

## CHAPTER 25. PUBLIC RIGHT-OF-WAY MANAGEMENT

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### 25. PUBLIC RIGHT-OF-WAY MANAGEMENT

25.01. Findings, Purpose and Intent. Subdivision 1. The City strives to keep its public rights-of-way in a state of good repair and free from unnecessary encumbrances in order to provide for and protect the health, safety and welfare of its citizens, and to insure the integrity of its streets and the appropriate use of the public rights-of-way. Accordingly, the City hereby enacts this chapter relating to public right-of-way permits and administration. This chapter 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. This chapter is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons using, excavating, and obstructing the rights-of-way will bear financial responsibility for their work and will be required to maintain, support, protect or move their facilities. For purposes of this chapter the term "facilities" includes, but is not limited to, private utilities, services, equipment, building improvements, landscaping, signage or other similar obstructions.

Subd. 2. This chapter shall be interpreted consistently with the 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Section 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights to the City and users of the rights-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 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. This chapter shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. The City's placement of public infrastructure consistent with its adopted standards, policies, and practices for the horizontal and vertical location of its facilities shall be considered compliant with said Minnesota Rules and shall have priority of location over any other utility proposed or existing within the right-of-way or utility easements. The term "public infrastructure shall include, but not be limited to, roadways, sanitary sewer, watermain, and storm sewers.

25.02. 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, as well as Minnesota Statutes Section 237.163, subd. 2(b), the City hereby elects to manage rights-of-way within its jurisdiction.

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25.03 Existing Facilities. Any private facility existing within the right-of-way at that time this ordinance becomes effective shall be allowed to remain in the right-of-way subject to the standards and conditions identified in this chapter, state law, and state rules. In particular Minn. Rules sections 7819.3100 and 7818.3300 shall apply to any existing private utility service in City right-o- way that may be in conflict with the location of a local improvement project.

25.04. Administration. The Director of Public Works is the principal City official responsible for the administration of the rights-of-way, public right-of-way permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

25.09. Permit Requirement. Subdivision 1. Permit Required. Except as otherwise provided in this code, no person may obstruct, excavate in or encroach upon any public right-of-way without first having obtained the appropriate permit from the City to do so. A violation of any provision of this chapter is a misdemeanor.

- A. Excavation Permit. An excavation permit is required by any person wishing to excavate that part of the public right-of-way described in such permit and to hinder free and open passage over the specified portion of the public 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 any person wishing to hinder free and open passage over the specified portion of public right-of-way for a period of 365 days or less by placing equipment described therein on the public right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a party already possesses a valid excavation permit for the same project.
- C. Revocable Permit. A revocable permit is required by any party wishing to hinder free and open passage over the specified portion of public right-of-way for a period of 365 days or more by any equipment, structure, landscape features or other encroachment described therein on the public right-of-way, to the extent and for the duration specified therein.

Subd. 2. Permit Extensions. No permittee may excavate or obstruct the public right-of-way beyond the date specified in the permit unless the Director has received and approved: (A) a supplementary application for another public right-of-way permit before the expiration of the initial permit; or (B) an application for an extension of time not to exceed 48 hours.

Subd. 3. Delay Penalty. In accordance with Minnesota Rule 7819.1000 subp. 3 and Updated 2014

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notwithstanding subd. 2 of this section, the Director may establish and impose a delay penalty for unreasonable delays in public right-of-way excavation, obstruction, patching, or restoration.

25.10. Permit Applications. Application for a permit is made to the City Public Works Department. Public right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the following requirements:

- A. Submission of a completed permit application form including: (1) all required attachments and scaled drawings showing the location and area of the proposed project, and (2) the location of all existing and proposed facilities.
- B. Payment of permit fee.

25.11. Issuance of Permit; Conditions. Subdivision 1. Permit Issuance. The Director of Public Works shall issue an excavation permit or obstruction permit if the Applicant has satisfied the requirements of this chapter. The City Council may approve or deny the application for a revocable permit.

Subd. 2. Conditions. The City may impose reasonable conditions, including requirement of surety, upon the issuance of the permit in order to protect the public health, safety and welfare or when necessary to protect the public right-of-way and its current use including the recovery of any unusual management costs not recovered through the standard permit fee, including the cost of assigning a police officer to provide traffic management or the cost of assigning a field observer.

25.12. Permit Fees. The City Council shall by resolution adopt a fee schedule managed by the Director.

25.13. Permit Compliance. Subdivision 1. Timing. The work to be done under the excavation permit, and the patching and restoration of the public right-of-way as required herein, must be completed within the time period specified in the permit unless an extension is granted by the Director.

Subd. 2. Standards. The Permittee shall perform work according to the standards and with the materials specified by the City or its standards, and shall comply with Minnesota Rule 7819.1100, 7819.5000 and 7819.5100, or this chapter, whichever is more restrictive.

Subd. 3. 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 must correct all necessary restoration work using the method required by the City. This work shall be completed within ten calendar days of receipt of the City's notice, not including days

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during which work cannot be done because of circumstances constituting force majeure or days when the Director determined that work is prohibited as unseasonable or unreasonable under section 25.16.

Subd. 4. Failure to Restore. If the Permittee fails to restore the public right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may perform such work. In that event, the Permittee shall pay to the City, within thirty days of billing, the cost of restoring the public right-of-way. If Permittee fails to pay as required, the City may exercise its rights under any surety provided as a condition of permit issuance.

Subd. 5. Compliance with Other Laws. Obtaining a public right-of-way permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A Permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. §§ 216D.01-09 ("Gopher One Call Excavation Notice System"). 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 public right-of-way pursuant to its permit, regardless of who does the work.

25.17. Denial of Permit. The City may deny a permit application if the City determines: (A) the application fails to meet the requirements and conditions of this chapter; (B) denial is necessary to protect the public's health, safety, and welfare; (C) denial is necessary to protect the public right-of-way and its current use; or (D) the Applicant has failed to comply with any provision of this chapter within the past 12 months.

### 25.18. 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 a reasonable 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

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presented within the required time, the Director may revoke the permit pursuant to section 25.22.

25.20. Work Authorized To Be Done Without a Permit. Subdivision 1. Emergency Situations. Each Permittee/Owner shall immediately notify the Director of any event regarding its facilities which it considers to be an emergency. The Permittee/Owner must take whatever actions are necessary in order to respond to the emergency. Within two business days after the occurrence of the emergency, the Permittee/Owner shall apply for the necessary permits, pay the applicable permit fees 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.

Subd. 2. Non-Emergency Situations. In addition to the criminal penalties for work done without a permit, the Owner of the private facility or improvement shall subsequently obtain a permit and comply with the permit conditions.

25.22. Revocation of Permits. Subdivision 1. The City reserves its right, as provided herein, to revoke any public right-of-way permit, without a fee refund, if the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit are not met. A breach by Permittee shall include, but shall not be limited to, the following:

- A. The violation of any material provision of the public right-of-way permit;
- B. An evasion or attempt to evade any material provision of the public 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 public 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 25.19.

Subd. 2. Written Notice of Breach. If the Directory determines that the Permittee/Owner has committed a breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the Director may issue a stop work or correction order demanding the Permittee/owner to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit or issuance of criminal

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charges. A breach will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Correction Order or Stop Work Order. Following Permittee's receipt of Correction Order or Stop Work Order and within a reasonable time established by the Director, Permittee shall provide the City with a plan, acceptable to the City, to cure the breach. Permittee's failure to submit a timely and acceptable plan, or Permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee's failure to contact the City, Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, may result in probation for up to one full year.

Subd. 4. Cause for Probation. The City may establish a list of permit conditions which, if breached, will be grounds to place the Permittee on probation. The City shall not enforce a probation program unless and until the Director has established such conditions, which may be amended from time to time.

Subd 5. Reimbursement of City costs. If a permit is revoked, the Permittee must 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.

25.24. Location of Facilities, Equipment, or other Improvements. Subdivision 1. Placement, location, and relocation of facilities must comply with this chapter, the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, and City standards whichever is most restrictive.

Subd. 2. Corridors. The City may assign a specific area within the public right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is now, or the City expects will someday be, located within the public right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facility at issue.

Subd. 3. Limitation of Space. To protect the public health, safety and welfare, or when necessary to protect the public 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 public right-of-way. In making such decisions, the City will attempt to the extent possible to accommodate all existing and potential users of the public right-of-way. The City's accommodation will be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the public right-of-way, the time of year with respect to essential utilities, the ability and obligation of Permittee/Owner to protect existing facilities in the public right-of-way, and future City plans for public improvements and development projects which

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have been determined to be in the public interest.

25.25. 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 public right-of-way excavation, each Permittee/Owner who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any Permittee/Owner whose facilities are less than twenty 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.

25.26. Damage to Other Facilities. The provisions of Minnesota Rules 7819.3100 shall apply when the City does work to maintain its existing public facilities/improvements or to install new public facilities/improvements in the public right-of-way and finds it necessary for the Permittee/Owner to maintain, support, protect, or relocate a Permittee/Owner’s facilities, whether the facility has received a permit from the City or not, the City shall notify the local representative as early as is reasonably possible. The Permittee/Owner of the facility shall be responsible to locate, protect, remove, or relocate their facility, as necessary within the timeframe required for the City’s work. If Permittee/Owner fails to locate, protect, remove, or relocate their facility within the time line identified by the City, then the City may take actions to minimize the impact on the Owner’s facility and incur necessary costs for location, protection, removal or relocation of the private facility. The costs associated therewith will be billed to that Permittee/Owner and must be paid within thirty days from the date of invoicing. Each Permittee/Owner shall be responsible for the cost of repairing any facilities in the public right-of-way which it or its facilities damages. Each Permittee/Owner shall be responsible for the cost of repairing any damage to the facilities of another Permittee/Owner which occurs during the City’s response to an Emergency occasioned by that Permittee/Owner’s facilities or the City’s maintenance, repair, replacement or installation of public facilities/improvements.

25.27. Maintenance of Facilities. Permittee/Owner shall properly maintain their facility/improvement to minimize the risk to the public, the public infrastructure/improvements, and for the general benefit of the community. In the event the Permittee/Owner fails to maintain their facility the City may maintain the facility and charge the Permittee/Owner the cost incurred by the City. Permittee/Owner shall pay said charges within 30 days of invoicing.

25.28. Indemnification and Liability. By placing improvements within the right-of-way, a Permittee/Owner, by virtue of a formal permit or not, agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

25.29. Abandoned and Unusable Equipment and Facilities. Subdivision 1. A Permittee/Owner who has discontinued operations in the City continues to have the responsibility for operation and maintenance of said facility whether the facility is in operation

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or not.

Subd. 2. Abandonment. In the event the City finds a facility and has notified the Permittee/Owner pursuant to this ordinance and they fail to respond to said notification, the City will consider the facility abandoned.

Subd 3. Cost for Removal. Any cost incurred by City for removal of a facility shall be an obligation of the Permittee/Owner of said facility. Permittee/Owner shall pay said charges within 30 days of invoicing.

25.30. Nonpayment. In the event the Permittee/Owner fails to provide payment as directed herein the City may take any and all measures afforded to it to recover said costs including, but not limited to:

- A. Implementation of section 85.25;
- B. Withholding future permits; or
- C. Certify the outstanding charges, plus any administrative charges, to Olmsted County for collection with property taxes.

(4006, 3/7/11)