CHAPTER 910

RIGHT OF WAY MANAGEMENT
(Ord. 630, August, 23, 1999)

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910.01: **FINDINGS, PURPOSE, AND INTENT:** The City hereby enacts this new Chapter of this Code relating to right-of-way permits and administration and 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. This Chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein. It is intended to complement the regulatory roles of state and federal agencies.

This Chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (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 consistently with Minnesota Rules Part 7819.0050 – 7819.9950 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.

910.02: **ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY:** In accordance with the authority granted to the City under state and federal statutory, administrative and common law, the city hereby elects pursuant to this Chapter to manage rights-of-ways within the jurisdiction.

910.03: **DEFINITIONS:** The following definitions apply in this Chapter of this Code. References hereafter to “Sections” are unless otherwise specified references to Sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

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 requesting permission to Excavate or obstruct a right-of-way.

Subd. 3. **CITY** means the City of Mounds View, Minnesota. For purposes of Section 910.27, City means its elected officials, officers, employees and agents.

Subd. 4. **COMMISSION** means the Minnesota Public Utilities Commission.
Subd. 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 five hundred feet (500’).

Subd. 6. CONSTRUCTION PERFORMANCE BOND means any of the following forms of security provided at permittee’s option:

   a. Individual project bond
   b. Cash deposit;
   c. Security of a form listed or approved under Minnesota Statutes, section 15.73 subdivision 3;
   d. Letter of Credit, in a form acceptable to the LGU;
   e. Self-insurance, in a form acceptable to the LGU;
   f. 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. 7. 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. 8. 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.

Subd. 9. 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 costs.

Subd. 10. DEPARTMENT means the Department of Public Works of the City.

Subd. 11. DEPARTMENT INSPECTOR means any person authorized by the Director to carry out inspections related to the provisions of this Chapter.

Subd. 12. DIRECTOR means the Director of the Department of Public Works of the City, or Director’s designee.

Subd. 13. DELAY PENALTY is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as requested by permit.
Subd. 14. **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. 15. **EQUIPMENT** means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Subd. 16. **EXCAVATE** means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Subd. 17. **EXCAVATION PERMIT** means the permit which, pursuant to this Chapter, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

Subd. 18. **EXCAVATION PERMIT FEE** means money paid to the city by an applicant to cover the costs as provided in Section 910.11.

Subd. 19. **FACILITY OR FACILITIES** means any tangible asset in the right-of-way required to provide utility service.

Subd. 20. **FIVE YEAR PROJECT PLAN** shows projects adopted by the local government unit for construction within the next five (5) years.

Subd. 21. **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. 22. **HOLE** means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

Subd. 23. **LOCAL GOVERNMENT UNIT** means the City.

Subd. 24. **LOCAL REPRESENTATIVE** means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter.

Subd. 25. **MANAGEMENT COSTS** means the actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering Applicants; issuing, processing, and verifying right-of-way 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 permits. Management costs...
do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of 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 taken pursuant to Section 910.29 of this Chapter.

Subd. 26. 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. 27. OBSTRUCTION PERMIT means the permit which, pursuant to this Chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

Subd. 28. OBSTRUCTION PERMIT FEE means money paid to the City by a permittee to cover the costs as provided in Section 910.11.

Subd. 29. 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 the pavement is included in the city’s five-year project plan.

Subd. 30. 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. 31. PERMIT has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.

Subd. 32. PERMITTEE means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Chapter.

Subd. 33. 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. 34. PROBATION means the status of a person that has not complied with the conditions of this Chapter.

Subd. 35. PROBATIONARY PERIOD means one (1) year from the date that a person has been notified in writing that they have been put on probation.
Subd. 36.  PUBLIC RIGHT-OF-WAY means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Subd. 37.  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. 38.  RESTORE OR RESORATION 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. 39.  RESTORATION COST means the amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of PUC rules.

Subd. 40.  RIGHT-OF-WAY PERMIT means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Chapter.

Subd. 41.  RIGHT-OF-WAY USER means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 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. 42.  SERVICE OR UTILITY SERVICE includes (1) those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter 238; (4) natural gas or electric energy or telecommunications services provided by the City; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling or heating services.

Subd. 43.  SUPPLEMENTARY APPLICATION means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

Subd. 44.  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 local government unit’s two-year plan, in which case it is considered full restoration.
Subd. 45  TRENCH means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

Subd. 46.  TELECOMMUNICATION RIGHTS-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 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 telecommunication activities related to providing natural gas or electric energy services whether provided by 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.

Subd. 47.  TWO YEAR PROJECT PLAN shows projects adopted by the local government unit for construction within the next two (2) years.

910.04: **ADMINISTRATION:** The Director 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.

910.05: **REGISTRATION AND RIGHT-OF-WAY OCCUPANCY:**

Subd. 1. Registration: Each Person who occupies, uses, or seeks to occupy or use, the Right-of-Way or place any Equipment or Facilities in or on the Right-of-Way, including Persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Director. Registration will consist of providing application information and paying a registration fee.

Subd. 2. Registration Prior to Work: No Person may 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 Director.

Subd. 3. Exceptions: Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting Persons to plant or maintain boulevard plantings or gardens in the area of the Right-of-Way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Chapter. However, nothing herein relieves a Person from complying with the provisions of the Minnesota Statutes chapter 216D, One Call Excavation Notice System.
910.06: **REGISTRATION INFORMATION:**

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

(a) Each Registrant's name, One Call Excavation Notice System registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a Local Representative. The Local Representative or designee shall be available at all times. Current information regarding how to contact the Local Representative in an Emergency shall be provided at the time of registration.

(c) A certificate of insurance or self-insurance:

(1) Verifying that an insurance policy has been issued to the Registrant by an insurance company authorized to do business in the State of Minnesota, or a form of self insurance acceptable to the Director;

(2) Verifying that the Registrant 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 Registrant, its officers, agents, employees and Permittees, and (ii) placement and use of Facilities and Equipment in the Right-of-Way by the Registrant, 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;

(3) Either naming 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 or otherwise providing evidence satisfactory to the Director that the city is fully covered and will be defended through Registrant’s insurance for all actions included in Minnesota Rule subpart 7819.1250;

(4) Requiring that the Director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Chapter.
(d) The City may require a copy of the actual insurance policies if necessary to ensure the Director that the policy provides adequate third party claim coverage and city indemnity and defense coverage for all actions included in the indemnity required by Minnesota Rule subpart 7819.1250.

(e) Such evidence as the Director may require that the person is authorized to do business in Minnesota.

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

910.07: REPORTING OBLIGATIONS:

Subd. 1. Operations: Each Registrant 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 Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavations and Obstructions of Rights-of-Way.

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

(a) 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

(b) 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 (5)-year Project”).

The term “project” in this section shall include both Next-year Projects and Five (5)-year Projects.

By January 1 of each year the Director will have available for inspection in the Director’s office a composite list of all Projects of which the Director has been informed of the annual plans. All Registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each Registrant may change any Project in its list of Next-year Projects, and must notify the Director and all other Registrants of all such changes in said list. Notwithstanding the foregoing, a Registrant may at any time join in a Next-year Project of another Registrant listed by the other Registrant.
Subd. 2. Additional Next-year Projects: Notwithstanding the foregoing, the Director 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.

910.08: **PERMIT REQUIREMENT:**

Subd. 1. Permit Required: Except as otherwise provided in this Code, no Person may Obstruct or Excavate any Right-of-Way without first having obtained the appropriate Right-of-Way Permit from the Director to do so.

(a) Excavation Permit: An Excavation Permit is required by a Registrant to Excavate that part of the Right-of-Way described in such permit and to hinder free and open passage over the specified portion of the Right-of-Way by placing 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 the specified portion of Right-of-Way by placing Equipment described therein on the Right-of-Way, to the extent and for the duration specified therein. An Obstruction Permit is not required if a Person already possesses a valid Excavation Permit for the same project.

Subd. 2. Permit Extensions: No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the permit unless such Person (i) 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 and notwithstanding subdivision 2 of this Section, the City shall establish and impose a Delay Penalty for unreasonable delays in Right-of-Way excavation, Obstruction, Patching, or Restoration. The Delay Penalty shall be established from time to time by City Council resolution.

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

910.09: **PERMIT APPLICATIONS:** Application for a permit is made to the Director. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(a) Registration with the Director pursuant to this Chapter;
(b) 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.

(c) Payment of money due the City for

   (1) permit fees, estimated Restoration Costs and other Management Costs,

   (2) prior Obstructions or Excavations;

   (3) 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;

   (4) franchise fees or other charges, if applicable.

(d) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the director deems the existing construction performance bond inadequate under applicable standards.

910.10: **ISSUANCE OF PERMIT; CONDITIONS:**

Subd. 1. Permit Issuance: If the Applicant has satisfied the requirements of this Chapter, the Director shall issue a permit.

Subd. 2. Conditions: The Director 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.

910.11: **PERMIT FEES:**

Subd. 1. Fee Schedule and Fee Allocation: The City’s permit fee schedule shall be available to the public and established in advance. The permit fees shall be designed to recover the City’s actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the City.

Subd. 2. Excavation Permit Fee: The city shall establish an Excavation Permit Fee in an amount sufficient to recover the following costs:

   (a) the City Management Costs;
(b) Degradation Costs, if applicable.

Subd. 3. Obstruction Permit Fee: The city shall establish the Obstruction Permit Fee which shall be in an amount sufficient to recover the City Management Costs.

Subd. 4. Payment of Permit Fees: No Excavation Permit or Obstruction Permit shall be issued without payment of Excavation or Obstruction Permit Fees. The City may allow Applicant to pay such fees within thirty (30) days of billing.

Subd. 5. Non refundable: Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 910.21 are not refundable.

Subd. 6. 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.

910.12: RIGHT-OF-WAY PATCHING AND RESTORATION:

Subd. 1. Timing: The work to be done under the Excavation Permit, and the Patching and Restoration of the Right-of-Way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonal or unreasonable under Section 910.15.

Subd. 2. Patch and Restoration: Permittee shall Patch its own work. The City may choose either to have the Permittee restore the Right-of-Way or to Restore the Right-of-Way itself.

(a) City Restoration: If the City restores the Right-of-Way, Permittee shall pay the costs thereof within thirty (30) days of billing. If, following such Restoration, the pavement settles due to Permittee's improper backfilling, the Permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.

(b) Permittee Restoration: If the Permittee Restores the Right-of-Way itself, it shall at the time of application for an Excavation Permit post a Construction Performance Bond in accordance with the provisions of Minnesota Rules 7819.3000.

(c) Degradation Fee in Lieu of Restoration: In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
Subd. 3. Standards: The Permittee shall perform Patching and Restoration according to the standards and with the materials specified by the Director and shall comply with Minnesota Rule 7819.1100. The Director shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis.

Subd. 4. Duty to Correct Defects: The Permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee shall upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 910.15.

Subd. 5. Failure to Restore: If the Permittee fails to Restore the Right-of-Way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all Restoration required by the Director, the Director 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.

910.13: 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 Director 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 Director, 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.
910.14:  **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.

910.15:  **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 (One Call Excavation Notice System). 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, or with the approval of the Director, no Right-of-Way Obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. Interference with Right-of-Way: A Permittee shall not so Obstruct a Right-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles 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.

910.16:  **DENIAL OF PERMIT:** The Director may deny a permit for failure to meet the requirements and conditions of this Chapter or if the Director determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the Right-of-Way and its current use.
910.17: **INSTALLATION REQUIREMENTS:** The excavation, backfilling, Patching and Restoration, and all other work performed in the Right-of-Way shall be done in conformance with Minnesota Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163.

910.18: **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 Rules 7819.1300.

Subd. 2. Site Inspection: Permittee shall make the work-site available to the Director and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd 3. Authority of Director:

(a) At the time of inspection, 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 issue an order to the Permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the Permittee shall present proof to the 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 910.21.

910.19: **WORK DONE WITHOUT A PERMIT:**

Subd. 1. Emergency Situations: Each Registrant shall immediately notify the Director of any event regarding its Facilities, which it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to the Emergency. Within two 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.
If the Director becomes aware of an Emergency regarding a Registrant’s Facilities, the Director will attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency, direct them to take whatever action may be necessary to respond to the Emergency, or otherwise take whatever action the Director deems necessary to respond to the Emergency if Registrant does not timely respond. The Cost shall be borne by the Registrant whose Facilities occasioned the Emergency.

Subd. 2. Non-Emergency Situations: Except in an Emergency, any Person who, without first having obtained the necessary permit, Obstructs or Excavates a Right-of-Way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by the Legislative Code, deposit with the Director the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this Chapter.

910.20: SUPPLEMENTARY NOTIFICATION: If the Obstruction or Excavation of the Right-of-Way begins later or ends sooner than the date given on the permit, Permittee shall notify the Director of the accurate information as soon as this information is known.

910.21: REVOCATION OF PERMITS:

Subd. 1. Substantial Breach: The City reserves its right, as provided herein, to revoke any Right-of-Way Permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by Permittee shall include, but shall not be limited to, the following:

(a) The violation of any material provision of the Right-of-Way Permit;

(b) An evasion or attempt to evade any material provision of the Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

(c) Any material misrepresentation of fact in the application for a Right-of-Way Permit;

(d) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the Permittee’s control; or

(e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 910.18.
Subd. 2. Written Notice of Breach: If the Director 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 Director 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 Director, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach: Within twenty-four (24) hours of receiving notification of the breach, Permittee shall provide the Director with a plan, acceptable to the Director, that will cure the breach. Permittee's failure to so contact the Director, or the Permittee's failure to submit an acceptable plan, or Permittee’s failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee’s failure to so contact the Director, or the Permittee's failure to submit an acceptable plan, or Permittee’s failure to reasonably implement the approved plan, shall automatically place the Permittee on Probation for one (1) year.

Subd. 4. Cause for Probation: From time to time, the Director 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 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.

910.22: MAPPING DATA:

Subd. 1. Information Required: Each Registrant and Permittee shall provide Mapping information required by the Director in accordance with Minnesota Rules 7819.4000 and 7819.4100.

910.23: LOCATION AND RELOCATION OF FACILITIES:

Subd. 1. Unless otherwise agreed in a franchise between the applicable right-of-way user and the City, Facilities in the right-of-way must be located or relocated and maintained underground in accordance with this section, Minnesota Rule subpart 7819.3100 and Chapter 911 of this Code.
Subd. 2. Corridors: The Director may assign specific corridors 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 Director expects will someday be located within the Right-of-Way. All excavation, obstruction, or other permits issued by the Director involving the installation or replacement of Facilities shall designate the proper corridor for the Facilities at issue. Any relocation of Facilities required by the Director shall be carried out in accordance with Minnesota Rule subpart 7819.3100.

Subd. 3. Limitation of Space: To protect health, safety, and welfare or when necessary to protect the Right-of-Way and its current use, the Director 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 Director 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.

910.24: PRE-EXCAVATION FACILITY AND FACILITIES LOCATION: Registrant shall comply with the requirements of Minn. Stat. § 216D.01-.09 (“One Call Excavation Notice System”). 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.

910.25: DAMAGE TO OTHER FACILITIES: When the Director does work in the Right-of-Way and finds it necessary to maintain, support, or move a Registrant's Facilities to protect it, the Director 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 damages. 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.

910.26: RIGHT-OF-WAY VACATION: If the City vacates a Right-of-Way, which contains the Facilities of a Registrant, the registrant’s rights in the vacated right-of-way are governed by Minnesota Rule 7819.3200.

910.27: INDEMNIFICATION AND LIABILITY: By registering with the Director, or by accepting a permit under this Chapter, a Registrant or Permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.
910.28: **ABANDONED AND UNUSABLE FACILITIES:**

Subd. 1. 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 Director that the Registrant's obligations for its Facilities in the Right-of-Way under this Chapter have been lawfully assumed by another Registrant.

Subd. 2. Removal: Any Registrant 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 Director.

910.29: **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 invalid, 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. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

910.30: **RESERVATION OF REGULATORY AND POLICE POWERS:** A Permitee’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.

910.31: **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. Nothing in this Chapter precludes the City from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.
CHAPTER 911

LOCATION, RELOCATION, INSTALLATION AND REINSTALLATION OF FACILITIES IN THE RIGHT-OF-WAY
(Ord. 631, 9-13-99)

SECTION:

911.01: Purpose
911.02: Definitions
911.03: Undergrounding of Facilities
911.04: Undergrounding of New Facilities
911.05: Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities
911.06: Retirement of Overhead Facilities
911.07: Public Hearings
911.08: Public Hearing Issues
911.09: Undergrounding Plan

911.01: PURPOSE. The purpose of this Section is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the City. Location and relocation, installation and reinstallation of Facilities in the right-of-way must be made in accordance with this Section.

911.02: DEFINITIONS. The terms used in this Section have the meanings given them.

Subd. 1. COMMISSION means the Minnesota Public Utilities Commission.

Subd. 2. FACILITY means tangible asset in the public right-of-way required to provide utility service. The term does not include Facilities to the extent the location and relocation of such Facilities are preempted by Minnesota Statutes, section 161.45, governing utility facility placement in state trunk highways. Facility does not mean electric transmission lines, as distinguished from electric distribution lines.

Subd. 3. PUBLIC RIGHT-OF-WAY has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.
Subd. 4. RIGHT-OF-WAY USER means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 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. 5. UTILITY SERVICE means and includes: (1) service provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including the transporting of voice or data information; (3) services provided by a cable communications system as defined in Minnesota Statutes, section 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.

911.03. UNDERGROUNDING OF FACILITIES. Facilities placed in the public right-of-way must be located, relocated and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards. This Section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to Minnesota Statutes, sections 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, USC section 253.

911.04. UNDERGROUNDING OF NEW FACILITIES. A new Facility or a permanent extension of Facilities must be installed and maintained underground when supplied to:

   (a) a new installation of buildings, signs, streetlights or other structures;

   (b) a new subdivision of land; or

   (c) a new development or industrial park containing new commercial or industrial buildings.

The City Council in its discretion may deviate from the requirements of this Sections in situations where undergrounding is not technically or economically feasible.

911.05. UNDERGROUNDING OF PERMANENT REPLACEMENT, RELOCATED OR RECONSTRUCTED FACILITIES. A permanent replacement, relocation or reconstruction of a Facility of more than three hundred feet (300’) must be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this
Section, reconstruction means any substantial repair of or any improvement to existing Facilities. Undergrounding is required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the Facilities, or by the City in connection with (1) the present or future use by the city or other local government unit 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. The City Council in its discretion may deviate from the requirements of this Section in situations where undergrounding is not technically or economically feasible.

911.06. RETRIEMENT OF OVERHEAD FACILITIES. The City Council may determine whether it is in the public interest that all Facilities within the City, or within certain districts designated by the City, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to Sections 911.04 and 911.05 of this Code. The decision to underground must be preceded by a public hearing, and must be proceeded by two weeks’ published notice and not less than thirty (30) days written notice to the utilities affected. At the hearing the council must consider items (1) – (4) in Section 911.08 of this Code and make findings. Undergrounding may not take place until the City Council has, after hearing and notice, adopted a plan containing items (1) – (6) of Section 911.09 of this Code.

911.07. PUBLIC HEARINGS. A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether Facilities in the right-of-way in the City, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under Sections 911.04 and 911.05 of the City Code.

911.08. PUBLIC HEARING ISSUES. The issues to be addressed at the public hearings include but are not limited to:

1. The costs and benefits to the public of requiring the undergrounding of all Facilities in the right-of-way.

2. The feasibility and cost of undergrounding all Facilities by a date certain as determined by the city and the affected utilities.

3. The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the City.
(4) Alternative financing options available if the City deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

911.09. **UNDERGROUNDING PLAN.** If the Council finds that it is in the public interest to underground all or substantially all Facilities in the public right of way, the Council must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

(1) Timetable for the undergrounding.

(2) Designation of districts for the undergrounding unless, undergrounding plan is citywide.

(3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions.

(4) Procedures for the undergrounding process, including but not limited to coordination with City projects and provisions to ensure compliance with non-discrimination requirements under the law.

(5) A financing plan for funding of the incremental costs if the City determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility.

(6) Penalties or other remedies for failure to comply with the undergrounding.