

CHAPTER VIII - STREETS, ALLEYS AND PUBLIC WAYS.....	2
Section 800 - Driveways	2
800.01. Driveway construction requirements.	2
800.11. Waiver.	2
Section 805 – Sidewalks and Trails	4
805.01. Removal of Snow and Ice.	4
Section 810 - Right-of-Way Management	6
810.01. Findings, Purpose, and Intent.....	6
810.02. Election to Manage the Public Rights-of-Way.....	6
810.03. Definitions.	6
810.04. Administration.....	12
810.05 Utility Coordination Committee.	12
810.06. Registration and Right-of-Way Occupancy.	12
810.07 Registration Information.....	13
810.08. Reporting Obligations.	14
810.09 Permit Requirements.	14
810.10. Permit Applications.....	16
810.11. Issuance of Permit; Conditions.....	17
810.12. Permit Fees.	18
810.13. Right-of-Way Patching and Restoration.....	19
810.14 Joint and Individual Applications.	20
810.15. Supplementary Applications.	21
810.16 Other Obligations.	21
810.17. Denial of Permit.....	22
810.18. Installation Requirements.	23
810.19 Inspection.....	23
810.20 Work Done Without a Permit.	25
810.21 Supplementary Notification.	26
810.22 Revocation of Permits.....	26
810.23 Mapping Data.	27
810.24 Undergrounding.	28
810.25 Location and Relocation of Facilities.	30
810.26 Pre-excavation Facilities Location.	31
810.27 Interference by Other Facilities.....	31
810.28 Right-of-Way Vacation – Reservation of Right.	32
810.29 Indemnification and Liability.....	32
810.30 Abandoned Facilities.....	32
810.31 Appeal.....	33
810.32 Reservation of Regulatory and Police Powers.....	33
810.33 Severability.	33

CHAPTER VIII - STREETS, ALLEYS AND PUBLIC WAYS

Section 800 - Driveways

800.01. Driveway construction requirements.

In addition to such rules, regulations and specifications as may be required by the city for specific projects, the following requirements shall be met with respect to driveways:

- (a) Shared driveways shall not be permitted unless the city council grants a waiver from this prohibition. The property owners sharing the driveway will also be required to provide the city with copies of an executed maintenance agreement and an executed reciprocal easement for the driveway; and
- (b) All driveways must connect directly to an open and improved public or private right-of-way.

800.11. Waiver.

The city council may grant a waiver from any requirement of this ordinance if there exists a practical difficulty in complying and if the council determines that such requirement is not necessary for protection of the public health, safety or welfare. If the applicant wishes to request a waiver, the applicant shall make that request to city staff in writing. The applicant shall include information in the waiver request that responds to the following factors. No waiver shall allow conditions in violation of regulations applicable to fire apparatus access roads. The council shall take the following factors into consideration in determining whether to grant a waiver from the requirements of this ordinance:

- (a) The nature and significance of the waiver;
 - (b) Whether the waiver is the minimum necessary to overcome the practical difficulty;
 - (c) Whether the protection of environmental and other sensitive features have been addressed;
 - (d) The effect on adjacent properties;
 - (e) Whether the waiver will enhance or impair good planning for the area;
- and

(f) Such other factors as the council deems relevant under the circumstances.

Financial considerations alone shall not be sufficient to justify a waiver. In granting a waiver, the city council may impose such conditions or requirements as it deems reasonably necessary to protect the public health, safety or welfare.

Section 805 – Sidewalks and Trails

805.01. Removal of Snow and Ice.

Subdivision 1. Removal of Snow and Ice.

(a.) All snow and ice remaining upon public trails and sidewalks is hereby declared to constitute a public nuisance. Notwithstanding any other ordinance of the city, no owner or occupant of any single family home or duplex adjacent to a public sidewalk or trail shall allow snow or ice to remain on the sidewalk or trail longer than 24 hours after it has ceased to be deposited. This provision does not apply to sidewalks and trails that are posted “No Winter Maintenance” by the city or other areas specified in the Sidewalk & Trail Maintenance Policy.

(b.) Notwithstanding any other ordinance of the city, no owner or occupant of any building containing three or more housing units or a commercial or industrial property adjacent to a public sidewalk or trail shall allow snow or ice to remain on the sidewalk or trail any longer than four hours during the hours of 8:00 a.m. and 5:00 p.m. after it has ceased to be deposited. This provision does not apply to sidewalks and trails that are posted “No Winter Maintenance” by the city.

Subd. 2. Removal by the city.

Snow and ice left on sidewalks and trails in violation of this section may be removed by the city and charged or assessed against property owner in accordance with this section.

Subd. 3. Notice.

In the event that snow or ice is not removed within the timeframes stated in this section, city personnel may give notice to the owner or occupant that snow and ice must be cleared by a certain time. The notice may be given as follows:

- (a.) By delivering oral or written notice to the occupant; or
- (b.) By giving notice by telephone to any owner or occupant who has requested that such notice be given by telephone to a specified number given to the City Administrator or his or her designee; or

If the city is not immediately successful in giving notice under paragraphs (a) or (b), by posting a written notice in a conspicuous location on the property.

Subd. 4. Payment of Removal Expenses.

If snow and ice is not removed by the time specified in the notice described above, the city may remove the snow and ice using either city or contract forces and maintain accounts of costs and expenses incurred. The owner of the property adjacent to the sidewalk or trail from which the snow and ice is removed will be billed for such costs, payment of which shall be due within 30 days of the date of the invoice. Unpaid charges will be levied as a special assessment against the owner's property.

Subd. 5. Placement of Snow in Public Street.

It is a misdemeanor for any person to throw, put or push or cause to be thrown, put or pushed, any snow or ice taken from any private property into the roadway of any public street.

Section 810 - Right-of-Way Management

810.01. Findings, Purpose, and Intent.

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 a state of good repair and free from unnecessary encumbrances.

Accordingly, the City enacts this new Section of this code relating to right-of-way permits and administration. This Section imposes reasonable regulation on 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. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, Persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from Persons using the public rights-of-way.

This Section 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 Section shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent that any provision of this Section cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended.

Unless otherwise provided, this Section shall be interpreted to complement other sections of the City Code; provided, however, that if a provision of this Section conflicts with another section of the City Code, this Section shall prevail.

810.02. Election to Manage the Public Rights-of-Way.

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

810.03. Definitions.

The following definitions apply in this Section of this code. References to "subdivisions" are unless otherwise specified references to subdivisions in this Section.

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 Minnetrista, Minnesota. For purposes of Section 810.29, 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 500 feet.

Subd. 6. “Construction Performance Bond” means any of the following forms of security provided at permittee’s option:

- (a.) Individual project bond, including a “license and permit” bond;
- (b.) Cash deposit;
- (c.) Security of a form listed or approved under Minnesota Statutes, section 15.73, subdivision 2;
- (d.) Letter of Credit, in a form acceptable to the City;
- (e.) Self-insurance, in a form acceptable to the City; or
- (f.) A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

Subd. 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 cost.

Subd. 10. "Department Inspector" means any person authorized by the City to carry out inspections related to the provisions of this Section.

Subd. 11. "Director" means the City Administrator of the City, or her or his designee.

Subd. 12. "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. 13. "Emergency" means a condition that

(a) poses a danger to life or health, or of a significant loss of property; or

(b) requires immediate repair or replacement of facilities in order to restore service to a customer.

Subd. 14. "Equipment" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Subd. 15. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Subd. 16. "Facility or Facilities" means tangible asset in the public right-of-way required to provide utility service.

Subd. 17. "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. 18. "Hole" means an excavation in the right-of-way, with the excavation having a length less than the width of the pavement or adjacent pavement.

Subd. 19. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Section.

Subd. 20. "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, mapping of “as built” location of facilities located in the right-of-way; and revoking right-of-way permits and performing all other tasks required by this Section, including other costs the City may incur in managing matters described in this Section. 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 810.31.

Subd. 21. “Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage or sight line over that or any part of the right-of-way.

Subd. 22. “Obstruction Permit” means the permit which, pursuant to this Section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage or sight line over the specified portion of that right-of-way, for the duration specified therein, including a blanket permit for a period of time and for types of work specified by the director, if deemed appropriate in his discretion.

Subd. 23. “Obstruction Permit Fee” means money paid to the City by a permittee to cover the costs as provided in Section 810.12.

Subd. 24. “Patch or Patching” means a method of pavement replacement that is temporary in nature. A patch consists of:

- (a) the compaction of the subbase and aggregate base, and
- (b) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

Subd. 25. “Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with paver blocks, bituminous, concrete, aggregate, or gravel.

Subd. 26. “Permit” has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.

Subd. 27. “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. 28. “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. 29. “Public Right-of-Way” has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

Subd. 30. “Registrant” means any person who:

- (a) has or seeks to have its equipment or facilities located in any right-of-way, or
- (b) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way

Subd. 31. “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. 32. “Right-of-Way Permit” means either the utility permit or the obstruction permit, or both, depending on the context, required by this Section.

Subd. 33. “Right-of-Way User” means

- (a) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or
- (b) 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. 34. “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. 35. “Service or Utility Service” means and includes

- (a) those services provided by a public utility as defined in Minnesota Statutes 216B.02, subdivisions 4 and 6;
- (b) services of a telecommunications right-of-way user, including transporting of voice or data information;

(c) services of a cable communications system as defined in Minnesota Statutes, chapter. 238.02, subdivision 3;

(d) natural gas or electric energy or telecommunications services provided by the City;

(e) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and

(f) water, sewer, including service laterals, steam, cooling or heating services.

Subd. 36. "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. 37. "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.

Subd. 38. "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. 39. "Telecommunication 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 transporting telecommunication or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services 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 telecommunication right-of-way users.

Subd. 40. "Utility Permit" means the permit which, pursuant to this Section, must be obtained before a person may excavate in a right-of-way. A utility permit allows the holder to excavate that part of the right-of-way described in such permit.

Subd. 41. "Utility Permit Fee" means money paid to the City by an applicant to cover the costs as provided in Section 810.12.

810.04. 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.

810.05 Utility Coordination Committee.

The City may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any Registrants that wish to assist the City in obtaining information and by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The City may determine the size of such committee and shall appoint members from a list of Registrants that have expressed a desire to assist the City.

810.06. 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 City. Registration will consist of providing application information and paying a registration fee. Registration shall be renewed annually.

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 City.

Subd. 3. Persons not Covered.

Nothing in this Section shall be construed to repeal or amend the provisions of a City ordinance establishing the rights of and limitations placed on Persons to plant or maintain boulevard plantings, fencing, or gardens in the area of the right-of-way between their property and the street curb. Persons not included in the definition of Right of Way User in Section 810.03, Subd. 33, shall not be governed by this Section.

Subd. 4. Gopher One Call.

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

810.07 Registration Information.

Subd. 1. Information Required.

The Registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:

- (a.) Registrant's name, address, telephone number, facsimile number and Gopher One-Call registration certificate number if required by State law;
- (b.) Name, address, telephone number, email address, and facsimile number of the Person responsible for fulfilling the obligations of the Registrant;
- (c.) A Certificate of Insurance from a company licensed to do business in the State of Minnesota providing coverage that meets the requirements of the Schedule established by the City from time to time.

Such certificate shall verify that the Registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:

- (i) use and occupancy of the right-of-way by the Registrant, its officers, agents, employees and Permittees, and
 - (ii) placement and use of Equipment or Facilities in the right-of-way by the Registrant, its officers, agents, employees and Permittees, including but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property. Such certificate shall also name the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages. Such certificate shall require that the Director be notified 30 days prior to cancellation of the policy;
- (d.) 24 hour emergency number;
 - (e.) An acknowledgement by the Registrant of the indemnification pursuant to Section 810.29; and
 - (f.) Such other information the Director may require.

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 15 days following the date on which the Registrant has knowledge of any change.

810.08. Reporting Obligations.

Subd. 1. Operations.

If requested by Director, 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 City. Such plan shall be submitted using a format designated by the City and shall contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

The plan shall include, but not be limited to, the locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year.

Subd. 2. Additional Next-Year Projects.

Notwithstanding the foregoing, the City will not deny an application for a Right-of-Way Permit for failure to include a project in a plan submitted to the City if the Registrant has used commercially reasonable efforts to anticipate and plan for the project.

810.09 Permit Requirements.

Subd. 1. Permit Required.

Except as otherwise provided in this code, no Right-of-Way User may Obstruct or Excavate any right-of-way without first having obtained the appropriate Right-of-Way Permit from the City to do so.

- (a.) *Utility Permit.* A Utility 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 the 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 Utility Permit for the same project.
- (c.) *Other Permits.* Other permits may be required for Persons in accordance with the City Code.

- (d.) *Overhead Facilities.* Permits for installation, repair or other work on above-ground facilities within the meaning of Minn. Stat. § 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand dug for the purpose of placing a pole type structure.
- (e.) *Security.* For companies not operating under a franchise with the City that waives this requirement, a surety bond, self-insurance letter of credit or cash deposit in the amount determined by the Director but not less than \$5,000, shall be required from each Applicant. A surety bond shall be from a corporate surety authorized to do business in the State. Security required pursuant to this subdivision shall be conditioned that the holder will perform the work in accordance with this Section and applicable regulations, will pay to the City any costs incurred by the City in performing work pursuant to this Section, and will indemnify and save the City and its officers, agents and employees harmless pursuant to the City code. The bond, self-insurance letter of credit or cash deposit shall be released by the City upon completion of the work and compliance with all conditions imposed by the Permit.

Subd. 2. Permit Extensions.

No Person may Excavate or Obstruct the right-of-way beyond the date or dates specified in the Permit unless:

(a) such Person makes a Supplementary Application for another Right-of-Way Permit before the expiration of the initial Permit, or requests a verbal extension, and

(b) a new permit or permit extension is granted. Verbal extensions may be granted by the Director for a period no greater than 48 hours or for emergencies.

Subd. 3. Diligence in Performing Work; Delay Penalty.

Work shall progress in an expeditious manner as permitted by weather conditions until completion in order to avoid unnecessary inconvenience. In the event that the work is not performed in accordance with applicable regulations, excavations and utility connections, or the work is not done in an expeditious manner, or is abandoned without due cause, the City may, after 72 hours' notice to the Permit holder, correct and fill the excavation or repair the street. The entire cost of such work shall be paid by the Permit holder upon demand made by the City. In accordance with Minnesota Rule 7819.1000 subp. 3, 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 in the City's fee schedule. 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.

Subd. 5. Routine Obstruction and Excavation.

Routine excavations and obstructions are permitted without separate notice and separate compensation for such projects. Projects that do not involve excavation of right-of-way surface and that last less than a continuous eight hour period in duration between 7 a.m. and 7 p.m. Monday through Friday, excluding holidays, may, in the Director's discretion, be considered Routine Obstruction and Excavation and include by way of example, switching, replacing fuses, replacing transformers, placing line guards, animal protection, leak surveys, anode installations and inspections, or to repair Facilities due to public damage or accident.

810.10. Permit Applications.

Subd. 1. Content of Permit.

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

- (a.) Registration with the City pursuant to this Section;
- (b.) Submission of a completed Permit application form as provided by the City, including all required attachments, and five copies of scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities owned or operated by the Applicant. Plans must include scaled dimensions indicating the proposed location of the Facility within the right-of-way and scaled dimensions of the Facility from an existing physical topographic feature (such as "back of curb", "edge of bituminous road"). Plans must also show all existing physical topographic features (trees, shrubs, culverts, driveways, fences, street signs) that lie within 10 feet of the proposed Facility location;
- (c.) Scaled drawings showing the location of any public streets, alleys, sidewalks, or trails that will be disrupted by the work;

- (d.) Scaled drawings showing the location of any public streets, alleys, sidewalks, or trails that will be temporarily closed to traffic or obstructed by the work;
- (e.) A description of methods to be used for Restoration of streets or boulevards;
- (f.) 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;
- (g.) Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 100 percent of the amount owing.
- (h.) Posting an additional or larger Construction Performance Bond for additional facilities when Applicant requests a Utility Permit to install additional facilities and the City deems the existing Construction Performance Bond inadequate under applicable standards; and
- (i.) As directed by the City Engineer, all plans must be digitized and compatible with the Hennepin County coordinate system.

810.11. Issuance of Permit; Conditions.

Subd. 1. Permit Issuance.

If the Applicant has satisfied the requirements of this Section, the City shall issue a Permit within 10 business days of receiving a completed application.

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 Permittee shall comply with all conditions contained in the Permit.

Subd. 3. Notice of Work.

Upon request by the Director, the Permittee shall notify in writing in a form approved by the Director all residents specified by the Director whose property is adjacent to the right-of-way where the proposed work is to be done indicating start and completion dates. Written notification is not required for Routine Obstruction and Excavation projects described in Section 810.09, Subd. 5.

810.12. 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 where reasonably possible. 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. Utility Permit Fee.

The City shall establish a Utility Permit Fee in an amount sufficient to recover the following costs:

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

Subd. 3. Obstruction Permit Fee.

The City shall establish the Obstruction Permit fee and shall be in an amount sufficient to recover the City Management Costs.

Subd. 4. Payment of Permit Fees.

No Utility Permit or Obstruction Permit shall be issued without payment of excavation or Obstruction Permit Fees.

Subd. 5. Non Refundable.

Permit fees that were paid for a Permit that the City has revoked for a breach as stated in Section 810.22 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.

810.13. Right-of-Way Patching and Restoration.

Subd. 1. Timing.

The work to be done under the Utility 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 810.16, subd. 2 or if the Permittee is granted a new Permit.

Subd. 2. Patch and Restoration.

Permittee must Patch its own work. The City may choose either to have the Permittee Restore the surface and subgrading portions of right-of-way or to Restore the surface portion of right-of-way itself.

(a.)Permittee Restoration. If the Permittee Restores the right-of-way itself, it shall at the time of application for a Utility Permit post a Construction Performance Bond in accordance with the provisions of Section 810.09, subd. 1E. and Minnesota Rules 7819.3000.

(b.)City Restoration. If the City Restores the surface portion of right-of-way, Permittee shall pay the costs thereof within 30 days of billing. If, following such Restoration, the right-of-way settles or otherwise fails for reasons not caused by City's failure to properly Restore, the Permittee shall pay to the City, within 30 days of billing, all costs associated with correcting the defective work.

(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 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. 3. Standards.

The Permittee shall perform Patching and Restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100. In exercising authority over Restoration, the Director shall be guided by the following standards and considerations:

(a.)The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;

- (b.)The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
- (c.)The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;
- (d.)Whether the relative cost of the method of Restoration to the Permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the exaction, disturbance or damage to the right-of-way; and
- (e.)The likelihood that the particular method of Restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Subd. 4. Duty to Correct Defects.

The Permittee shall correct defects in Patching, or Restoration performed by Permittee or its agents. Upon notification from the City, Permittee shall correct all Restoration work to the extent necessary, using the method required by the City. Unless otherwise agreed to by the Director, said work shall be commenced within two days of receipt of the notice from the City and shall be completed within 14 days of commencement of work, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal.

Subd. 5. Failure to Restore.

If the Permittee fails to Restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all Restoration required by the City, the City shall notify the Permittee in writing of the specific alleged failure or failures and shall allow the Permittee five days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the Director. In the event the Permittee fails to cure, the City may at its option perform the necessary work and Permittee shall pay to the City, within 30 days of billing, the cost of restoring the right-of-way. If Permittee fails to pay as required, the City, in addition to other remedies provided by law, may exercise its rights under the Construction Performance Bond.

810.14 Joint and Individual Applications.

Subd. 1. Joint Trenching.

Director may require Registrants to jointly apply for permits to Excavate or Obstruct the right-of-way at the same place and time.

Subd. 2. Fees.

The Registrant who applies for a joint Utility Permit shall pay the required permit fee.

810.15. 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 (a) make application for a permit extension and pay any additional fees required thereby, and (b) 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. Except in the case of verbal extensions, 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.

810.16 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 but not limited to Minnesota Statutes, Section 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, or 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 a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with, unless otherwise approved by the Director. 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.

Subd. 4. Traffic Control.

A Permittee shall implement traffic control measures in the area of the work and shall 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.

810.17. Denial of Permit.

The City may deny a permit for failure to meet the requirements and conditions of this Section or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use or for the following specific violations.

(a.) Failure to register pursuant to Section 810.06;

(b.) A proposed excavation within a street or sidewalk surface that has been constructed or reconstructed within the preceding seven years, unless the Director determines that no other locations are feasible or when necessitated by Emergency;

- (c.)The Applicant is subject to revocation of a prior Permit issued pursuant to this Section;
- (d.)The proposed schedule for the work would conflict or interfere with and exhibition, celebration, festival or any other similar event;
- (e.)The right-of-way would become unduly congested due to the proposed Facilities and Equipment when combined with other uses in the right-of-way as provided in Section 810.25, subd. 3;
- (f.) Businesses or residences in the vicinity will be unreasonably disrupted;
- (g.)The Applicant failed to meet a reasonable schedule to participate in a mandated joint Trench operation with other applicants, and the additional work will unreasonably disrupt the restored right-of-way, businesses or residences; or
- (h.)The proposed schedule conflicts with scheduled reconstruction of the right-of-way.

810.18. Installation Requirements.

The excavation, backfilling, Patching and Restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100, 7819.5000 and other applicable local requirements, insofar as they are not inconsistent with the 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 810.23, subd. 2.

810.19 Inspection.

Subd. 1. Site Inspection.

Permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd. 2. 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 to correct any work that does not conform to the terms of the Permit or other applicable standards, conditions, or code. If the work failure is a “substantial breach” within the meaning of Minn. Stat. § 237.163 subd. 4(c), the order shall state that failure to correct the violation will be cause for revocation of the Permit after a specified period determined by the Director. The Permittee shall present proof to the Director that the violation has been corrected within the time period set forth by the Director in the order. Such proof shall be provided no later than the next business day following the day of completion. If such proof has not been presented within the required time, the Director may revoke the Permit pursuant to Section 810.22.

Subd. 3. Standards During Construction or Installation.

The Permit holder shall comply with the following standards when engaging in the work:

- (a.) Observe and comply with all laws, rules and regulations of the State;
- (b.) Conduct the operation and perform the work in a manner as to ensure the least obstruction and interference to traffic;
- (c.) Take adequate precautions to ensure the safety of the general public and those who require access to abutting property;
- (d.) If required by the Director, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to such adjoining properties;
- (e.) In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford restricted use of the area and comply with MUTCD traffic safety signing requirements;
- (f.) Exercise precaution at all times for the protection of Persons, including employees and property;
- (g.) Protect and identify excavations and work operations with barricade flags, and if required, by flagmen in the daytime, and by warning lights at night;
- (h.) Provide proper Trench protection as required by O.S.H.A when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation;

- (i.) Protect the root growth of trees and shrubbery;
- (j.) Installation of pipe (utility conductors) under concrete, or bituminous pavements shall be done by jacking, auguring or tunneling as directed by the Director unless otherwise authorized;
- (k.) All backfilling must be placed in six-inch layers at optimum moisture and compacted with the objective of attaining 100 percent of standard proctor density. Compaction shall be accomplished with hand, pneumatic or vibrating compacters as appropriate; and
- (l.) No metal-tracked or other lugged Equipment is allowed to be driven on the Public Right-of-Way.

810.20 Work Done Without a Permit.

Subd. 1. Emergency Situations.

Each Registrant shall immediately notify the Director of any event regarding its Facilities that it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to the Emergency. Excavators' notification to Gopher State One Call regarding an Emergency situation does not fulfill this requirement. 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 City becomes aware of an Emergency regarding a Registrant's Facilities, the City will attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary to respond to the Emergency, the cost of which shall be borne by the Registrant whose Facilities occasioned the Emergency.

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 City code, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter.

810.21 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 City by Supplementary Application of the accurate information as soon as this information is known.

810.22 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:

- (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 a written notice issued pursuant to Section 810.13 subd. 5.

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 a time established by the Director following Permittee's receipt of 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.

Subd. 4. 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.

810.23 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 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, owed, 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, 2007, 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 of performance 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 for future permits to the offending Permittee or its subcontractors.

810.24 Undergrounding.

Subd. 1. Purpose.

The purpose of this section 810.24 is to promote the health, safety and general welfare of the public and is intended to foster (a) safe travel over the right-of-way, (b) non-travel related safety around homes and buildings where overhead feeds are connected and (c) orderly development in the City. Location and relocation, installation and reinstallation of Facilities in the right-of-way or in or on other public ground must be made in accordance with this section 810.24 and 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, 301B.01, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, U.S.C. section 253.

Subd. 2. Undergrounding of Facilities.

Facilities newly installed, constructed or otherwise placed in the Public Right-of-Way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. These requirements shall apply equally outside of the corporate limits of the City coincident with City jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

Subd. 3. Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities.

If the City finds that one or more of the purposes set forth in Section 810.24 subd. 1 would be promoted, the City may require a permanent replacement, relocation or reconstruction of a Facility to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this subdivision, reconstruction means any substantial repair of or any improvement to existing Facilities. Undergrounding may be 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 (a) the present or future use by the City or other local government unit of the right-of-way or other public ground for a public project, (b) the public health or safety, or (c) the safety and convenience of travel over the right-of-way. Subject to Subdivision 4 below, all relocations from previously placed underground Facilities shall be to another underground location.

Subd. 4. Exceptions to Undergrounding.

The following exceptions to the strict application of this Subdivision shall be allowed upon the conditions stated:

- a) Technical/Economic Feasibility; Promotion of Policy. Above-ground installation, construction, or placement of Facilities shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:
 - 1) Underground placement would place an undue financial burden upon the landowner, ratepayers, or Right-of-Way User or would deprive the landowner of the preservation and enjoyment of substantial property rights;
 - 2) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground Facilities placement; or
 - 3) Failure to promote the purposes of undergrounding. The Right-of-Way User clearly and convincingly demonstrates that none of the purposes under Section 810.24, Subd. 1 would be advanced by underground placement of Facilities on the project in question, or the City determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.
- b) Temporary Service. Above-ground installation, construction, or placement of temporary service lines shall only be allowed:
 - 1) During new construction of any project for a period not to exceed three months;
 - 2) During an Emergency in order to safeguard lives or property within the City; or
 - 3) For a period of not more than seven months when soil conditions make excavation impractical.

Subd. 5. Developer Responsibility.

All owners, platters, or developers are responsible for complying with the requirements of this Subdivision, and prior to final approval of any plat or development plan, shall submit to the Director written instruments from the appropriate Right-of-Way Users showing that all necessary arrangements with said users for installation of such Facilities have been made.

810.25 Location and Relocation of Facilities.

Subd. 1. Rule.

Placement, location, and relocation of Facilities must comply with the Act, with other applicable rights of the City under its police power, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

- (a.) *Relocation Notification Procedure:* The Director shall notify the utility owner at least three months in advance of the need to relocate existing Facilities so the owner can determine if relocation or replacement is required and plan any required work. The City should provide one notification, provide the date work will start on the City's project, and if different, provide the date by which the relocation must be completed. To the extent technically feasible and limited by seasonal constraints, all utilities shall be relocated within one month or in a time frame determined by the Director. The Director may allow a different schedule if it does not interfere with the City's project. The utility owner shall diligently work to relocate the Facilities within the above schedule.
- (b.) *Delay to City Project:* If the owner fails to meet the relocation schedule due to circumstances within the utility's control, the City may charge the utility owner for all costs incurred by the City because the relocation is not completed in the scheduled timeframe.
- (c.) *Joint Trenching:* All Facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground Facilities. When technically appropriate and no safety hazards are created, all utilities shall be installed, constructed or placed within the same Trench. Notwithstanding the foregoing, gas and electric lines shall be placed in conformance with Minnesota Rules pt. 7819.5100, subd. 2, governing safety standards.

Subd. 2. 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 be located within the right-of-way. All utility, 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. A typical crossing section of the location for utilities may be on file at the Director's office. This section is not intended to establish "High Density Corridors".

Any Registrant who has Facilities in the right-of-way in a position at variance with the corridors established by the City may remain at that location until the City requires Facilities relocation to the corridor pursuant to relocation authority granted under Minnesota Rules part 7819.3100 or other applicable law.

Subd. 3. Limitation of Space.

To protect the public 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.

810.26 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 be responsible to mark the horizontal placement of all said Facilities, to the extent technically feasible. To the extent its records contain such information, each Registrant shall provide information regarding the approximate vertical location of their Facilities, at the time of installation, to excavators upon request. Nothing in this subsection is meant to limit the rights, duties and obligations of the Facility owners or excavators as set forth in Minnesota Statutes, Section 216D.01-.09.

810.27 Interference by Other Facilities.

When the City does work in the right-of-way in its governmental right-of-way management function and finds it necessary to maintain, support, or move a Registrant's Facilities to carry out the work without damaging Registrant's Facilities, the City shall notify the Local Representative as early as is reasonably possible. The City's costs associated therewith will be billed to that Registrant and must be paid within 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.

810.28 Right-of-Way Vacation – Reservation of Right.

Subd. 1 Reservation of Right.

If the City vacates a right-of-way which contains the Equipment of a Registrant, and if the vacation does not require the relocation of Registrant Facilities and Equipment, the City shall reserve, to and for itself and all Registrants having Facilities and Equipment in the vacated right-of-way, the right to install, maintain and operate any Facilities and Equipment in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.

Subd. 2. Relocation of Equipment.

If the vacation requires the relocation of Registrant Facilities and Equipment; and (a) if the vacation proceedings are initiated by the Registrant, the Registrant must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the Registrant must pay the relocation costs unless otherwise agreed to by the City and the Registrant; or (c) if the vacation proceedings are initiated by a Person or Persons other than the Registrant or Permit holder, such other Person or Persons must pay the relocation costs.

810.29 Indemnification and Liability.

By registering with the City, or by accepting a Permit under this Section, a Registrant or Permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

810.30 Abandoned Facilities.

Subd. 1. Discontinued Operations.

A Registrant who has decided to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the Registrant's obligations for its Facilities in the right-of-way under this Section have been lawfully assumed by another Registrant.

Subd. 2. Removal.

Any Registrant who has Abandoned Facilities in any right-of-way shall remove them from that right-of-way pursuant to Minnesota Rule Part 7819.3300, unless the requirement is waived by the Director. A Facility is not abandoned unless declared so by the operator. Any Registrant that has

Abandoned Facilities that have not been removed shall provide the City with maps detailing the type, size, and depth of the Abandoned Facility.

810.31 Appeal.

A Right-of-Way User that: (a) has been denied registration; (b) has been denied a Permit; (c) has had a Permit revoked; (d) believes that the fees imposed are not in conformity with Minnesota Statutes Section 237.163, Subd. 6, or (e) disputes a determination of the Director regarding Section 1.23 subd. 2 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City council. The City council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

810.32 Reservation of Regulatory and Police Powers.

A Permittee's or Registrant's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

810.33 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Section is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Section or any portions of this Section is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days' written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this Section precludes the City from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.