

**City of Woodbury
Washington County, Minnesota**

Ordinance No. 1965

**An ordinance of the City of Woodbury, Washington County, Minnesota Providing
That the City Code be Amended by Amending Chapter 20 – Streets and
Sidewalks, Article V – Right-of-Way Management,
Sections 20 – 64 Through 20 – 94**

The City Council of the City of Woodbury, Washington County, Minnesota Does Ordain:

SECTION ONE. That Chapter 20 – Streets and Sidewalks, Article V – Right-of-Way Management, Sections 20 – 64 through 20 – 94 be amended to delete the same in its entirety and substitute the following therefore:

ARTICLE V. - RIGHT-OF-WAY MANAGEMENT

Sec. 20-64. - Findings, purpose, and intent.

In order to provide for the health, safety and welfare of its populace, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City of Woodbury strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city hereby amends this article of chapter 20 of the City Code relating to right-of-way permits and administration. This article imposes reasonable regulation on the placement and maintenance of facilities and 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 article, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this article provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This article shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stats. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Minn. Laws, ch. 94, art. 9, amending the Act, and the other laws governing applicable rights of the city and users of the right-of-way. This article shall also be interpreted consistent with Minnesota Rules 7819.0050—7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this article 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 article 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.

Sec. 20-65. - Election to manage the public rights-of-way.

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

Sec. 20-66. - Definitions.

The following definitions apply in this article of the City Code. References hereafter to "sections" are unless otherwise specified references to sections in this article. Defined terms remain defined terms whether or not capitalized.

Abandoned facility means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user, or if the right-of-way user fails to certify it in writing to the city as being in current use within 30 days of the City making inquiry as to its status.

City means the City of Woodbury, Minnesota, its elected officials, officers, employees and/or agents.

Collocate or collocation means to install, mount, maintain operate, or replace a Small Wireless Facility on, under, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other government unit.

Commission means the Minnesota Public Utilities Commission.

Congested right-of-way means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stats., § 216D.04. subd. 3, over a continuous length in excess of five hundred (500) feet.

Construction performance guarantee means any of the following forms of security provided at permittee's option:

- (a) Cash deposit.
- (b) Security of a form listed or approved under Minn. Stats. § 15.73, subd. 3.
- (c) Letter of credit, in a form acceptable to the city.

Degradation means 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 or disturbance did not occur.

Degradation cost, subject to Minnesota Rules 7819.1100, means 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 Minnesota Rules parts 7819.9900 to 7819.9950.

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

Delay penalty means the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Department means the department of engineering of the city.

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

Director means the director of the department of engineering of the city, or authorized designee as delegated by the director.

Emergency means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Equipment means any tangible asset used to install, repair, or maintain facilities in any public right-of-way.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

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

Excavation permit fee means money paid to the city by an applicant to cover the costs as provided in section 20-75.

Facility or facilities means any tangible asset in the right-of-way required to provide a service.

Five-year project plan means that specific plan which shows the projects adopted by the city for construction within the next five years.

High density corridor means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

Hole means an excavation in the right-of-way, with the excavation having a length less than the width of the right-of-way.

Local representative means 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 article.

Management costs or rights-of-way management costs means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; creating and maintaining information on a geographical information system (GIS) mapping system; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs or rights-of-way management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stats. §§ 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 20-93 of this article.

Micro wireless facility means a small wireless facility that is no longer than twenty-four (24) inches long, fifteen (15) inches wide, and twelve (12) inches high, and whose exterior antenna, if any, is no longer than eleven (11) inches.

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

Obstruction permit means the permit which, pursuant to this article, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

Obstruction permit fee means money paid to the city by a permittee to cover the costs as provided in section 20-75.

Patch or *patching* means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) 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.

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

Permit has the meaning given "right-of-way permit" in Minn. Stats. § 237.162.

Permittee means any person to whom a permit to excavate, obstruct or install small-wireless-facilities in the right-of-way has been granted by the city under this article.

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

Potholing means excavating the area above an underground facility to determine the precise location of the underground facility, without damage to it, before excavating within two feet of the marked location of the underground facility, as required in Minn. Stats. ch. 216D subd. 3a.

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

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

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

Registrant means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way, or (3) requests permission to excavate or obstruct a right-of-way.

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

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

Right-of-way permit means either the excavation permit, obstruction permit, or small-wireless-facilities permit, or any combination thereof, depending on the context, required by this article.

Right-of-way user means (1) a telecommunications right-of-way user as defined by Minn. Stats. § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing a service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

Service means (1) those services provided by a public utility as defined in Minn. Stats. § 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minn. Stats. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stats. ch. 308A; and/or (6) water, sewer, steam, cooling or heating services.

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.

Small wireless facility means a wireless facility that meets both of the following qualifications: (1) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and (2) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than twenty-eight (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.

Small-wireless-facility permit means the permit which, pursuant to this article, must be obtained before a person may install, place, maintain, or operate a small wireless facility in a public right of way to provide wireless service. A small-wireless-facility permit allows the holder to conduct such activities in that part of the right-of-way described in such permit. A small-wireless-facility permit does not authorize (1) providing any service other than a wireless service, or (2) installation, placement, maintenance, or operation of a wireline backhaul facility in the right of way.

Small-Wireless-Facility Permit Fee means money paid to the city by a permittee to cover the costs as provided in section 20-75.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend or supply additional information to, a permit that had already been submitted or issued.

Telecommunication right-of-way user means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this article, a cable communication system defined and regulated under Minn. Stats. ch. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stats. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stats. chs. 453 and 453A, or a cooperative electric association organized under Minn. Stats. ch. 308A, are not telecommunications right-of-way users for purposes of this article except to the extent such entity is offering wireless service.

Temporary surface means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

Trench means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the right-of-way.

Two-year project plan means that specific plan which shows the projects adopted by the city for construction within the next two (2) years.

Utility pole means a pole that is used in whole or in part to facilitate telecommunications or electric service.

Wireless facility means 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, that are not otherwise immediately adjacent to and directly associated with a specific antenna.

Wireless service means 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 means 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 means a facility used to transport communications data by wire from a wireless facility to a communications network.

Sec. 20-67. - Director.

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 is the engineering director. The director may delegate any or all of the duties hereunder.

Sec. 20-68. - 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 or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee. Registration fees shall be set by ordinance from time to time.
- (b) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.
- (c) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. 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 article. However, plantings must not violate applicable clear zone requirements nor obstruct visibility on the roadway, and the city may remove such plantings if necessary for maintenance, safety, or construction purposes, with no compensation due to the property owner.

Irrigation systems, underground pet fences or other similar property owner improvements shall be allowed in the right-of-way without a permit and installers shall be exempt from registration unless the property owner improvement is connected to city utilities, in which case a permit will be required. A permit will, however, be necessary when a new connection to city utilities is necessary. There shall be no compensation provided for removal required by any city, county, or permitted work within the right-of-way. Irrigation systems that will cross city streets shall be installed at a depth and inside of a casing that shall be determined by the director. Said casings shall extend from the right-of-way line on one side of the street to the right-of-way line on the other side of the street. No compensation shall be provided for any irrigation system, underground pet fences or other similar property owner improvements if removal is required or if it is damaged by any city, county, or permitted work within the right-of-way.

Existing resident-owned sewer and water service lines connected to a city main and resident-owned drain tile lines shall not be required to obtain permits for excavation and obstruction, and not be required to register with the city.

Nothing herein relieves a person from complying with the provisions of the Minn. Stats. Ch. 216D, Gopher One Call Law.

Existing facilities and equipment within the right-of-way shall not require a permit beyond that which was required at the time of the original installation. All existing facilities and equipment shall be subject to this article for any necessary maintenance.

Sec. 20-69. - Registration information.

- (a) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to:
- (1) Each registrant's name, Gopher One-Call registration certificate number, address 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 accessible for consultation 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:
 - a. Verifying that an insurance policy has been issued to the registrant by an insurance company authorized to do business in the State of Minnesota, or a form of self insurance acceptable to the city;
 - 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 and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - c. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - d. Requiring that the director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this article.
 - (4) The city may require a copy of the actual insurance policies.
 - (5) If the person is a corporation, a copy of the certificate that has been filed as a requirement of Minn. Stats. § 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 applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
- (b) *Notice of changes.* The registrant shall keep current all of the information listed under subsection (a) of this section, "information required," at all times by providing to the city

any changes to said information within fifteen (15) days following the date on which the registrant has knowledge of any change.

Sec. 20-70. - Reporting obligations.

- (a) *Operations.* Each registrant shall, at the time of registration and by March 1 of each year, file a construction and major maintenance plan for underground and aboveground facilities with the director. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. Facility plans which the service provider identifies in writing to the city as being "trade secret information" will be treated as general non-public data in accordance with Minn. Stats. § 13.37.

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) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five (5) 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 April 1 of each year the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of 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 city 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 city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 20-71. - Permit requirement.

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

- (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. An obstruction permit is not required for obstructions of eight hours or less for the purpose of repairing or maintaining previously installed facilities. Permits for installation, repair or other work on above-ground facilities within the meaning of Minn. Stats. § 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand dug for the purpose of placing a pole type structure.

- (b) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (1) such person 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.* In accordance with Minnesota Rule 7819.1000 subp. 3 and notwithstanding subsection (c) 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 ordinance. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, labor disputes, acts of God or other circumstances beyond the control of the applicant. Before imposing a delay penalty, the city will recognize and take into consideration the applicant's need to respond to emergencies in other communities or areas.
- (d) *Permit display.* Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

Sec. 20-72. - Permit applications.

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 article;
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities to a sufficient scale and quality as to allow the director to analyze said permit application for potential conflicts with general permit conditions. The director shall reserve the right to determine whether drawings are suitable for a permit application. All proposed facilities must have installation location dimensions given with respect to:
 - (1). Both the nearest back of curb and adjacent property lines in areas where curb is present; or,
 - (2). Both the nearest edge of pavement and property lines where curb is not present.
- (c) Payment of money due the city for:
 - (1). Permit fees, estimated restoration costs and other management costs;
 - (2). Prior obstructions or excavations;

- (3). 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.
- (4). Franchise fees or other charges, if applicable.
- (d) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 100 percent of the amount owing.
- (e) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

Sec. 20-73. - Issuance of permit; conditions.

- (a) *Permit issuance.* If the applicant has satisfied the requirements of this article, the city shall issue:
 - (1) an excavation or obstruction permit within five (5) business days.
 - (2) a Small-Wireless-Facilities permit within ninety (90) days.
- (b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.
- (c) 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) *Notice of work.* Upon request by the director, the permittee shall notify in writing in a form approved by the director all residents specified by the director whose property is adjacent to the right-of-way, and any property within five hundred (500) feet of the outer boundaries of where the proposed work is to be done indicating start and completion dates. If permittee chooses not to carry out the notice process required with its own staff, permittee shall promptly inform the director. The city may then carry out the notice process using its own staff, and permittee shall reimburse the city its costs of providing required notice, within thirty (30) days of billing.

Sec. 20-74. - Permit fees.

- (a) *Excavation permit fee.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:
 - (1) The city management costs;
 - (2) Degradation costs, if applicable.

- (b) *Obstruction permit fee.* The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.
- (c) *Small wireless facility permit fee.* The city shall impose a small wireless facility permit fee in an amount sufficient to recover:
 - (1) management costs, and;
 - (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
- (e) *Payment of permit fees.* No excavation permit, obstruction permit, small-wireless-facility permit, or conditional use permit shall be issued without payment of corresponding permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.
- (f) *Non refundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in section 20-85 are not refundable.
- (g) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.
- (h) *Fee determination.* Fees under this section shall be established in accordance with Minn. Rule 7819.1000 and applicable city requirements.

Sec. 20-75. - Right-of-way patching 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 circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under section 20-79.
- (b) *Patch and restoration.* Permittee shall patch its own work. The city may choose either to have the permittee restore the surface portion of the right-of-way or to restore the surface portion of the right-of-way itself.
 - (1) *City restoration.* If the city restores the right-of-way surface, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such Restoration, the pavement or any part of the right-of-way settles within twenty-four (24) months following such restoration due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting 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 post a 24-month construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.
 - (3) *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 replacing and compacting the subgrade and aggregate base

material and the degradation fee shall not include the cost to accomplish these responsibilities.

- (c) *Standards.* The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100. All restoration of paved and turf surfaces shall be in accordance with PUC standard plates.
- (d) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents. The permittee upon notification from the city shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) business days upon 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 section 20-79.
- (e) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failures and shall allow the permittee at least five working days from the receipt of notice to cure the failure or failures or to respond with a plan to cure. In the event the permittee fails to cure or fails to respond to the notice, the city may at its option perform the necessary work and the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Sec. 20-76. – No Joint applications.

No joint application. Each service provider must make separate application for their work. No joint applications for a project will be allowed.

Sec. 20-77. - 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 submitted before the permit end date. Permits for non-emergency work shall be submitted at least seventy-two (72) hours prior to the planned start of work unless engineering allows a different duration.

Sec. 20-78. - 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 Minn. Stats. §§ 216D.01—216D.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560 (location of utility laterals within public right-of-way). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

- (b) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for 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. Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual and any directions of the city director.
- (d) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in Minn. Stats. Ch. 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing utilities, in order to determine the precise location of marked underground utilities before excavating. In addition, permittees employing trenchless excavation methods, shall not install facilities at a depth greater than four feet below grade, unless specifically approved by the director.

Sec. 20-79. - Denial of permit.

- (a) *Reasons for Denial.* The city may deny a permit for failure to meet the requirements and conditions of this article or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current and future uses. The city may deny a permit if the utility has failed to comply with previous permit conditions. The city may withhold issuance of a permit until the applicant is in compliance with the conditions of a previous permit.
- (b) *Procedural Requirements.* The denial of a right of way 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 cure the deficiencies identified by the city and resubmit its application. If the application is resubmitted within thirty (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 thirty (30) days after submission.

Sec. 20-80. - Installation 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, 7819.5000 and 7819.5100 and other applicable local requirements, such as the City Standard Plans and Specifications in so far as they are not inconsistent with the Minn. Stats. §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter

7560 and these ordinances are subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in this article.

Sec. 20-81. - Inspection.

- (a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.
- (b) *Site inspection.* Permittee shall make the work-site available to the city and to all others as authorized by law for inspection at all reasonable times during the 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 20-85.
 - (3) The cost of any action taken by the city shall be paid by the permittee.
 - (4) The director may require that the permittee immediately cease work if the permittee has recently performed work without regard for public safety. Such work without regard for public safety may include, but not be limited to, causing by means of work within the right of way, damage to two or more utility facilities within 48 hours or damage to three or more utility facilities within one week. Should such work without regard for public safety occur, the director reserves the right to require:
 - a. That the permittee cease work immediately;
 - b. Prepare a new safety plan to prevent future occurrences;
 - c. Present said safety plan to the director or the director's staff for approval 24 hours after the order to cease work;
 - d. That the permittee not return to work until the safety plan satisfies the director; and
 - e. The director instructs the permittee that it is okay to return to work by form of a written letter.

Sec. 20-82. - 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. The registrant may proceed to take whatever actions are necessary 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 article for the actions it took in response to the emergency.

If the city becomes aware of an emergency regarding the registrant's facilities, the city will contact the registrant's emergency telephone number as registered with the city or listed in the telephone directory. The city will make the area safe, as necessary. If there is no response from registrant, the city may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the permittee or registrant whose facility occasioned the emergency.

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

Sec. 20-83. - Supplementary notification.

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

Sec. 20-84. - 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 may 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 complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control;
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 20-82;
- (6) Failure to pay any required costs, fees, or charges billed by the city; or
- (7) Failure to provide traffic control that conforms to the provisions of the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual.

- (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 follow the procedural requirements of Sec. 20-80(b) of this article. In addition, the demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at the

city's discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

- (c) *Response to notice of breach.* Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, may automatically place the permittee on probation for one (1) full year.
- (d) *Cause for probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.
- (e) *Automatic revocation.* If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.
- (f) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Sec. 20-85. - Mapping data.

- (a) *Information required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. All existing and new facilities shall be shown. Within ninety (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.
- (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 use of appropriate means of establishing the vertical and horizontal locations of installed service laterals, to the extent technically feasible as determined by the director. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision (b) and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition to city approval of
 - (1) payment to contractors working on a city improvement project including those under Minn. Stats. ch. 429, and
 - (2) city approval of performance under development agreements, or other subdivision or site plan approval under Minn. Stats. ch. 462. Each utility shall utilize the appropriate

means and methods of providing to the city accurate location of the newly-installed, or applicable repair to, service laterals, subject to the approval of the director. Failure to provide prompt and accurate information on the service laterals installed may result in the city's withholding of applicable approvals or in the revocation of the permit issued for the applicable work or for future permits to the offending permittee or its subcontractor.

Sec. 20-86. - Location and relocation of facilities.

- (a) Placement, location, and relocation of facilities must comply with this article, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- (b) *Undergrounding.* Unless otherwise agreed in a franchise or other agreement between the applicable right-of-way user and the city, facilities in the right-of-way must be located or relocated and maintained underground in accordance with sections 20-3 and 21-95 of the city code.
- (c) *Corridors.* The city may assign specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the 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.
- (d) *Nuisance.* One (1) year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or right sit 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.
- (e) *Limitation of space.* To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making 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 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.

Sec. 20-87. - Pre-excavation facilities location.

In addition to complying with the requirements of Minn. Stats. §§ 216D.01—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 placement of all said facilities. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of its facilities

to excavators upon request. Nothing in this subsection is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in Minn. Stats. §§ 216D.01—216D.09.

Any right-of-way user whose facilities are known to be less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish and mark the exact horizontal and vertical location of its facilities and the best procedure for excavation.

Sec. 20-88. - Damage to other facilities.

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

Sec. 20-89. - Right-of-way vacation.

- (a) *Reservation of right.* In accordance with Minn. Rule 7819.3200, if the city vacates a right-of-way which contains the facilities or equipment of a registrant or right-of-way user and the right-of-way vacation does not require the relocation of the right-of-way user's facilities, the local government unit shall, except when it would not be in the public interest, reserve to and for itself and all right-of-way users having facilities in the vacated right-of-way, the right to install, maintain, and operate facilities in the vacated right-of-way and to enter upon the right-of-way at any time to reconstruct, inspect, maintain, or repair the facilities.
- (b) *Relocation of equipment or facilities.* If the vacation requires the relocation of registrant or permittee equipment or 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.

Sec. 20-90. - Indemnification and liability.

By registering with the city, or by accepting a permit under this article, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

Sec. 20-91. - Abandoned and unusable facilities.

- (a) *Discontinued operations.* A registrant who has decided to discontinue all or a portion of its operations in the city must either:
 - (1) Provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this article have been lawfully assumed by another registrant; or
 - (2) Remove the facilities as outlined in subsection (b) of this section below.

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

Sec. 20-92. Small Wireless Facilities- Purpose and Findings.

The City desires high quality wireless services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that small wireless facilities can create. These negative impacts include, but are not limited to, interference with right-of-way user sight lines, impacts to right-of-way user circulation, incompatible aesthetics with the surrounding area, fall zone risk, clear zone risk, creating navigation obstacles, interference with future travel way expansion plans, interference with the delivery of other utility services, interference with stormwater management facilities, and increased noise pollution.

To minimize these negative impacts, any person desiring to place a new wireless support structure in the right-of-way or collocate small wireless facilities on existing privately-owned wireless support structures in the right-of-way shall first obtain a small wireless facility permit from the City. Any person desiring to collocate small wireless facilities on existing wireless support structures owned or controlled by the City shall first enter into a standard small wireless facility collocation agreement. The purpose of these requirements is to comply with Minnesota Statutes Sections 237.162 and 237.163 while at the same time protecting the public health, safety, and welfare.

The City will consider impacts to the public health, safety and welfare when reviewing a small wireless permit application and a request to enter into a small wireless facility collocation agreement. The City has also published aesthetic standards for small wireless facilities and support structures and compliance with such standards is a condition of any small wireless facility permit issued.

Sec. 20-93. Small Wireless Facility Permit. No person may place a new wireless support structure within the right-of-way or collocate a small wireless facility on an existing wireless support structure in the right-of-way without first obtaining a small wireless facility permit from the City.

Sec. 20-94. Permit Application and Fee. A written application for a small wireless facility permit shall be submitted to the director on a form provided by the City. The applicant shall pay an application fee in the amount set forth in the Fee Resolution adopted by the City Council, as the same may be amended from time to time. The application will be processed in accordance with the requirements of Minnesota Statutes§ 237.163, subd. 3c(b) and (c).

1. **Consolidated Permit Application.** An applicant may file a consolidated permit application to collocate up to fifteen (15) small wireless facilities, provided that the 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 .

2. **Permission from Owner.** If the applicant seeks to collocate a small wireless facility on an existing wireless support structure, the applicant shall, at the time of application, provide the City with proof that it has obtained the necessary authority from the owner of the wireless support structure to collocate the small wireless facility on the structure.
3. **Issuance of Permit and Conditions.** Upon the director's determination that the applicant has satisfied the requirements of this Section, the director shall issue the small wireless facility permit. The director may condition permit approval on compliance with the following:
 - (a) generally applicable and reasonable health, safety, and welfare regulations consistent with the City's authority to manage its public right-of-way;
 - (b) the City's aesthetic standards including reasonable accommodations for decorative wireless support structures or signs; and
 - (c) where an applicant proposes to replace an existing wireless support structure, reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in the right-of-way.
 - (d) collocation on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
 - (e) No wireless facility may extend more than ten (10) feet above its wireless support structure.

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

4. **Additional Conditions for New Wireless Support Structures.** New wireless support structures that comply with the following requirements may be placed in the right-of-way after the issuance of a small wireless facility permit:
 - (a) A new wireless support structure shall not exceed fifty (50) feet above ground level, 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 fifty (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.
 - (b) City's aesthetic standards including reasonable accommodations for decorative wireless support structures or signs and separation requirements between new support structures and existing wireless

support structures or other facilities in and around the right-of-way.

5. **Permit Denial.** The director may deny a small wireless facility permit if he or she reasonably determines that the applicant has not satisfied the requirements of this Section or that approval of the permit would be contrary to generally applicable and reasonable health, safety, and welfare regulations. The City shall notify the applicant in writing within three (3) business days of its decision to deny the permit. Upon denial, the applicant may cure the deficiencies identified by the City and resubmit its application. If the applicant resubmits the application within thirty (30) days of receiving written notice of the denial, no additional filing or processing fee shall be required. The City shall approve or deny the revised application within thirty (30) days after the revised application is submitted.
6. **Term.** The term of a small wireless facility permit shall be equal to the length of time that the small wireless facility is in use, unless earlier revoked under this Section.
7. **Obstruction or Excavation.** A small wireless facility permit holder whose approved work in the right-of-way involves obstruction or excavation of the right-of-way shall also obtain a right-of-way permit from the City.
 - (c) Wireless facilities constructed in the right-of-way shall not extend more than ten (10) feet above an existing wireless support structure.
8. **Exemptions.** No small wireless facility permit is required to conduct the following activities in the right-of-way:
 - (a) routine maintenance of a small wireless facility;
 - (b) replacement of a small wireless facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or
 - (c) installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

If any of the above activities will obstruct the right-of-way, the small wireless facility permit holder shall provide notification to the City at least ten (10) days in advance of such activity.

- B. Collocation on City-Owned Wireless Support Structure.** No person may collocate a small wireless facility on an existing wireless support structure owned or controlled by the City without first entering into a Standard Small Wireless Facility Collocation Agreement with the City.
- C. New Structures.** The erection in the public right-of-way of a new public utility structure to support wireless facilities other than small wireless facilities is prohibited, except where the director determines there is a need for additional roadway lighting, emergency warning siren, or other infrastructure that must be

supported by a public utility structure. Any new structure erected to support wireless facilities other than small wireless facilities allowed by the City under this paragraph and any associated or attached equipment must comply with the requirements of this Section.

D. Other Wireless Facilities A telecommunications right-of-way user who desires to place a new public utility structure or wireless facilities other than small wireless facilities in the right-of-way shall enter into a license agreement with the City for use of space that sets forth such terms and conditions as the City deems appropriate and shall obtain any necessary right-of-way permit.

Sec. 20-95. Collocation Agreement. A small wireless facility permit shall only be issued for collocation on a City-owned wireless support structure after the applicant has executed a standard small wireless facility collocation and lease agreement with the city. The standard collocation agreement may require payment of the following:

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

Sec. 20-96. Special/Conditional Use Permit. A special or conditional use permit may be required to install a new wireless support structure for the siting of a small wireless facility in a right of way located in and/or adjacent to residentially zoned districts or within a historic district established by federal or state law or city ordinance as of the date of application for a small wireless facility permit.

Sec. 20-97. - Appeal.

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 conformance with Minn. Stats. ch. 237.163, subd.6, 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.

Sec. 20-98. – Reservation of regulatory and police powers.

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

Sec. 20-99. - Severability.

If any portion of this article is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this article or any portion of

this article is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other party. 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 article precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Sec. 20-100. - Penalty.

Any person violating any provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000.00.

SECTION TWO. Effective date.

This ordinance shall be in full force and effect following its passage and publication according to law.

Passed and adopted by the City Council of Woodbury, Washington County, Minnesota, this 14th day of August, 2019.

ATTEST:

Anne W. Burt, Mayor

Clinton P. Gridley, City Administrator

(SEAL)