CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA  

ORDINANCE NO. 08-185  

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY ADDRESSING SMALL CELL WIRELESS FACILITIES IN THE RIGHT-OF-WAY  

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title IX: General Regulations; Chapter 94: Right-of-Way Management Permits by amending the following:  

GENERAL PROVISIONS  

§ 94.01 FINDINGS AND PURPOSE.  

(A) To provide for the health, safety, and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, a primary cause for the early and excessive deterioration of its rights-of-way is frequent excavation.  

(B) Right-of-way obstruction is a source of frustration for merchants, business owners, and the general population which must avoid these obstructions or change travel or shopping plans because of them and has a detrimental effect on commerce. Persons whose equipment is within the right-of-way are the primary cause of these frequent obstructions.  

(C) 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 millions of dollars in public funds to build and maintain the rights-of-way. The city also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the city for goods and services delivered thereby, are using this property held for the public good. Although the services are often necessary or convenient for the citizens, the persons receive revenue and/or profit through their use of public property.  

(D) The Minnesota Legislature has recognized that it is in the public’s interest that the use and regulation of rights-of-way be carried on 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.  

(E) In response to the foregoing facts, the city hereby enacts this chapter relating to right-of-way management. This chapter imposes reasonable regulations on the placement and maintenance of facilities 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
chapter, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for the integrity of the city’s rights-of-way. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(F) By enactment of this chapter, the City Council hereby exercises its lawful police power and common law authority, and all statutory authority which is available to it, including, but not limited to, the powers conferred on it under M.S. §§ 237.16, 237.162 237.163, 237.79, 237.81, and 238.086 (the “Act) and 2017 Session Laws, Chapter 94 amending the Act as they may be amended from time to time, while preserving all power and authority to further require franchises from rights-of-way users under M.S. §§ 216B.36, 222.37, 300.03, and 412.11, as they may be amended from time to time, Minnesota Rules Parts 7819.0050 – 7819.9950 and Minnesota Rules Chapter 7560 where possible, and other provisions of law. 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 regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

(Ord. 9756, passed 6-20-2000)

§ 94.02 ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY.

Pursuant to the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects, pursuant to M.S. § 237.163, subd. 2 (b), to manage rights-of-way within its jurisdiction.

§ 94.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**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. A facility is not abandoned unless declared so by the right-of-way user.

**ADMINISTRATOR.** The City Administrator of the City of Lake Elmo, or the Administrator’s designee.

**APPLICANT.** Any person requesting permission to excavate or obstruct a right-of-way.

**CITY.** The City of Lake Elmo, Minnesota. For purposes of § 94.65, CITY means its elected officials, officers, employees, and agents.

**COLLOCATE or COLLOCATION.** To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit. See M.S. § 237.162, subd. 10.

**CONSTRUCTION PERFORMANCE BOND.** Any of the following forms of security provided at permittee’s option:

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under M.S. § 15.73, subd. 3;
- Letter of credit, in a form acceptable to the city;
- Self-insurance, in a form acceptable to the city;
A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

**DEGRADATION.** The accelerated depreciation of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct the right-of-way earlier than would be required if the excavation did not occur.

**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. The cost to achieve a level of restoration, subject to Minnesota Rules Part 7819.1100, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules Parts 7819.9900 to 7819.9950.

**DEGRADATION FEE.** The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

**DELAY PENALTY.** The penalty imposed as a result of unreasonable delays in right-of-way construction excavation, obstruction, patching, or restoration as established by permit.

**DEPARTMENT.** The Department of Public Works of the city.

**DEPARTMENT INSPECTOR.** Any person authorized by the Administrator to carry out inspections related to the provisions of this chapter.

**EMERGENCY.** A condition that:

1. Poses a danger to life or health, or of a significant loss of property; or
2. Requires immediate repair or replacement of facilities in order to restore service to a customer.

**EQUIPMENT.** Any tangible 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.

**EXCAVATE.** To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way, except horticultural practices of penetrating the boulevard area to a depth of less than 12 inches.

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

**EXCAVATION PERMIT FEE.** Money paid to the city by an applicant to cover the costs as provided in §

**FACILITY or FACILITIES.** Any tangible asset in the right-of-way required to provide utility service.

**FIVE-YEAR PROJECT PLAN.** Shows projects adopted by the city for construction within the next five years.

**HIGH DENSITY CORRIDOR.** A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.
IN. When used in conjunction with “right-of-way,” means over, above, in, within, on, or under a right-of-way.

LOCAL REPRESENTATIVE. A local person or persons, or designee of the person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

MANAGEMENT COST. The actual cost incurred by the city for public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public 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 and performing all other tasks required by this chapter, including other costs the city may incur in managing the provisions of this chapter. MANAGEMENT COST does 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 costs of litigation relating to the interpretation of Minnesota Session Laws 1997, § Chapter 123; M.S. §§ 237.162 or 237.163; as they may be amended from time to time; or any ordinance enacted under those sections, or the city’s fees and costs related to appeals taken pursuant to § 94.68 of this chapter.

OBSTRUCT. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

OBSTRUCTION PERMIT. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.

OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in § 94.40.

PATCH or PATCHING.

1. A method of pavement replacement that is temporary in nature.

2. A patch consists of:

   (a) The compaction of the sub-base and aggregate base; and

   (b) The replacement, in kind, of the existing pavement for a minimum of 2 feet beyond the edges of the excavation in all directions.

3. A patch is considered full restoration only when the pavement is included in the city’s five-year project plan.

PAVEMENT. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

PERFORMANCE SECURITY. A performance bond, a restoration bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in both a timely and quality manner.

PERMIT. Has the meaning given “right-of-way permit” in M.S. § 237.162.
PERMITTEE. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

PROBATION. The status of a person that has not complied with the conditions of this chapter.

PROBATIONARY PERIOD. One year from the date that a person has been notified in writing that they have been put on probation.

REGISTRANT. Any person who:

(1) Has or seeks to have its equipment or facilities located in any right-of-way; or

(2) In any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

REPAIR. The temporary construction work necessary to make the right-of-way usable for travel.

RESTORE or RESTORATION. The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation

RESTORATION COST. An amount of money paid to the city by a permittee to cover the cost to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

RIGHT-OF-WAY or PUBLIC RIGHT-OF-WAY. The surface and space on, above and below a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

RIGHT-OF-WAY PERMIT. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

RIGHT-OF-WAY USER. (1) A telecommunications right-of-way user as defined by M.S. § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

SERVICE or UTILITY SERVICE. Includes but is not limited to:

(1) Those services provided by a public utility as defined in M.S. § 216B.02, subds. 4 and 6, as it may be amended from time to time;

(2) Services of a telecommunications right-of-way user, including transporting of voice or data information;

(3) Services of a cable communications system as defined in M.S. 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 M.S. Ch. 308A; and

(6) A telecommunication right-of-way user Water, and sewer, including service laterals, steam, cooling, or heating services.

**SERVICE LATERAL.** An underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer’s premises.

**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 6 cubic feet in volume or could fit within such an enclosure; and

(2) All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Note: M. S. § 237.162, subd. 11.

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

**TELECOMMUNICATION RIGHTS-OF-WAY USER.** A person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under M.S. Ch. 238, as it may be amended from time to time, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in M. S. § 216B.02, a municipality, a municipal gas or power agency organized under M. S. Chaps. 453 and 453A, or a cooperative electric association organized under M. S. Chap. 308A, are not telecommunications right-of-way users for the purpose of this chapter except to the extent such entity is offering wireless service.

**UNUSABLE EQUIPMENT.** Equipment in the right-of-way which has remained unused for 1 year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next 12 months or a potential purchaser or user of the equipment.

**UTILITY POLE.** A pole that is used in whole or in part to facilitate telecommunications or electric service.

Note: M. S. §237.162, subd. 12.

**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.
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.

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.

Note: M. S. § 237.162, subd. 13.

§ 94.04 Administration.

The Administrator is the principal city official responsible for the administration of the right-of-way permits, and the regulations related thereto. The Administrator may delegate any or all of the duties hereunder.

Note: M. S. § 237.162, subd. 16

(Ord. 9756, passed 6-20-2000)

§ 94.05 Franchise; Franchise Supremacy.

The city may, in addition, to the requirements of this chapter, require that any person, which has or seeks to have equipment located in any right-of-way, obtain a franchise for the full extent permitted by law, now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this chapter, whether granted prior or subsequent to enactment of this chapter, shall control and supersede the conflicting terms of this chapter, provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification, or any other security in favor of the city may be cumulative in the sole determination of the city or unless otherwise negotiated by the city and the franchisee. All other terms of this chapter shall be fully applicable to all persons, whether franchised or not.

(Ord. 9756, passed 6-20-2000)

§ 94.06 Reservation of Regulatory and Police Powers.

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

(Ord. 9756, passed 6-20-2000)

§ 94.07 Severability; Revocable Permits.

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

(Ord. 9756, passed 6-20-2000)

REGISTRATION

§ 94.20 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

(A) Registration. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, way must register with the city. Registration will consist of providing application information.

(B) Registration prior to work. No person may construct, install, repair, remove, relocate, or perform any other work on or use any facilities or any part thereof in any right-of-way without first being registered with the city.

(C) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Except as hereinafter provided, persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining the boulevard plantings or gardens under this chapter. However, excavations deeper than 12 inches are subject to the permit requirements of § 94.35. Nothing herein relieves a person from complying with the provisions of M.S. § 216D, as it may be amended from time to time, the “Gopher One Call” Law.”

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.21 REGISTRATION INFORMATION.

(A) Information required. The information provided to the Administrator-city at the time of registration shall include, but not be limited to:

1. Each registrant’s name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers;

2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration;

3. A certificate of insurance shall be on a form approved by the city:

   a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or that registrant is covered by self-insurance which the Administrator determines to provide the city with protections equivalent to that of a Minnesota licensed insurance company, legally independent from the registrant;

   b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-
way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, and that registrant’s insurance coverage includes, but is not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all the coverages;

(d) Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers’ compensation and umbrella coverage established by the city in amounts sufficient to protect the city and carry out the purposes and policies of this chapter.

(4) The city may require a copy of the actual insurance policies;

(5) If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06 as recorded and certified to by the Secretary of State;

(6) A copy of the person’s certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency; and

(7) The other information as the city may require.

(B) Notice of changes. The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.22 REPORTING OBLIGATIONS.

(A) Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city.

(1) The plan shall be submitted by using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

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

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (a “next-year project”); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (a “five-year project”).

(3) The term “project” in this chapter shall include both next-year projects and 5-year projects.

(4) By January 1 of each year, the city will have available for inspection in the Administrator’s office a composite list of all projects of which the city has been informed in the
annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

(5) Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all the changes in the list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(B) Additional next-year projects. Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

PERMITS

§ 94.35 RIGHT-OF-WAY PERMIT REQUIREMENT.

(A) Right-of-way permit required. Except as otherwise provided in the city’s regulations, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city and posting of the appropriate construction performance bond with the city.

(1) Excavation permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein, to the extent and for the durations specified therein.

(2) Obstruction permit. An obstruction permit is required by registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the durations specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(3) Small Wireless Facility Permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

Note: M. S. §237.163, subd. 13.

(B) Right-of-way permit extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new right-of-way permit, or right-of-way permit extension, is granted.

(C) Delay penalty. In accordance with Minnesota Rule Part 7819.1000, subpart 3 and Notwithstanding the provisions of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.
(D) **Right-of-way permit display.** Right-of-way permits issued under this chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the city.

(E) **Construction performance bond.** The construction performance bond shall be in an amount determined in the city’s sole discretion, sufficient to serve as security for the full and complete performance of permittee’s obligation under this chapter, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this chapter or any other applicable law, regulation, or standard. During the period of construction, repair, or restoration of rights-of-way or facilities within the rights-of-way, the construction performance bond security shall be in an amount sufficient to cover 125% of the estimated cost of the work, as documented by the person proposing to perform the work, or in a lesser amount as may be determined by the city, taking into account the amount of facilities in the right-of-way, the location and method of installation of the facilities, the conflict or interference of the facilities with the equipment facilities of other persons, and the purposes and policies of this chapter. Sixty days after completion of the work, the construction performance bond security may be reduced in the sole determination of the city.

(Ord. 9756, passed 6-20-2000) **Penalty.** See § 10.99

§ 94.36 APPLICATION FOR A RIGHT-OF-WAY PERMIT.

(A) Applications for a right-of-way permit is made to the city through the Administrator.

(B) Right-of-way permit applications shall contain and will be considered complete only upon compliance with the requirements of the following provisions:

1. Registration with the city pursuant to this chapter;

2. Submissions 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 existing and proposed facilities;

3. Payment of all money due to the city for:

   a. Permit fees, estimated restoration costs, and other management costs;

   b. Prior obstructions or excavations;

   c. Any undisputed loss, damage, or expense suffered by the city because of applicant’s prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; and/or

   d. Franchise fees or other charges, if applicable.

4. Payment of disputed amounts due the city by posting security or depositing in a city-approved escrow account an amount equal to at least 125% of the amount owing; and

5. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required.

6. A Storm Water Management Plan and/or an Erosion and Sediment Control Plan if applicable as specified in § 150.283.

(Ord. 9756, passed 6-20-2000; Am. Ord. 08-024, passed 4-20-2010)
§ 94.37 ISSUANCE OF PERMIT; CONDITIONS.

(A) Permit issuance. If the Administrator determines that the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

(B) Conditions. The city 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. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to M. S. §§216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

(1) Small Wireless Facility Conditions. In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

(a) 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.

(b) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city’s written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety, and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

(c) No wireless facility may extend more than 10 feet above its wireless support structure.

(d) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

(e) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.

(f) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

Note: M. S.§ 237.163, subd. 3b.

(C) Small Wireless Facility Agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation
agreement with the city. The standard collocation agreement may require payment of the following:

(1) Up to $150 per year for rent to collocate on the city structure;

(2) $25 per year for maintenance associated with the collocation;

(3) A monthly fee for electrical service as follows:

   (a) $73 per radio node less than or equal to 100 maximum watts;
   (b) $182 per radio node over 100 maximum watts; or
   (c) The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

Note: M. S.§ 237.163. Subd. 6(g).

§ 94.39 ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS.

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

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

   (1) are located within a two-mile radius;

   (2) consist of substantially similar equipment; and

   (3) are to be placed on similar types of wireless support structures

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

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

   (1) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

   (2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt of the
application. Upon submission of additional documents or information, the city shall have 10 days to notify the applicant in writing of any still-missing information.

(3) The city and a small wireless facility applicant agree in writing to toll the review period.

Note: M. S. § 237.163. subd. 3c

(Ord. 9756, passed 6-20-2000)

§ 94.40 RIGHT-OF-WAY PERMIT FEES.

(A) Excavation permit fee. The excavation permit fee shall be established by the city in an amount sufficient to recover the following costs:

(1) The city management costs; and

(2) Degradation cost, if applicable.

(B) Obstruction permit fee. The obstruction permit fee shall be established by the city and shall be in an amount sufficient to recover the city management costs.

(C) Small wireless facility permit fee. The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

(1) management costs, and;

(2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

(D) Payment of permit fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay the fees within 30 days of billing.

(E) Non-refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in § 94.59 are not refundable.

(F) Application to franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

(Ord. 9756, passed 6-20-2000)

§ 94.41 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) Timing.

(1) The work to be done under the excavation permit, and the patching and/or restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under § 94.44.

(2) In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for 36 months thereafter.
(B) *Patch and restoration.* Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or the city shall restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, during the 36 months following the restoration, the pavement settles due to permittee’s improper backfilling, the permittee shall pay to the city, within 30 days of billing, the cost of repairing the pavement.

(2) *Permittee restoration.* If the permittee restores the right-of-way, it shall at the time of application for an excavation permit, post a construction performance bond security in accordance with the provisions of Minnesota Rule Part 7819.3000 in an amount determined by the Administrator to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition and reasonable, directly related costs that the city estimates will be incurred if the right-of-way user fails to perform under the bond. Litigation costs and attorney fees are not direct costs to be included in calculating the amount of the bond. If, 36 24 months after completion of the restoration of the right-of-way, the Administrator city determines that the right-of-way has been properly restored, the surety on the construction performance bond security shall be released.

(C) *Standards.* The permittee shall perform repairs excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the Administrator city and shall comply with Minnesota Rule Part 7819.1100. The city 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. The city in exercising this authority 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 affected by the excavation;

(4) Whether the relative cost of the method of restoration to the permittee 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 or restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

(D) *Guarantees.* By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for 36 months following its completion. During this 36-month period, it shall, upon notification from the city, correct all restoration work to the extent necessary, using the method required by the city. The work shall be completed within 5 five calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of the circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under § 94.44.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.
(F) Degradation fee in lieu of restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the costs to accomplish these responsibilities.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.42 JOINT APPLICATIONS.

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

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

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

(Ord. 9756, passed 6-20-2000)

§ 94.43 SUPPLEMENTARY APPLICATIONS.

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

(B) Limitation on dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

(Ord. 9756, passed 6-20-2000)

§ 94.44 OTHER OBLIGATIONS.

(A) Compliance with other laws. Obtaining a right-of-way permit does not relieve the 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 county, state, or federal rules, laws, or regulations. A permittee shall comply with all requirements of local, state, and federal laws, including M.S. § 216D.01-09, as it may be amended from time to time ("Gopher One Call Excavation Notice System") and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(B) Prohibited work. Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for the work.
(C) *Interference with right-of-way.*

(1) A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

(2) Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations.

(3) The loading or unloading of trucks next to a permit area is prohibited unless specifically authorized by the permit.

(D) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including, but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in M.S. Chapter 216D and Minnesota Rules Chapter 7560 and shall requiring potholing or open cutting over existing underground utilities before excavating, as determined by the Administrator.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.45 DENIAL OR REVOCATION OF PERMIT.

(A) *Reasons for denial.* The city may deny a permit for failure to meet the requirements and conditions of this chapter, or if the city determines that the denial is necessary to protect the health, safety, and welfare of the public, or if necessary to protect the right-of-way and its current use.

(B) *Procedural requirements.* The denial or revocation of a permit must be made in writing and must document the basis for denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after resubmission.

Note: M. S.§ 237.163, subds. 4(c) and 5(f).

(Ord. 9756, passed 6-20-2000)

REGULATIONS AND PROCEDURES

§ 94.55 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching, and restoration, and all other work performed in the right-of-way, shall be done in conformance Minnesota Rules Parts 7819.1100 and 7819.5000 and other applicable local requirements, insofar as they are not inconsistent with M.S. §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and this Chapter. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits or agreements referenced in § 94.60, subdivision (B) of this Chapter.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.56 INSPECTION.
(A) Notice of completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with P.U.C. rules Minnesota Rule Part 7819.1300.

(B) Site inspection. Permittee shall make the work-site available to the Administrator and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) Authority of Administrator.

1. At the time of inspection, the Administrator may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

2. The Administrator may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The Order shall state that failure to correct the violation will be cause for revocation of the permit. Within 10 days after issuance of the order, the permittee shall present proof to the Administrator that the violation has been corrected. If the proof has not been presented within the required time, the Administrator may revoke the permit pursuant to § 94.59.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.57 WORK DONE WITHOUT A PERMIT.

(A) Emergency situations.

1. Each registrant shall immediately notify the Administrator of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

2. (a) If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency.

(b) In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(B) Non-emergency situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for the permit, pay double all the other fees required by the City Code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.58 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99
§ 94.59 REVOCATION OF RIGHT-OF-WAY PERMITS.

(A) Substantial breach. The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule, or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

(3) Any material misrepresentation of fact in the application for a right-of-way permit;

(4) The failure to maintain the required bonds and/or insurance;

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

(6) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 94.56.

(B) Written notice of breach. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit, the city shall make a written demand upon the permittee to remedy the violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) Response to notice of breach.

(1) Within 24 hours of receiving notification of the breach, permittee shall contact provide the city with a plan, acceptable to the city, that will cure the breach.

(2) Permittee's failure to so contact the city, or the permittee’s failure to timely submit an acceptable plan, or permittee’s failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

(3) Further, permittee’s failure to so contact the city, or permittee’s failure to submit an acceptable plan, or permittee’s failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one full year.

(D) Cause for probation. From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

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

(F) Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city’s reasonable costs, including restoration costs and the costs of collection and reasonable attorney’s fees incurred in connection with the revocation.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99
§ 94.60 MAPPING DATA.

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

(B) Service laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules Part 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the Administrator reasonably requires it. Permittees or their subcontractors shall submit to the Administrator evidence satisfactory to the Administrator of the installed service lateral locations. Compliance with this subdivision and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005 shall be a condition of any city approval necessary for:

(1) payments to contractors working on a public improvement project including those under M. S. Chapter 429

(2) city approval under development agreements or other subdivision or site plan approval under M. S. Chapter 462. The Administrator shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.61 LOCATION OF FACILITIES.

Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules Parts 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

(A) Undergrounding. Unless otherwise permitted by an existing franchise, or other agreement, or unless existing above-ground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

(B) Corridors.

(1) The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
(2) Any registrant whose facility is in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facility is located, move that facility to its assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facility, public safety, customer service needs, and hardship to the registrant.

(C) Nuisance.

(1) One year after the passage of this chapter, any facility found in a right-of-way that has not been registered shall be deemed to be a nuisance.

(2) The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facility and restoring the right-of-way to a usable condition.

(D) Limitation of space. To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making the decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public’s needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

(Ord. 9756, passed 6-20-2000)

§ 94.62 RELOCATION OF FACILITIES.

(A) (1) A right-of-way user must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever it is necessary to prevent interference, and not merely for convenience of the city, and shall restore the right-of-way to the same condition it was in prior to the removal or relocation.

(2) The city may make the request to a right-of-way user to remove and relocate its facilities when in connection with:

(a) A present or future city use of the right-of-way for a public project;

(b) When the public health, and safety, require it; or

(c) The safety and convenience of travel over the right-of-way.

(B) Notwithstanding the foregoing, a right-of-way user shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the right-of-way user.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.63 PRE-EXCAVATION FACILITY AND FACILITIES LOCATION.

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

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.64 DAMAGE TO OTHER FACILITIES.

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

(B) (1) Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

(2) Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city’s response to an emergency occasioned by that registrant’s facilities.

(Ord. 9756, passed 6-20-2000)

§ 94.65 RIGHT-OF-WAY VACATION.

(A) Reservation of right. If the city vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of a registrant or permittee's facilities, the city shall, except when it would not be in the public interest, reserve to and for itself and all right-of-way users having facilities in the vacated right-of-way, the right to install, maintain, and operate facilities in the vacated right-of-way and to enter upon the right-of-way at any time for the purpose of reconstructing, inspecting, maintaining, or repairing the same.

(B) Relocation of facilities. If the vacation requires the relocation of registrant or permittee facilities, payment of the relocation costs must be determined as follows: (1) if the vacation proceedings are initiated by the right-of-way user, the right-of-way user must pay the relocation costs; or (2) if the vacation proceedings are initiated by the city for a public project, the right-of-way user must pay the relocation costs unless otherwise agreed to by the city and the right-of-way user; or (3) if the vacation proceedings are initiated for the purposes of benefitting by a person or persons other than the right-of-way user, the benefited person or persons must pay the relocation costs.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.66 INDEMNIFICATION AND LIABILITY.

(A) By registering with the city, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule Part 7819.

(B) Defense.

(a) If a suit is brought against the city under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the city in the suit if written notice of the suit is properly given to the registrant or permittee within a period in which the registrant or permittee is not prejudiced by the lack or delay of notice.
(b) If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the city. Consent will not be unreasonably withheld.

(c) This part is not as to third-parties, a waiver of any defense, immunity, or damage limitation otherwise available to the city.

(d) In defending an action on behalf of the city, the registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the city could assert in its own behalf.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.67 ABANDONED AND UNUSABLE EQUIPMENT.

(A) Discontinued operations. A registrant who has determined to discontinue all or a portion of its operations in the city must either:

(1) Provide information satisfactory to the city that the registrant’s obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant; or

(2) Submit to the city a proposal and instruments for transferring ownership of its facilities to the city. If a registrant proceeds under this clause, the city may, at its option:

(a) Purchase the equipment;

(b) Require the registrant, at its own expense, to remove it; or

(c) 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 equipment.

(B) Removal. Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

(Ord. 9756, passed 6-20-2000) Penalty, see § 10.99

§ 94.68 APPEALS.

(A) A right-of-way user that:

(1) Has been denied registration;

(2) Has been denied a permit;

(3) Has had a permit revoked;

(4) Believes that the fees imposed are not in conformity with M. S. §237.163, subd. 6, or

(5) Disputes a determination of the Administrator regarding § 94.59, subd. (B) of this chapter

may have denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial,
revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

(Ord. 9756, passed 6-20-2000)

§ 94.69 RESERVATION OF REGULATORY AND POLICE POWERS

A permittee’s rights are subject to the regulatory and policy powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.

§ 94.70 RESERVATION OF REGULATORY AND POLICE POWERS

If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.
SECTION 3. Adoption Date. This Ordinance 08-196 was adopted on this 5th day of Sept. 2017, by a vote of 4 Ayes and 0 Nays.

LAKE ELMO CITY COUNCIL

[Signature]
Mike Pearson, Mayor

ATTEST:

[Signature]
Julie Johnson, City Clerk

This Ordinance 08-____ was published on the ____ day of ________________, 2017.