

**ORDINANCE NO. 19-030, FIFTH SERIES
CITY OF NEW ULM, BROWN COUNTY, MINNESOTA**

AN ORDINANCE REVISING SECTION 6.21 OF THE CITY CODE OF THE CITY OF NEW ULM RELATIVE TO RIGHT-OF-WAY MANAGEMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW ULM:

SECTION 1. That Section 6.21 of the City Code of the City of New Ulm is hereby amended to read as follows:

Section 6.21 Right-of-Way Management

Subdivision 1. Findings and Purpose. The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested substantial dollars in public funds to build and maintain improvements within the rights-of-way. The City recognizes that placing other utility equipment in the rights-of-way for the purpose of delivering services to the citizens of the City is a public use of this property for the public good. Although such services are necessary or convenient for the citizens, other persons or entities receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities is in most cases a necessary and proper use of rights-of-way, the City must regulate and manage such uses.

To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets, utilities 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. Although the general population bears the financial burden for the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

The Minnesota Legislature has recognized that it is in the public's interest that the use and regulation of rights-of-way be carried out in a fair, efficient, competitively neutral, and substantially uniform manner while recognizing the regulation must reflect distinct engineering, construction, operation, maintenance, and public and worker safety requirements and standards applicable to various users of rights-of-way. Further, the Legislature has determined that because increasing numbers of persons may seek usage of rights-of-way, municipalities such as the City must be and have been authorized to regulate use of rights-of-way. Consistent with this mandate, the City has endeavored to model its right-of-way regulations consistent with those of models enacted or under consideration by municipalities throughout the State. Further, the City has endeavored to create competitively neutral rights-of-way standards and regulations of general applicability. In response to the foregoing facts, the City hereby enacts this ordinance relating to right-of-way management.

This ordinance imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this ordinance, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this ordinance provides for recovery of the City's costs associated with managing its rights-of-way.

Subdivision 2. Election to Manage the Public Rights-of-Way. In accordance with the authority granted to the City under state and federal statutory, administrative, and common law, the City hereby elects to manage the rights-of-way within its jurisdiction pursuant to this ordinance.

Subdivision 3. Definitions. For purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this subdivision, unless the context clearly indicates that another meaning is intended.

- A. Abandoned Facility.** 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.
- B. City Engineer.** The City Engineer of the City of New Ulm or their designee.
- C. Collocate or Collocation.** To install, mount, maintain, modify, operate, or replace a small wireless facility or other equipment on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the City or other governmental unit.
- D. Degradation.** The accelerated reduction of service life of the right-of-way caused by excavation 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 did not occur.
- E. Degradation Cost.** Money paid to the City to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation or other means of installation.
- F. Emergency.** A condition that 1) poses a clear and immediate danger to life or health, or of a significant loss of property; or 2) requires immediate repair or replacement in order to restore service to a customer.
- G. Equipment.** Any tangible thing or asset used to install, repair or maintain facilities in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.
- H. Excavate.** To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- I. Facility.** Any tangible asset in the public right-of-way required to provide utility or telecommunication service.
- J. Management Cost.** 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 or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the City including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the City, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. § 237.162 or § 237.163; or any ordinance enacted under those sections, or the City fees and costs related to appeals.

- K. Obstruction.** An obstacle, blockage, or an object that impedes or prevents passage, progress, or to navigate around an object within the right-of-way, or otherwise negatively impacting the general public's engagement of the right -of-way.
- L. Permit.** A permit issued pursuant to this section.
- M. Permit Holder.** Any person to whom a permit to excavate or place equipment or facilities in a right-of-way which has been granted by the City under this section.
- N. Registrant.** Any person who has or seeks to have its facilities or equipment located in any right-of-way.
- O. Restore or Restoration.** The process by which the right-of-way and surrounding area, including pavement and foundation, is returned to the condition that meets or exceeds the right-of-way condition before the commencement of the work.
- P. Restoration Cost.** Money paid to the City by a permit holder to cover the cost of restoration.
- Q. Right-of-Way or Public Right-of-Way.** The surface and space above and below a public roadway, highway, street, alley, cartway, bicycle lane, public sidewalk, boulevard or other areas intended for public use in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements owned by the City for City utility purposes.
- R. Service or Utility Service.** Includes: 1) those services provided by a public utility as defined in Minn. Stat. § 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 cable communication systems as defined in Minn. Stat. Ch. 238; 4) natural gas or electric energy or telecommunications services provided by the City; 5) services provided by a cooperative electric association organized under Minn. Stat. Ch. 308A; and 6) water and sewer, including service laterals, steam, cooling, or heating services.
- S. Small Wireless Facility.** A wireless facility that meets both of the following qualifications: 1) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the

antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and 2) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or a micro wireless facility.

- T. Telecommunication Right-of-Way User.** A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this section, a cable communication system defined and regulated under Minn. Stat. Ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Ch. 308A, are not telecommunications right-of-way users for purposes of this section except to the extent such entity is offering wireless service.
- U. Micro Wireless Facility.** A small wireless facility that is no larger than 24-inches long, 15-inches wide, and 12-inches high, and whose exterior antenna, if any, is no longer than 11-inches.
- V. Utility Pole.** A pole that is used in whole or in part to facilitate telecommunications or electric service.
- W. Wireless Facility.** Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.
- X. Wireless Service.** Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.
- Y. Wireless Support Structure.** A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the City.
- Z. Wireline Backhaul Facility.** A facility used to transport communications data by wire from a wireless facility to a communications network.

Subdivision 4. Fees. Permit fees shall be assessed for work governed by this ordinance in accordance with a resolution of the City Council.

Subdivision 5. Registration.

A. Annual Registration Required. No person shall construct, install, repair, remove, relocate, obstruct or perform any work within any right-of-way without first being registered pursuant to this Subdivision. Such registration shall be made on an application form provided by the City and shall be accompanied by the registration fee provided by City Council resolution. A service or utility service operating under a franchise with the City shall register pursuant to this Subdivision but need not provide the registration information required by Subdivision 5.B below if such information has been submitted pursuant to the franchise agreement. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from payment of a registration fee but will need to comply with the annual registration requirement.

B. Registration Information. The registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:

1. Registrant's name, address, telephone number and Gopher One- Call registration certificate number if required by State law.
2. Name, address and telephone number of the person responsible for fulfilling the obligations of the registrant.
3. A Certificate of Insurance from a company licensed to do business in the State of Minnesota providing coverage in the following amounts.
 - a. GENERAL LIABILITY: Public Liability, including premises, products and complete operations. Bodily Injury Liability: \$1,000,000 each person \$3,000,000 each occurrence. Property Damage Liability: \$3,000,000 each occurrence. Bodily Injury and Property and Damage Combined: \$3,000,000 single limit.
 - b. COMPREHENSIVE: Automobile Liability Insurance, including owned, non- owned and hired vehicles. Bodily Injury Liability: \$1,000,000 each person \$3,000,000 each occurrence. Property Damage Liability: \$3,000,000 each occurrence. In lieu of a) & b) Bodily Injury and Property Damage Combined: \$3,000,000 single limit.

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: 1) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and 2) placement and use of equipment or facilities in the right-of-way by the registrant its officers, agents, employees and permit holder, including but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property. Such certificate shall also indicate the registrant's insurance is the primary coverage, shall name the City as an

additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages. Such certificate shall require that the City be notified 30 days prior to cancellation or nonrenewal of the policy. Insurance must run concurrently throughout the warranty period for the work performed.

4. 24 hour emergency number.
5. An acknowledgment by the registrant of the indemnification pursuant to Subdivision 22 of this ordinance.
6. Such other information the City may require.

C. Exceptions. The following are not subject to the requirements of this Subdivision.

1. The New Ulm Public Utilities Commission.
2. Persons performing work on behalf of the City.
3. Persons planting or maintaining boulevard plantings or gardens.
4. Persons engaged in snow removal activities.
5. Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this Subdivision.
6. Persons performing concrete sidewalk and/or driveway construction/reconstruction activities.
7. Other uses of the rights-of-way as authorized under Section 6.30 of the New Ulm City Code.

D. Term. Registrations issued pursuant to this section shall expire on December 31 of each calendar year.

Subdivision 6. Permit Required, Bond; Exceptions. No person shall obstruct, excavate, dig, tunnel, trench, or install any facilities, equipment or improvements above, on, or beneath the surface of any right-of-way in the City or any property owned by the City without first obtaining a permit pursuant to this subdivision.

A. Application. An application for a permit shall be made on forms provided by the City and shall be accompanied by the fees as established by City Council resolution. If the work is to be performed by an agent, contractor or subcontractor on behalf of a registrant, such application shall be signed by the registrant. The application shall also be accompanied by the following:

1. Scaled drawings showing the location of all facilities and improvements proposed by the applicant.
2. A description of the methods that will be used for installation.
3. A proposed schedule for all work.
4. The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work.
5. A traffic control plan that complies with The Minnesota Manual of Uniform Traffic Control Devices (MN MUTCD) traffic safety signing requirements.
6. The location of any public rights-of-way, streets, sidewalks, boulevards, alleys or public utilities that will be disrupted by the work.

7. A description of methods for restoring any public improvements disrupted by the work.
 8. Permits will not be issued until all requirements of this subdivision have been received including original signature, proof of insurance, and surety bond.
 9. Any other information reasonably required by the City Engineer.
- B. Security.** For companies not operating under a franchise with the City, a surety bond, letter of credit or cash deposit in the amount determined by the City Engineer 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 6(B) shall be conditioned that the holder will perform the work in accordance with this subdivision 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 against any and all claims, judgment or other costs arising from any excavation and other work covered by the permit or for which the City, the City Council or any City officer may be liable by reason of any accident or injury to persons or property through the fault of the permit holder, either in improperly guarding the excavation or for any other injury resulting from the negligence of the permit holder. The bond, 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, except for permits allowing excavations within public streets and rights-of-way, when such bond, letter of credit or cash deposit shall be held for a period of 24 months to guaranty the adequacy of all restoration work.
- C. Permit Conditions and Issuance.** The City Engineer shall grant a permit upon finding the work will comply with applicable subdivisions of this ordinance. The permit shall be kept on the site of the work while it is in progress, in the custody of the individual in charge of the work. The permit shall be exhibited upon request made by any City official or police officer. The City Engineer, or designee may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public. No permit shall be issued to anyone who has failed to register in accordance with Subdivision 5 of this ordinance.
- D.** A permit for any facility to be located in the right-of way will be issued only if the City Engineer finds the following:
1. The equipment will not disrupt traffic or pedestrian circulation;
 2. The equipment will not create a safety hazard;
 3. The location of the equipment minimizes impacts on adjacent properties;
 4. The equipment will not adversely impact the health, safety or welfare of the community; and
 5. The equipment will not interfere with public safety communications.

- E. Exceptions.** No permit shall be required for the following:
1. Landscaping work permitted by the City.
 2. Snow removal activities.
 3. Other uses of the rights-of-way as authorized under Section 6.30 of the New Ulm City Code.
- F. New Ulm Public Utilities Exceptions.** The New Ulm Public Utilities Commission shall abide by all permit requirements of this subdivision except for the security payment and permit fee payment requirements.
- G. Sidewalk and Driveway Exceptions.** Persons performing concrete sidewalk and/or driveway construction/reconstruction shall abide by all permit requirements of this section except for the security payment and permit fee payment.

Subdivision 7. Diligence in Performing Work. Work shall progress in an expeditious manner as reasonably permitted by weather conditions until completion in order to avoid unnecessary inconvenience to the public. In the event that the work is not performed in accordance with applicable regulations pertaining to excavations and utility connections, or the work is not done in an expeditious manner, or shall cease or be abandoned without due cause, the City may, after 48 hour notice to the permit holder, perform any emergency work as necessary, or otherwise make the work area safe to the general public. The entire cost of such work shall be paid by the permit holder upon demand made by the City. The financial guarantees made per Subdivision 6(B) of this ordinance may be used by the City to reimburse itself for the City's incurred costs including its private engineering consulting fees and attorney fees to complete the work under this section.

Subdivision 8. Standards During Construction or Installation. The permit holder shall comply with the following standards when engaging in the work.

- A.** Take such precautions as are necessary to avoid creating unsanitary conditions. Observe and comply with all applicable laws, rules and regulations.
- B.** Conduct the operations 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 City Engineer, 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 it restricted use of the area and comply with MN 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 or conduit under Portland Cement Concrete, asphalt concrete, or other high-type bituminous pavements shall be done by jacking, auguring or tunneling as directed by the City Engineer unless otherwise authorized. High Density Polyethylene (HDPE) sleeving shall be an acceptable casing or sleeving material for telecommunications installations.
- K.** When removing Portland Cement Concrete, asphalt concrete or high-type built-up bituminous surfacing, the pavement shall be removed on each side of the trench or excavation a distance of one (1) foot beyond the trench width and length, or to adjacent joint line as directed by a City representative in order to provide a shoulder and solid foundation for the surface restoration.
- L.** All right-of-way surface cuts shall have a straight edge or neat appearing opening that may require a full depth saw cut or otherwise approved method directed by the City.
- M.** Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be shored and braced depending upon location and soil stability, and as directed by the City.
- N.** Excavations, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage.
- O.** All backfilling must be placed in six (6) inch layers at optimum moisture and compacted with the objective of attaining 100% modified proctor density. Compaction shall be accomplished with pneumatic or vibrating compactors as appropriate.
- P.** Backfill material shall be select grading material or material specified by the City Engineer. Backfilling with the material from the excavation may be permitted provided such material is granular in nature and acceptable to the City Engineer.
- Q.** Compacted backfill shall be brought to subgrade elevation and shaped to match pre-existing profile of the road. Backfill procedures shall provide for no settlement. Settlement that occurs within a two-year warranty period shall be repaired in a timely manner. The permit holder shall be notified by the City within 15 calendar days to have necessary repairs performed to correct the unsatisfactory condition. If permit holder cannot abate the repairs within the specified time period, an approved Plan for Compliance must be filed with the City. If remedial action is not taken, the City will correct the condition and charge all costs incurred therein against the applicant.
- R.** Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.

- S. Upon completion, an inspection of the job site shall be made, and the permit holder shall be responsible for any damages caused by equipment within the general area of work.
- T. Dirt or debris must be periodically removed during construction, and upon completion of the project within 24 hours.
- U. Equipment placed in the right of way shall meet the following standards:
 - 1. Be set back a minimum of ten (10) feet from the back of curb;
 - 2. Be separated from a sidewalk by a minimum of two (2) feet;
 - 3. Shall not be placed within a triangle formed by the two side lines of the two intersecting streets at the face of the curb and a third line crossing the first two at points forth (40) feet from their intersection;
 - 4. Vegetative or other screening compatible with the surrounding area shall be provided around the equipment if deemed necessary by the City Engineer.
- V. Other reasonable standards and requirements of the City Engineer.

Subdivision 9. Standards for Small Wireless Facilities.

A. Purpose and Findings. The City desires high quality wireless services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that small wireless facilities can create. These negative impacts include, but are not limited to, interference with right-of-way user sight lines, impacts to right-of-way user circulation, incompatible aesthetics with the surrounding area, fall zone risk, clear zone risk, creating navigation obstacles, interference with future travel way expansion plans, interference with the delivery of other utility services, interference with storm water management facilities, and increased noise pollution.

Due to the many services that must be delivered within its limited area, the City also strives to avoid unnecessary encumbrances within the public right-of-way. The purpose of this Subdivision is to regulate wireless telecommunication facilities within the public right-of-way in a manner that balances the desire for service with aesthetic, public safety and right-of-way flexibility concerns.

Public rights-of-way are appropriate locations for wireless telecommunication facilities that present minimal impacts (i.e. small pole attachments that do not require new poles, do not require pole extensions, and do not have associated ground mounted equipment). Wireless telecommunication facilities that require greater heights than can be afforded by existing poles in the public right-of-way and that require ground mounted equipment are more appropriately sited outside the public right-of-way.

B. Applicability.

- 1. This ordinance applies to the construction, modification, replacement, removal and operation of small wireless facilities installed in the public right-of-way.
- 2. This ordinance does not apply to video service systems, wireline services, or wireless facilities that are not small wireless facilities.

3. All references to small wireless facilities in this ordinance shall refer only to small wireless facilities in the right-of-way and not small wireless facilities located anywhere outside of the right-of-way.
4. No person shall install, construct, modify, replace, or otherwise place any small wireless facility within the public right-of-way except pursuant to the provisions of this ordinance.
5. Microwave, macro towers, and other wireless backhaul facilities are not permitted within the right-of-way.

C. Administration. The City Engineer is the principal City official responsible for the administration of the rights-of-way and the small wireless facility permits.

D. Agreements.

1. Any person desiring to place a new wireless support structure in the right-of-way or collocate small wireless facilities on existing wireless support structures in the right-of-way shall first obtain a right-of-way permit from the City and must register as defined in Subdivision 5 of this ordinance.
2. Any person desiring to collocate small wireless facilities on existing wireless support structures owned or controlled by the City shall first enter into a standard small wireless facility collocation agreement.
3. No person shall install or place a small wireless facility in the public right-of-way without first having obtained a small wireless facility permit.

E. Locations.

1. The City will consider impacts to the public health, safety, and welfare when reviewing a small wireless permit application and requests to enter into a small wireless facility collocation agreement. The public health, safety, and welfare can be best accommodated by locating small wireless facilities in the following order, which affords the greatest protection to the public:
 - a. Locate outside of the right-of-way.
 - b. Locate in an alley right-of-way, if applicable.
 - c. Collocate on existing wireless support structures within the right-of-way.
 - d. Locate in the right-of-way on or adjacent to major arterials, minor arterials or collector streets, as shown in the most current version of the City's Comprehensive Plan.
 - e. Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure of the same height.
 - f. Locate on a new wireless support structure within the right-of-way whose height is similar to nearby structures.
 - g. Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure whose height is less than or equal to 50 feet.
 - h. Locate on a new wireless support structure within the right-of-way whose height is less than or equal to 50 feet.

2. The City will also consider factors such as aesthetic compatibility of the small wireless facility with surrounding structures, ability to eliminate underground, or screen ground-mounted equipment, dangers within the small wireless facility fall zone, distance of the small wireless facility from roads, sidewalks, trails and bicycle lanes, and future roadway, pedestrian, bicycle, water, wastewater, and stormwater improvement plans for the site before issuing small wireless facility permit or entering into a standard small wireless facility collocation agreement.

F. Permit Application.

1. General application requirements. A written application for a small wireless facility permit shall be submitted to the City Engineer on a form provided by the City. A permit application will be considered complete only upon compliance with the following provisions:

- a. 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, and including the following information:

- 1) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

- b. Payment of fees and other charges:

- 1) Permit fees, and other management costs.
- 2) Any disputed loss, damage, or expense suffered by the City due to applicant's prior excavation or obstructions of the rights-of-way or any emergency actions taken by the City.
- 3) Franchise fees, or other charges, if applicable.
- 4) Inspection fees, if applicable, and if not included in the permit fee.
- 5) In addition to the permit fees, the City reserves the right to charge telecommunication providers for their use of the public right-of-way to the extent that such charges are allowed under state law. Telecommunication providers shall be responsible for payment of property taxes attributable to their equipment in the public right-of-way.
- 6) Standard collocation agreement, if applicable.

- G. Special Application Requirements.** A conditional use permit is required to install a small wireless facility in a right-of-way: 1) that abuts or is within 100' of a local heritage preservation landmark or district, or property on the National Register of Historic Places; or 2) that abuts a property zoned R-1 (Single Family Residential District) or R-2 (Single and Two Family Residential District).

H. Exceptions to Permitting. Unless the work requires the closing of sidewalks or vehicle lanes in the public right-of-way, an application for a permit is not needed for:

1. Routine maintenance of a small wireless facility or support structures for a small wireless facility;
2. The replacement of one small wireless facility with another small wireless facility of substantially similar or smaller size;
3. The installation, placement, operation or maintenance of a micro wireless facility that is strung on a cable between two existing utility poles in compliance with the National Electric Safety Code; or
4. Non-substantial modifications

A wireless provider shall give notice to the City of an activity described in Subdivision 9.H at least five (5) business days prior to conducting the activity.

I. Consolidated Application.

1. A small wireless facility permit applicant may file a consolidated small wireless facility permit application to collocate up to 15 small wireless facilities provided that all the small wireless facilities in the application:
 - a. are located within a two-mile radius;
 - b. consist of substantially similar equipment; and
 - c. are to be placed on similar types of wireless support structures.
2. All consolidated small wireless facility permit applications shall acknowledge that the City may approve a permit for some small wireless facilities and deny a permit for others, but the City may not use denial of one or more permits as a basis to deny all the small wireless facilities in the application.
3. For small wireless facility permit applications, an applicant need not provide information previously provided in a different application to the City for a small wireless facility permit if the information has not changed and the applicant shall provide a specific reference to the previous submittal.

J. Permission from Owner. If the applicant seeks to collocate a small wireless facility on an existing wireless support structure, the applicant shall, at the time of the application, provide the City with proof that it has obtained the necessary authority from the owner of the wireless support structure to collocate the small wireless facility on the structure.

K. Issuance of Permit and Conditions.

1. The City Engineer shall issue the small wireless facility permit upon the City Engineer's determination that the applicant has satisfied the requirements in this ordinance or shall provide written reasons for the denial if the City Engineer believes the requirements have not been satisfied within 90 days of receiving a completed application or any applicable extension of the 90-day deadline. If the City receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the City may extend in writing the 90-day

deadline imposed in state law by an additional 30 days. The small wireless facility permit, and any associated building permit application, shall be approved if the City fails to approve or deny the application within the review periods established in this ordinance.

2. Conditions.

- a. 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.
- b. In addition, a permit holder shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. § 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minnesota Rules, Chapter 7560.
- c. The erection or installation of a wireless support structure, or the collocation of a small wireless facility, shall be subject to the following conditions:
 - 1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
 - 2) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City Engineer's written authorization, and further provided that an applicant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height, subject to such conditions or requirements as may be imposed in the applicable permit.
 - 3) No wireless facility may extend more than 10 feet above its wireless support structure.
 - 4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such support structures and any existing wireless support structure or other facilities in and around the right-of-way.
 - 5) Where an applicant proposes to replace a City-owned wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
 - 6) The applicant shall submit to the City a determination by a third-party Licensed Engineer that the wireless facility can safely be supported by the wireless support structure in which installation is proposed. All fees associated with the determination shall be paid for by the applicant.

3. **Small Wireless Facility Agreement.** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City or New Ulm Public Utilities Commission, or any other City asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the City or New Ulm Public Utilities Commission. The standard collocation agreement may require payment of the following:
 - a. Rental fees as adopted in the City Fee Schedule, or New Ulm Public Utilities Schedule of Fees and Charges.
 - b. Maintenance fees associated with the collocation as adopted in the City Fee Schedule, or New Ulm Public Utilities Schedule of Fees and Charges.
 - c. Payment of monthly electrical service costs as follows: 1) \$73 per radio node less than or equal to 100 maximum watts; 2) \$182 per radio node over 100 maximum watts; or 3) the actual costs of electricity, if the actual cost exceeds the foregoing.
 4. The City will not impose a small wireless facility permit fee for any of the following activities:
 - a. routine maintenance of a small wireless facility;
 - b. replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or
 - c. installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.
 5. **Non-Refundable.** Permit fees that were paid for a permit that the City has revoked for a breach as stated in Subdivision 15 are not refundable.
- L. Permit Duration.** For a small wireless facility permit, the term of the permit is equal to the length of time that the small wireless facility is in use, unless the permit is revoked under Subdivision 15, Revocation of Permit.
- M. Supplementary Notification.** If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permit holder shall notify the City of the accurate information as soon as this information is known.
- N. Removal of Small Wireless Facilities.**
1. Abandoned System: In the event that: 1) the use of any portion of a small wireless facility is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of the wireless provider; or 2) any small wireless facility has been installed in the rights-of-way without complying with the requirements of this ordinance; a wireless provider shall be deemed to have abandoned such small wireless facility.

2. **Removal/Abandoned Facility:** The City, upon such terms as it may impose, may give a wireless provider written permission to abandon, without removing, any small wireless facility, or portion thereof, directly constructed, operated or maintained. Unless such permission is granted or unless otherwise provided in this ordinance, a wireless provider shall remove within a reasonable time the abandoned small wireless facility and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed and in accordance with the adopted engineering standards, so as not to impair their usefulness. In removing its facilities and equipment, a wireless provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any pole or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this ordinance and any security fund provided shall continue in full force and effect during the period of removal and until full compliance by a wireless provider with the terms and conditions of this section.
3. **Transfer of Abandoned Facility to City:** Upon abandonment of any small wireless facility or wireless support structure in place, a wireless provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of such poles or equipment allowed to remain within the right-of-way.
4. **Removal of Above-Ground System:** At the expiration of the term for which an agreement is made or upon its revocation or earlier expiration, in any such case without renewal, extension or transfer, the City shall have the right to require a provider to remove, at its expense, all above-ground portions of small wireless facilities within a reasonable period of time, which shall not be less than one hundred eighty (180) days.
5. **Leaving Underground System:** Upon written approval by City, a wireless provider may abandon underground portions of a small wireless facility in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator or other person.
6. If a wireless provider defaults under any provision of this ordinance and such default is not cured within 30 days following notice by City to facility owner of its default, City shall maintain all its rights and remedies, at law and in equity, including the ability to charge fines, recover fees and costs. In the alternative, the City may remove the facilities and associated equipment and charge the reasonable, documented, actual cost to the facility owner.

O. Design/Aesthetic Standards Applicable to All Small Wireless Facilities.

1. **Integrated Design Consideration:** Small wireless facilities, including equipment associated with the small wireless facility, shall be integrated into the stand-alone pole, utility pole or pole where possible and generally shall be installed in a manner minimizing the visual impact. Whether the small wireless facility is collocated or is placed on its own pole:
 - a. Small wireless facilities should not be readily noticed;
 - b. All equipment, including electric meters, should be located on or within the pole unless prohibited by the owner of the pole, in which case an alternative power meter box must be approved by the City Engineer;
 - c. A small wireless facility and associated equipment located on the exterior of a pole shall be enclosed in a shroud or enclosure painted to match the existing pole color;
 - 1) All small wireless facilities shall, to the extent possible, use design techniques including, but not limited to, the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the small wireless facilities to the surrounding natural setting and built environment. Design, materials and colors of small wireless facilities shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation located in the right-of-way and on adjacent parcels.
 - 2) Should the City Engineer determine that such design meets the intent of this ordinance and the community is better served thereby, the design shall include the use of camouflage measures such as man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and conceals the presence of antennas or poles so as to make them architecturally compatible with the surrounding area pursuant to this policy.
 - 3) All small wireless facilities shall be constructed out of or finished with non-reflective materials (visible exterior surfaces only);
 - 4) For metal poles:
 - a) Cable runs should be inside of the pole to the maximum extent practicable;
 - b) Equipment associated with the small wireless facility should, where practicable, be enclosed at the base of the wireless support structure in a space not more than 24 inches in diameter and not more than five feet eight inches in height; and

- c) Poles used for collocation shall be designed to separate different pole users, such as through dual chamber or tri-chamber design.
- 5) If equipment cannot be installed inside of the pole, pole attachments within 15 feet of ground level shall be positioned on the side of the pole facing away from approaching traffic in the travel lane closest to the pole, provided that if the equipment would extend over a sidewalk or road surface, the equipment shall be positioned in a way to avoid such encroachment;
- 6) Small wireless facility equipment on the outside of a utility pole shall be placed at least 8 feet above the public way, unless otherwise permitted by the City;
- 7) Small wireless facilities shall not be lighted or marked unless required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or other applicable governmental authority;
- 8) Signs located at the small wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by applicable governmental authority. Commercial advertising is strictly prohibited.
- d. Small wireless facilities shall be located such that it in no way impedes, obstructs, or hinders the usual pedestrian or vehicular travel, affect public safety, obstruct the legal access to or use of the public right-of-way, violate applicable law, violate or conflict with public right-of-way design standards, specifications, or historic district requirements, violate any FAA regulation or the Federal Americans with Disabilities Act of 1990, or in any way create a risk to public health, safety, or welfare.

2. Antennae

- a. Each individual antenna shall be located entirely within a shroud enclosure of not more than three (3) cubic feet in volume. All antennas associated with the small wireless facility shall not exceed a combined space of six (6) cubic feet.
- b. The diameter of the antenna or antenna enclosure should generally not exceed the diameter of the top of the wireless support structure pole, and to the maximum extent practical, should appear as a seamless vertical extension of the pole.
- c. In no case shall the maximum diameter of the shroud be wider than one and one half times the diameter of the top of the pole.

- d. Where the maximum shroud diameter exceeds the diameter of the top of the pole, the shroud shall be tapered to meet the top of the pole
- e. Unless technologically infeasible or otherwise inappropriate based on neighborhood context, all antenna shall be mounted to the top of the wireless support structure pole, aligned with the centerline of the structure.
- f. Antennas shall be generally cylindrical in shape.
- g. Antenna shall be completely housed within a cylindrical shroud that is capable of accepting paint to match the wireless support structure.

3. Height Limitations:

- a. The height of a structure used for collocation of a small wireless facility, including the wireless facility, measured at the base of the structure shall not exceed the lesser of:
 - 1) The minimum height needed for the operation of the wireless facility; or
 - 2) For a new or modified utility pole 50 feet above ground level together with the minimum antenna height necessary for one antenna contained within any approved concealment feature.
- b. A utility pole existing on or before May 31, 2017 that is used for the collocation of a small wireless facility may, on only one occasion, be increased by up to ten feet (10') to allow for the attachment of the small wireless antenna together with any approved concealment feature.
- c. All installations shall not violate any height restrictions as determined by the FAA or other airport land use and height restrictions. The applicant shall be solely responsible for all costs incurred for the FAA determination applications and processing.

4. If a ground mounted or buried equipment cabinet is proposed, the cabinet or vault:

- a. May be placed above ground in a boulevard as approved by the City Engineer. The preferred location shall be behind the sidewalk where the right-of-way width allows, or by obtaining a private utility easement. If there is no boulevard, it shall be placed underground.
- b. Shall meet the same separation standards as required for a new utility pole from trees and drive approaches; and
- c. For an above ground cabinet:
 - 1) Shall be secured to a concrete foundation or slab with a breakaway design in the event of collisions; and
 - 2) Shall not exceed three feet in height.
 - 3) Shall not encroach into the sidewalk area reserved for the sidewalk or within two (2) feet of the curb.

P. Design/Aesthetic Standards Applicable to Collocated Small Wireless Facilities. Collocated small wireless facilities shall meet the following design standards:

1. To the maximum extent practicable, all small wireless facilities, associated equipment and cabling shall be completely concealed from view within an enclosure.
2. Where equipment cannot reasonably be incorporated into the base of the pole, it may be installed within:
 - a. An equipment enclosure mounted to the pole; or
 - b. A ground-mounted cabinet physically independent from the pole.
3. Equipment enclosures mounted to a pole:
 - a. Shall not protrude more than eighteen (18) inches beyond the face of the pole to the outermost portion of the enclosure.
 - b. Should be installed as flush to the pole as practical. In no case shall an enclosure be installed more than four inches from the wireless support structure pole.
 - c. Where multiple enclosures are proposed on a wireless support structure pole, the enclosures shall be grouped as closely together as possible on the same side of the pole.
 - d. Small wireless facility equipment enclosures should be the smallest size practicable to house the necessary facilities and equipment.
 - e. Small wireless facility equipment enclosures shall be cylindrical or rectangular in shape, and should generally be no wider than the maximum outside diameter of the pole to which it is attached, to the maximum extent possible.
 - f. The shroud enclosure shall be securely strapped to the wireless support structure pole using stainless steel banding straps. Through-bolting or use of lag bolts on publicly-owned wireless support structures is prohibited.
 - g. The applicant shall execute a standard small wireless facility collocation agreement with the pole owner before any facility is installed.

Q. Design/Aesthetic Standards Applicable to Small Wireless Facilities on New Stand-Alone Poles. If an applicant proposes to install a new stand-alone utility pole in connection with a small wireless facility, the pole and facilities shall meet the following design standards:

1. Design of the pole shall be cylindrical and shall match the aesthetics of existing streetlight poles, streetlights, or other utility poles installed adjacent to the pole.
2. Together with the small wireless facility, components shall be sized to be visually pleasing.
 - a. For a pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole shall be considered;

- b. The equipment associated with the small wireless facility shall be enclosed at the base of the wireless support structure in a space provided that if a separate equipment cabinet or vault not exceeding 28 cubic feet in size may be used if the equipment cannot reasonably be contained in the space allowed;
 - c. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size and shall taper between different pole diameters, with no horizontal or flat spaces greater than 1.5 inches;
 - d. The upper pole shall be scaled to 0.5 to 0.75 the size of the equipment cabinet, with a 10-inch minimum outer diameter at the widest portion of the pole;
 - e. All hardware connections shall be hidden from view;
 - f. No horizontal flat spaces greater than 1.5 inches shall exist on the equipment cabinet to prevent cups, trash, and other objects from being placed on the equipment cabinet; and
 - g. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
 - h. The new pole shall be made to match existing infrastructure within the general area.
3. The new pole:
- a. Shall be placed in alignment with existing trees, utility poles, and streetlights.
 - b. Shall be located at intersecting property lines as much as possible.
 - c. Shall be located a minimum of 15 feet away from trees or outside of the tree drip line, whichever is greater, to prevent disturbance within the critical root zone of any tree.
 - d. Shall be located at least 5 feet away from the widest part of an alley or drive approach, including any flare associated with the approach.
 - e. Shall not be installed between the perpendicular extension of the primary street-facing wall plane of any single or two-family residence and the street.
 - f. When located adjacent to a commercial establishment, such as a shop or restaurant, care should be taken to locate the pole such that it does not negatively impact the business and shall not be located in-front of store front windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building.

R. Design/Aesthetic Standards Applicable to Decorative Poles and Historic Districts. Small wireless facilities located on decorative poles or in a historic district shall, in addition to any other requirements of this policy, meet the following design standards:

1. **Decorative Poles:** If necessary to collocate a small wireless facility, a wireless provider may replace a decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the displaced decorative pole as approved by the City Engineer. A replacement pole does not reasonably conform to the design aesthetic if it extends the current pole height by more than 25%.
2. **Historic Districts:** Within a historic district:
 - a. The City would prefer that small wireless facilities be located in adjoining alleys, if possible.
 - b. The City may require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design or concealment measure, unless the facility is excluded from evaluation for effects on historic properties.
 - c. A design or concealment measure described in Subdivision 9.R. may not:
 - 1) have the effect of prohibiting a provider's technology; or
 - 2) be considered a part of the small wireless facility for purposes of the size parameters in the definition of a small wireless facility.

Subdivision 10. Compatibility Standards.

- A. A facility located in a public right-of-way may be replaced with a facility of similar size, height, shape, color and other associated features.
- B. Replacement of a facility, pole or associated equipment shall follow the standards set forth in this ordinance unless clearly indicated otherwise.
- C. New facilities, including utility poles, within a public street right-of-way shall be made of metal.
- D. New facilities located in non-street public right-of-way locations may match the materials used for facilities located on each side of it. If a facility is not located on one side, materials used on the remaining side shall be used.
- E. The City Engineer is authorized to determine the most appropriate materials and standards to use for new or replacement facilities when the location does not provide the appropriate information.
- F. The City Engineer shall determine the minimum amount of separation required between adjoining facilities in the right-of-way.
- G. A facility placed in an alley cannot obstruct an existing or future driveway location.
- H. The standards provided in Subdivision 9, Item O, P, Q and R apply to all facilities within a street right-of-way and other locations as determined by the City Engineer.

Subdivision 11. Repair and Restoration.

- A. **Schedule.** The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit. If due to extraordinary circumstances beyond the control of the permit holder the work cannot be completed by the date specified in the permits, the permit holder must submit a repair schedule that shall be approved by the City. In

addition to repairing its own work, the permit holder must restore the general area of the work, and the surrounding areas, including any and all sidewalks, curb and gutter, catch basins, manholes, valves, paving and foundations, etc. to the condition that existed before the commencement of the work but only to the extent the permit holder disturbed such surrounding areas.

B. General Standards. The permit holder shall perform repairs and restoration according to the standards and with the materials specified by City Engineer. The City Engineer 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. In exercising this authority, the City Engineer shall be guided by the following standards and considerations:

1. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.
2. The traffic volume carried by the right-of-way, the character of the neighborhood surrounding the right-of-way;
3. The pre-excavation condition of the right-of-way, the remaining life-expectancy of the right-of-way infrastructure affected by the excavation;
4. 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 excavation, disturbance or damage to the right-of-way; and
5. The likelihood that the particular method of restoration would be effective in slowing the life of the service of the right-of-way and infrastructure that would otherwise take place.

C. Inspection.

1. **Notice of Completion.** When the work under any permit hereunder is completed, the permit holder shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.
2. **Site Inspection.** The permit holder shall make the work-site available to City personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. **Authority of City.** a) At the time of inspection, the City 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 City may issue an order to the permit holder for any work that 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 permit holder shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to Subdivision 15, Revocation of Permit.

D. Guarantees. The permit holder shall guarantee its work and shall maintain it for 24 months following the date of completion. During this twenty-four (24) month period it shall, upon notification from the City Engineer, promptly correct all restoration work to the extent necessary, using the method required by the City Engineer.

Subdivision 12. Permit Limitations. Permits issued pursuant to this subdivision are valid only for the area of the right-of-way specified in the application and permits, and only for the dates so specified. No work shall be extended beyond the permitted area or dates without a new permit being procured therefore, provided the City Engineer may extend the completion date of the work in accordance with Subdivision 11(A) of this ordinance.

Subdivision 13. Denial of Permit. The City Engineer may deny a permit due to the following:

- A. Failure to register pursuant to Subdivision 5 of this ordinance.
- B. A proposed excavation within a street or sidewalk surface that has been constructed or reconstructed within the preceding five years unless the City Engineer determines that no other locations are feasible or when necessitated by an 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 an 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 Subdivision 18(C) of this ordinance.
- F. Businesses or residences in the vicinity will be unreasonably disrupted by the work.
- G. The proposed schedule conflicts with scheduled total or partial reconstruction of the right-of-way.
- H. The applicant fails to comply with the requirements of this ordinance.

Subdivision 14. Emergency Work. Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities that it considers being an emergency. Within two (2) business days after the occurrence of the emergency, the owner 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 subdivision for the actions it took in response to the emergency. If the City becomes aware of an emergency regarding facilities, the City will attempt to contact the local representative of each facility owner 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 person whose facilities occasioned the emergency.

Subdivision 15. Revocation of Permits.

- A. **Substantial Breach.** The City Engineer may revoke any 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 condition of the permit which substantial breach shall continue uncured for 10 calendar days after the issuance of a written order by the City Engineer. A substantial breach of a permit holder shall include, but shall not be limited to, the following:
 - 1. The violation of any material provision of the permit;

2. An evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
3. Any material misrepresentation of fact in the application for a permit;
4. The failure to maintain the required bonds and insurance;
5. The failure to complete the work in a timely manner, unless a permit extension is granted by the City; or
6. The failure to correct a condition indicated on an order issued by the City Engineer.

B. Written Notice of Breach. If the City determines that the permit holder 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 permit holder to remedy such violation. The demand shall state that continued violations might be cause for revocation of the permit.

C. Procedural Requirements. If the City decides to revoke the permit, the revocation must be made in writing and must document the basis for the revocation. The City must notify the permit holder in writing within three (3) business days of the decision to revoke a permit. If a permit application is denied, the right-of-way user may cure the deficiencies identified by the City and resubmit its application. If the right-of-way user resubmits the application within 30 days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The City will approve or deny the revised application within 30 days after the revised application is submitted.

D. Reimbursement of City Costs. If a permit is revoked, the permit holder 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.

Subdivision 16. Appeal. Any person aggrieved by: 1) the denial of a permit application, 2) the denial of a registration, 3) or the revocation of a permit may appeal to the City Council by filing a written notice of appeal with the City Finance Director. Said notice must be filed within 20 days of the action causing the appeal. The notice of appeal shall state the relevant facts on which the appellant relies in objecting to the permit denial or revocation. A hearing on the appeal shall be scheduled before the City Council at its next regular scheduled meeting. The appellant shall be given notice of the hearing and shall be given an opportunity to be heard at the hearing. The City Council may render its decision at the initial hearing, or, in its discretion, may request such further information as is necessary to render a decision, in which case it shall set a continued hearing date with notice to the appellant. The permit denial or revocation shall be in effect pending the City Council's decision on the appeal. 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.

Subdivision 17. Mapping. Within 60 days following completion of any work pursuant to a permit, the registrant shall provide the City Engineer accurate maps and drawings

certifying the "as-built" location of all facilities and equipment installed, owned and maintained by the registrant. Such maps and drawings shall indicate both the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the City's electronic mapping system. Failure to provide maps and drawings in accordance with this Subdivision shall be grounds for revoking the permit holder's registration.

Subdivision 18. Location of Facilities and Equipment.

- A. Undergrounding by Right-of-Way Users.** Any new construction and the installation of new equipment and replacement of old equipment of right-of-way users shall be underground or contained within buildings or other structures in conformity with applicable codes.
- B. Corridors.** The City Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment that is or, pursuant to current technology, the City Engineer expects will someday be located within the right-of-way. All permits issued by the City Engineer involving the installation or replacement of equipment shall designate the proper corridor for the equipment at issue.
- C. Limitation of Space.** To protect health and safety, the City Engineer shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the City Engineer 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 equipment 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.

Subdivision 19. Relocation.

- A. Relocation for City Purposes.** A facility owner shall promptly but in no event more than 120 days after the City's request, permanently remove and relocate at no charge to the City, any facilities or equipment if and when made necessary by a change in the grade, alignment or width of any right-of-way, by the construction, maintenance or operation of any City facilities or to protect the public health, safety and welfare. The facility owner shall restore any rights-of-way to the condition it was in prior to removal and relocation.
- B. Undergrounding of Relocated Facilities.** A right-of-way user shall relocate all above ground facilities and equipment to underground locations at its own cost and expense at the City's request when: 1) the City requires the relocation of all facilities and equipment to underground locations, or 2) structures or poles to

which the registrant's facilities or equipment is attached are abandoned or removed by the owner of such structures or poles.

- C. Damage to Other Facilities.** When the City does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect them, the City shall notify the local representative of the facility as early as is possible and develop a plan of action. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.

Subdivision 20. Right-of-Way Vacation. If the City vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules § 7819.3200.

Subdivision 21. Abandoned and Unusable Equipment.

- A. Discontinued Operations.** A registrant who has determined to discontinue its operations in the City must either:

1. Provide information satisfactory to the City Engineer that the registrant's obligations for its equipment in the right-of-way under this section have been lawfully assumed by another registrant; or
2. Submit to the City Engineer an action plan for the removal or abandonment of equipment and facilities. The City Engineer shall require removal of such facilities and equipment if the City Engineer determines such removal is necessary. The City Engineer may require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and equipment.

- B. Abandoned Facilities Equipment.** Facilities and equipment of a registrant located on the surface of or above a right-of-way or on City property which, for one year, remains unused shall be deemed to be abandoned. Such abandoned equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to: 1) abating the nuisance, or 2) requiring removal of the equipment or facilities by the registrant, or the registrant's successor in interest.

- C. Removal of Underground Equipment.** Any registrant who has unusable and abandoned underground facilities or equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, to the extent such facilities or equipment is uncovered by such excavation unless this requirement is waived by the City Engineer.

Subdivision 22. Indemnification and Liability. By applying for and accepting a permit under this section, a permit holder agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rules § 7819.1250.

Subdivision 23. Reservation of Regulatory and Police Powers. A permit holder'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.

Subdivision 24. Severability. If any portion of this section is for any reason held invalid by any court of competent jurisdiction, such portion will be deemed a separate, distinct, and independent provision and such holding will not affect the validity of the remaining portions.

Subdivision 25. Franchise Holders. If there is a conflict in language between the franchise of a person holding a franchise agreement with the City and this section, the terms of the franchise shall prevail.

SECTION II. That this ordinance shall take effect and shall be in force 30 days from and after its adoption, approval, and publication.

Adopted by the City Council of the City of New Ulm this ____ day of _____, 2019.

President of the City Council

Attest:

Finance Director

Approved by the Mayor of the City of New Ulm this ____ day of _____, 2019.

Mayor