

CHAPTER 4**ROADS****410. RIGHT-OF-WAY MANAGEMENT****Section 410.01. Findings, Purpose, and Intent. Elections to Manage the Public Rights-of-Way.**

Subd. 1. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in good repair and free from unnecessary encumbrances. Accordingly, the city enacts this Section 410 of the Code establishing reasonable regulations concerning the placement and maintenance of facilities and equipment currently within the City's rights-of-way or to be placed therein at some future time and also concerning obstructions of such rights-of-way. This Section 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.

This Section is intended to implement and shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Session Laws, Chapter 94 amending the Act and the 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 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the 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.

Subd. 2. Pursuant to Minnesota Statutes, Section 237.163 subdivision 2(b), and all authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects to manage rights-of-way within its jurisdiction.

Section 410.02. Definitions. The following definitions apply to this Section 410:

Subd. 1. "Abandoned Facility" means 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.

Subd. 2. "Applicant" means any person that has applied for a permit to excavate or obstruct a right-of-way.

Subd. 3. “City” means the city of Medina, Minnesota, its elected officials, officers, employees, and agents.

Subd. 3.5. “Collocate or Collocation” means 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.

Subd. 4. “Commission” means the Minnesota Public Utilities Commission.

Subd. 4.5 “Congested Right-of-Way” means 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 500 feet.

Subd. 5. “Construction Performance Bond” means any of the following forms of security provided at a permittee’s option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under Minnesota Statutes, section. 15.73, subdivision;
- (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.

Subd. 6. “Degradation” means 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.

Subd. 7. “Degradation Cost” means the cost, subject to Minnesota Rules 7819.1100, 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.

Subd. 8. “Degradation Fee” means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

Subd. 9. “Director” means the director of the department of public works of the city, or her or his designee.

Subd. 10. “Delay Penalty” is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Subd. 11. “Emergency” means 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.

Subd. 12. “Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Subd. 13. “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Subd. 14. “Facility or Facilities” means any tangible asset in the public right-of-way required to provide utility service.

Subd. 14.3. “High Density Corridor” means 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.

Subd. 14.7. “Hole” means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

Subd. 15. “Local Representative” means a local person authorized by a right-of-way user to accept service and to make decisions for that right-of-way user regarding all matters within the scope of this Section 410.

Subd. 16. “Management Costs” means the actual costs the city incurs in managing its rights-of-way, including 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 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 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 costs of any litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections; or the City fees and costs related to appeals relating to this Section 410.

- Subd. 17.** “Obstruct” means 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.
- Subd. 18.** “Patch or Patching” means 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 excavation of the pavement is included in the city’s five-year project plan.
- Subd. 19.** “Pavement” means 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.
- Subd. 20.** “Permit” has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.
- Subd. 21.** “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this Section.
- Subd. 22.** “Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.
- Subd. 22.3.** “Probation” means the status of a person that has not complied with the conditions of this chapter.
- Subd. 22.5.** “Probationary Period” means one year from the date that a person has been notified in writing by the City that such person has been put on probation.
- Subd. 22.7.** “Registrant” means 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.
- Subd. 23.** “Public Right-of-Way” or “Right-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, 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 nonwire telecommunications or broadcast service.
- Subd. 24.** “Restore or Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.
- Subd. 25.** “Restoration Cost” means the amount of money paid to the city by a right-of-way user to achieve the level of restoration according to plates 1 to 13 of Minnesota Rule 7819.1100 Subpart 1.

Subd. 26. “Right-of-Way User” means (1) A telecommunications right-of-way user as defined by Minnesota Statutes, section 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.

Subd. 27. “Service or Utility Service” means and includes (1) services provided by a public utility as defined in Minnesota Statutes 216B.02, subdivisions 4 and 6; (2) services of a telecommunications provider including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter. 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling or heating services.

Subd. 27.3. “Service Lateral” means 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.

Subd. 27.7. “Small Wireless Facility” means a wireless facility that meets both of the following qualifications:

- (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
- (ii) 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.

Subd. 28. “Temporary Surface” means 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.

Subd. 29. “Trench” means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement or adjacent pavement.

Subd. 30. “Telecommunications right-of-way user” means 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. Chap. 238, and

telecommunication activities related to providing natural gas or electric energy services, whether provided by a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

Subd. 31. “Utility Pole” means a pole that is used in whole or in part to facilitate telecommunications or electric service.

Subd. 32. “Wireless Facility” means 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.

Subd. 33. “Wireless Service” means 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.

Subd. 34. “Wireless Support Structure” means 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.

Section 410.03. Administration.

The director of public works is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

Section 410.04. Conduct Prohibited. Except as authorized pursuant to a permit issued by the city, no person shall:

Subd. 1. Obstruct or excavate any right-of-way.

Subd. 2. Place any equipment, facilities, or structures in any right-of-way.

Subd. 3. Deposit snow or ice on any right-of-way.

Subd. 4. Erect a fence or other barrier on or across any right-of-way.

Subd. 5. Obstruct any ditch in or abutting a right-of-way.

Subd. 6. Place any advertisement or sign other than a traffic control sign or other governmental sign in any right-of-way.

Subd. 7. Deface, mar, damage or tamper with any sign, marker, signal, monument, equipment, facility, structure, material, tools, or any appurtenance in any right-of-way.

Subd. 8. Drive a vehicle over, through, around, or past any fence, barrier, sign, or obstruction erected to prevent traffic from passing over the right-of-way, or portion of the right-of-way.

Section 410.05. Registration and Right-of-Way Occupancy.

Subd. 1. Registration. Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in 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 registration information and paying a registration fee. Each right-of-way user shall be registered by the earliest of the following: 1) December 1 of each year; or 2) prior to work being completed within the right-of-way as described in Subd. 2 below.

Subd. 2. Registration Prior to Work. No person may construct, install, repair, remove, relocate or perform any other work on, or use any equipment or facilities or any part thereof, in any right-of-way without first being registered with the city.

Subd. 3. Exceptions. Persons shall not be required to register, obtain permits or satisfy any other requirements under this Section for the following:

- (1) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots pursuant to a driveway permit, except repairs or restoration necessitated by utility cuts or other work;
- (2) Plowing and preparing the land for planting a perennial hay crop, and harvesting said crop;
- (3) Snow removal activities;
- (4) Placement of flexible fiberglass markers at the edge of the paved road to assist snow plow operators (metal posts are prohibited).

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

Section 410.06. Registration Information.

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

- (1) The right-of-way user's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers;
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative accessible for consultation at all times. Current

contact information for the local representative shall be provided at the time of registration.

- (3) A certificate of insurance or self-insurance:
 - (a) Verifying that an insurance policy has been issued to the right-of-way user by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;
 - (b) Verifying that the right-of-way user is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the right-of-way user, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the right-of-way user, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - (c) Either naming the city as an additional insured or otherwise providing evidence satisfactory to the director that the city is fully covered and will be defended;
 - (d) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - (e) Indicating 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 Section.
 - (f) Evidencing adequate third party claim coverage and city indemnification for all actions included in Minnesota Rule part 7819.1250.
- (4) Such evidence as the city may require to demonstrate that the person is authorized to do business in Minnesota.
- (5) Such evidence as the city may require to demonstrate that the person is authorized to use or occupy the right-of-way.
- (6) If the person is a corporation, a copy of the certificate is required to be filed under Minn. Stat. Sec. 300.06 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 authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.

Subd. 2. 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.

Section 410.07. Reporting Obligations.

Subd. 1. Operations. Each right-of-way user shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for

underground facilities 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.

Subd. 2. Plan. 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 (in this section, a “next-year project”); and
- (2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a “five-year project”).

Subd. 3. Failure to Include Projects in Plan. 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 right-of-way user demonstrates that it used commercially reasonable efforts to anticipate and plan for the project.

Subd. 4. The city may annually produce for inspection a list of all planned projects for inspection.

Section 410.08. Permit Requirement.

Subd. 1. Permit Required. Except as otherwise provided in this section, no person may obstruct or excavate the right-of-way, or place equipment or facilities in or on the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so. The permit shall specify the extent and the duration of the work permitted.

- (a) *Excavation Permit.* An excavation permit is required by a registrant to excavate any part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (b) *Obstruction Permit.* An obstruction permit is required by a registrant to hinder free and open passage over any specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- (c) *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.

Subd. 2. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary

application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. Delay Penalty. In accordance with Minnesota Rule 7819.1000 subp. 3, the city may 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 ordinance. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

Subd. 4. Permit Display. Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

Section 410.09. Permit Applications.

Application for a permit is made to the city. Right-of-way permit applications shall contain, and will only be considered complete upon compliance with the following:

- (1) Registration with the city pursuant to this Section;
- (2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- (3) Payment of money due the city for:
 - (a) permit fees, estimated restoration costs and other management costs;
 - (b) prior obstructions or excavations;
 - (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.
- (4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- (5) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

Section 410.10. Issuance of Permit; Conditions.

Subd. 1.

- (a) **Permit Issuance.** If the Applicant has satisfied the requirements of this Section 410 the city shall issue a permit.
- (b) **Action on Small Wireless Facility Permit Applications.**
 - (1) **Deadline for Action.** The city shall approve or deny a small wireless facility

permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

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

- (i) are located within a two-mile radius;
- (ii) consist of substantially similar equipment; and
- (iii) 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.

(c). Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

- (i) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
- (ii) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.
- (iii) The city and a small wireless facility applicant agree in writing to toll the review period.

Subd. 2. Conditions. The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. The city may establish and define location and relocation requirements for equipment and facilities to be located in the right-of-way. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

Subd. 3. *Small Wireless Facility Conditions.* In addition to subdivision 2, 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: 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.

- (a) No new wireless support structure installed within the right-of-way shall exceed 50 feet 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 registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- (b) No wireless facility may extend more than 10 feet above its wireless support structure.
- (c) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
- (d) 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.
- (e) 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.

Subd. 4. *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 the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:

- (a) Up to \$150 per year for rent to collocate on the city structure.
- (b) \$25 per year for maintenance associated with the collocation;
- (c) A monthly fee for electrical service as follows:
 1. \$73 per radio node less than or equal to 100 maximum watts;
 2. \$182 per radio node over 100 maximum watts; or
 3. The actual costs of electricity, if the actual cost exceed 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.

Section 410.11. Permit Fees.

Subd. 1. Excavation Permit Fee. The city shall impose an excavation permit fee in an amount sufficient to recover:

- (a) management costs;
- (b) degradation costs, if applicable.

Subd. 2. Obstruction Permit Fee. The city shall impose an obstruction permit fee in an amount sufficient to recover management costs.

Subd. 3. Small Wireless Facility Permit Fee. The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

- (a) management costs, and;
- (b) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

Subd. 4. Payment of Permit Fees. No permit shall be issued without payment of permit fees. The city may allow an applicant to pay such fees within thirty (30) days of billing. Permit fees paid for a permit that the city has revoked for a breach are not refundable.

Subd. 5. 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 in the franchise.

Section 410.12. Right-of-Way Patching and Restoration.

Subd. 1. Timing. The work to be done under a permit, and the required patching and restoration of the right-of-way, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 410.19.

Subd. 2. Patching. The permittee must patch its own work.

Subd. 3. Restoration. The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or the city may restore the surface portion of right-of-way itself.

- (a) **City restoration.** If the city restores the surface portion of right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.
- (b) **Permittee restoration.** If the permittee restores the right-of-way itself, it shall at the time of filing the permit application post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

Subd. 4. Degradation fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee in an amount identified by the city. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate based material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.

Subd. 5. Standards. The permittee shall perform patching and restoration according to the

standards in Minnesota Rule 7819.1100, and with the materials specified by the city.

Subd. 6. Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents upon notification from the city, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 410.15.

Subd. 7. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event, the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Section 410.13. Joint Applications.

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

Subd. 2. Shared fees. Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. With city projects. Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

Section 410.14. Supplementary Applications.

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

Subd. 2. Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, 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 submitted before the permit end date.

Section 410.15. Other Obligations.

Subd. 1. Compliance With Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. 216D.01-.09 (Gopher One Call Excavation Notice System) 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.

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

Subd. 3. Interference with Right-of-Way. A permittee shall not so obstruct or interfere with the natural passage of water through the gutters or other waterways. Private vehicles must be parked in conformance with city parking regulations. Unless specifically authorized by a permit, trucks must be loaded and unloaded within the defined permit area.

Subd. 4. Traffic Control. A permittee shall implement traffic control measures in the area of the work and use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the State of Minnesota.

Subd. 5. Trenchless excavation. As a condition of all 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, as determined by the director.

Section 410.16. Denial or Revocation of Permit.

Subd. 1. The city may deny a permit for failure to meet the requirements and conditions of this Section, when the proposed work is seasonally prohibited or when conditions are unreasonable for such work, to protect the public health, safety, and welfare, or to protect the right-of-way and its current use.

Subd. 2. Procedural Requirements. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 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 30 days after submission.

Section 410.17. Installation Requirements.

The installation of facilities in the right-of-way and associated excavation, backfilling, patching, and restoration work shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far 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 these ordinances. 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 section 410.21 of this ordinance.

Section 410.18. Inspection.

Subd. 1. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.

Subd. 2. Site Inspection. The permittee shall make the work-site available to the city for inspection at all reasonable times during the execution of and upon completion of the work.

Subd. 3. Authority of Director.

- (a) The director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- (b) The director may order the permittee to correct work that does not conform to the terms of the permit or other applicable standards, conditions, or code. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Section 410.20.

Section 410.19. Work Done Without a Permit.

Subd. 1. Emergency Situations. Each right-of-way user shall immediately notify the director of any event regarding its facilities that the right-of-way user considers to be an emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. The right-of-way user may take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the right-of-way user shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to comply with this Section for the actions it took in response to the emergency.

Subd. 2. If the city becomes aware of an emergency affecting facilities in the right-of-way, the city will attempt to contact the local representative of each potentially affected right-of-way user. The city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the right-of-way user whose facilities occasioned the emergency.

Subd. 3. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay an unauthorized work permit fee in an amount established from time to time by the city council, 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 Section.

Section 410.20. Revocation of Permits.

Subd. 1. Substantial Breach. The city reserves its right 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. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of a permit;
- (2) An evasion or attempt to evade any material provision of a 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 permit;
- (4) The failure to complete work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated in an order issued by the director pursuant to Section 410.18.

Subd. 2. 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 to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach. Within 24 hours of receiving notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to contact the city, permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall automatically place the permittee on probation for one (1) full year.

Subd. 4. Cause for Probation. From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for

one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

Subd. 5. Automatic Revocation. If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

Subd. 6. Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 410.21. Mapping Data.

Subd. 1. Information Required. Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

Subd. 2. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 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:

- a) payments to contractors working on a public improvement project including those under Minnesota Statutes Chapter 429 and
- b) city approval under development agreements or other subdivision or site plan approval under Minnesota Statutes Chapter 462. The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

Section 410.22. Location and Relocation of Facilities.

Subd. 1.

- (a) Placement, location, and relocation of facilities must comply with the Act, 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) A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection with: (1) a present or future city use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

Subd. 2. Undergrounding. Unless otherwise agreed in a franchise or other agreement between the applicable right-of-way user and the City, Facilities in the right-of-way must be located or relocated and maintained underground.

Subd. 3. Corridors. The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities 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. 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, 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.

Subd. 4. Nuisance. One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

Subd. 5. 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 prohibit or limit the placement 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 needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing 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.

Section 410.23. Interference By Other Facilities.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a right-of-way user's facilities to carry out the work without damaging right-of-way user's

facilities, the city shall notify the local representative as early as is reasonably possible. The city costs associated therewith will be billed to that right-of-way user and must be paid within thirty (30) days from the date of billing. Each right-of-way user shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

Section 410.24. Pre-excavation Facilities Location.

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

Section 410.25. Damage to Other Facilities.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. 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.

Section 410.26. Right-of-Way Vacation.

If the city vacates a right-of-way that contains the facilities of a right-of-way user, the right-of-way user's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

Section 410.27. Indemnification and Liability

By registering with the city, or by accepting a permit under this Section, a right-of-way user or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

Section 410.28. Abandoned and Unusable Facilities.

Subd. 1. Discontinued Operations. A right-of-way user who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the right-of-way user's obligations for its facilities in the right-of-way under this Section have been lawfully assumed by another right-of-way user.

Subd. 2. Removal. Any right-of-way user who has abandoned 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 this requirement is waived by the city.

Section 410.29. Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has

had permit revoked; or (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163; or (5) disputes a determination of the director regarding Section 410.21, subd.2 of this ordinance may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. 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.

Section 410.30. Reservation of Regulatory and Police Powers.

A permittee's or right-of-way user's rights are subject to the regulatory and police power authority of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Section 410.31. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Section 410 is for any reason held invalid or unconstitutional by any court, regulatory body or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 410.32. Penalty.

Any person violating any provision of this Section 410, or any permit or order issued hereunder, shall, upon conviction thereof, be guilty of a misdemeanor punishable in accordance with Section 115.03 of this Code.

Amendment History of this Section

Previously Amended April 2, 1985 (Ord. 218). Subsection 410.03 was amended.

Adopted February 15, 2005 (Ord. 382). Previous language of Section 410 was repealed in its entirety and replaced with the wording from Ord. 382.

Amended December 19, 2017 (Ord. 624). Amended entire ordinance regarding management of the public right-of-way to comply with recent state legislative changes and to describe regulations concerning the placement and maintenance of facilities and equipment within the right-of-way.