

## CHAPTER 50. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

### ARTICLE III. Right-of-Way Management and Use

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\*State law references--Use and regulation of public right-of-way by telecommunications companies, Minn. Stats. § 237.162 et seq.; uniform statewide standards, Minn. Stats. § 237.163, subd. 8.  
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#### **Section 50-61. Purpose.**

The purpose of this article is to provide a way for the city (i) to manage its public rights-of-way and to recover its rights-of-way management costs and (ii) to regulate the use of public rights-of-way by providers of telecommunication services, public utility services, and the like, in a fair, efficient, competitively neutral and substantially uniform manner, consistent with and to the extent authorized by state law, specifically Minn. Stats. §§ 237.162, 237.163, 237.79, 237.81 and 238.086 and Minnesota Public Utility Commission Rules 7819.0050 through 7819.9950.

#### **Section 50-62. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Applicant* means any person requesting permission to excavate or obstruct a right-of-way.

*City* means the City of Anoka, Minnesota. For purposes of this article, the term "city" means its elected officials, officers, employees, agents or any commission, committee or subdivision acting pursuant to lawfully delegated authority.

*City cost* means the actual costs incurred by the city for managing rights-of-way including, but not limited to costs associated with registering of applicants, issuing, processing, and verifying right-of-way permit applications; revoking right-of-way permits; inspecting job sites; creating and updating mapping systems; determining the adequacy of right-of-way restoration; restoring work inadequately performed; maintaining, supporting, protecting, or moving user equipment during right-of-way work; budget analysis; record keeping; legal assistance; systems analysis; and performing all of the other tasks required by this article, including other costs the city may incur in managing the provisions of this article except as expressly prohibited by law.

*City inspector* means any person authorized by the city to carry out inspections related to the provisions of this article.

*Commission* means the state public utilities commission.

*Degradation* means 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 such right-of-way earlier than would be required if the excavation did not occur, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

*Emergency* means a condition that (i) poses a clear and immediate danger to life or health, or of a significant loss of property; or (ii) requires immediate repair or replacement in order to restore service to a customer.

*Equipment* means any tangible thing located 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* means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

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

*Excavation permit fee* means money paid to the city by an applicant to cover the costs as provided in section 50-124.

*High density corridor* means a designated portion of the public right-of-way within which 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.

*Local representative* means the person or designee of such person authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this article.

*Obstruction permit* means the permit which, pursuant to this article, 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 a right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.

*Obstruction permit fee* means money paid to the city by a registrant to cover the costs as provided in section 50-124.

*Performance and restoration bond* means any of the following forms of security:

- (a) Individual project bond;
- (b) Cash deposit;
- (c) Security in the form listed or approved under Minn. Stats. § 15.73, subd. 3;
- (d) Letter of credit in a form acceptable to the city;
- (e) Self-insurance in a form acceptable to the city;
- (f) Blanket bond for projects within the city or other form of construction bond for time specified in a form acceptable to the city.

*Permittee* means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this article.

*Person* means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have equipment located in any right-of-way.

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

*Probation* means the status of a person that has not complied with the conditions of this article.

*Probation period* means one year from the date that a person has been notified in writing that they have been put on probation.

*Registrant* means any person who (i) has or seeks to have its equipment located in any right-of-way, or (ii) in any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment located in the right-of-way and, accordingly, is required to register with the city.

*Right-of-way permit* means either the excavation permit or the obstruction permit, or both, depending on the context, required by this article.

*Rules* means Rules 7819.0050 through 7819.9950 adopted by the state public utilities commission.

*Telecommunications right-of-way user* means a person owning or controlling a facility in the right-of-way, or seeking to own or control the facility, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this article, a cable communications system defined and regulated under Minn. Stats. ch. 238, and telecommunications activities related to providing natural gas or electric energy services are not included in this definition for purposes of this article. This definition shall not be inconsistent with Minn. Stats. § 237.162, subd. 4.

**Section 50-63.**

**Administration.**

The city may designate a principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The city may delegate any or all of the duties under this article.

**Section 50-64.**

**Severability.**

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

**Section 50-65.**

**Reservation of regulatory and police powers.**

- (a) The city by the granting of a right-of-way permit, or by registering a person under this article does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the city under the Constitution and statutes of the state or the charter of the city to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a right-of-way permit or of registration under those ordinances agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are now or as may be from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public deemed to agree to comply with all applicable general laws and ordinances enacted by the city pursuant to such powers.
- (b) Any conflict between the provisions of a registration or of a right-of-way permit and any other present or future exercise of the city's regulatory or police powers shall be resolved in favor of the latter.

**Section 50-66.**

**Appeals.**

- (a) A person that:
  - (1) Has been denied registration;
  - (2) Has been denied a right-of-way permit;
  - (3) Has had its right-of-way permit revoked; or
  - (4) Believes that the fees imposed on the user by the city do not conform to the requirements of law; may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.
- (b) Upon affirmation by the city council of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the city and the person. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the city, one arbitrator selected by the person, and one arbitrator selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the city and the person. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.
- (c) Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

**State law reference--**Similar provisions, Minn. Stats. § 237.163, subd. 5.

**Section 50-67. Franchise; franchise supremacy.**

The city may, in addition to the requirements of this article, require any person which has or seeks to have equipment located in any right-of-way to obtain a franchise to the full extent permitted by law, now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provisions of this article, whether granted prior or subsequent to enactment to this article, excluding the city's police powers which shall always be reserved to the city, shall control and supersede the conflicting terms of this article 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 franchise grantee. All other terms of this article shall be fully applicable to all persons whether franchised or not.

**State law reference--**Restriction on franchises, Minn. Stats. § 237.163, subd. 7(a)(4).

**Section 50-68. 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 with the city. Registrants must use commercially reasonable efforts to anticipate and plan for all upcoming projects and include all such projects in a construction or major maintenance plan. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:

- (1) The specific locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
- (2) The tentative locations and beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects. By January 1 of each year the city will have available for inspection in its offices a composite list of all projects of which it has been informed in the annual plans. All registrants are responsible for keeping themselves apprised of the current status of this list. Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in such list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant that was listed by the other registrant.

(b) *Additional next-year projects.* Notwithstanding the provisions of subsection (a) of this section, the city may, for good cause shown, allow a registrant to submit additional next-year projects. Good cause includes, but is not limited to, the criteria set forth in subsection 50-123(3) concerning the discretionary issuance of permits.

**State law reference--**Authority to so require, Minn. Stats. § 237.163, subd. 2(b)(3).

**Section 50-69.**

**Right-of-way restoration.**

- (a) The work to be done under the permit, and the restoration and the right-of-way as required in this article, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances constituting force majeure or when work was prohibited as unseasonal or unreasonable under subsection 50-126(b) all in the sole determination of the city. 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) In its application for an excavation permit, the permittee may choose to have the city restore the right-of-way. In any event, the city may determine to perform the right-of-way restoration and shall require the permittee to pay a restoration fee to provide for reimbursement of all costs associated with such restoration. In the event the permittee elects not to perform restoration, the city may, in lieu of performing the restoration itself, impose a fee to fully compensate for the resultant degradation as well as for any and all additional city costs associated therewith. Such fee for degradation shall compensate the city for costs associated with a decrease in the useful life of the right-of-way caused by excavation and shall include a restoration fee component. It does not relieve permittee from any restoration obligation, including but not limited to replacing and compacting the subgrade base material and the excavation. The restoration fee will not include the cost to accomplish these responsibilities.
  - (1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If, during the 36 months following such restoration, the right-of-way settles due to permittee's excavation or restoration, the permittee shall pay to the city, within 30 days of billing, the cost of repairing such right-of-way.
  - (2) *Restoration by permittee.* If the permittee chooses at the time of application for an excavation permit to restore the right-of-way itself, such permittee shall post an additional performance and restoration bond in an amount determined by the city to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, 24 months after completion of the restoration of the right-of-way, the city determines that the right-of-way has been properly restored, the surety on the performance and restoration bond posted pursuant to this subsection shall be released.
- (c) The permittee shall perform the work according to the standards and with the materials specified by the city and in compliance with Minnesota Rule 7819.1100. The city shall have the authority to prescribe the manner and extent to 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 but not limited 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 of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Notwithstanding the provision of this subsection, the maximum limits of restoration methods and area requirements the city will impose are found in PUC Plates 1 to 13, shown in parts 7819.9900 to 7819.9950.

- (d) By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for 24 months following its completion. During this 24-month period it shall, upon notification from the city, correct all restoration work to the extent necessary, using the method required by the city. Such work shall be completed within five calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under subsection 50-126(b), all in the sole determination of the city.
- (e) 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 repairs required by the city, the city at its option may perform or cause to be performed such 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 the permittee fails to pay as required, the city may exercise its rights under the performance and restoration bond.

**State law reference--**Right-of-way restoration, Minn. Stats. § 237.163, subd. 3.

**Section 50-70. Installation requirements.**

In accordance with Minn. Stats. §§ 237.162, subd. 8(3), 237.163, subd. 8; and the commission rules, all work performed in the right-of-way shall be done in conformance with the standard specifications for street openings as promulgated by the city and at a location as may be required by subsection 50-72(b). The city may enforce local standards pursuant to its inherent and historical police power authority, so long as such standards do not impose greater requirements than those found in the commission rules.

**Section 50-71. Inspection.**

- (a) When the work under any permit under this article is completed, the permittee shall notify the city.
- (b) Permittee shall make the work site available to the city inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of work.

- (c) At the time of inspection the city inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well being of the public. The city inspector may issue an order to the registrant for any work which does not conform to the 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 days after issuance of the order, the registrant 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 section 50-129.

## Section 50-72.

### Location of equipment.

- (a) *Undergrounding.* Unless otherwise permitted by an existing franchise or Minn. Stats. § 216B.34, or unless existing aboveground equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment, and the replacement of old equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes unless otherwise agreed to by the city in writing, and such agreement is reflected in applicable permits.
- (b) *High density corridor.* The city may assign specific high density 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 expects will someday be located within the right-of-way, excavation, obstruction, or other permits issued by the city involving the installation or replacement of equipment may designate the proper corridor for the equipment at issue and such equipment must be located accordingly. In the event the city desires to establish a high-density corridor, it shall include the elements required in commission rule 7819.0200. Any registrant having equipment located prior to enactment of this article 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 its equipment is located, move that equipment 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 facilities, public safety, customer service needs and hardship to the registrant.
- (c) *Nuisance.* One year after the passage of the ordinance from which this article is derived, any equipment found in a right-of-way that has not been registered shall be 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, abating the nuisance or taking possession of the equipment and restoring the right-of-way to a useable condition.
- (d) *Limitation of space.* To protect health, safety and welfare, the city 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 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 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.

**Section 50-73. Relocation of equipment.**

The person must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its equipment and facilities in the right-of-way whenever the city requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to such removal or relocation. The city may take such requests in order to prevent interference by the company's equipment or facilities with (i) a present or future city use of the right-of-way for a public project; (ii) the public health or safety; (iii) the safety and convenience of travel over the right-of-way.

**Section 50-74. Pre-excavation equipment location.**

In addition to complying with the requirements of Minn. Stats. ch. 216D (one call excavation notice system) before the start date of any right-of-way excavation, each registrant who has equipment located in the area to be excavated shall mark the horizontal and approximate vertical placement of all such equipment. Any registrant whose equipment is less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish the exact location of its equipment and the best procedures for excavation.

**Section 50-75. Damage to other equipment.**

- (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) Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

**Section 50-76. Right-of-way vacation.**

- (a) If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.
- (b) If the vacation requires the relocation of registrant or permittee equipment and:
  - (i) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or
  - (ii) if the vacation proceedings are initiated by the city, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the city and the registrant or permittee; or
  - (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

**Section 50-77.**

**Indemnification and liability.**

- (a) By reason of the acceptance of a registration or the grant of a right-of-way permit, the city does not assume any liability: (i) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city; or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.
- (b) By registering with the city, or by accepting a permit under this article, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rules 7819.1250.

**Section 50-78.**

**Future uses.**

In placing any equipment, or allowing it to be placed, in the right-of-way the city is not liable for any damages caused thereby to any registrant's equipment which is already in place. No registrant is entitled to rely on the provisions of this article, and no special duty is created as to any registrant. This article is enacted to protect the general health, welfare and safety of the public at large.

**Section 50-79.**

**Abandoned and unusable equipment.**

- (a) A registrant who has determined to discontinue its operations with respect to any equipment in any right-of-way, or segment or portion thereof, in the city must either:
  - (1) Provide information satisfactory to the city that the registrant's obligations for its equipment in the right-of-way under this article have been lawfully assumed by another registrant; or
  - (2) Submit to the city a proposal and instruments for transferring ownership of its equipment 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 an additional bond or an increased bond amount sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the equipment.
- (b) Equipment of a registrant which fails to comply with subsection (a) of this section and which, for two years, remains unused shall be deemed to be abandoned. 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, (i) abating the nuisance, (ii) taking possession of the equipment and restoring it to a useable condition, (iii) requiring removal of the equipment by the registrant or by the registrant's surety; or (iv) exercising its rights pursuant to the performance and restoration bond.
- (c) Any registrant who has unusable equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the city.

**Sections 50-80 thru 50-95. Reserved.**

**Section 50-96. Registration, bonding and right-of-way occupancy.**

- (a) Each person which occupies, uses, or seeks to occupy or use, the right-of-way or any equipment located in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment located in any right-of-way must register with the city. Registration will consist of providing application information to and as required by the city, paying a registration fee, and posting a performance and restoration bond. The performance and restoration bonds required by this article shall be in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this article, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this article or any other applicable laws, regulations or standards. During periods of construction, repair or restoration of rights-of-way or equipment in rights-of-way, the performance and restoration bond shall be in an amount sufficient to cover 100 percent of the estimated cost of such work, as documented by the person proposing to perform such work, or in such lesser amount as may be determined by the city, taking into account the amount of equipment in the right-of-way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this article. Sixty days after completion of the work, the performance and restoration bond may be reduced in the sole determination of the city.
- (b) No person shall construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or any part thereof located in any right-of-way without first being registered with the city.
- (c) Nothing in this section shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens or in the area of right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits to satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this article. However, excavations deeper than 12 inches are subject to the permit requirements of section 50-116.

**State law reference--**Authority to require telecommunication right-of-way users to register, Minn. Stats. § 237.163, subd. 2(b)(2).

**Section 50-97. Registration information.**

- (a) The information provided to the city at the time of registration shall include, but not be limited to:
  - (1) The 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 or self-insurance:
  - a. Shall be on a form approved by the city;
  - b. Shall verify that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state; or is covered by self-insurance which the city determines to provide the city with protections equivalent to that of a state licensed insurance company, legally independent from registrant;
  - c. Shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property;
  - d. Shall name the city as an additional insured as to whom the coverages required in this subsection are in force and applicable and for whom defense will be provided as to all such coverages;
  - e. Shall require that the city be notified 30 days in advance of cancellation of the policy; and
  - f. Shall indicate comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage in amounts established by the city of the office of risk and employee benefit management in amounts sufficient to protect the city and carry out the purposes and policies of this article.
- (4) If the registrant is a corporation, a copy of the certificate required to be filed under Minn. Stats. § 333.01 as recorded and certified to by the secretary of state.
- (5) A copy of the registrant's certificate of authority from the state public utilities commission, where the registrant is lawfully required to have such certificate from such commission.
- (6) Such other information as the city may require.
- (b) The registrant shall keep all of the information listed in subsection (a) of this section current at all times by providing to the city information of changes within 15 days following the date on which the registrant has knowledge of any change.

**State law reference**--Minimum required information, Minn. Stats. § 237.163, subd. 2(b)(2).

**Section 50-98. Right to occupy rights-of-way; payment of fees.**

- (a) Any person required to register under section 50-96, which occupies, uses, or places its equipment in the right-of-way, is hereby granted a right to do so if and only so long as it (i) timely pays all fees as provided in this article and (ii) complies with all other requirements of law.
- (b) The grant of right in section 50-98 is expressly conditioned on, and is subject to, the police powers of the city, continuing compliance with all provisions of law now or hereinafter enacted, including this article as it may be from time to time amended and, further, is specifically subject to the obligation to obtain any and all additional required authorizations, whether from the city or other body or authority.

**State law reference--**Registration fee, Minn. Stats. § 237.163, subd. 6.

**Sections 50-99 thru 50-115. Reserved.**

**Section 50-116. Permit requirement.**

- (a) *Generally.* Except as otherwise provided for in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City to do so. This section does not apply to the construction, alteration, improvement or expansion of driveways.
- (b) *Excavation permit.* An excavation permit is required to allow the holder to excavate that part of the right-of-way described in such permit and/or 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 duration specified therein.
- (c) *Obstruction permit.* An obstruction permit is required to allow the holder to hinder free and open passage over the specified portion of right-of-way by placing equipment, vehicles, or other obstructions described therein on the right-of-way for the duration specified therein.
- (d) *Specified dates for excavation or construction.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless a new permit or permit extension is granted.

**Section 50-117. Applications.**

Application for a permit under this article is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

- (a) Registration with the city pursuant to this article.
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment.
- (c) Payment of all money due to the city for:
  - (1) Permit fees and costs due;
  - (2) Prior obstructions or excavations;

- (3) Any loss, damage, or expense suffered by the city as a result of applicant's prior excavations or obstructions of the rights-of-way of any emergency actions taken by the city; and
- (4) Franchise fees, if applicable.

**Section 50-118. Joint applications.**

- (a) Registrants may jointly make application for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) Registrants who join in and during 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.
- (c) Registrants who apply for permits for the same obstruction or excavation, which is not performed by the city, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate such portion on their applications.

**Section 50-119. Submission of mapping data.**

- (a) Except as provided in subsection (b) of this section, each registrant shall provide as a part of its permit application the following information:
  - (1) Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities with the location based on:
    - a. Offsets from the property lines, distances from the centerline to the public right-of-way, and curblines as determined by the city;
    - b. Coordinates derived from the coordinates system being used by the city; or
    - c. Any other system agreed upon by the applicant and the city;
  - (2) Type and size of the utility facility;
  - (3) Description showing aboveground appurtenances;
  - (4) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and
  - (5) Any facilities to be abandoned, if applicable, in conformance with Minn. Stats. § 216D.04, subd. 3.

The applicant shall provide the city information mapping data shall be provided with specificity and in the format requested by the city for inclusion in the mapping system used by the city. If such format is different from what is currently utilized and maintained by the registration, the registrant may provide such information in the format that they currently are utilizing. The permit application fee may include the cost to convert the data furnished by the applicant to a format currently in use by the city.

- (b) Information regarding equipment of telecommunications right-of-way users constructed or located prior to May 10, 1997, need only be supplied in the form maintained, however, all telecommunications right-of-way users must submit some type of documentary evidence regarding the location of equipment within the rights-of-way of the city.
- (c) At the request of any registrant, any information requested by the city, which qualifies as a "trade-secret" under Minn. Stats. § 13.37(b) shall be treated as trade secret information as detailed therein. With respect to the provision of mapping data, the city may consider unique circumstances from time to time required to obtain mapping data.

**Section 50-120.**

**Supplementary applications.**

- (a) A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may perform any work outside the area specified in the permit, except as provided in this article. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees necessitated thereby, and (ii) be granted a new permit or permit extension.
- (b) 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 in this article, continue working after the end date. If a permittee does not finish the work by the permit end date, it must make application 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.

**Section 50-121.**

**Additional performance and restoration bonds.**

When an excavation permit is requested for purposes of installing additional equipment, and a performance and restoration bond which is in existence is insufficient with respect to the additional equipment in the sole determination of the city, the permit applicant may be required by the city to post an additional performance and restoration bond in accordance with subsection 50-96(a).

**Section 50-122.**

**Issuance of permit; conditions.**

- (a) If the city determines that the applicant has satisfied the requirements of this article, the city may issue a permit.
- (b) The city may impose any reasonable conditions upon the issuance of a permit and the performance of the applicant there under in order 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, to minimize the disruption and inconvenience to the traveling public, and to otherwise efficiently manage use of the right-of-way.

**Section 50-123. Denial of permit.**

The city may, in accordance with Minn. Stats. § 237.163, subd. 4, deny any application for a permit as provided in this section.

- (a) *Mandatory denial.* Except in the case of an emergency, no right-of-way permit will be granted:
- (1) To any person required by section 50-96 to be registered who has not done so;
  - (2) To any person required by section 50-68 to file an annual report but has failed to do so;
  - (3) For any next-year project not listed in the construction and major maintenance plan required under section 50-68 unless the person used commercially reasonable efforts to anticipate and plan for the project;
  - (4) For any project which requires the excavation of any portion of a right-of-way which was constructed or reconstructed within the preceding five years;
  - (5) To any person who has failed within the past three years to comply, or is presently not in full compliance, with the requirements of this article;
  - (6) To any person as to whom there exists grounds for the revocation of a permit under section 50-129; and
  - (7) If, in the sole discretion of the city, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The city, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way, and by considerations relating to the public health, safety and welfare.
- (b) *Permissive denial.* The city may deny a permit in order to protect the public health, safety and welfare, to protect interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The city may consider one or more of the following factors:
- (1) The extent to which right-of-way space where the permit is sought is available;
  - (2) The competing demands for the particular space in the right-of-way;
  - (3) The availability of other locations in the right-of-way or in other rights-of-way for the equipment of the permit applicant;
  - (4) The applicability of ordinance or other regulations of the right-of-way that affect location of equipment in the right-of-way;
  - (5) The degree of compliance of the applicant with the terms and conditions of its franchise; if any, this article, and other applicable ordinances and regulations;

- (6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
  - (7) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; and
  - (8) The balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.
- (c) *Discretionary issuance.* Notwithstanding the provisions of subsections (a)(3) and (4) of this section, the city may issue a permit in any case where the permit is necessary (i) to prevent substantial economic hardship to a customer of the permit applicant, or (ii) to allow such customer to materially improve its utility service, or (iii) to allow a new economic development project; and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when the applicant was required to submit its list of next-year projects.
- (d) *Permits for additional next-year projects.* Notwithstanding the provisions of subsection (a)(3) of this section, the city may issue a permit to a registrant who was allowed under subsection 50-68(b) to submit an additional next-year project, or in the event the registrant demonstrates that it used commercially reasonable efforts to anticipate and plan for the project, such permit to be subject to all other conditions and requirements of law, including such conditions as may be imposed under this article.

**State law reference--**Permit denial, Minn. Stats. § 237.163, subd. 4.

**Section 50-124.**

**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 cost;
  - (2) The degradation of the right-of-way that will result from the excavation;
  - (3) Restoration, if done or caused to be done by the city.
- (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 cost.
- (c) *Disruption fees.* The city may establish and impose a disruption fee as a penalty for unreasonable delays in excavations, obstructions, or restoration. Disruption fees will not be imposed if the delay in completion is due to circumstances beyond the control of the applicant, including without limitation inclement weather, acts of God or civil strike.
- (d) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of all fees required prior to the issuance of such a permit unless the applicant shall agree (in a manner, amount, and substance acceptable to the city) to pay such fees within 30 days of billing therefore. All permit fees shall be doubled during a probationary period. Permit fees that were paid for a permit which was revoked for a breach are not refundable. Any refunded permit fees shall be less all city cost up to and including the date of refund.

- (e) *Use of permit fees.* All obstruction and excavation permit fees shall be used solely for city management, construction, maintenance and restoration costs of the right-of-way.

**State law reference--**Permit fees, Minn. Stats. § 237.163, subd. 6.

**Section 50-125. Display of permits.**

Permits issued under this article shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the city inspector and authorized city personnel.

**Section 50-126. Other obligations.**

- (a) Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, franchises or other authorizations and to pay all fees required by the city, any other city, county, state or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stats. ch. 216D (One Call Excavation Notice System). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.
- (b) Except in the case of an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.
- (c) A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles may not be parked with or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.

**Section 50-127. Work done without a permit.**

- (a) *Emergency situations.* Each registrant shall immediately notify the city or the city's designee of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency. In the event that the city becomes aware of an emergency regarding a registrant's equipment, the city may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.
- (b) *Non-emergency situations.* Except in the case of an emergency, any person who, without first having obtained the necessary permit, obstructs or evacuate a right-of-way must subsequently obtain a permit, pay double the normal fee for such permit, pay double all the other fees required by city ordinance, including, but not limited to, criminal fines and penalties, 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 article.

**Section 50-128. Supplementary notification.**

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

**Section 50-129. Revocation of permits.**

- (a) Registrants hold permits issued pursuant to this Code as a privilege and not as a right. The city reserves its right, as provided in this article and in accordance with Minn. Stats. § 237.163, subd. 4, to revoke any right-of-way permit, without fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any 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; or
  - (6) The failure to correct a condition indicated on an order issued pursuant to subsection 50-71(c).
- (b) If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated in this subsection, will allow the city, at the city's discretion, to place additional or revised conditions on the permit.
- (c) Within 24 hours of receiving notification of the breach, the permittee shall contact the city with a plan, acceptable to the city inspector, for its correction. The permittee's failure to so contact the city inspector, the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the city inspector, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall automatically place the permittee on probation for one full year.
- (d) From time to time, the city may establish a list of conditions of the permit which, if breach, 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 outside of the permit.

- (e) If a permittee, while on probation, commits a breach as outlined above, the permittee's permit will automatically be revoked and the permittee will not be allowed further permits for one full year, except for emergency repairs.
- (f) If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

**State law reference--**Permit revocation, Minn. Stats. § 237.163, subd. 4.

**Sections 50-130 thru 50-150. Reserved.**