

**SMALL WIRELESS FACILITY PERMIT:** The permit issued by the City, prior to any work commencing, authorizing the permittee to collocate a small wireless facility or install and maintain a wireless support structure in a right-of-way as specifically described in the permit.

**SMALL WIRELESS FACILITY PERMIT FEE:** Money paid to the City by the permittee to cover the costs as provided in section 7-15-12 of this chapter.

**SUBDIVISION:** The separation of an area, parcel, or tract of land under single ownership into two (2) or more parcels, tracts, lots, or long term leasehold interests where the creation of the leasehold interest necessitates the creation of public utilities and/or streets and roads, for residential, commercial, industrial, or other use or any combination thereof.

**SUPPLEMENTARY APPLICATION:** An application made to excavate, obstruct or install wireless support structures or small wireless facilities in more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

**TELECOMMUNICATION RIGHT-OF-WAY USER:** A person owning or controlling a facility in the right-of-way, or seeking to own or control the same, which 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 Minnesota Statutes chapter 238, and telecommunications activities related to providing natural gas or electric energy services, a public utility as defined in Minnesota

Statutes section 216B.02, a Municipality, a Municipal gas or power agency organized under Minnesota Statutes chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes chapter 308A, are not telecommunications right-of-way users for purposes of this chapter, except to the extent these entities are offering wireless services.

**TRENCH:** An excavation having a length equal to or greater than the width of the roadway where the work is occurring.

**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: a) equipment associated with wireless service; b) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and c) a small wireless facility. Wireless facility does not include: a) wireless support structures, b) wireline backhaul facilities, or c) coaxial or fiber-optic cables between utility poles or wireless support structures, or that are not otherwise immediately adjacent to or 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 a cable service under United States Code, title 47, section 522 clause (6).

**WIRELESS SUPPORT STRUCTURE:** A new or existing structure in a public right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the City.

**WIRELINE BACKHAUL FACILITY:** A facility used to transport communications data by wire from a wireless facility to a communications network. (Ord. 990, 12-4-2017)

#### 7-15-4: ADMINISTRATION:

The City may designate a principal City official responsible for the administration of the rights-of-way, right-of-way permits and the ordinances related thereto. The City may delegate any or all of the duties hereunder. (Ord. 990, 12-4-2017)

#### 7-15-5: FRANCHISE:

The City may, in addition to the requirements of this chapter, require any person which has or seeks to have facilities located in any right-of-way to obtain a franchise to the full extent permitted by law, now or hereinafter enacted, except that the City shall not require an individual license, franchise, or other agreement, other than a standard small wireless facility collocation agreement to collocate small wireless facilities on wireless support structures owned or controlled by the City and located within the public right-of-way. (Ord. 990, 12-4-2017)

#### 7-15-6: REGISTRATION AND RIGHT-OF-WAY OCCUPANCY:

A. Registration: Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities or small wireless facilities or wireless support

structures in or on the right-of-way, including persons with installation and maintenance responsibilities by contract, lease, sublease or assignment, must register with the City. Registration will consist of providing application information and paying a registration fee.

B. Registration Prior To Work: No person may collocate, construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the City.

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes chapter 216D, "Gopher State One Call" Law. (Ord. 990, 12-4-2017)

#### 7-15-7: REGISTRATION INFORMATION:

A. Information Required: The information provided to the City at the time of registration shall be on the form approved by the City and shall include, but not be limited to:

1. Each registrant's name, Gopher State One Call registration number, address and e-mail address if applicable, and telephone and facsimile numbers.

2. The local representative's name, address and e-mail address, if applicable, and telephone and facsimile numbers. The local representative or designee shall be available for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration, including emergency information for the registrant's subcontractors.

3. The name, address and telephone number of the person(s) or entities, other than the applicant, to perform the project work or any portion thereof.

4. A certificate of insurance or self-insurance:

a. Shall verify that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;

b. Shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the: 1) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and 2) placement and use of facilities in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from contracts, independent contractors, products and completed operations, damage of underground facilities and collapse of property;

c. Shall name 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;

d. Shall require that the City be notified thirty (30) days in advance of cancellation of the policy, nonrenewal or material adverse modification of a coverage term;

e. Shall indicate comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this chapter. The minimum amounts of coverage must equal or exceed the maximum liability limits set forth in Minnesota Statutes 466.04.

5. The City may require a copy of the actual insurance policies.



6. If the person is a corporation, a copy of the certificate that is required to be filed under state law as recorded and certified to by the secretary of state.

7. 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 from said commission or other State or Federal agency.

B. Notice Of Changes: The registrant shall keep all of the information listed above current at all times by providing to the City information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change. (Ord. 990, 12-4-2017)

#### 7-15-8: REPORTING OBLIGATIONS:

A. Operations: Each registrant shall, at the time of registration and by January 1 of each year, file a construction and major maintenance plan for known underground utilities with the City. 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 utility facility plans shall be kept up to date by the registrant. Facility plans which a utility identifies in writing to the City as being "trade secret information" will be treated as general nonpublic data in accordance with Minnesota Statutes section 13.37 if the data is within the statutory requirements for "trade secret information".

The plan shall include, but not be limited to, the following information:

1. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year; and
2. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five (5) years following the next calendar year (in this section, a "five-year CIP").

The term "project" in this section shall include projects identified in the five-year CIP but does not include individual service line hookups and minor maintenance unless they are part of an area wide program.

It is the registrant's responsibility to keep informed on available plans.

B. Additional Next Year Projects: Notwithstanding the foregoing, the City will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project. (Ord. 990, 12-4-2017)

#### 7-15-9: PERMIT REQUIREMENT:

A. Permit Required: Except as otherwise provided in this Code, no person may excavate, place a utility service, install or place facilities, or obstruct any right-of-way without first registering and having obtained the appropriate right-of-way permit from the City to do so. The following permits may be required:

1. Excavation Permit: An excavation permit is required by a registrant to excavate that part of the right-of-way as specifically described in such permit and to hinder free and open

passage over the specified portion of that right-of-way by placing facilities described therein, for the duration specified therein.

2. Obstruction Permit: An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of that right-of-way by placing facilities described therein, for the duration specified therein. An obstruction permit is required for any obstruction in connection with the installation, relocation, operation or maintenance of a utility service.

3. Small Wireless Facility Permit: A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked. A small wireless facility permit shall not be required for: a) routine maintenance of a small wireless facility, b) replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility, c) installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with National Safety Codes. The telecommunication right-of-way user shall provide advance notification to the City of these activities if the work will obstruct a public right-of-way.

B. Permit Extensions: No person may excavate, place a utility service, install or place facilities or obstruct the right-of-way beyond the date or dates specified in the permit unless such person: 1) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and 2) a new permit or permit extension is granted.

C. Delay Penalty: In accordance with Minnesota Rule 7819.1000 subparagraph 3 and notwithstanding subsection B 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 and shall include any delays or damages charged by the City's construction contractor and may include liquidated damages consistent with the contract.

D. Permit Display: Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City. (Ord. 990, 12-4-2017)

#### 7-15-10: PERMIT APPLICATIONS:

A. Applications: Application for a permit is made to the City on the form provided by the City. Right-of-way permit applications shall contain and will be considered complete only upon compliance with the requirements of the following provisions:

1. Registration with the City pursuant to this chapter;
2. Submission of a completed permit application form, including all required attachments.
3. Electronic submission of a detailed description and drawing to a scale, as required by the City, showing the location and area of the proposed project and the location of all

known existing and proposed facilities of the permittee in the project area. Drawings and descriptions shall include, but not be limited to, the identification of the obstructions to be placed, the size and depth of any excavation, the schedule for commencement and completion of the proposed project, the identification of the existing right-of-way, the location of existing sidewalks, trailways and other improvements and the location and size of any trees impacted in the designated work area.

4. Payment of all money due the City for:

- a. Permit fees, estimated restoration costs and other management costs;
- b. Prior excavation or obstruction permits;
- c. Any undisputed 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;
- d. Franchise fees or other charges, if applicable.

5. Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least one hundred ten percent (110%) of the amount owing.

6. Application for a permit may not be filed more than ten (10) weeks prior to the anticipated installation start date proposed by the right-of-way user or prior to construction plan completion by the subdivider's engineer.

B. Deadline For Action:

1. The City shall approve or deny a small wireless facility permit application for attachment of a small wireless facility using a new structure within ninety (90) days after receiving a complete application.

2. The City shall approve or deny a small wireless facility permit application for collocation of a small wireless facility using a preexisting structure within sixty (60) days after receiving a complete application.

C. Consolidated Applications: An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to fifteen (15) small wireless facilities, or a greater number if agreed by the City, provided that all small wireless facilities in an application:

1. Are located within a two-mile radius;
2. Consist of substantially similar equipment; and
3. Are to be placed on similar types of wireless support structures.

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

D. Tolling Of Deadline For Action: The applicable sixty (60) or ninety (90) day deadline for action may be tolled if:

1. The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within thirty (30) business days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the City's

determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon applicant's submittal of additional information in response to a notice of incompleteness, the City has ten (10) days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the sixty (60) or ninety (90) day deadline for action.

2. The City and applicant may agree in writing to toll the review period. (Ord. 990, 12-4-2017; amd. Ord. 1034, 10-5-2020)

#### 7-15-11: ISSUANCE OF PERMIT; CONDITIONS:

A. Permit Issuance: If the applicant has satisfied the requirements of this chapter, the City shall issue a permit.

B. Conditions: The City 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 or, when necessary, to protect the right-of-way and its current and future use.

1. Installation, placement, location and relocation of facilities shall comply with all Federal, State and local laws.

2. Installation of all underground utilities shall be in accordance with the underground utilities regulations set forth in this section and all other applicable Federal, State and local laws.

3. Precautions shall be taken as are necessary to avoid creating unsafe or unsanitary conditions.

4. Project operations and work shall be conducted in a manner so as to ensure the least obstruction to and interference with present and continued use of the right-of-way.

5. Precautions shall be taken to assure the safety of the general public, employees, invitees and those who require access to abutting property, including appropriate signage.

6. The permittee shall notify abutting property owners with a forty-eight (48) hour written notice prior to commencement of any permitted project.

7. The permittee involved in underground projects shall register with Gopher State One Call and comply with the requirements thereof.

8. The permittee shall comply with the "Minnesota Manual On Uniform Traffic Control Devices" (MMUTCD) at all times during any project work and shall protect and identify excavations and work operations with barricade flags in the daylight hours and by warning lights at dusk and night.

9. The permittee shall comply with all conditions of the permit.

10. When any trail, sidewalk or driveway has been cut, City approved signage must be kept in place and maintained until restoration is complete.

11. The permittee shall provide proper trench protection as required by OSHA to prevent any cave in; injury to property or persons; or enlargement of the excavation.

12. Excavations, trenches and jacking pits off the roadway surface area or adjacent to the roadway or curbing shall be sheathed and braced. When unattended, all excavations, trenches and jacking pits shall be secured and protected to prevent surface drainage and access by unauthorized persons.

13. The permittee shall protect the root growth of trees and shrubbery located within the right-of-way and adjacent thereto. Facilities shall be placed outside of the current and/or future mature dripline of the tree to prevent future tree-facility conflicts.

14. The permittee shall coordinate project work and installation of facilities in collocations involving other right-of-way users.

15. The permittee shall maintain access to all properties and cross streets during project work, including emergency vehicle access.

16. The permittee shall physically locate property lines abutting the project work. The permittee shall replace, with the services of a Minnesota licensed surveyor, any property corners or monuments disturbed as a result of the project.

17. The permittee shall complete restoration of the right-of-way in conformance with this section.

18. No permittee, or any agent, subcontractor or employee thereof, shall use lugs (steel tracks) on any roadway surfaces.

19. The permittee shall remove daily, or as required by the City, all dirt or debris from sidewalks, trails, public and private roadway surfaces and curbs and gutters during project work.

20. The permittee shall obtain all other necessary permits, licenses and approvals, pay all required fees therefor and comply with all requirements of local, State and Federal laws.

21. The permittee shall not do any work outside the project area as specified in the permit.

22. The permittee shall conduct a public informational meeting for all major projects as deemed necessary by the City.

23. In new subdivisions in which public utilities have been constructed, permit applications will not be accepted for review prior to construction plan completion by the subdivider's engineer and the mapping requirements specified in section 7-15-23 of this chapter have been satisfied. Construction plans shall be submitted to service/utility service providers (as defined in section 7-15-3) by the subdivider's engineer.

24. Trenchless excavation/directional boring is prohibited more than forty eight inches (48") below grade unless approved by the City Engineer.

C. Small Wireless Facility Conditions: In addition to subsection B of this section, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right- of-way, shall be subject to the following conditions:

1. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

2. No new wireless support structure installed within the right- of-way shall exceed fifty feet (50') above ground level in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect

the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a wireless support structure that replaces an existing wireless support structure in the public right-of-way that is greater than fifty feet (50') above ground level in height may be placed at the height of the existing wireless support structure, subject to such conditions or requirements as may be imposed in the applicable permit.

3. No wireless facility constructed in the right-of-way after May 30, 2017 may extend more than ten feet (10') above a wireless support structure existing on May 30, 2017.

4. Where an applicant proposes to install a new wireless support structure in the right-of-way, the new wireless support structure may not be located within six hundred feet (600') of any existing wireless support structure in and around the right-of-way.

5. All new or replacement wireless support structure and equipment shall match the surrounding poles in structure, materials, and color.

6. Wireless support structures shall be of a monopole design not exceeding eighteen inches (18") in diameter.

7. All electric, telephone, cable, fiber, or other utility lines necessary to operate a small wireless facility shall be installed within the applicable wireless support structure where practicable. All of a small wireless facility that is affixed to a wireless support structure which has exterior exposure shall be as close to the color of the wireless support structure as is commercially available. Electrical, telephone, cable, fiber, or other utility lines are not allowed to be coiled or rolled up and externally attached to the support structure or equipment boxes.

8. Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure.

9. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

10. No small wireless facility shall be collocated on any City owned traffic control device.

D. Small Wireless Facility Agreement: A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City, or any other City asset in the right-of-way, after applicant has executed a standard small wireless facility collocation agreement with the City. The standard collocation agreement may require payment of the following:

1. Management costs;
2. Up to one hundred fifty dollars (\$150.00) per year for rent on the City structure;
3. Twenty-five dollars (\$25.00) per year for maintenance associated with the collocation;
4. A monthly fee for electrical service as follows:
  - a. Seventy-three dollars (\$73.00) per radio node less than or equal to one hundred (100) maximum watts;

b. One hundred eighty-two dollars (\$182.00) per radio node over one hundred (100) maximum watts;

c. The actual cost of electricity, if the actual cost exceeds the foregoing.

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

E. County Or State Right-Of-Way: Any right-of-way user who is required to obtain any County or State permit for excavation or obstruction in any Dakota County or Minnesota Department of Transportation right-of-way must provide notification of permitting to the City within one week of obtaining the permit but no less than forty eight (48) hours before the excavation would begin. (Ord. 1007, 2-4-2019)

#### 7-15-12: PERMIT FEES:

Permit fees shall be established by the City Council. The City Council shall periodically review and approve the fee schedule for permits issued under this chapter.

A. Excavation Permit Fee: The City shall establish an excavation permit fee in an amount sufficient to recover the following costs:

1. Management costs;
2. Degradation costs, if applicable.

B. Obstruction Permit Fee: The City shall establish an obstruction permit fee in an amount sufficient to recover the City management costs.

C. Small Wireless Facility Permit Fee: The City shall impose a small wireless facility permit fee for the placement of small wireless facilities and wireless support structures in the public right-of-way in an amount sufficient to recover:

1. Management costs; and
2. City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

D. Cost Of Initial Engineering Survey And Preparatory Construction Work Associated With Collocation: Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge to recover costs associated with a proposed attachment.

E. Payment Of Permit Fees: No excavation permit, obstruction permit, or small wireless facility permit shall be issued without payment of the respective excavation, obstruction, or small wireless facility permit fees. The City may allow the applicant to pay such fees within thirty (30) days of billing.

F. Nonrefundable: Permit fees that were paid for a permit that the City has revoked for a breach as stated in section 7-15-22 of this chapter are not refundable.

G. Application To Franchises: Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user. (Ord. 990, 12-4-2017)

### 7-15-13: RIGHT-OF-WAY PATCHING AND RESTORATION:

A. Timing: The work to be done under the right-of-way permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances constituting force majeure or when work was prohibited as unseasonable or unreasonable under section 7-15-16 of this chapter.

B. Temporary Surfacing, Patch And Restoration: Permittee shall patch its own work, restore the right-of-way and assume all costs therefor unless otherwise agreed upon.

1. City Restoration: If the City restores any part of the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If the City restores only the surface of the right-of-way and during the twenty four (24) months following such restoration, the pavement settles, the permittee shall pay to the City, within thirty (30) days of billing, all costs related to restoring the right-of-way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by the permittee. These costs shall include administrative, overhead mobilization, material, labor and equipment.

2. Permittee Restoration: If the permittee restores the right-of-way, the City may require, and the permittee shall provide at the time of application for the right-of-way permit, a City specified type of security, in accordance with PUC rules, to cover the cost of repair and restoration.

C. Standards: To the maximum extent possible, restoration must return the right-of-way to the same condition that existed before excavation. Subject to this standard, plates 1 to 13, shown in Minnesota Rules parts 7819.9900 to 7819.9950, indicate the maximum limits of restoration methods and area requirements the City can impose when a right-of-way user excavates in the right-of-way. Subject to commission rules, the City shall have the authority to prescribe additional restoration procedures and standards on a case by case basis based on the following considerations:

1. The number, size, depth and duration of the excavation, disruption or damage to the right-of-way;

2. The traffic volume carried by the right-of-way;

3. The character of the neighborhood surrounding the right-of-way;

4. The pre-project condition of the right-of-way;

5. The remaining life expectancy of the right-of-way due to the project;

6. 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

7. 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.

D. Duty To Correct Defects: The permittee shall guarantee its work and restoration of the right-of-way, including plantings, and maintain it for twenty-four (24) months following its completion. The obligation is limited to twelve (12) months for turf establishment. During this twenty-four (24) month period, the permittee shall, upon notification from the City,



correct all defects in patching or restoration 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 when work is prohibited as unseasonable or unreasonable under section 7-15-16 of this chapter.

E. 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 repairs required by the City, the City shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee at least five (5) calendar days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event the permittee fails to cure or fails to respond to the notice, the City may, at its option, perform or cause to be performed the necessary work and 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 and draw from the City specified security. (Ord. 990, 12-4-2017)

#### 7-15-14: JOINT APPLICATIONS:

A. Joint Application: Registrants may jointly apply for permits to excavate, place a utility service, collocate or obstruct the right-of-way at the same place and time.

B. Shared Fees: Registrants who apply for permits for the same excavation, obstruction, or small wireless facility permit action, which the City does not perform, may share in the payment of the excavation, obstruction, or small wireless facility permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

C. With City Construction Projects: Registrants who join in a scheduled excavation or obstruction permit action coordinated with a City construction project by the City, whether or not it is a joint application by two (2) or more registrants or a single application, are not required to pay the excavation or obstruction portions of the permit fee, but a permit is still required. (Ord. 990, 12-4-2017)

#### 7-15-15: SUPPLEMENTARY APPLICATIONS:

A. 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 excavated or obstructed 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. The City may orally waive the requirement for a permit extension or the payment of an additional fee. The City shall maintain a written record of any waivers granted.

B. 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. The City may waive the requirement for a permit extension for the payment of an additional fee. The City shall maintain a written record of any waivers granted. (Ord. 990, 12-4-2017)

#### 7-15-16: OTHER OBLIGATIONS:

A. **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 the City or other appropriate jurisdiction or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, State and Federal laws, including, but not limited to, road load restrictions, Minnesota Statutes 216D (Gopher State One Call) and Minnesota Rules chapter 7560. 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.

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

C. **Interference With Right-Of-Way:** A permittee shall not obstruct a right-of-way, except as expressly authorized by the permit, so as to hinder the natural free and clear passage of water through the gutters, culverts, ditches, tiles or other waterways. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit. Traffic control shall conform to the "Minnesota Manual On Uniform Traffic Control Devices" (MMUTCD) and its field manual and any written directions of the City.

D. **Trenchless Excavation:** As a condition of applicable permits, permittees employing trenchless excavation methods, including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes chapter 216D and Minnesota Rules chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating. (Ord. 990, 12-4-2017)

#### 7-15-17: DENIAL OF PERMIT:

A. **Reasons For Denial:** The City may deny a permit for failure to meet the requirements and conditions of this chapter or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current and future use. The City may deny a permit if the utility has failed to comply with previous permit conditions. The City may withhold issuance of a permit until conditions of previous permits are complied with.

B. **Procedural Requirements:** The denial of a permit must be made in writing and must document the basis for the denial. The City must notify the applicant in writing within three (3) business days of the decision to deny a permit. If an application is denied, the applicant may address the reasons for denial identified by the City and resubmit its application. If the application is resubmitted within thirty (30) days of receipt of the notice of denial, no

additional application fee shall be imposed. The City must approve or deny the resubmitted application within thirty (30) days after submission. (Ord. 990, 12-4-2017)

#### 7-15-18: 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, 7819.5000 and 7819.5100 and shall conform to MnDOT standard specifications as amended by City standard specifications, insofar as they are not inconsistent with Minnesota Statutes sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules chapter 7560 and this Code. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and/or agreements referenced in sections 7-15-23 and 7-15-24 of this chapter. (Ord. 990, 12-4-2017)

#### 7-15-19: INSPECTION:

A. Notice Of Completion: When the work under any permit hereunder is completed, the permittee shall notify the City and furnish a completion certificate in accordance with Minnesota Rule 7819.1300.

B. Site Inspection: The permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

##### C. Authority Of City:

1. At the time of inspection the City may order the immediate cessation and correction of any work, which poses a serious threat to the life, health, safety or well-being of the public.

2. The City may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, rules, laws, conditions or codes so long as the nonconformance constitutes a "substantial breach" as set forth in Minnesota Statutes section 237.163, subdivision 4(c)(1 - 5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within a reasonable time after issuance of the order, the permittee shall present proof to the City that the violation has been or will be corrected within a time period set forth by the City in the order. If such proof has not been presented within the required time, the City may revoke the permit pursuant to section 7-15-22 of this chapter.

3. The cost of any action required by the City shall be paid by the permittee. (Ord. 990, 12-4-2017)

#### 7-15-20: WORK DONE WITHOUT A PERMIT:

A. Emergency Situations: Each registrant shall immediately notify the City of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency or as directed by the City. Excavator's notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) 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. The permittee requirements shall not apply if the repair is caused by another permittee's work in the right-of-way. If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

B. Nonemergency Situations: Except in an emergency, any person who, without first having obtained the necessary permit, excavates, obstructs, or collocates in a right-of-way must subsequently obtain a permit, deposit with the City the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter. (Ord. 990, 12-4-2017)

#### 7-15-21: SUPPLEMENTARY NOTIFICATION:

If the excavation or obstruction of, or collocation in the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the City of the accurate information as soon as this information is known. (Ord. 990, 12-4-2017)

#### 7-15-22: REVOCATION OF PERMITS:

A. Substantial Breach: The City reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit, including a threat to the safety of workers, right-of-way users or utility users. A substantial breach by the permittee shall include, but shall not be limited to, the following:

1. The violation of any material provision of the right-of-way permit or this Code;
2. 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;
3. Any material misrepresentation of fact in the application for a right-of-way permit;
4. The failure to maintain the required security and/or insurance;
5. The failure to complete the work within the time specified in the permit; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control;
6. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 7-15-19 of this chapter; or
7. The failure of the utility to pay any required costs, fees, or charges billed by the City.

B. Written Notice Of Breach: If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

C. Response To Notice Of Breach: Within five (5) calendar days of receiving a written notification of the breach from the City, the permittee shall provide the City with a plan acceptable to the City that will cure the breach. The permittee's failure to so contact the City, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

D. Revocation: Revocation of a right-of-way permit or small wireless facility permit shall be made in writing within three (3) business days of the decision to revoke the permit and shall document the basis for the revocation.

E. Reimbursement Of Management Costs: If a permit is revoked, the permittee shall reimburse the City for the City's reasonable costs, including restoration costs and legal fees, incurred in connection with the revocation.

F. Revoked Permit: If the City revokes a permittee's permit for breach of this chapter, the permittee will not be allowed to excavate, obstruct, or collocate within the City right-of-way until the breach situation is corrected to the satisfaction of the City and the permit is reissued. (Ord. 990, 12-4-2017)

#### 7-15-23: MAPPING DATA:

A. Information Required: Each registrant and permittee shall provide project data in accordance with Minnesota Rules 7819.4000 and 7819.4100 and as follows:

1. The location of applicant's mains, cables, conduits, switches and related equipment and facilities, identified by:

a. Offsets from property lines, distances from the centerline of the right-of-way and curb lines and/or other reference points as determined by the City.

b. Coordinates derived from the Dakota County coordinate system. The information shall be supplied in an electronic file using a .dwg or .dxf format.

c. Any other system agreed upon by the right-of-way user and the City;

2. The type, quantity and size of the equipment;

3. A dimensional description of aboveground appurtenances;

4. A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and

5. The location of any facilities that were abandoned in conformance with Minnesota Statutes.

B. Submittal Requirements:

1. All right-of-way users shall submit as built record drawings by April 1 of every year for all new facilities located within the right-of-way during the preceding year. In new subdivisions, permits for work within the right-of-way shall not be issued until the City is in receipt of and has accepted x and y coordinates for each of the proposed newly installed public facility main lines and service laterals located within the right-of-way and any applicable utility easements. These coordinates shall be derived from the approved construction plans submitted by the developer's engineer using the current Dakota County coordinate system, and shall be used for locating public utility service lateral locations until as built record drawings have been received. These coordinates shall be provided to the City by the developer's engineer in a geodata base or shapefile (.shp), digital drawing

(.dwg or .dxf) and text file (.txt) format. The text file shall include a description for each point that will identify the point using the City's assigned point code and the house address for the corresponding service. As built record drawings shall incorporate any changes to the approved construction plans made in the field; all main line and service lateral coordinates shall be revised to reflect these changes and include z coordinate data.

2. At the request of any right-of-way user, information required by the City, which qualifies as "trade secret" data under the Minnesota Data Practices Act, shall be protected accordingly.

C. Service Laterals: All permits issued for the installation or repair of service laterals, other than minor repairs as identified in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal and vertical locations of installed service laterals. Permittees or their subcontractors shall submit to the City as built record drawings satisfactory to the City of the installed service lateral locations. Compliance with this subsection C and with applicable Gopher State One Call Law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any City approval necessary for: 1) payments to contractors working on a public improvement contract including those under Minnesota Statutes chapter 429, and 2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes chapter 462. The City shall determine the appropriate method of collecting such information. Failure to provide prompt and accurate information on 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. (Ord. 990, 12-4-2017)

#### 7-15-24: LOCATION AND RELOCATION OF FACILITIES:

A. Placement, Location And Relocation: Placement, location and relocation of facilities must comply with Minnesota Statutes, with other applicable law and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

B. Corridors: The City may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, as a Best Management Practice for each type of facility or equipment that is, or, pursuant to current technology, the City expects will someday be located, within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. In new subdivisions, the subdivider's engineer shall indicate all utility crossings associated with the subdivision in the construction plan submittal to the City and service/utility service providers (as defined in section 7-15-3). Conduits shall be required and installed in accordance with the current City of Lakeville Utility and Street Construction Standard Specifications. Installation of dual mains by a single company shall be required for all new subdivisions.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, to prevent interference with City use of the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration of

such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

C. Limitation Of Space: To protect health, safety and welfare or when necessary to protect the right-of-way and its current use, the City shall have the power to use Best Management Practices to prohibit or limit the placement and location of new or additional facilities within the right-of-way. In making such decisions, the City 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 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 projects which have been determined to be in the public interest.

D. 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 convenience of the City, in connection with: 1) a present or future City use of the right-of-way for a public improvement, 2) the public health or safety, or 3) the safety and convenience of travel over the right-of-way. The right-of-way user shall restore any rights-of-way in accordance with this chapter.

A right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.

E. Undergrounding: Unless otherwise permitted by an existing franchise, or unless existing aboveground equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment and the required relocation of old equipment in the right-of-way must be located or relocated and maintained underground in accordance with chapter 6 of this title. The permittee shall comply with the following requirements when installing underground facilities:

1. Underground facilities shall, where reasonably possible, be installed outside the paved or surfaced area. If unable to install outside the surfaced area, the installation shall be as close to the edge of the roadway surface as possible to allow access thereto without unnecessarily disturbing paved areas of the roadway;
2. Right-of-way alignment and grade shall be maintained;
3. Fiber facilities shall be buried in a proper conduit and at a depth of no less than two feet (2') deep and no more than three feet (3') deep, and copper facilities, except City owned facilities, shall be buried no less than three feet (3') deep and no more than four feet (4') deep;
4. All underground facilities which cross streets or hard surfaced roadways and driveways shall be bored and installed in conduit when requested by the City to a depth of no less than 3 feet (3') deep and no more than four feet (4') unless determined otherwise by the City Engineer. Gas does not need to be installed in conduit;
5. When required, the permittee shall excavate an observation hole over a City utility to ensure that a City utility is not damaged;

6. If the project work involves an open cut, the permittee shall install visual tracers twelve inches (12") over buried facilities. If other construction methods are used, substitute location methods may be used upon approval by the City;

7. During plowing or trenching of facilities, a warning tape shall be placed at a depth of twelve inches (12") above copper cables with over two hundred (200) pairs and fiber facilities and a locating wire or conductive shield shall be installed above buried telecommunication facilities, except for dielectric cables;

8. Restoration of areas disturbed by facilities will include returning the right-of-way to the same condition that existed before excavation as per Minnesota Rules 7819.1100. Subject to this standard, plates 1 to 13, shown in parts 7819.9900 to 7819.9950, indicate maximum limits of restoration methods and area requirements the City can impose when a right-of-way user excavates in the right-of-way. The City and right-of-way user may agree to a lesser requirement. The right-of-way user is responsible for all of its work done in the right-of-way, whether by employees, agents or independent contractors. All levels of restoration include compaction of the materials placed in the excavation of the subgrade and aggregate base, plus pavement replacement, in-kind. If required by the City, all work must be performed according to the City's specifications and drawings;

9. All facilities shall be located so as to not interfere with existing and potential future traffic signals and signs;

10. Unless approved by the City, all aboveground appurtenances shall be located no closer than ten feet (10') to City hydrants, waterline valves, manholes, lift stations and catch basins; not in front of or within usual sightlines of any City sign, monument or amenity for facilities or parks; and no closer than two feet (2') from sidewalks and trails;

11. Underground facilities shall not be installed between a hydrant and an auxiliary valve;

12. Where utility easements exist beyond the roadway surface area of the right-of-way and space is available therein, underground facilities shall not be installed within five feet (5') of hydrants, waterline valves, lift stations, manholes or catch basins. In those areas in which no utility easement exists, placement of an underground facility shall be between the edge of pavement and no closer than three feet (3') to an existing City utility appurtenance, unless approved by the City;

13. The location and installation of telecommunications facilities shall comply with the National Electrical Safety Code, as incorporated by reference in Minnesota Statutes. (Ord. 990, 12-4-2017)

#### 7-15-25: PREEXCAVATION FACILITIES LOCATION:

In addition to complying with the requirements of Minnesota Statutes 216D.01 - .09 ("Gopher State One Call") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal placement of all said facilities. (Ord. 990, 12-4-2017)

#### 7-15-26: DAMAGE TO OTHER FACILITIES:

The provisions of Minnesota Statutes 216D shall apply to all situations involving damages to facilities during excavation operations. Each registrant shall be responsible for the cost



of repairing any facilities in the right-of-way which it or its facilities damages. This provision includes costs for damages to boulevard amenities, such as irrigation systems and invisible fences, placed by property owners. It is the registrant's responsibility to provide immediate notice of such damages to the affected property owners. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities. (Ord. 990, 12-4-2017)

#### 7-15-27: RIGHT-OF-WAY VACATION:

A. Reservation Of Right: If the City vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rule 7819.3200 and other applicable laws. (Ord. 990, 12-4-2017)

#### 7-15-28: INDEMNIFICATION AND LIABILITY:

A. Limitation Of Liability: By registering with the City, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the City for any liability for: 1) injuries to persons, damage to property or loss of service claims by parties other than the registrant or the City, or 2) claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.

B. Indemnification: By registering with the City, a registrant agrees, or by accepting a permit under this chapter, a permittee is required to indemnify, keep and hold the City free and harmless from any and all costs, specifically including attorney fees and other costs and expenses of defense, liabilities and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, 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. 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, permittee or the City, and the registrant or permittee, 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 in its own behalf. In defending the City, any registrant or permittee shall obtain the consent of the City Council before any settlement shall be enforced. (Ord. 990, 12-4-2017)

#### 7-15-29: ABANDONED OR UNUSABLE FACILITIES:

A. Discontinued Operations: A registrant who has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

B. Removal: Any registrant who has abandoned or unusable facilities in any right-of-way shall remove it from that right- of-way if required in conjunction with other right-of-way repair, excavation or construction unless the City waives this requirement. (Ord. 990, 12-4-2017)

**7-15-30: APPEALS:**

A right-of-way user that: a) has been denied registration; b) has been denied a permit; c) has had a permit revoked; d) believes that the fees imposed are invalid; or e) disputes a determination of the City regarding section 7-15-22 of this chapter, may have the denial, revocation, fee imposition, or decision reviewed upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision. (Ord. 990, 12-4-2017)

**7-15-31: 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 that 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. (Ord. 990, 12-4-2017)

**7-15-32: RESERVATION OF REGULATORY AND POLICE POWERS:**

A permittee's or registrant'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. (Ord. 990, 12-4-2017)

**7-15-33: SEVERABILITY:**

If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Ord. 990, 12-4-2017)

**7-15-34: PENALTY FOR VIOLATION:**

A person shall be subject to a fee or delay penalty for violation of this chapter when a person is obstructing the right-of-way beyond the date specified in the permit, is performing nonemergency work in the right-of-way without having been issued a permit or when a person causes the City to incur costs as a result of actions or inaction of the person. (Ord. 990, 12-4-2017)

**Section 2.** This ordinance shall be effective immediately upon its passage and publication. **ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2021, by the City Council of the City of Lakeville, Minnesota.

CITY OF LAKEVILLE

BY: \_\_\_\_\_  
Douglas P. Anderson, Mayor

ATTEST: \_\_\_\_\_  
Charlene Friedges, City Clerk