

**TITLE 7**  
**PUBLIC WAYS AND PUBLIC PROPERTY**

## CHAPTER 701 PARKS AND RECREATION

### SECTION:

- 701.01: Definition
- 701.02: Use of Motor or Snow Vehicles
- 701.03: Prohibited Conduct or Activity

### **701.01: DEFINITION:**

The word "park" when used in this Chapter shall mean any municipally owned or operated public park, open space, playground or golf course. (Ord. 534, 4-24-1967; amd. 1995 Code)

### **701.02: USE OF MOTOR OR SNOW VEHICLES<sup>1</sup>:**

- A. Operation of Vehicles: Except for authorized service vehicles, no person shall drive or operate any vehicle in any park except on roads, parking areas or such other areas designated by the Director of Parks and Recreation at a speed not to exceed 15 miles per hour.
- B. Parking of Vehicles: No person shall park any motor vehicle in any park except in designated parking areas. (Ord. 534, 4-24-1967; amd. 1995 Code)

### **701.03: PROHIBITED CONDUCT OR ACTIVITY:**

The following regulations apply in all parks:

- A. No person shall light or make a fire except in places provided for such purposes.
- B. No person shall discharge any firearms or air guns<sup>2</sup>. No person shall discharge or display any fireworks unless a permit is obtained from the City Manager<sup>3</sup>.
- C. No person shall use bows and arrows in parks and playgrounds except in areas designated for that purpose.
- D. No person shall scatter about or litter the grounds with any form of waste material.
- E. No person shall throw stones or rubbish of any kind in any lake, pond or watercourse nor bathe, swim or wade except in designated areas.
- F. No person shall affix or inscribe any handbill or poster on any structure or property in any park or any place, square or highway contiguous to any park. (Ord. 534, 4-24-1967)
- G. No person shall possess, display, consume or use intoxicating liquors as defined in Minnesota Statutes section 340A.101, subdivision 14. No person shall possess, display, consume or use non-intoxicating malt liquors as defined in Minnesota Statutes section 340A.101, subdivision 19, except in certain areas of Central Park. The permitted areas in Central Park shall be established by the Director or designee of the Parks and Recreation Department pursuant to permits issued on a case-by-case basis and upon conditions imposed by said permits. (Ord. 1111, 4-27-1992) (Ord. 1540 1-29-2018)
- H. No person shall disturb or interfere with any birds or animals kept or found in such park.

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<sup>1</sup> See Title 6, Chapter 604 of this Code.

<sup>2</sup> See Title 5, Chapter 503 of this Code.

<sup>3</sup> See Title 5, Chapter 504 of this Code.

- I. No person shall be permitted to sell any article including food or drink unless such person shall have a permit, lease or concession granted by the City.
- J. No person shall play any game of baseball, football or other game except in areas provided for such game. (Ord. 534, 4-24-1967; amd. 1995 Code)
- K. No dogs shall be allowed except on leash, cord, or chain not more than six feet in length. This subsection does not apply to service animals accompanying a disabled person.  
The owner or attendant of any animal must carry clean-up utensils and clean up and dispose of all feces in a sanitary manner. (Ord. 1168, 8-12-1996)
- L. City parks shall be closed between the hours of 10:00 P.M. and 5:00 A.M. unless otherwise posted. No person shall remain and no motor vehicle shall be left in the park between those hours unless special permission has been granted by the Director of Parks and Recreation. (Ord. 1069, 1-8-1990)
- M. No person shall write upon, mark, deface or destroy in any manner or use in any improper way any property or thing pertaining to or in said parks.
- N. All persons shall obey all orders or directions of the Director or employees of the Department of Parks and Recreation.
- O. No person shall break, cut, mutilate, injure, remove or carry away any tree, plant, flower, shrub, rock, soil, sand, fence, bench or any other property.
- P. No person shall ride a horse or other animal without a permit from the Parks and Recreation Director.
- Q. No person shall use SCUBA or other diving equipment. (Ord. 534, 4-24-1967; amd. 1995 Code)
- R. Notwithstanding anything to the contrary in this Code, the use of non-intoxicating malt liquors as defined in Minnesota Statutes section 340A.101, subdivision 19, is permitted in certain areas of McCarrons Lake Park. The permitted areas in McCarrons Lake Park shall be established by the Director of the Parks and Recreation Department, or the Director's designee, pursuant to permits issued by Ramsey County on a case-by-case basis and upon review and approval of said permits by the Director and the Roseville Police Department.  
This subsection R shall be in force until the issuance of a certificate of completion for the Snail Lake Park shelter or November 1, 1999, whichever occurs first, at which time it shall be repealed without further action of the City Council. (Ord. 1204, 5-26-1998)

## CHAPTER 702

### USE AND REGULATION OF PUBLIC WATERS

#### SECTION:

- 702.01: Adoption of Code
- 702.02: Speed Limited
- 702.03: Water-Skiing or Surfboarding
- 702.04: No Wake Zone
- 702.05: Lake Owasso and Lake Josephine Restrictions
- 702.06: Aircraft

#### **702.01: ADOPTION OF CODE:**

For the purpose of regulating the operation of motorboats on the public waters within the City, the provisions of Minnesota Statutes section 86B.001 et seq., are adopted and by this reference made a part of this Chapter as completely as if set forth in full herein. (Ord. 1187, 9-8-1997)

#### **702.02: SPEED LIMITED:**

No motorboat shall be operated on any public waters at a speed greater than is reasonable and proper having due regard to safety of other boats and persons. On McCarrons Lake, Lake Owasso and Lake Josephine, no motorboat shall be operated at a speed greater than 40 miles per hour. (Ord. 1207, 8-10-1998) (Ord. 1341, 7-10-2006)

#### **702.03: WATER-SKIING OR SURFBOARDING:**

Except as provided for elsewhere in this Chapter, no motorboat shall be used for the purpose of water-skiing, surfboarding or other similar device, on any lake unless such operation is performed in a manner so that neither the boat nor the skier or surfboard rider come within 300 feet of shoreline, docks, swimmers or other boats. (Ord. 1187, 9-8-1997)

#### **702.04: NO WAKE ZONE:**

Except as provided for elsewhere in this Chapter, no person shall operate a motorboat or be towed on water skis or a similar device at greater than a slow-no wake speed within 300 feet of shore. Launching or landing a skier by the most direct route to open water shall be exempt from this provision. (Ord. 1187, 9-8-1997)

#### **702.05: LAKE OWASSO AND LAKE JOSEPHINE RESTRICTIONS:**

Notwithstanding any other provision of this Code to the contrary, the following restrictions apply to the operation and use of motorized watercraft on Lake Owasso and Lake Josephine:

- A. Definitions: The following words and phrases when used in this Chapter have the meanings set forth in Minnesota Statutes section 86B.005: motorboat, operate, person, slow-no wake and watercraft.
- B. No Wake: No person shall operate a motorboat or be towed on water skis or a similar device at greater than a slow-no wake speed within 150 feet of shore. Launching or

- landing a skier by the most direct route to open water shall be exempt from this provision.
- C. Safe Distance: Persons operating a motorboat, and those being towed on water skis or a similar device shall, at all times, maintain an adequate distance (considering speed and conditions) from other watercraft, swimmers, swim rafts and docks, so as to avoid an accident. When a swimmer is present, motorboats or persons being towed on water skis or a similar device shall not pass between a swim raft and the nearest shore.
  - D. Exemptions:
    - 1. Authorized resource management emergency and enforcement personnel, when acting in the performance of their duties, shall be exempt from the provisions of this Chapter.
    - 2. A temporary exemption from these restrictions for a special event may be granted upon approval by the City Council and the issuance of a permit by the Ramsey County Sheriff's Department.
  - E. Direction of Travel: For Lake Josephine only, except when operating at slow-no wake speeds, motorboats shall only travel in a counterclockwise direction.
  - F. Enforcement: Primary enforcement of this Chapter shall be the responsibility of the Ramsey County Sheriff's Department. This, however, shall not preclude enforcement by other licensed peace officers. (Ord. 1207, 8-10-1998)

#### **702.06: AIRCRAFT:**

- A. Use of Aircraft Declared a Hazard: The City Council finds and determines that there are no public waters (except Lake Owasso) within the City which may be used by aircraft without endangering the property and lives of other persons using the public waters. The City Council finds that all public waters in the City are small and heavily used for boating, fishing and swimming by residents and other people generally and that the use of aircraft on the same waters is a hazard to public safety. The City Council further finds that by prohibiting aircraft on the public waters, the public use of such waters is greatly increased and the number of persons able to use such waters is proportionately increased.
- B. Aircraft Prohibited from Using Public Waters: No aircraft shall fly over any public waters (except Lake Owasso) at such a low altitude as to interfere with the existing use of the public waters for boating, bathing or other recreational uses of the waters. No aircraft shall land on public waters, other than Lake Owasso, except in the case of a forced landing. (Ord. 1187, 9-8-1997)

## **CHAPTER 703**

### **USE AND REGULATION OF PUBLIC WAYS**

#### **SECTION:**

- 703.01: Purpose and Intent
- 703.02: Permit Requirements
- 703.03: General Requirements
- 703.04: Driveway and Parking Lot Standards
- 703.05: Bus Benches in Right of Way
- 703.06: Newspaper Vending Machines
- 703.07: Newspaper Receptacles
- 703.08: Street Name Signs
- 703.09: Administration
- 703.10: Obstruction Prohibited

#### **703.01: PURPOSE AND INTENT:**

The purpose of this chapter is to control the location of curb cuts and driveways in order that traffic hazards be reduced, adequate street drainage be maintained and that ingress and egress from properties shall not constitute a hazard or impair the health, safety or public welfare of the residents of the city. (Ord. 286, 11-24-1959)

#### **703.02: PERMIT REQUIREMENTS:**

- A. Permit Required: No driveway shall be constructed or reconstructed at any location where motor vehicles will be provided with access to any public right of way without first obtaining a permit for said construction from the Community Development Director or designee after approval by the Public Works Director or designee. The Public Works Director may add conditions to the permit.
- B. Application: Any person desiring said permit shall present a written application to the Community Development Director or designee describing the improvements to be made and plans which indicate that the requirements of this chapter will be met. The permit application shall be reviewed by the Public Works Director or designee.
- C. Permit Fees: Such application shall be accompanied by a fee as established by the City's Fee Schedule in Section 314.05.
- D. Revocation: The permit may be revoked by the Community Development Director or designee at any time after its issuance for failure to comply with the conditions of the permit or the directions of the Community Development Director or designee respecting the work. (Ord. 1172, 9-23-1996)

#### **703.03: GENERAL REQUIREMENTS:**

- A. Licensed Contractor Required; Exception: All construction work within the right of way of a street shall be performed by a licensed contractor who shall be responsible to assure that all relevant code provisions and regulations are rigidly followed. The requirement that the work be done by a licensed contractor may be waived by the Community Development Director or designee if the work is construction or repair of a driveway and the work is performed by the owner of the property and the owner executes a hold harmless agreement indemnifying the city against any claims for damages which might

- be made against the city arising out of the work performed by the property owner.
- B. Application of Requirements: These requirements apply to all new driveways as well as to major repairs and changes to old driveways which do not conform to present requirements in addition to new construction.
  - C. Notice to City: The Community Development Director or designee is to be notified of the date that construction will start at least 24 hours in advance. (Ord. 1172, 9-23-1996)

#### **703.04: DRIVEWAY AND PARKING LOT STANDARDS:**

- A. New Commercial Uses: The location and specifications for curb cuts and driveways in accordance with this section shall be a necessary part of the plot plan for the use and structure and must be approved prior to the issuance of a building permit.
- B. Standards For Driveways and Parking Lots: The following regulations shall apply to all driveways and aisles in parking lots:
  - 1. Maximum Width:
    - a. R-1 and R-2 Zones: For single-family and duplex principal structures within the R-1 and R-2 zones, the maximum width of any driveway at the property line shall be 26 feet. In addition to the maximum width, at each side of the driveway where the driveway intersects the street, three foot flares are permitted. The maximum driveway width for all other uses shall be 36 feet and 10 foot flares are permitted.
    - b. All Other Zones: Except for the single-family and duplex principal structures, the maximum driveway width for all other types of properties shall be 36 feet as measured at the property line. In addition to the maximum width, at each side of the driveway for such property where the driveway intersects the street, 10 foot flares are permitted.
    - c. Public Safety Facilities Exemption. These driveway maximum width regulations shall not apply to publicly owned and operated public safety facilities. (Ord. 1423, 1-23-2012)
  - 2. Minimum Distance: The minimum distance between edges of driveways at the front property line right of way line shall be 10 feet except in planned unit developments where the development agreement shall specify the distance.
  - 3. Parking Lot Aisle: Any drive aisle in a parking lot in any residential zoning district serving a building containing three or more dwelling units or in any zone other than a residential zoning district shall be a minimum of 24 feet except one-way drive aisles which shall be a minimum of 18feet.
  - 4. Intersection: On properties zoned R-1 or R-2, no driveway shall be located within 30feet of any right of way of a street intersection. On properties in all other zones, no driveway shall be located within 40feet of any right of way line of a street intersection. Said distances shall be measured along the property line from the corner right of way line.
  - 5. Minimum Driveway Angle: The minimum driveway angle from a two-way access street shall be 60 degrees from a one-way street it shall be 30degrees.
  - 6. Driveway Approaches: Driveway approaches between the curb and the property line shall be constructed of concrete, asphalt, brick pavers, a strength capable of handling the weight of cars and trucks (generally stamped on bottom of paver) or other hard surface pavement approved by the Public Works Director.

If concrete is used for the driveway, where there is no concrete curb or gutter, the concrete driveway shall be held back two feet from the edge of the roadway. The remaining two feet shall be surfaced with hot mixed bituminous material. Prior to starting work, the owner or builder shall obtain a permit from the Community Development Director or designee.
  - 7. Driveways: Driveways shall be constructed of concrete, asphalt, brick pavers or other

hard surface pavement approved by the Public Works Director.

8. Driveway Elevation: The driveway elevation at the property line shall not be more than ten inches nor less than four inches above the centerline of the abutting street with a maximum slope to gutter lines of 10%+ and a minimum slope of 2%+.

9. Driveways on Private Property: Residential driveways, shall be constructed so that the edge of the driveway nearest to the side lot line shall be a minimum of five feet from the side lot line.

10. Driveways On County Or State Roads: Where new principal structures are constructed on lots contiguous to roadways designated as major thoroughfares in the city's comprehensive plan, driveways servicing such lots shall be designed and constructed so as to provide a vehicle turnaround facility within the lot.

- C. Access to County or State Roads: On properties having frontage on both major and minor roads, access shall be provided via the minor road wherever feasible in order to reduce the number of curb cuts on major thoroughfares.
- D. Traffic Control: Where commercial land uses are adjacent to residential districts, ingress and egress from the commercial properties on streets leading to or through the residential zones shall not be permitted unless it can be demonstrated that adequate access to public rights of way is thereby denied. Traffic control is exercised so as to ensure that the location of driveways shall not constitute a hazard nor be injurious to adjacent residential uses.
- E. State and County Highway Requirements: Where the proposed driveway is to be constructed so that it opens into any street designated as either a Minnesota state, Ramsey County or U.S. trunk highway, all additional specifications of the appropriate highway departments will apply. (Ord. 1172, 9-23-1996)

### **703.05: BUS BENCHES IN RIGHT OF WAY:**

No bench may be placed or maintained in a public right of way without securing a permit from the Public Works Director and the payment of an annual license fee as established in Section 314.05. The number, size, and locations of all benches shall be in accordance with the City of Roseville/Metro Transit bus route plan. The Public Works and Transportation Commission will review the annual site application for input regarding the siting application. A permit shall not be issued unless the bench and its placement comply with the following conditions:

(Ord. 1379A, 11-17-2008)

- A. Bus Stops: A bench shall only be placed at a bus stop on an established bus route.
- B. Location: A bench shall be placed parallel to and no nearer than four feet from the roadway curb or the edge of the roadway where no curb exists and shall not obstruct a pathway.
- C. Number: No more than one bus bench may be placed at a roadway intersection in the direction of traffic flow, unless the Public Works Director authorizes more benches in writing after finding that the passenger load justifies more than one bench at a bus stop. All bus benches shall bear the local telephone number at which the permittee may be reached concerning issues with the bench.
- D. Proximity to Other Benches: No bus bench may be placed within 500 feet of any other bench or within 15 feet of an existing one on a roadway, unless the Public Works Director authorizes more benches in writing after finding that the passenger load justifies more than one bench at a bus stop or closer proximity.
- E. Size: The maximum size of a bench shall be three and one-half feet high, seven feet long and three feet wide erected upon a concrete pad of maximum eight foot length and four foot width. The maximum amount of advertising on a bus bench shall not exceed



eleven square feet.

- F. Color: A bench shall be of a single color except a multicolored advertising sign. The bench signage may be affixed to or may be used as the backrest of the bench. Signage shall be affixed only to the street-side portion of the bench backrest
- G. Structure Maintenance: When directed by the Public Works Director as necessary to address refuse and litter issues, bench sites shall be equipped with an architecturally complementary trash receptacle. Benches shall be maintained a minimum of once per week with such maintenance to include picking-up litter/debris about the bench, removing graffiti/stickers, removal of ice and snow in a manner such that each bench shall be fully accessible within 72 hours of a snow fall or other weather event. Benches shall be inspected weekly for any damaged or broken parts and shall repair or replace damaged or broken parts within 48 hours after damage or breakage is discovered or reported.
- H. Liability Insurance: A certificate of liability insurance shall be filed with the city covering claims for damages which might arise out of the use or placement of a bench in the public right of way naming the city as an additional insured. The minimum limit of liability shall be six hundred thousand dollars (\$600,000.00).
- I. Removal: At the request of the Public Works Director, a bench shall be removed at the permittee's sole expense in order to permit right of way improvements or maintenance. If the location of the bench is a safety hazard or if it interferes with pedestrian or vehicular traffic on the right of way, or if the bus route changes, the provider shall incur the cost of removal within 30 days of the route change.
- J. State or County Permission: If the bench placement is in a Minnesota Department of Transportation or county right of way, written permission must be secured from the Minnesota department of transportation or the county and filed with the city. (Ord. 1267, 7-15-2002)
- K. Applicants and permittees must meet all local, state, and federal requirements applicable to bus benches, their placement, and their use for public transit services. (Ord. 1294, 9-15-2003)

### **703.06: NEWSPAPER VENDING MACHINES:**

- A. Notification to City: No newspaper vending machine may be placed or maintained in a public right of way without the publisher notifying the Public Works Director, in writing, of the location of the vending machine.
- B. Placement Conditions: Placement of vending machines shall comply with the following conditions:
  - 1. Distance from Roadway: A newspaper vending machine may be placed no nearer than four feet from the roadway curb or the edge of the roadway where no curb exists and shall not obstruct a pathway.
  - 2. Maximum Size: The maximum size of a newspaper vending machine shall be four feet high, two feet long and two feet deep.
  - 3. Number of Machines: No more than one newspaper vending machine per newspaper publisher may be placed within 800 feet of any other newspaper vending machine of that same newspaper publisher.
  - 4. Attachment to Public Facility Prohibited: No newspaper vending machine may be attached to a public facility such as a utility pole, roadway sign or fireplug.
  - 5. Color and Identification: A newspaper vending machine shall be of a single color except for lettering on the machine which shall not exceed four inches in height. Such lettering shall identify the newspaper only and shall not be an advertising sign.
  - 6. Removal: At the request of the Public Works Director, a newspaper vending machine shall be removed in order to permit right of way improvements or maintenance, if its

location is a safety hazard or if the vending machine significantly interferes with pedestrian or vehicular traffic on the right of way.

7. Residential Areas: No newspaper vending machine may be placed in a public right of way adjacent to a property zoned residential and containing four residential units or less. (Ord. 999, 5-12-1986; amd. 1995 Code)

### **703.07: NEWSPAPER RECEPTACLES:**

- A. Definition: For the purposes of this section, a "newspaper receptacle" is any outside device, whether tubular, box shaped or otherwise, designed for and used to receive newspapers, advertising flyers or similar printed material delivered by a carrier. Included in this definition are such devices which may be attached to the sides of buildings, freestanding posts, mailbox posts and other outside structures.
- B. Limitations: Newspaper receptacles are prohibited in public rights of way except at the roadway curb of each lot. No more than two newspaper receptacles may be attached to a rural delivery mailbox post. On lots where no mailbox post is available or where such placement is impractical, no more than two newspaper receptacles may be placed on a single post; provided that if there is a mailbox on the lot, the newspaper receptacle post shall be located within 18 inches of the mailbox post. In no event will there be more than two newspaper receptacles on any lot.
- C. Exceptions:
  - 1. Where rural mailboxes are located on one side of the street, newspaper receptacles may be placed on the side of the street where the residence is located or on the mailbox post or within 18 inches of the mailbox post in accordance with subsection B of this section regardless of which side of the street the mailbox is located.
  - 2. On lots where more than one dwelling unit is located, no more than two newspaper receptacles may be placed for each dwelling unit.
- D. Color: All newspaper receptacles permitted by this section shall be a brown or tan color or such other neutral color as provided, in writing, by the Public Works Director. Permitted newspaper receptacles shall not display the name of a newspaper or other advertising message but may display an identifying mark for each publisher using the receptacle not to exceed two inches by two inches in size.
- E. Permission: Each publisher which has placed or places a newspaper receptacle pursuant to this section shall provide the occupier of the dwelling to which it is adjacent with a self-addressed postcard, printed in such a manner that the occupier may instruct the publisher to remove the newspaper receptacle. In the event the publisher receives instructions from the occupier to remove the newspaper receptacle, the publisher shall remove the same within ten days of receipt of the instruction. (Ord. 920, 2-14-1983)

### **703.08: STREET NAME SIGNS:**

- A. Erection: No person other than an employee or duly authorized agent of the city shall erect any sign purporting to be a street name sign within the corporate limits of the city.
- B. Maintenance: The city shall maintain all street name signs within its corporate limits. (Ord. 337, 9-8-1961)

### **703.09: ADMINISTRATION:**

- A. Enforcement: The Public Works Director is hereby designated as the enforcing officer for this chapter and shall have the power to issue, deny or revoke any permit. The Public Works Director may institute in the name of the city any appropriate actions or procedure against a violator as provided by law. (Ord. 286, 11-24-1959; amd. 1995 Code)

- B. Appeals and Hearings: Appeals from the decision of the Public Works Director in relation to the granting and revoking of a permit shall be referred to the City Council. Such appeal shall be taken within 20 days from and after the date of such decision by the Public Works Director. Upon a motion from the City Council the appeal may be referred to the planning commission. If directed by the City Council, the planning commission may hold a public hearing on the appeal. The procedure for said public hearing shall be as set forth in Title 1, Chapter 108 of this code. The prosecution for violation of any of the provisions herein shall be held in abeyance pending the determination of the appeal to the City Council. (Ord. 1175A, 11-25-1996)

**703.10: OBSTRUCTION PROHIBITED:**

- A. Obstruction or blocking of city owned non-motorized pathways, sidewalks, or designated bicycle routes, by any means, including, but not limited to, the parking of vehicles or storage of snow, is prohibited. (Ord. 1186, 8-11-1997)

## **CHAPTER 704**

### **CONSTRUCTION OF STREETS AND SIDEWALKS**

#### **SECTION:**

- 704.01: Jurisdiction and Scope
- 704.02: Definitions
- 704.03: Grading
- 704.04: Specifications for Pavements
- 704.05: Curbs and Gutter
- 704.06: Drainage

#### **704.01: JURISDICTION AND SCOPE:**

- A. Jurisdiction: Pursuant to the applicable statutory authority of the City Council to regulate, control and maintain City streets as provided in Minnesota Statutes, Annotated, chapters 412, 429 and 471.
- B. Scope: The specifications set forth in this Chapter shall apply to all streets hereafter constructed within the City and are considered as additional safeguards made necessary through the rapid growth and expansion of the City. (Ord. 217, 6-12-56)

#### **704.02: DEFINITIONS:**

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

**COLLECTOR STREET:** A street which carries traffic from minor streets of residence development and the principal circulating streets within such a development.

**CUL-DE-SAC:** A short minor street having one open end and being permanently terminated at the other by a vehicular turnaround.

**MARGINAL-ACCESS STREET:** A minor street which is parallel to and contiguous with a thoroughfare and which provides access to abutting properties and protection to local traffic from fast, through-moving traffic on the adjoining thoroughfare.

**MINOR STREET:** A street other than a thoroughfare or collector street which affords local access to abutting properties. (Ord. 217, 6-12-56)

#### **704.03: GRADING:**

The full width of the right of way shall be graded, including the subgrade of areas to be paved, in accordance with the design and specifications approved by the Public Works Director and in accordance with the most current Minnesota Department of Transportation Standard Specifications for Highway Construction. (Ord. 448, 12-7-64; amd. 1995 Code)

#### **704.04: SPECIFICATIONS FOR PAVEMENTS:**

All pavements shall be constructed in accordance with the plans approved by the City Engineer and all minor streets, cul-de-sac streets and marginal access streets shall be constructed for seven ton rated capacity and all other roads shall be constructed for nine ton rated capacity, all of such construction to be in accordance with the most current Minnesota Department of Transportation Standard Specifications for Highway Construction. (Ord. 448, 12-7-64; amd. 1995 Code)

**704.05: CURBS AND GUTTER:**

Concrete curbs and gutters shall be constructed on all asphalt pavements. Either integral curb or concrete curb and gutter shall be constructed on all concrete pavements. (Ord. 448, 12-7-64)

**704.06: DRAINAGE:**

Where considered necessary to ensure adequate drainage of any street hereafter constructed in the City, the Public Works Director shall approve the necessary storm drainage facilities to be built with the street. (Ord. 448, 12-7-64; amd. 1995 Code)

**CHAPTER 705**  
**EXCAVATION, GRADING AND SURFACING - Repealed**  
**(Ord. 1551, June 4, 2018)**

## CHAPTER 706

### URBAN FOREST MANAGEMENT

#### SECTION:

- 706.01: Declaration of Policy
- 706.02: Purpose
- 706.03: Definitions
- 706.04: Tree Board
- 706.05: Jurisdiction
- 706.06: Designation and Duties of City Forester
- 706.07: Public Tree Master Plan
- 706.08: Regulations for Planting or Removing Trees, Shrubs, and Herbaceous Plants on Public and Private Property
- 706.09: Duties of Private Landowners
- 706.10: Reporting Discovery of Shade Tree Pests
- 706.11: Registration of Tree Care Firms
- 706.12: Standard Abatement Order Procedure
- 706.13: Development or Redevelopment Tree Planting
- 706.14: Declaration of A Shade Tree Pest
- 706.15: Nuisances are Unlawful
- 706.16: Declared Shade Tree Pests, Control Measures and Control Areas
- 706.17: Urban Forest Management Fees
- 706.18: Emergencies
- 706.19: Interference

#### **706.01: DECLARATION OF POLICY:**

The health of trees in the City of Roseville (City) is threatened by shade tree pests. The loss or ill health of trees growing upon public and private property, substantially depreciates the value of property within the city and impairs the safety, environmental benefits, general welfare and convenience of the public. The provisions of this section are adopted as an effort to control and prevent the spread of shade tree pests and to maintain a healthy urban forest, in addition to and in accordance with Minn. Stat. §§ 89.001, 89.01 and 89.51-.64.

#### **706.02: PURPOSE:**

It is the purpose of this Chapter to protect and promote the public health, safety and general welfare of the people of the City by:

- A. Regulating the planting, maintenance and removal of trees, shrubs and herbaceous plants on all public spaces and rights of way.
- B. Allowing the planting, maintenance, removal and trimming of trees, shrubs and herbaceous plants on public lands by written permission of the city.
- C. Inspecting trees on public and private lands.
- D. Controlling shade tree pests to protect the trees and to prevent and abate hazardous tree conditions and nuisances within the City on public and private lands.
- E. Protecting and preserving existing healthy trees.
- F. Encouraging the planting of trees for the protection and enhancement of the

environment

### **706.03: DEFINITIONS:**

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

**BOULEVARD:** That property between the edge of the street and the property line (right-of-way line).

**EASEMENT:** The right to use a defined part of real property held by others for a specific purpose.

**HAZARDOUS TREE:** Any tree, as determined by the City Forester, to cause or have the potential to cause harm to public or private property, following the guidelines set forth by the Minnesota Department of Natural Resources (MNDNR).

**HERBACEOUS PLANTS:** Non-woody plants.

**NUISANCE:** Any shade tree pest or hazardous tree in the community threatening to cause significant damage to another shade tree, or public or private property.

**PROPERTY LINE:** The legal boundary of a parcel of land.

**PUBLIC TREE MASTER PLAN:** Official comprehensive tree management plan, including, but not limited to, a planting guide with regulations outlining acceptable tree species, planting locations, planting techniques and treatments to limit the spread of shade tree pests and maintain healthy trees.

**PUBLIC TREE PERMIT:** Written permission given by the City allowing a person(s) to plant, trim, treat or remove a tree, shrub, or herbaceous plant on city public land.

**PUBLIC UTILITIES:** Public water, storm sewer and sanitary lines.

**RIGHT OF WAY:** The surface and space above and below a public roadway, highway, street, cartway, bicycle and public sidewalk in which the City has an interest, including other dedicated rights of way for travel purposes, utility easements and any other real property owned by or under the control of the City.

**SHADE TREE PEST:** Any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest, as defined by Minn. Stat. § 89.001.

**SHRUB:** A woody plant at maturity less than 20 feet tall with multiple stems at the ground or branching within a few feet above ground.

**TREE:** A woody plant at maturity 20+ feet tall with a single stem and unbranched for several feet above ground.

**TREE TOPPING:** Topping and tipping are pruning cuts made indiscriminately on limbs with no regard for placing the cuts near protection zones.

**TREE TRIMMING:** Recommended trimming and pruning techniques are outlined in the Public Tree Master Plan. Tree topping is not considered an appropriate tree trimming technique and is specifically prohibited on all public lands.

### **706.04: TREE BOARD:**

The Parks and Recreation Commission shall act in all matters relating to the advisement of issues contained in this Chapter and all others relating to urban forest management within the City, pursuant to City Code Chapter 203.

### **706.05: JURISDICTION:**

A. The city shall have the power to plant, care for, maintain, remove, and replace all trees, shrubs, and herbaceous plantings located within any street right of way, parks and public places within the City limits.

B. The city shall have control over the planting, care, maintenance, removal and replacement



of all trees, shrubs, and herbaceous plants located on private property that constitute a hazard or threat to the public as set forth in this Chapter.

#### **706.06: DESIGNATION AND DUTIES OF CITY FORESTER:**

- A. Appointment of City Forester: The Director of Parks and Recreation, or duly authorized employee, shall act as the City Forester to coordinate the activities within the city relating to urban forest management.
- B. Authority of City Forester: The City Forester shall have jurisdiction and supervision over all trees, shrubs, and herbaceous plants located within street rights of way, parks and public places of the City, and trees, shrubs and herbaceous plants located on private property that constitute a hazard or threat to the public.
- C. Duties of City Forester: The City Forester may direct the planting, care, maintenance, removal and replacement of any tree, shrub or herbaceous plant on public grounds and on private property where necessary to preserve or restore the healthy and safe condition of such tree, shrub or herbaceous plant or to protect the public from damage or injury. The cost of any such work may be assessed against the property on which the tree, shrub or herbaceous plant is located, pursuant to Section 706.12.
- D. Public Tree Master Plan: In addition to the other responsibilities under this Chapter, the City Forester shall review the Public Tree Master Plan regarding all aspects of trees, shrubs and herbaceous plants on public property within the City and on private property where such tree(s), shrub(s) and/or herbaceous plant(s) may present a health or safety hazard.

#### **706.07: PUBLIC TREE MASTER PLAN:**

The Public Tree Master Plan shall address the following matters:

- 1. List of acceptable varieties of plant material
- 2. Prohibited plantings of specific trees, shrubs and herbaceous plants
- 3. Minimum size of plant material
- 4. Grade and quality of plant material
- 5. Method/technique of planting and support
- 6. Maintenance
- 7. Recommended trimming and pruning techniques
- 8. Recommended acceptable treatments

When approved by resolution of the City Council following a review by the City Tree Board, the Public Works Director and Community Development Director, the Public Tree Master Plan and any modifications will be the Official Plan of the City. After the adoption of the official plan, no tree planting permit will be issued which does not conform to the Public Tree Master Plan.

#### **706.08: REGULATIONS FOR PLANTING OR REMOVING TREES, SHRUBS OR HERBACEOUS PLANTS ON PUBLIC PROPERTY:**

- A. Hazard Placement Prohibited: No tree, shrub or herbaceous plant shall be planted, placed or allowed to remain in a place which the City Engineer determines could cause a traffic hazard. Enforcement shall be conducted by the City Forester and the City Engineer.
- B. Boulevard Planting: Trees, shrubs, or herbaceous plants must be located within the first three (3) feet of the boulevard, measured from the property line. Plant material shall be consistent with the Public Tree Master Plan and not in conflict with public plantings based on the judgment of the City Forester. Planting will be by permit only.
- C. Spacing/Placement: Placement of trees, shrubs or herbaceous plants must be consistent

with Sections 706.07 through 706.08 and the guidelines listed in the Public Tree Master Plan.

- D. Abuse or Mutilation: No person shall on public property and right of way:
  - 1. Damage, cut, remove, carve, kill or injure trees, shrubs or herbaceous plants.
  - 2. Trim, prune, remove, spray or otherwise treat trees, shrubs or herbaceous plants without first obtaining a public tree permit.
  - 3. Attach any rope, wire or other contrivance to any tree, shrub or herbaceous plant.
  - 4. Cause or permit any wire charged with electricity or any gaseous liquid or solid substance to come in contact with trees, shrubs or herbaceous plants which are located on, or extend over, any public street, boulevard, park or other public place without a permit.
- E. Public Tree Permits:
  - 1. No person shall plant, remove or treat trees, shrubs or herbaceous plants on a public boulevard without first obtaining a public tree permit from the City Forester.
  - 2. The following provisions apply to the issuance of public tree permits for planting, treating or removing trees, shrubs and/or herbaceous plants on public property, especially the boulevard:
    - a. Application Data: The application required under this Section shall state the number of trees, shrubs and/or herbaceous plants to be planted, the location, size and specific species of each tree or plant.
    - b. Standards for Issuance: A permit shall be issued after the application has been determined to be in compliance with the Public Tree Master Plan and the requirements of this Section and related sections by the City Forester.
    - c. Replacement: As a condition to the granting of a tree removal permit, the City Forester may require the applicant to relocate or replace trees, shrubs and/or herbaceous plants to be consistent with the Public Tree Master Plan.
    - d. Bond Requirements: A posted bond or cash escrow may be required in an amount to be determined by the City Forester conditioned upon satisfactory compliance with the terms of the permit.
    - e. Permit Denial: If a planting or removal permit is denied, the reason(s) for denial shall be set forth in writing and given to the applicant, within 20 days of receipt of application.
    - f. Denial Appeal: Any applicant adversely affected by the decision may appeal to the City Tree Board and, finally, to the City Council.
- F. Areas Not Applicable: The provisions of subsection D above shall not apply to:
  - 1. The removal of trees on public easements/rights of way, conducted by, or on behalf of, a Federal, State, County, Municipal or other governmental agency in pursuance of its lawful activities or functions in construction or improvements.
  - 2. The removal of any tree by a public utility when such tree has the reasonable potential of endangering the facility's operation by the utility.

#### **706.09: DUTIES OF PRIVATE LANDOWNERS:**

It shall be the duty of any person owning private property to comply with the following:

- A. Planting on Private Property: No person shall plant or allow to be planted on any privately owned property any tree, shrub or herbaceous plant listed in the Public Tree Master Plan as prohibited.
- B. Acceptable Plant Materials: Acceptable plant materials shall not have characteristics detrimental to the public welfare such as:
  - 1. susceptibility to pests, as determined by the MNDNR, Minnesota Department of Agriculture (MDA) and the City Forester
  - 2. susceptibility to wind damage

3. a tendency to interfere with utilities
  4. or a tendency to interfere with public easements or rights of way.
- C. Prohibited Obstructions:
1. Obstructing View: No trees, shrubs or herbaceous plants shall be planted or allowed to grow so as to obstruct the view of any vehicular traffic on public streets or pathways, or pedestrians on public pathways.
  2. Utilities: No trees may be planted under or within ten (10) level feet of any overhead utility wire, or over or within ten (10) lateral feet of any underground public utilities.
- D. Trimming of Trees:
1. Private property trees and shrubs must be trimmed so as not to cause a hazard to persons or property on abutting property.
  2. All trees and shrubs shall be pruned to sufficient height to allow free passage of pedestrians and vehicular traffic: nine (9) feet over sidewalks and 16 feet over streets and two (2) feet horizontal distance.
- E. Removal of Pest-Infested or Hazardous Trees: Pest-infested or hazardous trees, and plants deemed to be a health or safety hazard by the City Forester, must be treated or removed so as not to constitute a health or safety hazard to the public or to other trees or plants in the City.
- F. Stockpiling and Storage of Firewood Logs: No person shall stockpile or store wood from a pest-infested tree with the bark intact without first having obtained a permit to do so. The City Forester may issue permits, upon proper application, for the stockpiling or storage of such wood only between September 15 and April 1 of the following year and only at locations which are specified in the permit.

#### **706.10: REPORTING DISCOVERY OF SHADE TREE PESTS:**

Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of a nuisance as defined under Section 706.03 shall report the same to the city.

#### **706.11: REGISTRATION OF TREE CARE FIRMS:**

Any person, corporation or other entity that operates a business which provides tree care, tree trimming, or removal of trees, limbs, branches, brush, or shrubs for hire must be licensed to work in the City by the Community Development Department.

#### **706.12: STANDARD ABATEMENT ORDER PROCEDURE:**

When the City Forester determines with reasonable certainty that it is necessary to order the trimming, treatment or removal of trees, shrubs or herbaceous plants as authorized in subsection 706.09, a written order to correct the condition shall be served.

- A. The City Forester will notify in writing the owner of record or occupant of the premises that a nuisance exists and order that the nuisance be terminated or abated. The notice may be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the City Forester.
- B. Removal Date: The date inserted in the notice in subsection 706.12A shall be 20 days after the notice is mailed.
- C. Appeal: A person receiving said notice may, within five (5) working days of the postmark date of said notice, file an appeal with the City. The appeal will be heard by the City Tree Board and forwarded to the City Council for action within 21 calendar

days following the appeal of said notice.

- D. **Summary Removal of Pest-Infested Trees:** In the event the trees covered in said notice are not removed, destroyed and/or treated, as provided in subsections 706.12A through C, within ten (10) calendar days following the denial on an appeal as set forth in subsection 706.12C, the City Forester shall cause said trees to be summarily removed, destroyed and/or treated and shall take any other action necessary to prevent the spread of the pest or danger to the public.
- E. **Cost Responsibility:** Any costs of inspecting, removing or treating trees, including any legal expense, shall be itemized and mailed to the owner at the address shown in the records of the County Auditor. In the event said itemized bill is not paid within 30 days, the amount of said costs, plus interest, shall be certified to the proper County officials and collected with the next succeeding five (5) years real estate taxes as provided for in Minnesota Statute Section 429.101.

### **706.13: DEVELOPMENT OR REDEVELOPMENT TREE PLANTING:**

All development and redevelopment activities within the City of Roseville shall be subject to City Code Chapter 1011.03 regarding minimum landscaping standards.

### **706.14: DECLARATION OF A SHADE TREE PEST:**

The City Forester may declare any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest, as defined by Minn. Stat. § 89.001, to be a shade tree pest.

### **706.15: NUISANCES ARE UNLAWFUL:**

It is unlawful for any person to permit any nuisance as defined in Section 706.03 to remain on any premises the person owns or controls within the city. The nuisance may be abated as provided in this ordinance.

### **706.16: DECLARED SHADE TREE PESTS, CONTROL MEASURES, AND CONTROL AREAS:**

The City Forester may prescribe control measures to effectively eradicate, control, or manage the shade tree pest, including necessary timelines for action. Shade Tree Pests are to be eradicated, controlled or managed according to best management practices prescribed by the MDA and the MNDNR. The control area of a shade tree pest is defined as all lands within the boundaries of the city.

### **706.17: URBAN FOREST MANAGEMENT FEES:**

Fees for all permits and other applicable required City services shall be as established by the City Fee Schedule in Section 314.05.

### **706.18: EMERGENCIES:**

In case of emergencies involving, but not limited to, tornadoes, windstorms, floods, freezes or other natural disasters, the requirements of this Chapter may be waived by the Mayor or, in the absence of the Mayor, the Acting Mayor.

### **706.19: INTERFERENCE:**

It is unlawful for any person to prevent, delay or interfere with the enforcement of this Chapter by any City official.

(Ord. 1410, 6-13-2011)

## CHAPTER 707 RIGHT-OF-WAY MANAGEMENT

### SECTION:

- 707.01: Findings and Purpose
- 707.02: Definitions
- 707.03: Administration
- 707.04: Utility Coordination Committee
- 707.05: Registration and Right-of-Way Occupancy
- 707.06: Registration Information
- 707.07: Reporting Obligations
- 707.08: Permit Requirement
- 707.09: Permit Applications
- 707.10: Issuance of Permit; Conditions
- 707.11: Permit Fees
- 707.12: Right-of-Way Repair and Restoration
- 707.13: Joint Applications
- 707.14: Supplementary Applications
- 707.15: Other Obligations
- 707.16: Denial of Permit
- 707.17: Installation Requirements
- 707.18: Inspection
- 707.19: Work Done without a Permit
- 707.20: Supplementary Notification
- 707.21: Revocation of Permits
- 707.22: Mapping Data
- 707.23: Location of Facilities
- 707.24: Relocation of Facilities
- 707.25: Pre-excavation Facilities Location
- 707.26: Damage to other Facilities
- 707.27: Right-of-Way Vacation
- 707.28: Indemnification and Liability
- 707.29: Appeal
- 707.30: Abandoned and Unusable Facilities
- 707.31: Reservation of Regulatory and Police Powers
- 707.32: Franchise; Franchise Supremacy
- 707.33: Severability

### **707.01: FINDINGS AND PURPOSE:**

- A. General: to provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights of way, the City strives to keep its rights of way in a state of good repair and free from unnecessary

encumbrances. Although the general population bears the financial burden for the upkeep of the rights of way, a primary cause for the early and excessive deterioration of its rights of way is frequent excavation.

The City holds the rights of way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the rights of way. 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 such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property.

In response to the foregoing facts, the City hereby enacts this new Chapter relating to right-of-way permits and administration. 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 rights of way will bear a fair share of the financial responsibility for their integrity. Finally, this Chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights of way.

- B. Legislative Power: By enactment of this Chapter, the City Council hereby exercises its lawful police power and common law authority, and all statutory authority which is available to it, including, but not limited to, the powers conferred on it under Minnesota Statutes sections 237.162 and 237.163, while preserving all power and authority to further require franchises from right-of-way users under Minnesota Statutes sections 216B.36, 222.37, 300.03, and 412.11, and other provisions of law. (Ord. 1209, 8-24-1998) This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. (Ord. 1549, 4-9-2018)

## **707.02: DEFINITIONS:**

The following definitions apply in this Chapter. References hereafter to "sections" are, unless otherwise specified, references to sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

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

**BUSINESS DISTRICT:** That portion of the City lying within and bounded by the following streets: to be subsequently designated.

**CITY:** The City of Roseville, Minnesota. For purposes of Section 707.28 of this Chapter, City means its elected officials, officers, employees and agents.

**COLLOCATE or COLLOCATION:** To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit. (Ord. 1549, 4-9-2018)

**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 such right of way earlier than would be required if the excavation did not occur.

**DEGRADATION COST:** The cost to achieve a level of restoration as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in proposed PUC rules parts 7819.9900 to 7819.9950.

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

**DELAY PENALTY:** The penalty imposed as a result of unreasonable delays in right-of-way

construction.

**DEPARTMENT:** The Department of Public Works of the City.

**DEPARTMENT INSPECTOR:** Any person authorized by the Director to carry out inspections related to the provisions of this Chapter.

**DIRECTOR:** The Director of the Department of Public Works of the City, or her or his designee.

**EMERGENCY:** A condition that: a) poses a clear and immediate danger to life or health, or of a significant loss of property; or b) requires immediate repair or replacement in order to restore service to a customer.

**EQUIPMENT:** Any tangible asset used to install, repair, or maintain facilities in any right of way.

**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 such permit.

**EXCAVATION PERMIT FEE:** Money paid to the City by an applicant to cover the costs as provided in Section 707.11 of this Chapter.

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

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

**MANAGEMENT COSTS:** The actual costs the City incurs in managing its rights of way, including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; creating, maintaining and updating mapping systems; budget analysis; systems analysis; legal assistance; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; 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.

**MICRO WIRELESS FACILITY:** a small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches. (Ord. 1549, 4-9-2018)

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

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

**OBSTRUCTION PERMIT FEE:** Money paid to the City by a registrant to cover the costs as provided in Section 707.11 of this Chapter.

**PATCH OR PATCHING:** A method of pavement replacement that is temporary in nature. A patch consists of: a) the compaction of the subbase and aggregate base, and b) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's five year project plan.

**PERFORMANCE AND RESTORATION BOND:** A performance bond or letter of credit posted to ensure the availability of sufficient funds to assure that all obligations pursuant to this Chapter, including, but not limited to, right-of-way excavation and obstruction work is



timely and properly completed.

**PERMITTEE:** Any person to whom a permit to excavate or obstruct a right of way has been granted by the City under this Chapter.

**PERSON:** 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.

**PROBATION:** The status of a person that has not complied with the conditions of this Chapter.

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

**REGISTRANT:** Any person who: a) has or seeks to have its equipment or facilities located in any right of way, or b) in any way occupies or uses, or seeks to occupy or use, the right of way or any equipment in the right of way.

**RESTORATION COST:** An amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of PUC rules.

**RESTORE OR RESTORATION:** The process by which a 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 surface and space above and below a public roadway, highway, street, cartway, bicycle and public sidewalk in which the City has an interest, including County and State right-of-way and other dedicated rights of way for travel purposes, utility easements along rear lot lines paralleling and adjacent to public roadway, except those along front lot lines and any other real property owned by or under the control of the City. (Ord. 1549, 4-9-2018)

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

**SERVICE OR UTILITY SERVICE:** Includes, but is not limited to: a) those services provided by a public utility as defined in Minnesota Statutes section 216B.02, subdivisions 4 and 6; b) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; c) the services provided by a corporation organized for the purposes set forth in Minnesota Statutes section 300.03; d) the services provided by a district heating or cooling system; and e) cable communications systems as defined in Minnesota Statutes chapter 238; and f) a telecommunications right-of-way user as defined below; and g) water and sewer, including service laterals, steam, cooling or heating services. (Ord. 1333, 3-13-2006)

**SERVICE LATERAL:** means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises. (Ord. 1333, 3-13-2006)

**SMALL WIRELESS FACILITY:** a wireless facility owned and operated by an approved telecommunications right-of-way user that meets both of the following qualifications:

- (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
- (ii) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, in an enclosure no more than 28 cubic feet in volume or enclosures totaling 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing

structure or concealment. (Ord. 1549, 4-9-2018)

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

**TELECOMMUNICATION RIGHT-OF-WAY USER:** A entity, which directly provides and offers wireless service to the general public, owning or controlling a facility in the right of way, or seeking to own or control a facility in the public right of way that is used or is intended to be used for providing wireless services, or transporting telecommunication or other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under Minnesota Statutes chapter 238, and telecommunication activities related to providing natural gas or electric energy services are not included in this definition, except to the extent such entity is offering wireless service. This definition shall not be inconsistent with Minn. Stats. §237.162, subd. 4. (Ord. 1549, 4-9-2018)

**UNUSABLE FACILITIES:** Facilities in the right of way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve months or a potential purchaser or user of the equipment. (Ord. 1209, 8-24-1998)

**UTILITY POLE:** a pole that is used in whole or in part to facilitate telecommunications or electric service. (Ord. 1549, 4-9-2018)

**WIRELINE BACKHAUL FACILITY:** a facility used to transport communications data by wire from a wireless facility to a communications network. (Ord. 1549, 4-9-2018)

**WIRELESS FACILITY:** equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network. Including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna. (Ord. 1549, 4-9-2018)

**WIRELESS SERVICE:** any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934 as amended, including cable service. (Ord. 1549, 4-9-2018)

**WIRELESS SUPPORT STRUCTURE:** a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city. (Ord. 1549, 4-9-2018)

### **707.03: ADMINISTRATION:**

The Director is the principal City official responsible for the administration of the rights of way, right-of-way permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder. (Ord. 1209, 8-24-1998)

### **707.04: UTILITY COORDINATION COMMITTEE:**

The City may create a Utility Coordination Committee. If created, this Committee shall be voluntary and advisory to the Director. It will be composed of any registrants that wish to assist the City in obtaining information and by making recommendations regarding use of the rights of way, and to improve the process of performing construction work therein. The Director may determine the size of such Committee and shall appoint members from a list of registrants that have expressed a desire to assist the City. (Ord. 1209, 8-24-1998)

### **707.05: REGISTRATION AND RIGHT-OF-WAY OCCUPANCY:**

- A. Registration: Each person who occupies, uses, or seeks to occupy or use the right of way or place any equipment in the right of way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Director. Registration will consist of providing application information, paying a registration fee, and posting a performance and restoration bond or other security acceptable to the Director.
- The performance and restoration bond required in this Section and in subsections 707.09B, 707.12B2, and 707.30A2c of this Chapter shall be in an amount determined in the Director's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this Chapter, including any costs, expenses, damages, or loss the City pays or incurs because of any failure to comply with this Chapter or any other applicable 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 one 100% 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 Director, 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 Chapter. 60 days after completion of the work, the performance and restoration bond may be reduced in the sole discretion of the Director.
- B. Registration Prior to Work: No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right of way without first being registered with the Director.
- C. Exceptions: Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right of way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right of way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Chapter. However, nothing herein relieves a person from complying with the provisions of the Minnesota Statutes chapter 216D, "One Call" law. (Ord. 1209, 8-24-1998)

#### **707.06: REGISTRATION INFORMATION:**

- A. Information Required: The information provided to the Director at the time of registration shall include, but not be limited to:
1. Each registrant's name, Gopher One-Call registration certificate number, addresses 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. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State, or a form of self-insurance acceptable to the Director;
    - 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: 1) use and occupancy of the right of way by the registrant, its officers, agents, employees and permittees, and 2) placement and use of facilities 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;

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 such coverages;

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

e. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the Director in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Chapter.

4. The City may require a copy of the actual insurance policies.

5. If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statutes section 300.06 as recorded and certified to by the Secretary of State.

6. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other similar authorized State or Federal agency, where the person is lawfully required to have such authorization or approval certificate from said Commission or other State or Federal agency. Persons seeking to install wireless support structure in the public right-of-way shall provide evidence, subject to the review and approval of the city, of authority to act on behalf of a wireless service provider.

(Ord. 1549, 4-9-2018)

7. Such other information as the City may require.

- B. Notice of Changes: The registrant shall keep all of the information listed above current at all times by providing to the Director information as to changes within 15 days following the date on which the registrant has knowledge of any change. (Ord. 1209, 8-24-1998)

### **707.07: REPORTING OBLIGATIONS:**

- A. Operations: Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director 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 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 estimated 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 Director will have available for inspection in this Director's office a composite list of all projects of which the Director has been informed in the annual plans. All registrants are responsible for keeping themselves informed 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 Director and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

- B. Additional Next-Year Projects: Notwithstanding the foregoing, the Director will not

deny an application for a right-of-way permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project. (Ord. 1209, 8-24-1998)

### **707.08: PERMIT REQUIREMENT:**

- A. Permit Required: Except as otherwise provided in this Code, no person may obstruct or excavate any right of way or install or place in the right-of-way without first having obtained the appropriate right-of-way permit from the Director to do so. (Ord. 1549, 4-9-2018)
  - 1. Excavation Permit: An excavation permit is required by a registrant to excavate that part of the right of way described in such permit and to hinder free and open passage over the specified portion of the right of way by placing facilities described therein, to the extent and for the duration specified therein.
  - 2. Obstruction Permit: An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right of way by placing equipment described therein on the right of way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
  - 3. Small-wireless facility permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked. (Ord. 1549, 4-9-2018)
- B. Permit Extensions: No person may excavate or obstruct the right of way beyond the date or dates specified in the permit unless such person: 1) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and 2) a new permit or permit extension is granted.
- C. Delay Penalty: Notwithstanding subsection B of this Section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.
- D. 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 Director. (Ord. 1209, 8-24-1998)

### **707.09: PERMIT APPLICATIONS:**

- A. General Requirements: Application for a permit is made to the Director. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
  - 1. Registration with the Director pursuant to this Chapter;
  - 2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities;
  - 3. Payment of all money due to the City for:
    - a. Permit fees, estimated restoration costs and other management costs;
    - b. Prior obstructions or excavations;
    - c. Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the City;

- d. Franchise or user fees, if applicable.
- 4. 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.
- B. Additional Equipment: When an excavation permit is requested for purposes of installing additional equipment, and the performance and restoration bond presently existing is insufficient with respect to the additional equipment, in the sole discretion of the Director, the posting of an additional performance and restoration bond for the additional equipment may be required in accordance with subsection 707.05A of this Chapter. (Ord. 1209, 8-24-1998)

### **707.10: ISSUANCE OF PERMIT; CONDITIONS:**

- A. Permit Issuance: If the applicant has satisfied the requirements of this Chapter, the Director shall issue a permit subject to the following procedure:
  - 1. Deadline for action. The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
  - 2. Consolidated applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
    - a. Are located within a two-mile radius;
    - b. consist of substantially similar equipment; and
    - c. are to be placed on similar types of wireless support structures.
  - 3. In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.
  - 4. Tolling of deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:
    - a. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
    - b. The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.
  - 5. The city and a small wireless facility applicant agree in writing to toll the review period. (Ord. 1549, 4-9-2018)
- B. Conditions: The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare or when necessary to protect the right of way and its current use. (Ord. 1209, 8-24-1998)
- C. Small Wireless Facility Conditions. In addition to other conditions of section 707.10.B. the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:
  - 1. A small wireless facility shall only be installed under those attachment specifications and at the height indicated in the detail plans attached to the approved

permit. Permittee may not change the number, kind or location of attachments authorized under a permit without the prior written consent of the city. Any expansion shall require a new permit.

2. A permittee shall have the authority to act on behalf of a wireless service provider and provide evidence of the same, subject to the review and approval of the city, upon demand of the city. City shall retain exclusive and priority use of city infrastructure used for collocation. The city retains complete discretion as to use of city infrastructure, including requests for collocation or modification, except as pursuant to State or Federal laws. This chapter does not require the city to replace, upgrade, or alter existing city infrastructure for collocation. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure. At the time of issuance of permit, permittee shall enter into a collocation agreement as required by 707.10.B. City retains the right to remove any attachment if necessary to protect public safety or prevent imminent damage to city infrastructure.
3. Wireless facility shall be removed or relocated at permittee's sole expense and in timely manner pursuant to written city request. Small wireless facility permit shall be automatically terminated and wireless support structure removed should the wireless facility not be continuously operated and maintained for a period of six months. Permittee may not transfer, assign, or convey small wireless facility permit without the consent of city.
4. No wireless support structure installed within the right-of-way following May 31, 2017 shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
5. Wireless support structure installed within the right-of-way after May 31, 2017 shall be self-supporting, non-wood monopole having maximum base diameter of 12" and be designed for small wireless facility, wind, snow, ice and other loading requirements: shall discourage climbing; and shall blend into the surrounding environment through black, bronze, gray or white color or other architectural treatment. Wireless support structure shall be designed to house communication cables and electrical wires inside of the monopole, except wireless support structure or utility pole existing prior to May 31, 2017, in which case cable and wire shall be black or white coated and attached to wireless support structure using similar coated bands or fasteners.
6. No wireless facility may extend more than 10 feet above its wireless support structure, and shall not exceed a total height of 50 feet without the city's written authorization. Small wireless facility antennas and associated equipment shall be mounted flush to the wireless support structure or utility pole so that the antenna(s) and associated equipment do not extend outward thereof by more than 12 inches, except for industrial zone where antenna(s) and associated equipment shall not extend outward from the wireless support structure more than 24 inches.
7. Where an applicant proposes to install a wireless support structure in the right-of-way, the city may impose reasonable separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way that shall not be less than 150 feet of separation between structures.

Wireless support structures shall be located no closer than 10 feet from city hydrants, valves, manholes and other utility fixture or appurtenance: shall be setback a minimum of 3 feet from back of curb and sidewalks or trails: and shall not be located within roadway clear zone area.

8. Ground equipment associated with small wireless facility shall be located to the backside of any sidewalk or trail, shall be setback a minimum of 3 feet from back of curb and sidewalk or trail, and shall not be located within the boulevard sight distance triangle (Section 1011.06) of intersecting streets unless the height satisfies the limitations thereof. Ground equipment shall be separated from the nearest telecommunications ground equipment on the same block by a minimum of 330 feet, except if the ground equipment be collocated within the same area as other wireless service provider and having a combined total size of less than 28 cubic feet.
  9. The small wireless facility shall not be connected to any aboveground power or communications cables, except where such facilities exist in the surrounding environment prior to May 31, 2017. No small wireless facility or wireless support structure or utility pole shall have affixed to it any signs, banners, or placards {except one sign of ten square inches or less identifying the monopole manufacturer or wireless service provider), nor shall any lights, reflectors, flashers or other illuminating device be affixed except as required by FAA or FCC.
  10. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
  11. Small wireless facility permittee shall provide City advance notice of any work obstructing street, bicycle or pedestrian traffic, and shall perform all work in a manner that is minimally disruptive to traffic. Small wireless facility permittee shall comply with Minnesota Manual for Uniform Traffic Control at all times during installation, maintenance, and removal of small wireless facility and/or wireless support structure.
  12. Wireless facilities shall be placed in appropriate portions of the right-of-way so as to minimize conflict with city infrastructure and other authorized facilities. Separate application shall be made for buried cable for small wireless facility backhaul communications. Buried cable for backhaul communications purposes shall be joint trench or collocated in multi-duct conduit when practicable. The city shall retain exclusive use of city conduit.
- D. Small wireless facility agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment for rent, maintenance, electrical service as outlined in the City fee schedule and capped by State Statute
1. The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant, The collocation agreement shall provide for, among other things, that: (i) permittee does not gain right. title or interest in city owned infrastructure; (ii) collocated small wireless facility and services shall not interfere with public safety or public utility communications; (iii) city shall have right to shut off power to small wireless facility to perform



maintenance work on city infrastructure, after providing reasonable advance notice to the wireless service provider; (iv) city makes no guarantee as to the condition of any wireless support structure with regard to applicant's use; (v) small wireless facility shall not obstruct light emanating from street lighting infrastructure used for collocation; and (vi) permittee shall be solely responsible for to maintain the small wireless facility in good and safe condition, and shall annually inspect mounting brackets to ensure they are securely attached to city infrastructure and not causing damage or premature depreciation of the asset. (Ord. 1549, 4-9-2018)

- E. By accepting a permit, telecommunications right-of-way user agrees on behalf of itself and its affiliates, successors and assigns that it will not provide video programming (including, but not limited to, programming delivered using internet protocol) over its facilities located within the rights-of-way to subscribers within the City without first obtaining a cable franchise or an open video system franchise from the City. (Ord. 1333, 03-13-2006)

### **707.11: PERMIT FEES:**

- A. Excavation Permit Fee: The excavation permit fee as established by the City Fee Schedule in Section 314.05, is an amount sufficient to recover the following costs:
  - 1. The City cost;
  - 2. Degradation cost, if applicable.
- B. Obstruction Permit Fee: The obstruction permit fee shall be established by the City Council and shall be in an amount sufficient to recover the City cost.
- C. Payment of Permit Fees: No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction fees. The City may allow the applicant to pay such fees within 30 days of billing.
- D. Nonrefundable: Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 707.21 of this Chapter are not refundable. (Ord. 1209, 8-24-1998)

### **707.12: RIGHT-OF-WAY REPAIR AND RESTORATION:**

- A. Timing: The work to be done under the excavation permit, and the patching 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 permittee, as determined by the Director, or when work was prohibited as unseasonal or unreasonable under Section 707.15 of this Chapter.
- B. Patch and Restoration: Permittee shall patch its own work. The City may choose either to have the permittee restore the right of way or to restore the right of way itself.
  - 1. City Restoration: If the City restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, during the 36 months following such 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 having to correct the defective work.
  - 2. Permittee Restoration: If the permittee restores the right of way itself, it shall at the time of application for an excavation permit, if the Director determines additional security is necessary, post an additional performance and restoration bond in an amount determined by the Director to be sufficient to cover the cost of restoration. If, 36 months after completion of the restoration of the right of way, the Director 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. Standards: The permittee shall perform patching and restoration according to the standards and with the materials specified by the Director. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Director in exercising this authority shall be guided by the following 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.
- D. Guarantees: By choosing to restore the right of way itself, the permittee guarantees its work and shall maintain it for 36 months following its completion. During this 36 month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five calendar days of the receipt of the notice from the Director, 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 Section 707.15 of this Chapter.
- E. Failure to Restore: If the permittee fails to restore the right of way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do 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 permittee fails to pay as required, the City may exercise its rights under the restoration bond.
- F. Degradation Fee In Lieu of Restoration: In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching, and the degradation fee shall not include the cost to accomplish these responsibilities. (Ord. 1209, 8-24-1998)

### **707.13: 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. With City Projects: Registrants who join in a scheduled obstruction or excavation performed by the Director, whether or not it is a joint application by two or more registrants or a single application, may not be required to pay some or all of the obstruction and degradation portions of the permit fee, in the sole discretion of the Director.
- C. Shared Fees: Registrants who apply for permits for the same obstruction or excavation, which the Director does not perform, 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 the same on their applications. (Ord. 1209, 8-24-1998)

### **707.14: SUPPLEMENTARY APPLICATIONS:**

- A. Limitation On Area: A right-of-way permit is valid only for the area of the right of way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area: 1) make application for a permit extension and pay any additional fees required thereby, and 2) be granted a new permit or permit extension.
- B. Limitation On Dates: A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date. (Ord. 1209, 8-24-1998)

#### **707.15: 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 permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, State and Federal laws, including but not limited to Minnesota Statutes sections 216D.01 through 216D.09 ("Gopher One Call Excavation Notice System") and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right of way pursuant to its permit, regardless of who performs the work. (Ord. 1333, 3-13-2006)
- B. Prohibited Work: Except in an emergency, and with the approval of the Director, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. Interference With Right of Way: 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 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 trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- D. Screening: A permittee placing a utility cabinet or other structure on any boulevard or other right-of-way area shall be required to provide visual screening of the structure with appropriate landscaping, as determined by the Director. (Ord. 1209, 8-24-1998)
- E. Trenchless Excavation: As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Director. (Ord. 1333, 03-13-2006)

#### **707.16: DENIAL OF PERMIT:**

The Director may deny a permit for failure to meet the requirements and conditions of this Chapter or if the Director determines that the denial is necessary to protect the public health, safety and welfare or when necessary to protect the right of way and its current use. (Ord. 1209, 8-24-1998)

#### **707.17: INSTALLATION REQUIREMENTS:**

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Engineering Standards adopted by the PUC or other applicable local requirements, insofar as they are not inconsistent with the PUC rules and Minnesota Statutes, Sections 237.162 and 237.163. Installation of Service Laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service Lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and/or agreements referenced in Section 707.22 paragraph B. of this Ordinance. (Ord. 1209, 8-24-1998); (Ord. 1333, 03-13-2006)

#### **707.18: INSPECTION:**

- A. Notice of Completion: When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with PUC rules.
- B. Site Inspection: Permittee shall make the work site available to the Director and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- C. Authority of Director:
  - 1. At the time of inspection the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
  - 2. The Director 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 ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 707.21 of this Chapter. (Ord. 1209, 8-24-1998)

#### **707.19: WORK DONE WITHOUT A PERMIT:**

- A. Emergency Situations: Each registrant shall immediately notify the Director of any event regarding its facilities which it considers to be an emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. The registrant may proceed to take whatever actions are necessary 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 Chapter for the actions it took in response to the emergency. If the Director becomes aware of an emergency regarding a registrant's facilities, the Director may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Director may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency. (Ord. 1333, 03-13-2006)
- B. Non-emergency Situations: Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right of way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by the Legislative Code, deposit with the Director the fees necessary to correct any damage to the right of way and comply with all of the requirements of this Chapter. (Ord. 1209, 8-24-1998)

#### **707.20: SUPPLEMENTARY NOTIFICATION:**

If the obstruction or excavation of the right of way begins later or ends sooner than the date given on the permit, permittee shall notify the Director of the accurate information as soon

as this information is known. (Ord. 1209, 8-24-1998)

### **707.21: REVOCATION OF PERMITS:**

- A. Substantial Breach: The City reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions, of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - 1. The violation of any material provision of the right-of-way permit;
  - 2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
  - 3. Any material misrepresentation of fact in the application for a right-of-way permit;
  - 4. The failure to maintain the required bonds and/or insurance;
  - 5. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; or
  - 6. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 707.18 of this Chapter.
- B. Written Notice of Breach: If the Director 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 Director 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. A substantial breach, as stated above, will allow the Director, at his or her discretion, to place additional or revised conditions on the permit.
- C. Response to Notice of Breach: Within 24 hours of receiving notification of the breach, permittee shall contact the Director with a plan, acceptable to the Director, that will cure the breach. Permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the Director, 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. Cause For Probation: From time to time, the Director may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right of way grossly outside of the permit authorization.
- E. Automatic Revocation: If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs, or as allowed in writing by the Director.
- F. Reimbursement of City Costs: If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees incurred in connection with such revocation.  
(Ord. 1209, 8-24-1998)

### **707.22: MAPPING DATA:**

- A. Rule: Each registrant and permittee shall provide mapping information in a form required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee

shall provide the Director accurate maps and drawings certifying the “as-built” location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City’s electronic mapping system when practical or as a condition imposed by the Director. Failure to provide maps and drawings pursuant to this Subsection shall be grounds for revoking the permit holder’s registration. (Ord. 1333, 3-13-2006)

- B. Service Laterals: All permits issued for the installation or repair of Service Laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the Permittee’s use of appropriate means of establishing the horizontal locations of installed Service Laterals, and the Service Lateral vertical locations in those cases where the Director reasonably requires it. Permittees or their subcontractors shall submit to the Director evidence satisfactory to the Director of the installed Service Lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing Service Laterals installed after December 31, 2005, shall be a condition of any City approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The Director shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the Service Laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending Permittee or its subcontractors. (Ord. 1209, 8-24-1998); (Ord. 1333, 03-13-2006)

### **707.23: LOCATION OF FACILITIES:**

- A. Undergrounding: to the extent not inconsistent with applicable law or regulation, or unless otherwise permitted by an existing franchise or Minnesota Statutes section 216B.34, or unless existing aboveground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old underground facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes, if required by the Director.
- B. Corridors: The Director may assign specific corridors within the right of way, or any particular segment thereof as may be necessary, for each type of equipment that is or; pursuant to current technology, the Director expects will someday be located within the right of way. All excavation, obstruction, or other permits issued by the Director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.  
Any registrant who has facilities in the right of way in a position at variance with the corridors established by the Director shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right of way, unless this requirement is waived by the Director 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 this Chapter, any facilities 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 facilities and restoring the right of way to a useable condition.
- D. Limitation of Space: to protect health, safety, and welfare or when necessary to protect

the right of way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right of way. In making such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right of way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right of way, the time of year with respect to essential utilities, the protection of existing facilities in the right of way, and future City plans for public improvements and development projects which have been determined to be in the public interest. (Ord. 1209, 8-24-1998)

#### **707.24: RELOCATION OF FACILITIES:**

A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right of way whenever the Director for good cause requests such removal and relocation, and shall restore the right of way to the same condition it was in prior to said removal or relocation. The Director may make such request to prevent interference by the company's equipment or facilities with: a) a present or future City use of the right of way, b) a public improvement undertaken by the City, c) an economic development project in which the City has an interest or investment, d) when the public health, safety and welfare require it, or e) when necessary to prevent interference with the safety and convenience of ordinary travel over the right of way. Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right of way which has been vacated in favor of a nongovernmental entity unless and until the reasonable costs thereof are first paid to the person therefore. (Ord. 1209, 8-24-1998)

#### **707.25: PREEXCAVATION FACILITIES LOCATION:**

In addition to complying with the requirements of Minnesota Statutes sections 216D.01 through 216D.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said 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 equipment and the best procedure for excavation. (Ord. 1209, 8-24-1998)

#### **707.26: DAMAGE TO OTHER FACILITIES:**

When the Director does work in the right of way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Director 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. Each registrant shall be responsible for the cost of repairing any equipment 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. (Ord. 1209, 8-24-1998)

#### **707.27: RIGHT-OF-WAY VACATION:**

A. Reservation of right: If the City vacates a right of way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated right of way, the right to install, maintain and operate any

facilities in the vacated right of way and to enter upon such right of way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

- B. Relocation of Facilities: If the vacation requires the relocation of registrant's or permittee's facilities; and: 1) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or 2) 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 3) 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. (Ord. 1209, 8-24-1998)

### **707.28: INDEMNIFICATION AND LIABILITY:**

By registering with the Director, or by accepting a permit under this Chapter, a registrant or permittee agrees as follows:

- 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: 1) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or 2) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.
- B. Indemnification: A registrant or permittee shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of registrant's or permittee's facilities located in the right of way.

The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the local government unit's negligence as to the issuance of permits or inspections to ensure permit compliance. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts that the registrant or permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the City after receiving notice of the registrant's or permittee's determination.

- C. Defense: If a suit brought against the City under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the City in the suit if written notice of the suit is promptly given to the registrant or permittee within a period in which the registrant or permittee is not prejudiced by the lack or delay of notice.

If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the City. Consent will not be unreasonably withheld.

This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the City.

In defending an action on behalf of the City, the registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the City could assert in its own behalf. (Ord. 1209, 8-24-1998)

### **707.29: APPEAL:**

- A. A right-of-way user that: 1) has been denied registration; 2) has been denied a permit; 3) has had permit revoked; or 4) believes that the fees imposed are not in conformity with Minn. Stat. 237.163, Subd. 6; or 5) disputes a determination of the Director



regarding Section 707.23 Subd. 2 of this Ordinance, 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. (Ord. 1333, 3-13-2006)

- 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 Council and right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three (3) person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way user and one selected by the other two (2) arbitrators. The costs and fees of the single arbitrator shall be borne equally by the City and right-of-way user. 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. (Ord. 1209, 8-24-1998)

### **707.30: ABANDONED AND UNUSABLE FACILITIES:**

- A. Discontinued Operations: A registrant who has determined to discontinue its operations in the City must either:
1. Provide information satisfactory to the Director that the registrant's obligations for its facilities in the right of way under this Chapter have been lawfully assumed by another registrant; or
  2. Submit to the Director a proposal and instruments for transferring ownership of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:
    - a. Purchase the facilities; or
    - 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 facilities.
- B. Abandoned Facilities: Facilities of a registrant who fails to comply with subsection A of this Section, and which, for two years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to: 1) abating the nuisance, 2) taking possession of the facilities and restoring them to a usable condition, or 3) requiring removal of the facilities by the registrant, or the registrant's successor in interest.
- C. Removal: Any registrant who has unusable and abandoned facilities 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 Director. (Ord. 1209, 8-24-1998)

### **707.31: RESERVATION OF REGULATORY AND POLICE POWERS:**

A permittee's or registrant's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. (Ord. 1209, 8-24-1998)

### **707.32: FRANCHISE; FRANCHISE SUPREMACY:**

The City may, in addition to the requirements of this Chapter, 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 inconsistent with any provision of this Chapter, whether granted prior or subsequent to enactment of this Chapter, shall control and supersede the conflicting terms of this Chapter. All other terms of this Chapter shall be fully applicable to all persons whether franchised or not. (Ord. 1209, 8-24-1998)

**707.33: SEVERABILITY:**

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, 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, non-appealable order that any permit, right or registration issued under this Chapter or any portions of this Chapter 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. Nothing in this Chapter precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein. (Ord. 1209, 8-24-1998)