

**CITY OF ELKO NEW MARKET
SCOTT COUNTY, MINNESOTA**

ORDINANCE NO. 186

**AN ORDINANCE AMENDING TITLE 8, CHAPTER 1
OF THE ELKO NEW MARKET CITY CODE
CONCERNING PUBLIC RIGHTS-OF-WAY MANAGEMENT**

THE CITY COUNCIL OF THE CITY OF ELKO NEW MARKET, MINNESOTA
ORDAINS:

SECTION 1. Title 8, Chapter 1 of the Elko New Market City Code is hereby amended in its entirety to read as follows:

8-1-1: PURPOSE AND SCOPE:

In order to provide for the health, safety, well-being, and convenience of its citizens, as well as to ensure the structural integrity of its streets and the 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. Accordingly, the city hereby enacts this chapter relating to rights of way permits and management. This chapter imposes regulations on the placement and maintenance of equipment currently within the city rights of way or to be placed therein at a future time. This chapter is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights of way will bear the financial responsibility for their impacts and for city costs incurred in administering this chapter.

8-1-2: STATUTE AUTHORITY; INTERPRETATION:

This chapter is created to manage and regulate the public use of the city rights of way along city roads and infrastructure pursuant to the authority granted to the city under state and federal statutory, administrative and common law. The city hereby elects to manage the rights of way under its jurisdiction. All rights of way users, including the city, are subject to the provisions in this chapter. The city is exempt from the obligation of paying for permits or other fees imposed by this chapter. This chapter shall be interpreted consistent with ~~1997 session laws, chapter 123, substantially codified in~~ Minnesota statutes sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "act"), Minnesota statutes chapter 216D and the other laws governing applicable rights of the city and users of the rights of way as they are amended from time to time. This chapter shall also be interpreted consistent with Minnesota rules 7819.0050 - 7819.9950 as they are amended from time to time where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota rules, that interpretation most consistent with the act and other applicable statutory and case law is intended. 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. "Manage the right of way" means the authority of the city to do any or all of the following:

- A. Require registration;
- B. Require construction performance bonds and insurance coverage;
- C. Establish installation and construction standards;
- D. Establish and define location and relocation requirements for equipment and facilities;
- E. Establish coordination and timing requirements;
- F. Require rights of way users to submit, henceforth required by the city, project data reasonably necessary to allow the city to develop a right of way mapping system including GIS system information;
- G. Require rights of way users to submit, upon request of the city, existing data on the location of the user's facilities occupying the public rights of way within the city. The data may be submitted in the form maintained by the user in a reasonable time after receipt of the request based on the amount of data requested;
- H. Establish rights of way permitting requirements for access, excavating/grading, utility services, landscaping, collocation, and obstruction;
- I. Establish removal requirements for abandoned equipment or facilities, if required, in conjunction with other rights of way repair, excavation or construction; and
- J. Impose reasonable penalties for unreasonable delays in construction.

8-1-3: DEFINITIONS:

The following terms, when used in this chapter, shall have the meanings ascribed to them in this section:

ADMINISTRATOR: The city administrator or his designee.

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

CITY: The eCity of Elko New Market, Minnesota. For purposes of section [8-1-26](#) of this chapter, "city" means its elected officials, officers, employees, agents or any commission, committee or subdivision acting pursuant to lawfully delegated authority.

CITY COST: The actual costs incurred by the city for managing rights of way including, but not limited to, costs associated with registering of applicants; issuing, processing, and verifying right of way permit or small wireless facility permit applications; revoking right of way permits or small wireless facility permits; inspecting job sites; creating and updating mapping systems; determining the adequacy of right of way restoration; restoring work inadequately performed;

maintaining, supporting, protecting, or moving user equipment during right of way work; budget analyses; recordkeeping; legal assistance; systems analyses; and performing all of the other tasks required by this chapter, including other costs the city may incur in managing the provisions of this chapter except as expressly prohibited by law. City costs do not include payment by telecommunications right of way user for the use of the right of way, unreasonable fees of a third party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right of way or for the city, the fees and costs of litigation relating to interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 8-1-28 of this chapter.

CITY INSPECTOR: Any person authorized by the city to carry out inspections related to the provisions of this chapter.

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.

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

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 thing located in any right of way, but shall not include boulevard plantings or gardens planted or maintained in the right of way between a person's property and the street curb.

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

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 [8-1-8](#) of this chapter.

IN: Over, above, in, within, on, or under a right of way when used in conjunction with right of way.

JOINT TRENCH: The placement of two (2) or more conductors and/or conduits owned and operated by separate utilities in the same excavation to minimize occupied space; reduce costs, disruption, and construction time; and simplify mapping and future location of the facilities.

LOCAL REPRESENTATIVE: The 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.

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

OBSTRUCTION PERMIT: The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right of way, allowing the holder to hinder free and open passage over the specified portion of a 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 [8-1-8](#) of this chapter.

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 or collocate a small wireless facility or erect or install a wireless support structure in a right of way has been granted by the city under this chapter.

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

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

REGISTRANT: Any person who: a) has or seeks to have its equipment 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 located in the right of way and, accordingly, is required to register with the city.

REGISTRATION FEE: An amount of money paid to the city by a registrant to cover the costs of registration.

RESTORATION FEE: An amount of money paid to the city by a permittee to cover the cost of restoration.

RESTORE OR RESTORATION: The process by which an excavated or obstructed right of way

and surrounding area including, but not limited to, pavement and foundation, is returned to the same condition that existed before the commencement of excavation.

RIGHT OF WAY: The area on, below, or above any real property in which the city has an interest including, but not limited to, any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the city, including other dedicated rights of way for travel purposes and easements for drainage, utilities, trails, or other purposes.

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

SERVICE LATERAL: An underground facility that is used to transmit, distribute, or furnish gas, electricity, communication, 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, stormwater, or groundwater from a customer's premises.

SERVICE OR UTILITY SERVICE: A. Those services provided by a public utility as defined in Minnesota statutes section 216B.02, subdivisions 4 and 6, as they may be amended from time to time;

- B. Services of a telecommunications right of way user; including transporting of voice or data information;
- C. Service of a cable communications systems defined in Minnesota statutes chapter 238, as it may be amended from time to time;
- D. Natural gas or electric energy or telecommunications services provided by the city;
- E. Service provided by a cooperative electric association organized under Minnesota statutes chapter 308A, as it may be amended from time to time;
- F. Water and sewer, including service laterals, steam, cooling or heating services; and
- G. Privately owned utility services, including drain tiles.

SMALL UTILITIES: The buried facilities required to provide electricity, gas, telephone, cable TV and other telecommunications facilities to users in a subdivision or along a street. This definition is based on how these facilities are typically referred to in the industry.

SMALL WIRELESS FACILITY: (1) A wireless facility 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, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer

switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment; and (2) a micro wireless facility.

SMALL WIRELESS FACILITY PERMIT: The permit which, pursuant to this chapter, must be obtained before a person may collocate a small wireless facility or erect a wireless support structure in a right of way. A "small wireless facility permit" allows the holder to collocate a small wireless facility or install a wireless support structure at that part of the right of way described in such permit.

SMALL WIRELESS FACILITY PERMIT FEE: Money paid to the city by an applicant to cover the city costs as provided in section [8-1-8](#) of this chapter.

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.

TELECOMMUNICATIONS RIGHT OF WAY USER: A person or entity owning or controlling a facility in the right of way, or seeking to own or control the same, that is used or is intended to be used for providing wireless service, or transporting telecommunications or other voice or data information. For purposes of this chapter, a cable communications system defined and regulated under Minnesota statutes chapter 238, and telecommunications activities relating to providing natural gas or electric energy services, a public utility as defined in Minnesota statutes section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota statutes chapters 453 and 453A, or a cooperative electric association organized under Minnesota statutes chapter 308A, are not included in this definition for purposes of this chapter except to the extent such entity is offering wireless service. This definition shall be consistent with Minnesota statutes section 237.162, subdivision 4.

UNUSABLE EQUIPMENT: Equipment located in the right of way which has 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 (12) months or a potential purchaser or user of the equipment.

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

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

WIRELESS SERVICE: Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device that is provided

using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

WIRELESS SUPPORT STRUCTURE: A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

WIRELINE BACKHAUL FACILITY: A facility used to transport communications data by wire from a wireless facility to a communications network.

8-1-4: ADMINISTRATIVE OFFICIAL:

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

8-1-5: REGISTRATION REQUIREMENTS:

A. Registration Required:

1. Each person who occupies or uses, or seeks to occupy or use, the right of way or any equipment located in the right of way, including by lease, sublease or assignment, or who has, or seeks to have, equipment located in any right of way must register with the city. Registration will consist of providing application information to and as required by the city and paying a registration fee. Permit applicants may register at the time of permit application or once annually. A separate permit is required for each project. Users placing no permanent facilities in the right of way are exempt from registration but not from permit requirements.
2. No person may construct, install, repair, remove, collocate, relocate, or perform any other work on or use any equipment or any part thereof located in any right of way without first being registered with the city.

B. Registration Information:

1. Information Required: The information provided to the city at the time of registration shall include, but not be limited to:
 - a. The registrant's name, gopher one-call registration certificate number, addresses and e-mail address if applicable, and telephone and facsimile numbers.
 - b. 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.

- c. A copy of the registrant's certificate of authority from the Minnesota public utilities commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the registrant is lawfully required to have such certificate, authorization or approval from said commission.
 - d. Such other information as the city may reasonably require.
2. Changes To Information: The registrant shall keep all of the information listed above current at all times by providing changes to the city within fifteen (15) days following the date of which the registrant has knowledge of any change.

8-1-6: PERMITS REQUIRED; EXEMPTIONS:

A. Required Permits: Except as otherwise provided by city ordinance, no person may obstruct or excavate or collocate or install or place a wireless support structure in any right of way without first having obtained the appropriate right of way permit from the city to do so. The following permits may be required:

- 1. Excavation Permit: An excavation permit is required to allow the holder to excavate that part of the right of way described in such permit and/or to hinder free and open passage over the specified portion of the right of way by placing equipment described therein, to the extent and for the duration specified therein.
- 2. Obstruction Permit: An obstruction permit is required to allow the holder to hinder free and open passage over the specified portion of the right of way for activities not associated with an excavation permit by placing materials, equipment, vehicles, or other obstructions described therein on the right of way for the duration specified therein. This permit will be issued at the administrator's discretion and will be denied if a reasonable alternative to the obstruction is available.
- 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.

B. Exemptions From Permits:

- 1. Plantings Within Right Of Way: Nothing herein shall be construed to prevent persons from planting or maintaining boulevard grasses, flowers, and/or other garden plants, but not woody shrubs or trees, 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, these plantings are subject to disturbance or damage by city operations or permitted users. Required restoration in these cases will

consist only of boulevard grade turf grasses. Persons planting or maintaining vegetation in the right of way will not be compensated for damaged plantings or vegetation. Excavations for plantings deeper than twelve inches (12") are subject to the permit requirements of subsection A of this section.

2. Irrigation And Pet Containment Facilities: Nothing herein shall be construed to prevent owners of a residential or commercially zoned parcel from placing irrigation lines or pet containment wires in easements in favor of the city and located on their own property within twelve inches (12") of the surface, provided all other applicable regulations are met. The city and other permitted users will not be responsible for the location, protection, repair or replacement of facilities if city work is performed in the easement. No irrigation or pet containment facilities are allowed in any city owned right of way unless a permit is obtained under this chapter.

8-1-7: APPLICATION FOR PERMIT:

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

- A. Registration with the city pursuant to this chapter.
- B. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment.
- C. Payment of all monies due the city for:
 1. Permit fees and costs due;
 2. Prior obstructions or excavations;
 3. Any loss, damage, or expense suffered by the city as a result of the applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the city; and
 4. Franchise fees, if applicable.

8-1-8: PERMIT FEES:

- A. Fees Established:
 1. Excavation Permit: The excavation permit fee shall be established by the city in an amount sufficient to recover the following costs. Fees shall be listed on the schedule of fees updated and adopted annually by the city council.

- a. The city cost to administer the permit, inspect the work, and enforce provisions of this chapter and permit for each project.
 - b. The degradation of the right of way that will result from the excavation.
 - c. Restoration, if done or caused to be done by the city.
 - d. Creating and updating city maps.
2. Obstruction Permit: The obstruction permit fee shall be established by the city and shall be in an amount sufficient to recover the city's administration costs. This fee may be waived for local residents for activities at their residence at the discretion of the administrator.
3. Small Wireless Facility Permit Fee: The city shall impose a small wireless facility permit fee in an amount sufficient to recover:
 - a. city costs;
 - b. city engineering, make-ready, and construction costs associated with collocation of small wireless facilities and installation and placement of wireless support structures.
- B. Payment Of Fees: No excavation permit, ~~or~~ obstruction permit, or small wireless facility permit shall be issued without payment of all fees required prior to the issuance of such a permit unless the applicant shall agree (in a manner, amount, and substance acceptable to the city) to pay such fees within thirty (30) days of billing thereafter. Permit fees that were paid for a permit which was revoked for a breach are not refundable. Any refunded permit fees shall be less all city costs up to and including the date of refund.
- C. Use Of Fees: All obstruction, ~~and~~ excavation, and small wireless permit fees shall be used solely for city management, construction, maintenance and restoration costs of the right of way.

8-1-9: BOND AND INSURANCE REQUIREMENTS:

A. Bond Requirements:

1. Performance And Restoration Bond: The performance and restoration bond required in this subsection A1 and in subsection A2 of this section and subsections [8-1-18C2b](#) and [8-1-24A2c](#) of this chapter shall be in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this 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. A minimum bond amount of ten thousand dollars (\$10,000.00) shall be required for all projects unless waived by the administrator. Alternative forms of

security such as cash escrow or an irrevocable letter of credit may also be accepted at the discretion of the administrator. 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 hundred percent (100%) of the estimated cost of such work, as documented by the person proposing to perform such work, or in such lesser amounts as may be determined by the city, taking into account the amount of equipment in the right of way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this chapter. Sixty (60) days after completion of the work, the performance and restoration bond may be reduced in the sole determination of the city.

2. Additional Bond: When an excavation permit is required for purposes of installing additional equipment, and a performance and restoration bond which is in existence is insufficient with respect to the additional equipment, in the sole determination of the city, the permit applicant may be required by the city to post an additional performance and restoration bond in accordance with subsection A of this section.

B. Insurance Requirements: Before any permit shall be issued allowing work in the right of way, the applicant or registrant shall provide a certificate of insurance or self-insurance:

1. Verifying that an insurance policy has been issued to the applicant/registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the administrator;
2. Verifying that the applicant/registrant is insured against claims for bodily injury, including death, as well as claims for property damage arising out of the: a) use and occupancy of the right of way by the registrant, its officers, agents, employees and permittees; and b) 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 contracts, independent contractors, products and completed operations, explosions, damage of underground facilities and collapse of property;
3. Naming the city, its officers, employees and agents, as an additional insured as to whom the coverage required herein is in force and applicable and for whom defense will be provided as to all such coverage;
4. Requiring that the administrator be notified thirty (30) days in advance of cancellation of the policy, nonrenewal or material adverse modification of a coverage term;
5. Indicating commercial general liability coverage, business automobile liability coverage, workers' compensation and umbrella coverage established by the administrator in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

8-1-10: ISSUANCE OF PERMIT; CONDITIONS:

- A. Issuance: If the city determines that the applicant has satisfied the requirements of this chapter, the city may issue a permit.
- B. Conditions: The city may impose any reasonable conditions upon the issuance of a permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the right of way, to protect the property and safety of other users of the right of way, to minimize the disruption and inconvenience to the traveling public, and to otherwise efficiently manage the use of the right of way.
- C. Small Wireless Facility Conditions: In addition to subsection 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 collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
 - (2) No new wireless support structure installed within the right-of-way shall exceed 50 feet above ground level 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 health, safety and welfare or to protect the right-of-way in its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet above ground level in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
 - (3) No wireless facility may extend more than 10 feet above its wireless support structure.
 - (4) Where an applicant proposes to install a new wireless support structure in the right of way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right of way.
 - (5) Where an applicant proposes installing a new wireless support structure or replacing an existing wireless support structure, the new or replacement wireless support structure shall be of monopole design not exceeding 18 inches in diameter and compatible in design with existing wireless support structures in the area.
 - (6) The small wireless facility shall not interfere with public safety wireless telecommunications.
 - (7) Small wireless facilities in the right-of-way shall be removed and relocated at the City's request and at no cost to the City when the City determines that removal and relocation is necessary to prevent interference with (1) present or future City use of the right-of-

way for a public project; (2) the public health, safety, or welfare; or (3) the safety and convenience of travel over the right-of-way.

- (8) Small wireless facilities shall be mounted so there is vertical clearance of at least (8) eight feet between the facility and any pedestrian sidewalk.
- (9) No small wireless facilities may be located over street or parking lanes.
- (10) Small wireless facilities shall be located so as not to obstruct light fixtures. If small wireless facilities are to be located on a light pole, a lighting plan shall be submitted to demonstrate the facilities will not block light on the street or sidewalk.
- (11) Small wireless facilities and wireless support structures shall be located so as not to obstruct traffic lights, traffic signs, street signs, or wayfinding signage.
- (12) All wires servicing small wireless facilities and support facilities must be located inside the associated wireless support structure.
- (13) All small wireless facilities shall be flush with the wireless support structure it is collocated on to minimize visual impact.
- (14) Every small wireless facility shall be the same color and finish as the wireless support structure it is collocated on.
- (15) No stickers, signs, or decals shall be visible on any small wireless facility, except safety alerts required by law.
- (16) Brackets supporting small wireless facilities shall be designed to minimize the appearance and profile of the facilities. Bracket colors and materials should match the wireless support structures they are attached to.
- (17) Ground-mounted equipment associated with a small wireless facility is prohibited unless the applicant can show that ground-mounted equipment is necessary for operation of the small wireless facility. If ground-mounted equipment is necessary, it shall be placed below grade unless not technically feasible. If ground-mounted equipment is placed above grade, the design of ground equipment shall minimize its visual impact in the right-of-way. Ground-mounted equipment shall not disrupt traffic or pedestrian circulation or interfere with vehicle and pedestrian sight lines.

- (18) 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.
- (19) 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.

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 applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement shall require payment of the following:

1. \$150 per year for rent to collocate on the city structure;
2. \$25 per year for maintenance associated with the collocation;
3. A monthly fee for electrical service as follows:
 - a. \$73 per radio node less than or equal to 100 maximum watts;
 - b. \$182 per radio node over 100 maximum watts; or
 - c. The actual costs of electricity, if the actual costs exceed the foregoing.

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

E. Action on Small Wireless Facility Permit Applications:

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 the city, 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.

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.

- 3. 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 (7) 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 of the application. Upon submission of additional documents or information, the city shall have ten (10) days to notify the applicant in writing of any still missing information.
 - c. The city and a small wireless facility applicant agree in writing to toll the review period.

8-1-11: DENIAL OF PERMIT:

The city may, in accordance with Minnesota statutes section 237.163, subdivision 4, deny any application for a permit as provided in this section.

- A. Mandatory Denial: Except in the case of an emergency, no right of way permit will be granted:
 - 1. To any person required by section [8-1-5](#) of this chapter to be registered who has not done so;
 - 2. To any person who failed to use commercially reasonable efforts to anticipate and plan for the project;
 - 3. For any project which requires the excavation of any portion of a right of way which was constructed or reconstructed within the preceding five (5) years;
 - 4. To any person who has failed within the past three (3) years to comply or is presently not in full compliance with the requirements of this chapter;

5. To any person as to whom there exists grounds for the revocation of a permit under section [8-1-27](#) of this chapter; and
 6. If, in the sole discretion of the city, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The city, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right of way, and by considerations relating to the public health, safety and welfare.
- B. Permissive Denial: The city may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right of way, or when necessary to protect the right of way and its users. The city may consider one or more of the following factors:
1. The extent of which right of way space where the permit is sought is available;
 2. The competing demands for the particular space in the right of way;
 3. The availability of other locations in the right of way or in other rights of way for the equipment of the permit applicant;
 4. The applicability of ordinance or other regulations of the right of way that affect location of equipment in the right of way;
 5. The degree of compliance of the applicant with the terms and conditions of its franchise, if any, this chapter, and other applicable ordinances and regulations;
 6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right of way;
 7. The condition and age of the right of way, and whether and when it is scheduled for total or partial reconstruction; and
 8. The balancing of the costs of disruption to the public and damage to the right of way against the benefits to that part of the public served by the expansion into additional parts of the right of way.
- C. Discretionary Issuance: Notwithstanding the provisions of subsection A2 of this section, the city may issue a permit in any case where the permit is necessary: 1) to prevent substantial economic hardship to a customer of the permit applicant; or 2) to allow such customer to materially improve its utility service; or 3) to allow a new economic development project; and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service or the development project when said applicant was required to submit its list of next year projects.

D. Permits For Additional Next Year Projects: Notwithstanding the provisions of subsection A2 of this section, the city may issue a permit to a registrant who demonstrates that it used commercially reasonable efforts to anticipate and plan for the project, such permit to be subject to all other conditions and requirements of law, including such conditions as may be imposed under subsection [8-1-10B](#) of this chapter.

E. Procedural Requirements: The denial of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right of way user in writing within three (3) business days of the decision to deny a permit. If an application is denied, the right of way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

8-1-12: DISPLAY OF PERMIT:

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

8-1-13: EXTENSION OF PERMIT; SUPPLEMENTARY NOTIFICATION:

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

8-1-14: 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 perform 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 permit extension and pay any additional fees necessitated thereby; and
 - 2. Be granted a new permit or permit extension; or
 - 3. Verbally request the administrator make a determination that the change is minor and authorize the additional area by note on the application and city copy of the permit.

- 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, before working after the end date of the permit:
1. Make application for a new permit for the additional time it needs;
 2. Pay the new permit fee or permit extension fee;
 3. Pay the delay penalty required under subsection [8-1-18D](#) of this chapter; or
 4. Verbally request the administrator make a determination that the change is minor and authorize the additional time by note on the application and city copy of the permit.

8-1-15: INSPECTIONS:

- A. **Notice Of Completion:** When the work under any permit hereunder is completed, the permittee shall notify the city.
- B. **Site Inspection:** The permittee shall make the work site available to the city inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.
- C. **Authority Of City Inspector:** At the time of inspection, the city inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The city inspector may issue an order to the registrant for any work which does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to section [8-1-27](#) of this chapter.

8-1-16: WORK WITHOUT PERMIT:

A. **Emergency Situations:**

1. Each registrant shall immediately notify the city or the city's designee of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

2. In the event that the city becomes aware of an emergency regarding a registrant's equipment, the city may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

B. Nonemergency Situations: Except in the case of an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right of way, is in breach of this chapter.

8-1-17: RIGHT TO OCCUPY RIGHTS OF WAY; PAYMENT OF FEES:

A. Any person required to register under section [8-1-5](#) of this chapter who occupies, uses, or places its equipment in the right of way is hereby granted a right to do so if and only so long as said person: 1) timely pays all fees as provided herein; and 2) complies with all other requirements of law.

B. The grant of right in subsection A of this section is expressly conditioned on, and is subject to, the police powers of the city, continuing compliance with all provisions of law now or hereinafter enacted, including this chapter, as it may be from time to time amended, and further, is specifically subject to the obligation to obtain any and all additional required authorizations, whether from the city or other body or authority.

8-1-18: INSTALLATION AND RESTORATION REQUIREMENTS:

A. General Requirements: The excavation, backfilling, patching and restoration, and all other work performed in the right of way, shall be done in conformance with Minnesota rules 7819.1100 and 7819.5000 and shall conform to MnDOT standard specifications and other applicable local requirements, insofar as they are not inconsistent with Minnesota statutes sections 237.162 and 237.163, as may be amended from time to time.

B. Installation Requirements:

1. Installation of service laterals shall be performed in accordance with Minnesota rules chapter 7560 and this chapter. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in subsection [8-1-20H](#) of this chapter.
2. The city will generally require small utilities to be installed within five feet (5') of concrete roadway features such as curbs and sidewalks or within five feet (5') of the right of way line where no such features exist. The city will generally require any trees or shrubs permitted in the right of way to be at least five feet (5') from curbs, walks, or roadways.

C. Restoration Of Rights Of Way:

1. **Timing:** The work to be done under the permit, and the 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 circumstances constituting force majeure or when work was prohibited as unseasonal or unreasonable under subsection [8-1-25B](#) of this chapter, all in the sole determination of the city. In addition to repairing its own work, the permittee must restore the general area of the work and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for twenty four (24) months thereafter.
2. **Repairs And Restoration; Costs:** In its application for an excavation permit, the permittee may choose to have the city restore the right of way. In any event, the city may determine to perform the right of way restoration and shall require the permittee to pay a restoration fee to provide for reimbursement of all costs associated with such restoration. In the event the permittee elects not to perform restoration, the city may, in lieu of performing the restoration itself, impose a fee to fully compensate for the resultant degradation as well as for any and all additional city costs associated therewith. Such fee for degradation shall compensate the city for costs associated with a decrease in the useful life of the right of way caused by excavation and shall include a restoration fee component. Payment of such fee does not relieve a permittee from any restoration obligation.
 - a. **City Restoration:** If the city restores the right of way, the permittee shall pay the costs thereof within thirty (30) days of billing. If, during the twenty four (24) months following such restoration, the right of way settles due to the permittee's excavation or restoration, the permittee shall pay to the city, within thirty (30) days of billing, the cost of repairing said right of way.
 - b. **Permittee Restoration:** If the permittee chooses at the time of application for an excavation permit to restore the right of way itself, such permittee shall post an additional performance and restoration bond in an amount determined by the city to be sufficient to cover the cost of restoring the right of way to its pre-excavation condition. If, twenty four (24) months after completion of the restoration of the right of way, the city determines that the right of way has been properly restored, the surety on the performance and restoration bond posted pursuant to this subsection C2b shall be released.
3. **Repair And Restoration Standards:** The permittee shall perform the work according to the standards and with the materials specified by the city. The city shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case by case basis. The city, in exercising this authority, shall be guided, but not limited, by the following standards and considerations:
 - a. The number, size, depth and duration of the excavations, disruptions or damage to the right of way;

- b. The traffic volume carried by the right of way;
 - c. The character of the neighborhood surrounding the right of way;
 - d. The pre-excavation condition of the right of way;
 - e. The remaining life expectancy of the right of way affected by the excavation;
 - f. 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
 - g. 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.
4. Guarantees: By choosing to restore the right of way itself, the permittee guarantees its work and shall maintain it for twenty four (24) months following its completion. During this twenty four (24) month period, it shall, upon notification from the city, correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under subsection [8-1-25B](#) of this chapter, all in the sole determination of the city.
5. Failure To Restore: If the permittee fails to restore the right of way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all repairs required by the city, the city, at its option, may perform or cause to be performed such work. In that event, the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right of way. If the permittee fails to pay as required, the city may exercise its rights under the performance and restoration bond.

D. Delay Penalty: The city may establish and impose a charge or penalty for unreasonable delays in excavations, obstructions, or restoration.

8-1-19: JOINT INSTALLATIONS AND CITY PROJECTS:

A. Joint Installations: It is in the city's interest that utilities be located in a joint trench whenever possible. Applicants may be required to place their facilities in the same excavation at the same time; however, a separate permit application will be required for each facility. A shared or joint application will not be accepted. Each permit will reference other operators using the same excavation. No work may proceed until all applications are submitted and approved. Registrants who apply for permits for the same excavation will not be charged a permit fee.

- B. City Projects: Registrants whose planned activities are necessary because of a city project will not be charged a permit fee; however, a permit is still required.

8-1-20: MAPPING DATA:

- A. Information Required: Each registrant and permittee shall provide project data necessary to allow the city to develop a right of way mapping system in accordance with Minnesota rules 7819.4000 and 7819.4100.

- B. Permit Required; Application: The city requires a permit for excavation in or obstruction of its public right of way. A person wishing to undertake a project within the public right of way shall submit a right of way permit application, which will require the filing of mapping information pursuant to subsection C of this section.

- C. Mapping Information: The city requires as part of its permit the filing of the following information for placement of utilities:

1. Location and elevation of the applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on one of the following methods:
 - a. The preferred method is X, Y, and Z coordinates in NAD 83 1996 adjustment (also known as HARN adjustment), horizontal datum and NGVD 88 vertical datum. This information is to be supplied in an electronic format in an ASCII comma-delimited file including: point number, northing, easting, elevation and description. The alignment position shall be collected at minimum intervals of two hundred feet (200') or as required by changes in direction of the utility being located to define the horizontal alignment. Elevation "as built" depth locations shall be collected at a minimum of ten (10) per mile. The horizontal and vertical accuracy requirements for all collected positions shall be within 0.5 foot of their reported position as evidenced by the certification of a licensed land surveyor or engineer registered in the state of Minnesota.
 - b. Offsets from property lines, distances from the centerline of the public right of way, and curb lines as determined by the city.
 - c. Any other system agreed upon by the right of way user and the city.
2. The type and size of the utility facility.
3. A description of aboveground appurtenances.
4. Any facilities to be abandoned, if applicable, in conformance with Minnesota statutes section 216D.04, subdivision 3, as it may be amended from time to time.

- D. Changes And Corrections: The application must provide that the applicant agrees to submit "as built" data, reflecting any changes and variations from the information provided under subsection C of this section within sixty (60) days of completion.
- E. Additional Construction Information: In addition, the right of way user shall submit a completion certificate to the city at the time the project is completed.
- F. Manner Of Conveying Permit Data: A right of way user is not required to provide or convey mapping information or data in a format or manner that is different from what is currently used and maintained by that operator. A permit application fee may include the cost to convert the data furnished by the right of way user to a format currently in use by the city. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process.
- G. Data On Existing Facilities: A right of way user shall promptly provide existing data on its existing facilities within the public right of way in the form maintained by the user if requested by the city.
- H. Service Laterals: All permits issued for the installation or repair of service laterals, other than minor repairs, as defined in Minnesota rules 7560.0150, subparagraph 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 city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence satisfactory to the city of the installed service lateral locations. Compliance with this subsection 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; and 2) city approval of performance under development agreements, or other subdivision or site plan approval under Minnesota statutes chapter 462. The city 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.
- I. Trade Secret Information: At the request of any registrant, any information requested by the city which qualifies as a trade secret under Minnesota statutes section 13.37(b) shall be treated as trade secret information as detailed therein.

8-1-21: LOCATION OF EQUIPMENT:

- A. Undergrounding: Unless otherwise permitted by an existing franchise or other agreement, or unless existing aboveground equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment, and the replacement of old equipment shall be done underground or contained within buildings or other structures and in conformity with applicable codes unless otherwise agreed to by the city in writing, and such agreement is reflected in applicable permits.

B. Corridors:

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

C. Nuisance Equipment: One year after the effective date hereof, any non-permitted equipment found in a right of way shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the equipment and restoring the right of way to a usable condition.

D. Limitation Of Space: To protect health, safety and welfare, the city shall have the power to prohibit or limit the placement of new or additional equipment within the right of way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right of way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right of way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular service, the condition of the right of way, the time of year with respect to essential utility, the protection of existing equipment in the right of way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

E. Relocation Of Equipment:

1. The person must promptly and at his own expense, with due regard for seasonal working conditions, permanently remove and relocate his equipment and facilities in the right of way whenever the city requests such removal and relocation, and shall restore the right of way to the same condition it was in prior to said removal or relocation. The city may make such requests in order 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.
2. Notwithstanding the foregoing, a person shall not be required to remove or relocate his equipment 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 by such nongovernmental entity to the person therefor.

8-1-22: DAMAGE TO OTHER EQUIPMENT:

- A. When the city performs work in the right of way and finds it necessary to maintain, support, or move a registrant's equipment in order to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing.
- B. Each registrant shall be responsible for the cost of repairing any permitted equipment in the right of way which it or its equipment damages. Each registrant shall be responsible for the cost of repairing any damage to the equipment of another registrant caused during the city's response to an emergency occasioned by that registrant's equipment.

8-1-23: VACATION OF RIGHT OF WAY:

- A. Reservation Of Right: If the city vacates a right of way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant or permittee equipment, the city shall reserve, to and for itself and all registrants having equipment in the vacated right of way, the right to install, maintain and operate any equipment 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 Equipment: If the vacation requires the relocation of registrant or permittee equipment 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.

8-1-24: ABANDONED AND UNUSABLE EQUIPMENT:

A. Discontinued Operations: A registrant who has determined to discontinue its operations with respect to any equipment in any right of way, or segment or portion thereof, in the city must either:

1. Provide information satisfactory to the city that the registrant's obligations for its equipment in the right of way under this chapter have been lawfully assumed by another registrant; or
2. Submit to the city a proposal and instruments for transferring ownership of its equipment to the city. If a registrant proceeds under this clause, the city may, at its option:
 - a. Purchase the equipment; 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 equipment.

B. Abandoned Equipment: Equipment of a registrant which fails to comply with subsection A of this section and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to:

1. Abating the nuisance;
2. Taking possession of the equipment and restoring it to a usable condition;
3. Requiring removal of the equipment by the registrant or by the registrant's surety; or
4. Exercising its rights pursuant to the performance and restoration bond.

C. Removal Required: Any registrant who has unusable equipment in any right of way shall remove it from that right of way during the next scheduled excavation, unless this requirement is waived by the city.

8-1-25: OTHER OBLIGATIONS:

A. Compliance With Other Laws: Obtaining a right of way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other appropriate jurisdiction or other applicable rule, law or regulation. The permittee shall comply with other local codes and with road load restrictions. 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.

- B. Prohibited Work: Except in the case of an emergency, and with the approval of the city, no right of way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.
- C. Interference With Right Of Way: A permittee shall not so obstruct a right of way that there is interference with the natural free and clear passage of water through the gutters or other waterways. Private vehicles may not be parked within or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.
- D. Traffic Control: Traffic control shall conform to the "Minnesota Manual On Uniform Traffic Control Devices" (MMUTCD) and its field manual and any written directions of the city engineer.
- 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 city.

8-1-26: INDEMNIFICATION AND LIABILITY:

- A. Limitation Of Liability: By reason of the acceptance of a registration or the grant of a right of way permit, the city does not assume any liability:
 - 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 equipment by registrants or activities of registrants.
- B. Indemnification: By registering with the city, a registrant agrees, or by accepting a permit under this chapter, a permittee is required to defend, indemnify, and hold the city whole and harmless, from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment, or out of any activity undertaken in or near a right of way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right of way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the city for any claim nor for any award arising out of the presence, installation, maintenance or operation of its equipment, or any activity undertaken in or near a right of way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right of way permit. The foregoing does not indemnify the city for its own negligence except for claims arising out of or alleging the city's

negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf, including, but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the city; and the registrant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf.

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

8-1-27: REVOCATION OF PERMITS:

- A. Substantial Breach: Registrants hold permits issued pursuant to this chapter as a privilege and not as a right. The city reserves its right, as provided herein and in accordance with Minnesota statutes section 237.163, subdivision 4, to revoke any right of way permit, without fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any condition of the permit. A substantial breach by the permittee shall include, but shall not be limited to, the following:

1. The violation of any material provision of the right of way permit;
2. An evasion or attempt to evade any material provision of the right of way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
3. Any material misrepresentation of fact in the application for a right of way permit;
4. The failure to maintain the required bonds and/or insurance;
5. The failure to complete the work in a timely manner; or
6. The failure to correct a condition indicated on an order issued pursuant to subsection [8-1-15C](#) of this chapter.

- B. Written Notice Of Breach: If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the city, at the city's discretion, to place additional or revised conditions on the permit.

- C. Response To Notice Of Breach: Within twenty four (24) hours of receiving notification of the breach, the permittee shall contact the city with a plan, acceptable to the city inspector,

for its correction. The permittee's failure to so contact the city inspector, the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the city inspector, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan shall automatically place the permittee on probation for one full year.

- D. Cause For Probation: From time to time, the city may establish a list of conditions of the permit which, if breached, will automatically place the permittee on probation, such as, but not limited to, working out of the allotted time period or working on a right of way outside of the permit.
- E. Automatic Revocation: If a permittee, while on probation, commits a breach as outlined above, the permittee's permit will automatically be revoked, and the permittee will not be allowed further permits for one full year, except for emergency repairs.
- F. Revocation of a small wireless facility permit shall be made in writing within three (3) business days of the decision to revoke the permit and shall document the basis for the revocation.
- G. 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.

GH. Work With No Permit: Upon written notice of a breach for work in the right of way without first obtaining a permit, the violator must subsequently obtain a permit, pay the normal fee for said permit, pay all the other fees required by city ordinance, including, but not limited to, criminal fines and penalties, deposit with the city the fees necessary to correct any damage to the right of way and comply with all of the requirements of this chapter. Registrants will be placed on indefinite probation after the first violation. Fees and penalties for all subsequent violations will be doubled for registrants on probation.

8-1-28: APPEALS:

A person that: a) has been denied registration; b) has been denied a right of way permit; c) has had its right of way permit revoked; d) believes that the fees imposed are invalid; or e) disputes a determination of the administrator may have the denial, revocation, fee imposition, or determination 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, fee imposition, or decision will be in writing and supported by written findings establishing the reasonableness of the decision.

8-1-29: FRANCHISE MAY BE REQUIRED; SUPREMACY ESTABLISHED:

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 in direct conflict with any provisions of this chapter, whether granted prior or subsequent to enactment of this chapter, shall control and supersede the conflicting terms of this chapter; provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the city may be cumulative in the sole determination of the city or unless otherwise negotiated by the city and the franchise grantee. All other terms of this chapter shall be fully applicable to all persons whether franchised or not.

8-1-30: RESERVATION OF REGULATORY AND POLICE POWERS:

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

8-1-31: 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 portion of this chapter is illegal or unenforceable, 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 sixty (60) days' written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit, right or registration shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the city council to issue such revocable permit and the power to revoke it. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

8-1-32: NONEXCLUSIVE REMEDIES:

The remedies provided in this chapter and other city ordinances are not exclusive or in lieu of other rights and remedies that the city may have at law or in equity. The city is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public rights of way, including damages to the rights of way, whether or not caused by a violation of any of the provisions of this chapter or other provisions of city ordinances.

SECTION 2. This ordinance shall take effect immediately upon its passage and publication.

ADOPTED this 11th day of April, 2019 by the City Council for the City of Elko New Market.

CITY OF ELKO NEW MARKET

BY: _____
Joe Julius, Mayor

ATTEST:

Thomas Terry, Acting City Clerk