

## CHAPTER 91: RIGHT-OF-WAY MANAGEMENT

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#### ***Cross-reference:***

*Administration, see Title III*

*Streets and Sidewalks, see Ch. 96*

*Traffic Code, see Title VII*

**GENERAL PROVISIONS**

**91.01 PURPOSE.**

(A) The City of Olivia 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. It 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. Although the service delivery facilities are in most cases a necessary and proper use of right-of-way, the city hereby seeks to regulate and manage the uses pursuant to state law, and applicable rules of the State of Minnesota.

(B) 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 by all users, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

(C) This chapter imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons disturbing and obstructing the right-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this chapter provides for recovery of the city's cost associated with managing its rights-of-way. (Ord. 268, passed 7-16-2001)

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

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

**CERTIFICATE OF INSURANCE.** Proof of insurance from a company licensed to do business in the State of Minnesota against liability claims.

**CITY.** Olivia, Minnesota. **CITY** means its elected officials, officers, subdivisions, affiliates, employees, committees, and agents.

**CITY COST** or **MANAGEMENT COST.** The actual cost incurred by the city for the public

rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; mapping of as built locations of facilities located in rights-of-way; and revoking right-of-way permits; and performing all other tasks required by this chapter, including other costs the city may incur in managing the provisions of this chapter.

**COMMISSION.** The State Public Utilities Commission.

**CONGESTED RIGHT-OF-WAY.** A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with M.S. ' 216D.04, as it may be amended from time to time, over a continuous length in excess of 500 feet.

**CONSTRUCTION PERFORMANCE BOND.** A performance bond or other form of security 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. Any of the following forms of security can be provided at permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under M.S. ' 15.73, subd. 3, as it may be amended from time to time;
- (4) Letter of credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city; and/or
- (6) 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.** A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct the right-of-way earlier than would be required if the excavation or disturbance 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.

**DELAY PENALTY.** The penalty imposed as a result of unreasonable delays in right-of-way 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 city to carry out inspections related to the provisions of this chapter.

**DIRECTOR.** The City Administrator, or his or her designee.

**EMERGENCY.** A condition that:

- (1) Poses a clear and immediate danger to life or health or of a significant loss of property; or
- (2) Requires immediate repair or replacement in order to restore service to a customer.

**EQUIPMENT or FACILITIES.** Any tangible thing 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.

**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.

**GOPHER ONE CALL.** Calling for a locate request of utilities. Persons are responsible to call for a permit prior to excavating or obstructing any rights-of-way within the city. Nothing herein relieves a person from complying with the provisions of the M.S. Chapter 216D, Excavation Notice System, also known as Gopher One Call Law, as it may be amended from time to time.

**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.

**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.

**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. An **OBSTRUCTION PERMIT** allows the holder to obstruct that portion of the right-of-way described in the permit.

**PATCH** or **PATCHING**. A method of pavement replacement that is temporary in nature. A patch consists of:

- (1) The compaction of the sub-base and aggregate base; and
- (2) The replacement, in kind, of the existing pavement for a minimum of 2 feet beyond the edges of the excavation in all directions.

**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.

**PERMIT**. A permit issued pursuant to this chapter.

**PERMITTEE/PERMIT HOLDER**. Any person to whom a permit to excavate or place equipment or facilities in a right-of-way has been granted by the city under this chapter.

**PERSON**. 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 in any right-of-way).

**REGISTRANT**. Any person who has fulfilled all requirements for registration under ' 91.15 and any other applicable portions of this chapter.

**RESTORATION COST**. Money paid to the city by a permittee to cover the cost of restoration.

**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.

**RIGHT-OF-WAY**. 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 of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire 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**. Means:

- (1) A telecommunications right-of-way user as defined by M.S. ' 237.162, subd. 4, as it may be amended from time to time;

(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; or

(3) Any person who in any way occupies, uses, or has or places its facilities or equipment in a right-of-way, or seeks to do so.

***SERVICE or UTILITY SERVICE.*** Includes:

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

(2) Telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, natural gas, cooling energy, or power services;

(3) The services provided by a corporation organized for the purpose set forth in M.S. ' 301B.01, as it may be amended from time to time;

(4) The services provided by a district heating or cooling system;

(5) Cable communications systems as defined in M.S. Chapter 238, as it may be amended from time to time; and

(6) Telecommunications rights-of-way user as defined below.

***TELECOMMUNICATION RIGHT-OF-WAY USER.*** A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for 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 whether provided by a public utility as defined in M.S. ' 216B.02, as it may be amended from time to time, a municipality, a municipal gas or power agency organized under M.S. Ch. 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under M.S. Ch. 308A, as it may be amended from time to time, are not telecommunications right-of-way users for purposes of this chapter.

***TERM.*** Registrations issued pursuant to this chapter shall expire on December 31 of each calendar year.

***TRENCH.*** An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

(Ord. 268, passed 7-16-2001)

**' 91.03 ADMINISTRATION.**

The City Administrator is the 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 hereunder.

(Ord. 268, passed 7-16-2001)

**' 91.04 EFFECTIVE DATE.**

This chapter shall take effect the day following publication in the city's official newspaper.

(Ord. 268, passed 7-16-2001)

***REGULATIONS AND REQUIREMENTS***

**' 91.15 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.**

(A) *Registration.* Each right-of-way user, and any person with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(B) *Exceptions.* The following are not subject to the requirements of this section:

- (1) Persons planting or maintaining boulevard planting or gardens;
- (2) Persons erecting fences, installing driveways, sidewalks, curbs and gutters, or parking lots;
- (3) Persons engaged in snow removal activities;
- (4) Federal, state, county, and city agencies;
- (5) Persons acting as agents, contractors, or subcontractors for a registrant who has properly registered in accordance with this section; and
- (6) Contractors furnishing services for sewer and water connections.

(C) *Information required.* The information provided to the 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, telephone and facsimile numbers;
- (2) The name, address, telephone and facsimile numbers of a local representative or designee

that 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) The agent for service of process;

(4) A certificate of insurance:

(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;

(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 officer, agents, employees, and permittees, including, but 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 coverage;

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

(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 the public and to carry out the purposes and policies of this chapter;

(f) Verifying that all agents, contractors, or subcontractors of the registrant are additional named insured under the policies; and

(g) The city may, in its discretion, resolve to accept self insurance, if it provides equivalent protection.

(5) The city will require a copy of the actual insurance policies;

(6) If the person is a corporation, a copy of the Articles required to be filed under M.S. Chapter 302A, as it may be amended from time to time, as recorded and certified by the Secretary of State; and

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

(D) *Security.* For companies not operating under a franchise with the city, a surety bond letter of credit or cash deposit in the amount determined by the city but not less than \$5,000, may be required from each applicant at the discretion of the city. A security bond shall be from a corporate security

authorized to do business in the state. Security required pursuant to this division (D) shall be conditioned that the holder will perform the work in accordance with this chapter and applicable regulations, will pay to the city any costs incurred by the city in performing work pursuant to this chapter; and will indemnify and save the city and its officers, agents, and employees harmless against any and all claims, judgments, or other costs arising from any excavation and other work covered by the permit or for which City Council or any city officer may be liable by reason of any accident or injury to persons or property through the fault of the permit holder, either in improperly guarding the excavation or for any other injury resulting from the negligence of the permit holder. The bond, letter of credit, or cash deposit shall be released by the city upon completion of the work and compliance with all conditions imposed by the permit. For permits allowing excavations within public streets, the bond, letter of credit, or cash deposit shall be held for a period of 24 months to guarantee the adequacy of all restoration work.

(E) *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 on which the registrant has knowledge of any change.

(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**' 91.16 PERMIT REQUIREMENT.**

(A) *Permit required.* Except as otherwise provided in this chapter, no person, including registrants, may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.

(B) *Permit display.* Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(C) *Exceptions.* No excavation/obstruction permit shall be required for the following:

- (1) Landscaping work;
- (2) Fences, driveways, sidewalks, curbs and gutters, and parking lots, street furnishings, bus stop benches, shelters posts and pillars;
- (3) Snow removal activities;
- (4) Vending machines;
- (5) Irrigation systems, provided that the system does not connect directly to water mains in the right-of-way;
- (6) Activities of the city; or
- (7) Installation and maintenance of sewer or water services, provided that no excavation or

other work is done within a street, sidewalk, or alley and all work is confined to unimproved portions of rights-of-way or easements.

(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**' 91.17 PERMIT APPLICATIONS.**

(A) An application for a permit shall be made on forms provided by the city and shall be accompanied by the fees set forth. If the work is to be performed by an agent, a contractor, or subcontractor on behalf of a registrant, the application shall be signed by the registrant.

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

(1) Scaled drawings showing the location of all facilities owned by the applicant and improvements proposed by the applicant;

(2) A description of the methods that will be used for installation;

(3) A proposed schedule for all work;

(4) The location of any public streets, sidewalks, or alleys that will be temporarily closed to traffic during the work;

(5) The location of any public streets, sidewalks, or alleys that will be disrupted by the work;

(6) A description of methods for restoring any public improvements disrupted by the work;

(7) Payment of money due the city for permit fees, estimated restoration costs, and other management cost; prior obstructions or excavations; 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; franchise fees, security deposit, or other charges, if applicable;

(8) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing. Exempt from this provision are individual property owners within the city limits of Olivia;

(9) Any other information reasonably required by the city;

(10) When an excavation permit is requested for the purpose of installing additional equipment, and the posting of a performance bond for the additional equipment is insufficient, the posting of an additional or larger performance bond of the additional equipment may be required;

(11) Provide a detailed construction schedule;

(12) Adequately notifying property owners affected, with a minimum of 48 hours of

notification; and

(13) Except when acting as agent, contractor, or subcontractor of a registrant, applicant must comply with the insurance requirements of ' 91.15. (Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**' 91.18 ISSUANCE OF PERMIT; CONDITIONS.**

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit, subject to compliance with the conditions imposed by this chapter.

(B) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the 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.

(C) *Diligence in performing work.* Work shall progress in an expeditious manner as reasonably permitted by weather conditions until completion in order to avoid unnecessary inconvenience to traffic. In the event that the work is not performed in accordance with applicable regulations pertaining to excavations and utility connections, or the work is not done in an expeditious manner, or shall cease or be abandoned without due cause, the city may, after a 72-hour notice to the permit holder, correct the work and fill the excavation or repair the street. The entire cost of the work shall be paid by the permit holder upon demand by the city. In the event the permittee fails to comply with the prescribed schedule as described in the permit, the city may impose a delay penalty in an amount prescribed in the fee schedule.

(D) *Denial of permit.* The city may deny a permit due to the following:

- (1) Failure to register pursuant to this chapter;
- (2) A proposed excavation within a street or sidewalk surface that has been constructed or reconstructed within the preceding 5 years unless the city determines that no other locations are feasible or when necessitated by an emergency;
- (3) The applicant has failed to comply with or correct inadequacies of previous permits;
- (4) The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival, or any other similar event;
- (5) The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way as provided in this chapter;
- (6) Businesses or residences in the vicinity will be unreasonably disrupted by the work;
- (7) The proposed schedule conflicts with scheduled total or partial reconstruction of the

right-of-way; and/or

(8) The applicant fails to comply with the requirements of this section or other sections of this chapter.

(E) *Permit limitations.* Permits issued pursuant to this chapter are valid only for the area of the right-of-way specified in the application and the permit, and only for the dates so specified. No work shall be extended beyond the permitted area or dates without a new permit being obtained. The city may extend the completion date of the work in accordance with this chapter.

(F) *Standards during construction or installation.* The permit holder shall comply with the following standards when engaging in the work:

(1) Observe and comply with all laws, rules, and regulations of the state and city and take the precautions as are necessary to avoid creating unsanitary conditions;

(2) Conduct the operations and perform the work in a manner as to ensure the least obstruction and interference to traffic;

(3) Take adequate precautions to ensure the safety of the general public and those who require access to abutting property;

(4) If required by the city, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to the adjoining properties;

(5) In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford it restricted use of the area and comply with MUTCD (Manual on Uniform Traffic Control Devices) traffic safety signing requirements;

(6) Exercise precaution at all times for the protection of person, including employees and property;

(7) Protect and identify excavations and work operations with barricades or flags as required, by a flagperson in the daytime, and by warning lights at night;

(8) Provide proper trench protection (as required by O.S.H.A.) when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation;

(9) Protect the root growth of trees and shrubbery;

(10) Installation of pipe (utility conductors) under portland cement concrete, asphalt concrete, or other high-type bituminous pavements shall be done by jacking, auguring, boring, or tunneling as directed by the city, unless otherwise authorized. HDPE (High Density Polyethylene) sleeving shall be an acceptable casing or sleeving material for telecommunications installations;

(11) When removing pavement of portland cement concrete, asphalt concrete, or high-type built up bituminous surfacing, the pavement shall be removed on each side of the trench or excavation a distance of 9 inches beyond the trench width and length, in order to provide a shoulder and solid inundation for the surface restoration;

(12) To obtain a straight edge and neat-appearing opening in pavement surface, the following procedure is required.

(a) *Portland cement concrete pavement.* The surface shall be saw-cut scored 2 inches deep and the concrete broken out by sledge or pneumatic hammer chisel.

(b) *Asphalt concrete.* The surface shall be cut full depth by pneumatic hammer chisel.

(13) Excavations, trenches, and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability, and as directed by the city;

(14) Excavations, trenches, and jacking pits shall be protected when unattended to prevent entrance of surface drainage;

(15) All backfilling must be placed in 6-inch layers at optimum moisture compacted with the objective of attaining 100% of AASHO (American Association of State Highway and Transportation Officials) density. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate;

(16) Backfill material shall consist of the excavated soils that have been removed during excavation. The materials shall be segregated and backfilled in the same manner as removed, provided the material moisture is capable of obtaining optimum compaction. If the backfill material is too wet, then granular material may be substituted at the direction of the city. All backfill must replace in kind the materials removed. All organic materials must be replaced with granular material as directed by the city;

(17) Compacted backfill shall be brought to street grade and crowned at the center not more than 1 inch;

(18) Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit;

(19) No lugs damaging to roadway surfaces may be used;

(20) Dirt or debris must be periodically removed during construction; and

(21) Other reasonable standards and requirements of the city.  
(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

‘ **91.19 PERMIT FEES.** (See Appendix A).

(A) *Excavation/obstruction permit fee.* The city shall establish a permit fee in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(B) *Payment of permit fees.* No obstruction permit shall be issued without a payment of the required fees.

(C) *Nonrefundable.* Permit fees that were paid for a permit that the city has revoked for a breach is not refundable.

(D) *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.

(E) *City project permit fees.* No excavation permit or obstruction permit fee shall be charged for City of Olivia projects.  
(Ord. 268, passed 7-16-2001)

‘ **91.20 REPAIR AND RESTORATION.**

(A) *Schedule.* The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permit holder when work was prohibited as unseasonable or unreasonable or when extended by the city. In addition to repairing its own work, the permittee must restore the right-of-way and surrounding areas, including the pavement and its foundation, 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 24 months thereafter.

(B) *General standards.* The permit holder shall perform repairs and restoration according to the standards and with the materials specified by the city. The city shall have the authority to prescribe the manner and extent of the restoration, and may do so in verbal or 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 consideration:

- (1) The number, size, depth, and duration of the excavations, disruptions, or damage to the right-of-way;
- (2) The pre-excavation condition of the right-of-way; the remaining life expectancy of the

right-of-way affected by the excavation;

(3) Whether the relative cost of the method of restoration to the permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance, or damage to the right-of-way; and

(4) 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.

(C) *City restoration.*

(1) *Generally.* If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, during the 24 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, all costs associated with correcting the defective work.

(2) *Patching, restoration, and degradation fees.* If the city patches or restores the right-of-way involved in a city project, fees shall not be charged for restoration or degradation.

(D) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. Permittee upon notification from the city shall correct all restoration work to the extent necessary, using methods required by the city. The work shall be completed within 5 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.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and condition required for restoration 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, with 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.  
(Ord. 268, passed 7-16-2001)

**91.21 JOINT APPLICATIONS.**

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

(B) *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.

(C) *City projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by 2 or more registrants or a single application, are not

required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

(Ord. 268, passed 7-16-2001)

**' 91.22 OTHER OBLIGATIONS.**

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permit, licenses, and authority and to pay all fees required by the city or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including M.S. ' 216D.01-216D.09 (Gopher One Call, Excavation Notice System), as it may be amended from time to time. 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.* A permittee shall not obstruct or interfere with a right-of-way that allows the natural free and clear passage of water through the gutters. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of the trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(D) *Emergency work.*

(1) (a) A registrant may proceed to take whatever actions are necessary to respond to an emergency.

(b) Within 2 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) If the city becomes aware of an emergency, the city shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. If a registrant or any of its agents creates or causes to create an emergency they shall notify any and all affected parties within a reasonable amount of time. In any event, the city may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities or equipment occasioned the emergency.

(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**91.23 INSPECTION.**

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules, part 7819.1300, as it may be amended from time to time.

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

(C) *Authority of the city.*

(1) The city may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The city 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 city that the violation has been corrected. If the proof has not been presented within the required time, the city may revoke the permit pursuant to this chapter. (Ord. 268, passed 7-16-2001)

**91.24 REVOCATION OF PERMITS.**

(A) *Generally.* The city may revoke any permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, this chapter, rule, or regulation, or any condition of the permit which the substantial breach shall continue uncured for 10 calendar days after the issuance of a written order of the city. A substantial breach of a permit holder shall include, but shall not be limited to, the following:

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

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

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

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

(5) The failure to complete the work in a timely manner; and

(6) The failure to correct a condition indicated on an order issued by the city.

(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 to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or 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.

(Ord. 268, passed 7-16-2001)

**' 91.25 APPEAL.**

(A) A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked, or believes that the fees imposed are invalid, 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 will be in writing and supported by written findings establishing the reasonableness of the decision.

(B) 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. 268, passed 7-16-2001)

**' 91.26 LOCATION AND RELOCATION OF FACILITIES.**

(A) Placement, location, and relocation of facilities must comply with this chapter, with other applicable laws, and with Minn. Rules, parts 7819.3100, 7819.5000, and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) Within 120 days following completion of any work pursuant to a permit, the registrant shall provide the city accurate maps and drawings certifying the as built location of all facilities and equipment installed, owned, and maintained by the registrant. The maps and drawings shall indicate both the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the city's mapping system.

(C) Failure to provide maps and drawings in accordance with this chapter shall be grounds for revoking the permit holder's registration.

(Ord. 268, passed 7-16-2001)

**' 91.27 LOCATION OF FACILITIES AND EQUIPMENT.**

(A) *Undergrounding by telecommunications right-of-way users.* Any new construction and the installation of new equipment and replacement of old equipment of telecommunications right-of-way users shall be underground or contained within buildings or other structures in conformity with applicable codes. Telecommunications right-of-way users may attach equipment and facilities to existing poles and structures maintained by a service or utility service with the owner's permission.

(B) *Corridors.* The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment installation currently permitted or anticipated to be permitted in the future. All permits issued by the city involving the installation or replacement of equipment shall designate the proper corridor for the equipment at issue.

(C) *Limitation of space.* To protect health and safety, the city 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 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 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.

(D) *Preservation of corridor space in the right-of-way for future installations.* To adequately plan for future demand on the right-of-way by users, the city may reserve corridor space within the right-of-way for equipment to be installed at a point of time in the future even though it is not currently permitted.

(E) *Nuisance.* One year after the passage of this chapter, any facilities found in a right-of-way that have 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 facilities and restoring the right-of-way to useable condition.  
(Ord. 268, passed 7-16-2001)

**' 91.28 PRE-EXCAVATION FACILITIES LOCATION.**

In addition to complying with the requirements of M.S. ' 216D.01-216D.09 (Gopher 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 placement of all the facilities. Any registrant whose 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 facilities and the best procedure for excavation.  
(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**91.29 RELOCATION.**

(A) *Relocation for city purposes.* A registrant shall promptly but in no event more than 120 days of the city's request, permanently remove and relocate at no charge to the city, any facilities or equipment if and when made necessary by a change in the grade, alignment or width of any right-of-way, vacation of any right-of-way, by the construction, maintenance or operation of any city facilities or to protect the public health, safety, and welfare. The registrant shall restore any rights-of-way to the condition it was in prior to removal and relocation. No fees shall be required of the permittee for work done under this division (A).

(B) *Undergrounding of relocated telecommunications facilities.* A telecommunications right-of-way user shall relocate all above ground facilities and equipment to underground locations at its own cost and expense at the city's request when the city requires the relocation of all telecommunications facilities and equipment to underground locations or structures or poles to which the registrant's facilities or equipment is attached are abandoned or removed by the owner of the structures or poles.

(Ord. 268, passed 7-16-2001)

**91.30 RIGHT-OF-WAY VACATION.**

(A) *Reservation of right.* If the city vacates a right-of-way which contains the equipment of a registrant, and the vacation does not require the relocation of registrant facilities and equipment, the city shall reserve, to and for itself and all registrants having facilities and equipment in the vacated right-of-way, the right to install, maintain, and operate any facilities and equipment in the vacated right-of-way and to enter upon the vacated right-of-way at any time for the purpose of reconstruction, inspecting, maintaining, or repairing the same.

(B) *Relocation of equipment.* If the vacation requires the relocation of registrant facilities and equipment, and if the vacation proceedings are initiated by the registrant, the registrant must pay the relocation costs or, if the vacation proceedings are initiated by the city, the registrant must pay the relocation costs unless otherwise agreed to by the city and the registrant or, if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, the other person or persons must pay the relocation costs.

(C) *Abandoned and unstable equipment.*

(1) *Discontinued operations.* A registrant who has determined to discontinue its operations in the city must either;

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

(b) Submit to the city an action plan for the removal or abandonment of equipment and facilities. The city shall require removal of the facilities and equipment if the city determines the removal is necessary to protect the public health, safety, and welfare. The city may require the registrant to post a bond in an amount sufficient to reimburse the city for reasonably anticipated costs to be incurred removing the facilities and equipment.

(2) *Abandoned facilities equipment.* Facilities and equipment of a registrant located on the surface of or above a right-of-way, or on city property which remains unused for a period of 2 years shall be deemed to be abandoned. The abandoned equipment is deemed to be a nuisance, or abating the nuisance, or requiring removal of the equipment or facilities by the registrant, or the registrant's successor.

(3) *Removal of underground equipment.* Any registrant who has unusable and abandoned underground facilities or equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, to the extent the facilities or equipment is uncovered by the excavation unless this requirement is waived by the city.  
(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**' 91.31 INDEMNIFICATION AND LIABILITY.**

(A) *Limitation of liability.* By reason of the acceptance of a registration or the grant of a right-of-way permit, the city does not assume any liability for:

(1) Injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city; or

(2) Claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

(B) *Indemnification.* By registering with the city, a registrant agrees, or by accepting a permit under this chapter, a permit holder agrees, to defend, indemnify, and hold the city whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, or operation of its equipment, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit, or other proceeding claiming damages, or seeking any other relief against the city for any claim nor for any award arising out of the presence, installation, maintenance, or operation of its equipment, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. The foregoing does not indemnify the city for its own negligence except for claims arising out of or alleging the city's negligence where the negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance, or repair of the equipment by the registrant or on the registrant's behalf, including but not limited to, the issuance of permits and inspection of plans or work. This chapter is not as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to

the city; and the registrant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf.

(C) *Franchise holder.* If there is a conflict in language between the franchise of a person holding a valid franchise agreement with the city and this chapter, the terms of the franchise shall prevail.

(D) *Violations.* Every person who violates a section, division, paragraph, item, clause, part, or any provision of this chapter when performing an act thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions thereof.

(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**' 91.32 REMOVAL OF EXISTING CURB; JOINTS BETWEEN EXISTING CURB AND NEW ENTRANCE.**

In making curb cuts, the existing curb shall be removed in complete whole sections. No cutting, sawing, or breaking of the existing curb shall be made except at the existing joints in the existing curb.

(Ord. 268, passed 7-16-2001) Penalty, see ' 10.99

**' 91.33 REPAIR OF PAVEMENT DISTURBED BY CURB CUT WORK.**

Any portions of the existing pavement structure disturbed during curb cut work shall be repaired with similar materials of equal or greater structural capacity. Repair limits shall be defined by right angle saw cuts so oriented to provide the least noticeable surface patch.

(Ord. 268, passed 7-16-2001)

**' 91.34 TIME LIMIT ON CURB CUT WORK.**

On existing streets improved with curb and gutter, the period between removing the existing curb and constructing the new entrance shall not exceed 30 days.

(Ord. 268, passed 7-16-2001)