

**CITY OF SHOREVIEW  
ORDINANCE NO. 1047**

**AN ORDINANCE AMENDING RIGHT-OF-WAY MANAGEMENT AND PERMITTING**

The Shoreview City Council ordains that Section 34-66, 34-39, 34-70, 34-72, 34-73, 34-76, 34-74, and 34-79 to 34-86 of the Shoreview Municipal Code is amended to read as follows:

**Chapter 34**

**ARTICLE III. RIGHT-OF-WAY MANAGEMENT**

**Sec. 34-66. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or unless otherwise specified in sections of this article:

*Administrative Fee* means a fee to be paid by an applicant to the city to defray costs of administration associated with new applications. This fee is not an application fee, registration fee, management cost or escrow.

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

*Camouflage* means using shape, color, and texture to cause an object to appear to become part of something else. The term "camouflage" does not mean invisible but rather appearing as part of the landscape or another structure. The term "camouflage" includes wireless telecommunication facilities disguised to appear as another structure such flag pole, light pole, sign, tree, or utility pole.

*City* means, for purposes of section 34-93, its elected officials, officers, employees and agents.

*Collocation* means the sharing of a structures by wireless service providers and other right-of-way users on a single support structure or otherwise sharing a common location.

*Collocation Agreement* is an agreement between the city and a wireless service provider allowing the wireless services provider to collocate standard small wireless facilities on wireless support structures owned or controlled by the city and located within public roads or rights-of-way.

*Concealed* means fully hidden from view. The term "concealed" refers to a wireless telecommunication facility that is not evident and is hidden or integrated into a structure such as a pole, building, wall, or roof.

*Consolidated Application* means an application which collocate up to 15 small wireless facilities, or a greater number if agreed to by the City, provided that all the small wireless facilities in the application

*DAS hub* means ancillary equipment usually contained in a shelter or other enclosure which does not have any wireless transmission or receive equipment contained therein but is utilized in the deployment and operation of wireless DAS receive/transmit infrastructure that is located elsewhere.

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

*Degradation cost* means money paid to the city to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation.

*Delay penalty* means the penalty imposed as a result of unreasonable delays in right-of-way construction.

*Department* means the department of public works of the city.

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

*Disruptive fee* means the penalty imposed as a result of the adverse impact on the residents of the city and others who are required to alter travel routes and times resulting from right-of-way obstructions.

*Distributed antenna system (DAS)* is a network of spatially or geographically separated antenna nodes that are connected to a common source through a transport or communication medium in order to provide wireless communication service in a specific locality or building. A DAS can be deployed indoors (iDAS) to provide network or cellular connectivity throughout a building or outdoors (oDAS) in areas where regular wireless coverage does not reach.

*Emergency* means a condition that:

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

*Equipment* means any tangible thing in any right-of-way but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.

*Equipment enclosure* means a structure, shelter, cabinet, box, or vault designed for and used to house and protect the electronic equipment necessary and/or desirable for processing wireless telecommunication signals and data, including

any provisions for mechanical cooling equipment, air conditioners, ventilation, and/or auxiliary electric generators.

*Excavate* means 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 12 inches.

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

*Excavation permit fee* means money paid to the city by an applicant to cover the costs as provided in section 34-76.

*Facility* means any tangible asset in the right-of-way required to provide utility service.

*Franchise Agreement* means a non-exclusive agreement, for a scheduled term with or without renewal options, for the underground installation and use of telecommunications equipment and facilities, including base stations and access point facilities, within city rights-of-way; and, with express permission of the manager, on city-owned street light poles and traffic light poles, and certain utility poles and other facilities located within city rights-of-way, in connection with the provision of telecommunications services.

*Franchise Fees* means monies paid to the city by an applicant in accordance with the conditions of a franchise agreement.

*Grade* means the established elevation of the centerline of the finished surface of the street.

*Height, pole*, means the distance measured to the highest point of the antenna or tower from the mean ground level measured at the base of a freestanding facility or the projected base as determined by extending the antenna or tower base down vertically to the ground. For building mounted antennas, height is measured to the highest point of the equipment enclosure from the top of the cornice of a flat roof, from the top line of a mansard roof, from a point on the roof directly above the highest wall of a shed roof, from the uppermost point on a round or other arch-type roof, or from the highest gable on a pitched or hip roof.

*In* means, when used in conjunction with the term "right-of-way," over, above, in, within, on or under a right-of-way.

*Inventory of small cell/DAS sites* refers to an accurate and current inventory of all small cell/DAS sites approved by permittee pursuant to a lease agreement, including sites that become inactive for any reason.

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

*Maintenance* means to repair unscheduled and scheduled deficiencies in telecommunications equipment or performing routine actions which keep the equipment in working order (known as scheduled maintenance) or prevent trouble from arising (preventive maintenance).

*Management cost* means the actual cost incurred by the city for public rights-of-way management, including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public 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 or small wireless facility permits and performing all other tasks required by this article, including other costs the city may incur in managing the provisions of this article. Management cost does not include:

- (1) Payment by a telecommunications right-of-way user for the use of the right-of-way;
- (2) Unreasonable fees of a third-party contractor used by the city as part of managing its public rights-of-way, including, but not limited to, any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for the city; or
- (3) The fees and costs of litigation relating to the interpretation of M.S.A. § 237.163 or any ordinance enacted under that section, or the city's fees and costs related to appeals taken pursuant to M.S.A. § 237.163, subd. 5.

*Manager* means the city manager or the manager's designee.

*Micro wireless facility* is a small cell wireless facility.

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

*Obstruction permit* 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 by placing equipment described therein on the right-of-way for the duration specified therein.

*Obstruction permit fee* means money paid to the city by a registrant to cover the costs as provided in section 34-76.

*Patch or patching* means a method of pavement replacement that is temporary in nature. A patch consists of the compaction of the sub-base and aggregate base, and the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch

is considered full restoration only when the pavement is included in the city's five-year project plan.

*Performance security* means a ~~performance bond, a restoration bond~~, a letter of credit, or cash **escrow** deposit posted to ensure the availability of sufficient funds to ensure that right-of-way excavation and obstruction work is completed in both a timely and quality manner.

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

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

*Plans* means all drawings and standard details or reproductions thereof pertaining to details of construction or of the contract work which are made a part of the contract.

*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 Utilities Commission (PUC)* is a government authority responsible for regulating utilities such as electricity, natural gas, water, and telecommunications.

*Public utility structure* is a structure which is owned by a governmental agency or utility company and which may be/can be used to support illumination devices or lines and other equipment carrying electricity or communications.

*Radio propagation study.* The propagation of radio waves is described through the modeling of the different physical mechanisms (free-space attenuation, atmospheric attenuation, vegetation and hydrometer attenuation, attenuation by diffraction, building penetration loss, etc.). This modeling is necessary for the conception of telecommunications systems and, once they have been designed, for their actual field deployment. Propagation models are implemented in engineering tools for the prediction different parameters useful for the field deployment of systems, for the study of the radio coverage (selection of the emission sites, frequency allocation, powers evaluation, antenna gains, polarization) and for the definition of the interferences occurring between distant transmitters.

*Registrant* means any person who has or seeks to have its equipment located in any right-of-way, or in any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment in the right-of-way. **See also "permittee" or "applicant"**.

*Registration Fee* means an annual fee paid to the city by each registrant who occupies, uses, or seeks to occupy or use the right-of-way or any equipment located in the right-of-way, including by lease, sublease, or assignment, or who has, or seeks to have, equipment located in any right-of-way must register with the city. Annual registration must be completed and paid before permit applications will be reviewed or work can be performed in the right-of-way.

*Repair* means the temporary construction work necessary to make the right-of-way usable for travel.

*Restoration cost* means an amount of money paid to the city by a permittee to cover the cost of restoration. This amount may be assessed and drawn from the escrow account of the permittee or registrant to complete post-construction repair and restoration work at the sole discretion of the City.

*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 that existed before the commencement of the work.

*Right-of-way* means the surface and space above and below 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.

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

*Service or utility service* includes, but is not limited to:

- (1) Those services provided by a public utility as defined in M.S.A. § 216B.02, subds. 4 and 6;
- (2) Telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services;
- (3) The services provided by a corporation organized for the purposes set forth in M.S.A. § 301B.01;
- (4) The services provided by a district heating or cooling system; and
- (5) Cable communications systems as defined in M.S.A. ch. 238; and
- (6) A telecommunication rights-of-way user, as defined in this section.

*Small cell site* is defined as a low-power radio access facility, together with associated antennas, mounting and mechanical equipment, which provides and extends wireless communications systems' service coverage and increases network capacity.

*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, in the case of an antenna that has exposed elements, the antenna could fit within an enclosure of no more than six cubic feet; and
- (2) All other wireless equipment associated with the small wireless facility, excluding 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, is in aggregate no more than 28 cubic feet in volume; or
- (3) A micro wireless facility.

*Specifications* means the directions, provisions and requirements that are prepared for the project under consideration and made a part of the contract.

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

*Telecommunication rights-of-way user* means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this article, a cable communication system defined and regulated under M.S.A. ch. 238 and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.

*Traffic light/traffic signal system* are electrically operated colored signaling devices positioned at road intersections, pedestrian crossings, and other locations to control conflicting flows of traffic.

*Transmission media* is all of the permittee's radios, antennas, transmitters, wires, fiber optic cables, and other wireless transmission devices that are part of the small cell/DAS equipment.

*Unusable equipment* means equipment 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 12 months or a potential purchaser or user of the equipment.

*Upgrade or capital improvement* is the construction, installation, or assembly of new telecommunications equipment or the alteration, expansion, or extension of an existing equipment to accommodate a change of function or unmet programmatic needs, or to incorporate new technology.

*Utilities* means underground or overhead gas, electrical, steam or water transmission or distribution systems; collection, communication (excluding wireless

telecommunication facilities), supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants or other similar equipment and accessories in conjunction therewith; but not including buildings.

*Utility pole* is a structure that is:

- (1) Owned or operated by:
  - a. A public utility;
  - b. A communications service provider;
  - c. A municipality;
  - d. An electric membership corporation; or
  - e. A rural electric cooperative; and
- (2) Designed and used to:
  - a. Carry lines, cables, or wires for telephone, cable television, telecommunications or electricity; or
  - b. Provide lighting.

(Prior Code, § 405.020; Ord. No. 956, 9-21-2017)

### **Sec. 34-69. Registration and right-of-way occupancy.**

- (a) *Registration.* Each person who occupies, uses, or seeks to occupy or use the right-of-way or any equipment in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment in any right-of-way must register with the manager. Registration will consist of providing application information, ~~and~~ paying application and registration fees, and deposit of the required performance security escrow with the city.
- (b) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or any part thereof in any right-of-way without first being registered with the manager.
- (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. Except as hereinafter provided, 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 maintain such boulevard plantings or gardens under this article. However, excavations deeper than 12 inches are subject to the permit requirements of section 34-72. Nothing herein relieves a person from complying with the provisions of M.S.A. ch. 216D, One Call Law.

(Prior Code, § 405.050)

**Sec. 34-70. Registration information.**

- (a) *Information required.* The information provided to the manager 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 ~~number. and~~ ~~facsimile numbers.~~
  - (2) The name, address ~~and~~ e-mail address, ~~if applicable,~~ and telephone ~~number and facsimile numbers~~ of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
  - (3) A certificate of insurance shall be on a form approved by the city:
    - a. Verifying that an insurance policy has been issued to the registrant by an insurance company license to do business in the state, or that registrant is covered by self-insurance which the manager determines to provide the city with protections equivalent to that of a state licensed insurance company, legally independent from the registrant;
    - b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and placement and use of equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, and that registrant's insurance coverage includes, but is not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property;
    - c. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
    - d. Requiring that the manager be notified 30 days in advance of cancellation of the policy; and
    - e. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the manager in amounts sufficient to protect the city and 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 of incorporation as recorded and certified to by the Secretary of State.
  - (6) A copy of the person's certificate of authority from the state public utilities commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from the commission or other state or federal agency.
  - (7) **Performance Securities in accordance with fee schedule in effect for the current year.**
  - (8) Such other information as the city may require.
- (b) *Notice of changes.* The registrant shall keep all of the information listed in subsection (a) of this section current at all times by providing to the manager information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Prior Code, § 405.060)

**Sec. 34-72. Right-of-way permit requirement.**

- (a) *Right-of-way permit required.* Except as otherwise provided in the city's regulations, no person may obstruct or excavate any right-of-way or utilize land area or infrastructure without first having obtained the appropriate right-of-way permit from the city manager and posting of the appropriate performance security with the city manager.
- (1) *Excavation permit.*
- a. 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 equipment described therein, to the extent and for the durations specified therein.
  - b. **An applicant may file an Excavation Permit application to accommodate installation or maintenance of multiple contiguous facilities along a single route provided each application encompasses a maximum route length of 1 mile or 5,280 linear feet.**
- (2) *Obstruction permit.*
- a. An obstruction permit is required by registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the durations specified therein.
  - b. **To protect the public health, safety and welfare, ensure the structural integrity of the right-of-way, protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to**

the traveling public, aerial installation of new facilities may only be allowed with the approval of the manager where underground installation is infeasible. The city shall require demonstrated proof that alternative routes, means, and methods have been explored and underground installation found infeasible, prior to review and approval of aerial installations.

- (3) *Small cell wireless facilities/DAS hub permit.* A small cell wireless facility/DAS hub permit is required by the registrant to install facilities and equipment over a specified portion of the right-of-way by placing or utilizing infrastructure therein located.
- a. An application may file a consolidated permit application to collocate up to 15 small wireless facilities, or a greater number if agreed to by the city, provided that all the small wireless facilities in the application:
    1. Are located within a two-mile radius;
    2. Consist of substantially similar equipment; and
    3. Are to be placed on similar types of wireless support structures.
  - b. In rendering a decision on a consolidated permit application, the city 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 application.
  - c. The city shall have 90 days after the date a small cell wireless facilities/DAS hub permit application is filed to issue or deny the permit, or the permit is automatically issued. To toll the 90-day clock, the city must provide a written notice of incompleteness to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the city's determination whether the proposed equipment falls within the definition of a small cell wireless facility/DAS hub and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon an applicant's submittal of additional documents or information in response to a notice of incompleteness, the city has ten days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness.
  - d. If the city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the city may extend the 90-day deadline

imposed in subsection (a)(3)c of this section by an additional 30 days. If a city elects to invoke this extension, it must inform in writing any applicant to whom the extension will be applied.

- e. A wireless service provider may collocate small wireless facilities on wireless support structures owned or controlled by the city and located within the public roads or rights-of-way, provided a standard small wireless facility collocation agreement is executed.
- f. Any initial engineering survey and preparatory construction work associated with collocation must be paid by the applicant.
- g. A permit may be issued upon satisfaction of the following criteria:
  - 1. Compliance with applicable and reasonable health, safety, and welfare regulations consistent with the city's public right-of-way management;
  - 2. Compliance with the standards set forth in this article;
  - 3. All facilities shall make reasonable accommodations for decorative wireless support structures or signs; and
  - 4. Submittal shall address the restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.
- h. A permit may be denied upon the following findings:
  - 1. Denial is necessary to protect the health, safety, and welfare or when necessary to protect the public right-of-way and its current use.
  - 2. The facility does not comply with the standards set forth in this article.
  - 3. Any denial of a right-of-way permit for a small wireless facility permit must be made in writing and must document the basis for the denial. The city must notify the telecommunications right-of-way user in writing within three business days of the decision to deny the permit. If a permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the city and resubmit its application. If the telecommunications right-of-way user resubmits the application within 30 days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The city must approve or deny the revised application within 30 days after the revised application is submitted.

- i. Any Small Cell installation shall require a separate Small Cell Permit in addition to any excavation and obstruction permit.
- (b) *Right-of-way permit extensions.* No person may excavate or obstruct the right-of-way beyond the date specified in the permit unless such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new right-of-way permit, or right-of-way permit extension, is granted.
- (c) *Delay penalty.* Notwithstanding the provisions of subsection (b) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by city council resolution. ~~The delay penalty may be drawn on the registrant's escrow account in accordance with the current fee schedule established from time to time by the City Council.~~
- (d) *Right-of-way permit display.* Right-of-way permits issued under this article shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the manager.
- ~~(e) *Performance security.* Performance security shall be in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of permittee's obligation under this article, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this article or any other applicable law, regulation, or standard. During the period of construction, repair or restoration of rights-of-way or equipment within the rights-of-way, the performance security shall be in an amount sufficient to cover 125 percent of the estimated cost of such work, as documented by the person proposing to perform such work, or in a lesser amount as may be determined by the manager, taking into account the amount of equipment in the right-of-way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this article. Sixty days after completion of such work, the performance security may be reduced in the sole determination of the city.~~

(Prior Code, § 405.080; Ord. No. 956, 9-21-2017)

### **Sec. 34-73. Application for a right-of-way permit.**

Applications for a right-of-way permit ~~is~~ **must be** made to the manager. Right-of-way permit applications shall contain and will be considered complete only upon compliance with the requirements of the following provisions:

- (1) **Approved annual** registration with the manager pursuant to this article;
- (2) Submissions of a completed permit application form, **provided by the city and, including** all required attachments, **including but not limited to:**

- a. ~~and~~ Scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment;
  - b. Traffic control/detour plans, as applicable;
- (3) Payment of all money due to the city for:
- a. Permit fees, estimated restoration costs, and other management costs;
  - b. Prior obstructions or excavations;
  - c. Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
  - d. Franchise fees, if applicable.
- (4) Fully executed collocation or franchise agreement, if applicable.
- (5) Payment of all applicable money due to the city, for per the current fee schedule set by the city council from time to time, including but not limited to:
- a. Permit and application fees;
  - b. Registration fees;
  - c. Other management costs and administrative fees;
- (6) Performance Security in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of permittee's obligation under this article, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this article or any other applicable law, regulation, or standard.
- a. Annual Escrow for Routine Maintenance shall be in accordance with the current fee schedule set by the City Council from time to time.
  - b. Escrow for Individual Large Deployments (i.e. projects over \$100,000 in value) will be 10% of total construction value. The first \$5,000 must be in the form of a cash escrow; subsequent value may be provided via letter of credit.
  - c. Escrow Accounts and Draws. The City may, at their sole discretion, make a draw on a Registrant's escrow account to cover assessed costs and penalties due to incomplete or defective work and/or restoration, including but not limited to delay and restoration penalties.
- In the event the City makes a draw on the escrow account, the escrow shall be immediately replenished to a full balance by the Registrant, or a Stop Work Order may be issued by the City until which time as the escrow has been replenished in full.

- d. No new right-of-way permits shall be issued to the Registrant until replenishment occurs.
  - e. At the discretion of the Public Works Department, a stop work order may also be implemented on any open permits until replenishment occurs.
- (7) Franchise fees, if applicable;
  - (8) Estimated restoration costs;
  - (9) Fees due for prior obstructions or excavations; excavations including 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;
  - (10) Payment of disputed amounts due the city by posting performance security or depositing in a city-approved escrow account an amount equal to at least ~~ten~~ one hundred-ten percent (110%) of the amount owing.
  - ~~(5) — When an excavation permit is requested for purposes of installing additional equipment, and the posting of a restoration bond for the additional equipment is insufficient, the posting of an additional or larger restoration bond for the additional equipment may be required.~~

(Prior Code, § 405.090)

### **Sec. 34-76. Right-of-way permit fees.**

- (a) *Excavation permit fee.* The excavation permit fee shall be established by the city council from time to time. ~~manager in an amount sufficient to recover the following costs:~~
  - ~~(1) — The city management costs;~~
  - ~~(2) — Degradation cost, if applicable.~~
- (b) *Obstruction permit fee.* The obstruction permit fee shall be established by the city council from time to time. ~~manager and shall be in an amount sufficient to recover the city management costs.~~
- (c) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. ~~The city may allow applicant to pay such fees within 30 days of billing.~~
- (d) *Non-refundable.* Permit fees that were paid for a permit that the manager has revoked for a breach as stated in section 34-86 are not refundable.

(Prior Code, § 405.110)

### **Sec. 34-77. Right-of-way patching and restoration.**

- (a) *Timing.* The work to be done under the excavation permit, and the patching and/or restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under section 34-80. 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 ~~24~~36 months thereafter.
- (b) *Patch and restoration.* The permittee shall patch its own work. The city may, ~~at their sole discretion~~, choose either to have the permittee restore the right-of-way or the city shall restore the right-of-way itself ~~at the sole expense of the permittee~~.
- (1) *City restoration.* If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, during the ~~24~~36 months following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, the cost of repairing the pavement.
- (2) *Permittee restoration.* If the permittee restores the right-of-way, it shall, at the time of application for an excavation permit, post a performance security in an amount determined by the manager to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, ~~24~~36 months after completion of the restoration of the right-of-way, the manager determines that the right-of-way has been properly restored, the surety on the performance security shall be released.
- (c) *Standards.* The permittee shall perform repairs and restoration according to the standards and with the materials specified by the manager. The manager 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 manager in exercising this authority shall be guided by the following standards and considerations:
- (1) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
- (2) The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
- (3) The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;
- (4) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of

the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and

- (5) The likelihood that the particular method or restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.
- (d) *Guarantees.* By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for 2436 months following its completion. During this 2436 -month period, it shall, upon notification from the manager, correct all restoration work to the extent necessary, using the method required by the manager. Said work shall be completed within five calendar days of the receipt of the notice from the manager, not including days during which work cannot be done because of the circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under section 34-80.
- (e) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the manager, or fails to satisfactorily and timely complete all restoration required by the manager, the manager at its option may do such work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the restoration ~~bond~~ **cost to bond assess and draw from the escrow account of the Permittee to complete post-construction repair and restoration work at the sole discretion of the City.**
- ~~(f) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the costs to accomplish these responsibilities.~~

(Prior Code, § 405.120)

### **Sec. 34-79. 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, make a ~~supplementary~~ **supplementary** application for a permit ~~expansion~~ **extension** and pay any additional fees required thereby, and must ~~be granted~~ **obtain** a new permit or permit ~~expansion~~ **extension** ~~prior to working in the expanded area.~~
- (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 or extension of the existing permit for the additional time it needs, and receive obtain the new permit or an extension of the old existing permit before working after the end date of the previous permit. ~~This supplementary application must be done before the permit end date.~~

(Prior Code, § 405.140)

### **Sec. 34-80. 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 any other city, county, state or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including M.S.A. §§ 216D.01—216D.09 (One Call excavation notice system). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- (b) *Prohibited work.* Except in an emergency, and with the approval of the manager, 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 may not be parked within or next to a permit area. The loading or unloading of trucks next to a permit area is prohibited unless specifically authorized by the permit.
- (d) *Compliance with Special Provisions.* Permittee must comply with all Special Provisions stated in the permit.

(Prior Code, § 405.150)

### **Sec. 34-81. Denial of permit.**

- (a) The manager may deny a permit for failure to meet the requirements and conditions of this article, or if the manager determines that the denial is necessary to protect the health, safety and welfare of the public, or if necessary to protect the right-of-way and its current use.
- (b) The city shall retain the right to deny future applications on the basis of incomplete or deficient work or restoration of previously permitted work until such time as incomplete or deficient work has been completed and corrected to the satisfaction and at the sole judgement and discretion of the city, and any escrow replenishment has been made by the permittee as applicable.
- (c) The necessity for repeated escrow draws and/or recurrent incomplete or deficient work, lack of adequate post-construction restoration or repeated

damage to public infrastructure during the course of work within the right-of-way may result in denial of future annual registration applications.

(Prior Code, § 405.160)

### **Sec. 34-82. Installation requirements.**

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with **the city's special provisions to the permit**, engineering standards adopted by the public utility commission (PUC) or other applicable local requirements, insofar as they are not inconsistent with PUC rules.

(Prior Code, § 405.170)

### **Sec. 34-83. Inspection.**

- (a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a ~~completion~~ certificate of completion in accordance with **the city's special provisions to the permit and** public utility commission rules.
- (b) *Site inspection.* The permittee shall make the work site available to the manager 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 manager.*
  - (1) At the time of inspection, the manager 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 manager 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.
  - (3) Within ten days after issuance of the order, the permittee shall present proof to the ~~manager~~**director** that the violation has been corrected. If such proof has not been presented within the required time, the **manager** ~~director~~ may revoke the permit pursuant to section 34-86.

(Prior Code, § 405.180)

### **Sec. 34-84. Work done without a permit.**

- (a) *Emergency situations.* Each registrant shall immediately notify the manager of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring

itself into compliance with this article for the actions it took in response to the emergency. If the manager becomes aware of an emergency regarding a registrant's equipment, the manager may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the manager may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

- (b) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay double the normal fee for the permit, pay double all the other fees required by the legislative code, deposit with the manager the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this article. **Non-Emergency work discovered without a permit may also be subject to an immediate Stop Work Order.**

(Prior Code, § 405.190)

#### **Sec. 34-85. 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 manager of the accurate information as soon as this information is known.

(Prior Code, § 405.200)

#### **Sec. 34-86. Revocation of right-of-way permits.**

- (a) *Substantial breach.* The city reserves its right, as provided herein, to **issue a Stop Work Order and/or** 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 condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to maintain the required bonds and/or insurance;
- (5) The failure to complete the work in a timely manner; or
- (6) The failure to correct a condition indicated on an order issued pursuant to section 34-83.

- (b) *Written notice of breach.* If the manager 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 manager shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for **issuance of a Stop Work Order and/or** revocation of the permit. Further, a substantial breach, as stated in subsection (a) of this section, will allow the manager, at their discretion, to place additional or revised conditions on the permit.
- (c) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall contact the manager with a plan, acceptable to the manager, for its correction. The permittee's failure to so contact the manager, ~~or the permittee's failure to so contact the manager,~~ or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, 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 manager 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, **repeated deficient work, repeated failure to restore area of work, or failure to replenish escrow account to maintain a full balance.**
- (e) *Automatic revocation.* If a permittee, while on probation, commits a breach as outlined in subsection (a) of this section, the 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 attorney's fees incurred in connection with such revocation.

(Prior Code, § 405.210)

**Adoption Date:** Passed by the city council of the City of Shoreview on the 21st day of January, 2025.

**Effective Date:** This ordinance shall become effective February 1<sup>st</sup>, 2025.

**Publication Date:** Published on the 28th day of January, 2025.

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Sue Denking, Mayor

Attest:

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Brad Martens, City Manager

SEAL