

**704**  
**CITY OF OAK PARK HEIGHTS,**  
**WASHINGTON COUNTY MINNESOTA**

AN ORDINANCE RELATING TO THE ADMINISTRATION AND REGULATION OF  
PUBLIC RIGHTS-OF-WAY AND THE REGULATION OF PUBLIC WAY PERMITS  
GOVERNMENT RIGHT-OF-WAY USERS

THE COUNCIL OF OAK PARK HEIGHTS ORDAINS:

Ordinance 704 of the Oak Park Heights Code of Ordinances (hereafter “this Code”) is hereby repealed in its entirety, and is replaced by the following, to read as follows:

**Sec. 704.01. Findings, Purpose, and Intent.**

This ordinance shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086, as amended, (the “Act”) and the other laws governing applicable rights of the City and users of the right-of-way. This ordinance shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 and Minnesota Rules 7560 where possible. To the extent any provision of this ordinance cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the full delegation of statutory and common law police power is intended.

**Sec. 704.02. 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 elects and has previously elected pursuant Minnesota Statutes, section 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

**Sec. 704.03. Definitions.**

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*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. A facility is not abandoned unless declared so by the right-of-way user, or the user fails to respond within 30 days of the City requesting the status of the facility.

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

*City* means the City of Oak Park Heights, Minnesota. For purposes of this ordinance, the term “City” means its elected officials, officers, employees and agents.

*City Engineer* means the City Engineer, or her or his designee.

*Collocate or collocation* means to install, mount, maintain, modify, operate, or replace a

*small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.*

*Commission* means the State 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 Minnesota Statutes, section Section 216D.04, Subdivision 3, over a continuous length in excess of 500 feet.

*Construction Performance Bond* means a performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in accordance with the terms of the right-of-way permit, or other applicable state law or local regulation.

*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 construction.

*Department* means the department of public works of the City

*Department Inspector* means any person authorized by the director to carry out inspections related to the provisions of this ordinance.

*Developer* means any person or entity seeking to develop vacant or occupied land for commercial, business or residential purposes by subdivision, re-development, platting, or reconstruction of existing improvements in whole or part.

*Director* means the City Administrator or his or her designee.

*Emergency* means a condition that poses a clear and immediate danger to life or health, or of a significant loss or damage to property, or 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 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 ordinance, 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 by ordinance or building code.

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

*Five-year project plan* shows projects adopted by the city for construction within the next five years.

*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 ordinance.

*Management Costs* means the actual costs the city incurs in managing its rights-of-way, including, but not limited to, such costs as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; 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 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; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to section 704.31 of this ordinance.

*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 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 ordinance, 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 permittee to cover the city's management costs.

*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.

*Permit* has the meaning given "right-of-way permit" in Minnesota Statutes, Section 237.162.

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

*Person* means any natural person or corporation, business association or other business entity including, but not limited to, a partnership, a sole successor or assign of any of the foregoing, or any other legal entity.

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

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

*PUC* means the state public utilities commission.

*Registrant* means any person who has or seeks to have its equipment or facilities located in any right-of-way, or in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities in the right-of-way.

*Restoration Cost* means the amount of money paid to the City by a permittee to achieve the level of restoration as required by the City.

*Restore or Restoration* means the process by which a right-of-way is returned to the same condition and life expectancy that existed before excavation.

*Right-of-way* means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or 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 non-wire telecommunications or broadcast service.

*Right-of-Way Permit* means either the excavation permit, obstruction permit, small-wireless-facilities permit, conditional/special use permit, or any combination thereof, depending on the context, required by this ordinance.

*Right-of-Way User* means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 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 and includes (1) those services provided by a public utility as defined in Minn. Stats. 216B.02, subs. 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. Chapter. 238.02, subd. 3; (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., Chapter 308A; and/or (6) water, and sewer, including service laterals, 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. The term “service lateral” also means 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 management costs, and city engineering, make-ready, and construction costs associated with the installation of small wireless facilities.

*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, which is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stats. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stats. Chap. 308A, are not telecommunications right-of-way users for purposes of this ordinance except to the extent such entity is offering wireless service.

*Unusable Facilities* means facilities in the right-of-way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using the facilities within the next 12 months or has a potential purchase or user of the facilities.

*Utility Permit* means the permit which, pursuant to this section, must be obtained before a person may excavate in a right of way. A utility permit allows the holder to excavate that part of the right-of-way described in such permit.

*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 public right of way designed to support or capable of supporting small wireless facilities, as reasonably determined by a local government unit.

*Wireless Telecommunication Facility* means a tangible asset used to provide wireless telecommunication or data services, including all antennas, support devices, equipment including ground equipment, associated cables and attachments.

*Wireline backhaul facility* means a facility used to transport communications data by wire from a wireless facility to a communications network.

#### **Sec. 704.04. Administration**

The City Administrator is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Administrator may delegate any or all of the duties hereunder.

#### **Sec. 704.05. 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 director 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.

(3) Overhead Facilities. Permits for installation, repair or other work on above-ground facilities within the meaning of Minn. Stat. Section 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augured or hand dug for the purpose of placing a pole type structure.

(4) Small wireless facility permit. A small-wireless-facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked. No small-wireless-facility permit is required to solely conduct (1) routine maintenance of a small wireless facility; (2) replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or (3) 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, however, a service provider is required to make written notice of such activities to the city if the work will obstruct a public right of way.

(5) Approval in Residential Districts. Small wireless facilities and support structures located in residential districts shall require a public hearing, recommendation of the Planning Commission and review by the City Council as specified in Article 401.15.P.3 of this Code.

(b) Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

(c) Delay Penalty. Notwithstanding subsection (b) of this section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

(d) Permit Display. Permits issued under this ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the director or his designee.

## **Sec. 704.06. Permit Applications.**

Application for a permit is made to the city. The City requires a digital image file (pdf, jpg.etc.) and three hard copies of the plan for the permit. 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 ordinance;

(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.

(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 110% 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. 704.07. Undergrounding.**

**Subd. 1. Purpose.** The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the City consistent with its Comprehensive Plan, City Design Guidelines and City Council policies as adopted from time to time. Location and relocation, installation and reinstallation of Facilities in the right-of-way or in or on other public ground must be made in accordance with this section and is intended to be enforced consistently with state and federal law regulating right-of-way users, to the fullest extent of the City's statutory and common law authority.

**Subd. 2. Undergrounding of Facilities.** All Facilities newly installed, constructed or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of existing meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. These requirements shall apply equally outside of the corporate limits of the City coincident with City jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

**Subd. 3. Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities.** If the City finds that one or more of the purposes set forth in Section 704.07, subd., 1 would be promoted, the City may require a permanent replacement, relocation or reconstruction of a Facility to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this subdivision, reconstruction means any substantial repair or relocation of or any improvement to existing Facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the Facilities, or by the City in connection with (1) the present or future use by the City or other local government unit of the right-of-way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way. Subject to Subdivision 4 below, all relocations from previously placed underground facilities shall be to another underground location.

**Subd. 4. Exceptions to Undergrounding.** The following exceptions to the strict application of this Subdivision shall be allowed upon the conditions stated:

**A. Technical/Economic Feasibility; Promotion of Policy.** Above-ground installation, construction, or placement of Facilities shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:

1. Underground placement would place an undue financial burden upon the landowner or City ratepayers or would substantially deprive the landowner of the preservation and enjoyment of substantial property rights; or,
2. Underground placement is demonstrated to be not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground Facilities placement; or,
3. Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under Section 704.07 would be advanced by underground placement of Facilities on the project in question, or the City determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.

**B. Temporary Service.** Above-ground installation, construction, or placement of temporary service lines shall only be allowed:

1. During new construction of any project for a period not to exceed three (3) months;
2. During an emergency in order to safeguard lives or property within the City;
3. For a period of not more than seven (7) months when soil conditions make excavation impractical.

**C. Facilities Subject to Minnesota Statutes, Sections 216B.243 and chapter 216E.** Facilities that are subject to certificate of need and siting and routing requirements of the Minnesota Public Utilities Commission are exempted from this section to the extent that the City's undergrounding authority is preempted by law.

**Subd. 5. Developer Responsibility.** All owners of land, applicants seeking to plat real property, or developers seeking to develop and build upon land within the City are responsible for complying with the requirements of this Subdivision, and prior to final approval of any plat or development plan, shall submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for underground installation of such Facilities have been made.

## **Sec. 704.08. 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 director. Registration will consist of providing application information

and paying a registration fee.

- (b) Registration prior to work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the director.
- (c) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits under this ordinance or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this ordinance. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. Chap. 216D, Gopher One Call Law, or other provisions of City Code.

**Sec. 704.09. Registration Information.**

- (a) Information required. The information provided to the director at the time of registration shall include, but not be limited to:

- (1) Each registrant's name, Gopher One Call registration certificate number, 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 available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

- (3) A certificate of insurance or self-insurance:

- a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the director;

- b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its 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 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 director in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this ordinance.

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

(5) If the person is a corporation, a copy of the certificate of corporation that has been recorded and certified to by the secretary of state pursuant to state statutes.

(6) A copy of the person's order granting a 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 said commission or other state or federal agency.

(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 director information as to changes within 15 days following the date on which the registrant has knowledge of any change.

## **Sec. 704.10. Reporting Obligations.**

(a) Operations.

(1) Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the director. Such plan shall be submitted using a format designated by the director and shall contain the information determined by the director to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

(2) The plan shall include, but not be limited to, the following information:

a. 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

b. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects. By January 1 of each year the director will have available for inspection in the director's office a composite list of all projects of which the director has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the director and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may, at any time, join in a next-year

project of another registrant listed by the other registrant.

- (b) Additional next-year projects. Notwithstanding the foregoing, the director will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

## **Sec. 704.11. Issuance of Permit; Conditions.**

**Subd. 1. *Permit Issuance.*** If the applicant has satisfied the requirements of this ordinance, the city shall issue:

- (a) an excavation or obstruction permit within five (5) business days.
- (b) a Small-Wireless-Facilities permit within ninety (90) days.

**Subd. 2. *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.

**Subd. 3. *Small wireless facility conditions.*** In addition to subd. (2), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

- (a) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- (b) No new wireless support structure installed within the right-of-way shall exceed fifty (50) feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 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.
- (c) No wireless facility may extend more than ten (10) feet above its wireless support structure.
- (d) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and existing wireless support structure or other facilities in and around the right-of-way.
- (e) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
- (f) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement or relocation requirements on the replacement of such structure.

**Subd. 4. *Small wireless facility agreement.*** A small wireless facility permit shall only be issued 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:

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

The standard collocation agreement shall be in addition to, and no 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.

## **Sec. 704.12. Action on Small-Wireless-Facility Permit Applications**

**Subd. 1. *Deadline for action.*** The city shall approve or deny a small wireless facility permit application within ninety (90) days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

**Subd. 2. *Consolidated applications.*** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to fifteen (15) small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

- (a) are located within a two-mile radius;
- (b) consist of substantially similar equipment; and
- (c) are to be placed on similar types of wireless support structures.

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

**Subd. 3. *Tolling of Deadline.*** The 90-day deadline for action on a small wireless facility permit application may be tolled if:

- (a) The city receives applications from one or more applicants seeking approval of permits for more than thirty (30) small wireless facilities within a seven (7) day period. In such cases, the city may extend the

deadline for all such applications by thirty (30) days by informing the affected applicants in writing of such extension.

(b) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness, with specificity as to the missing information, to the applicant within thirty (30) days of receipt of the application. Upon submission of additional documents or information, the city shall have ten (10) days to notify the applicant in writing of any still-missing information.

(c) The city and small wireless facility applicant agree in writing to toll the review period.

**Sec. 704.13. Permit Fees.** [Note: Sample fee schedules included in the appendix; also note that Minn. Rule 7819.1000 establishes requirements for establishing fees.]

**Subd. 1. Excavation Permit Fee.** The city shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

- (a) the city management costs;
- (b) degradation costs, if applicable.
- (c) escrow fee to secure the payment of City “out of pocket” expenses.

**Subd. 2. Obstruction Permit Fee.** The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

**Subd. 3. Small wireless facility permit fee.** The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

- (a) management costs, and;
- (b) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

**Subd. 4. Payment of Permit Fees.** No excavation permit, obstruction permit, or small-wireless-facility 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.

**Subd. 5. Non-Refundable.** Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 704.23 are not refundable.

**Subd. 6. 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.

**Subd. 7. Fee Amounts** All fee amounts are located in the City’s Master Fee Schedule, Ordinance 102.

**Sec. 704.14. Right-of-Way Patching and Restoration.**

**Subd. 1. 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 unseasonal or unreasonable under Section 704.17.

**Subd. 2. Patch and Restoration.** Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(a) **City Restoration.** If the city elects to restore the right-of-way, permittee shall make the restoration and pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles 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.

(b) **Permittee Restoration.** If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

(c) **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

**Subd. 3. 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.

**Subd. 4. 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) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 704.17.

**Subd. 5. Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

**Subd. 6. Installation of Tracer Wire.** Utilities installed in the right-of-way shall be completely marked with a tracer wire placed directly above or in conjunction with the installed utility at the developer's expense. Burial depth shall be within 6 to 18 inches of final grade. In addition, the termination points where the utility crosses in, to and out of the right-of-way shall have buried pins or markers, both of which shall be detectable with a magnetic locator. At least one of these markers shall be a tracer wire access box with termination points for the tracer wire. A minimum of 12 inches of tracer wire shall be accessible above the termination box upon removal of the tracer wire access box cap. Tie points to permanent structures shall be submitted and GPS coordinates in the Washington County Coordinate system shall be supplied. Acceptable tracer wire and termination boxes shall be the following or equivalent as determined by the City.

- Direct Burial #12 AWG Solid (.0808" diameter), steel core soft drawn high strength tracer wire, 380# average tensile break load, 30 mil high molecular weight-high density color coded polyethylene jacket complying with ASTM-D-1248, 30 volt rating.

- Valvco cast iron head Tracer Wire Access box

Access box shall be placed near final grade with no more than a layer of sod above the access cap. If water and sewer are in a common trench, a single tracer wire access box may be used above the water line with details on the tie card of the offset to the sewer pin and the sewer trace wire following the right of way border to the location pin for the sewer line. A written plan and sketch shall be submitted prior to installation identifying the location and mitigation measure that will be required. A deposit of \$1000 shall be held by the City of Oak Park Heights until compliance with location requirements are met. Additional deposits will be required and held by the City of Oak Park Heights for any project which has the potential to impact City owned infrastructure. This includes any cuts or borings in, to, or under city streets, trails or storm drainage areas. This may, at the City's discretion, also be required when equipment will be traversing city infrastructure.

A separate permit for utility tie-in and inspections is required for connections to existing City of Oak Park Heights utilities. All utility access charges must be current before a permit for connection will be issued. Complex connections involving items such as wet taps, looped lines, fire flow lines, new wyes, or shut off of services will incur additional costs.

### **Sec. 704.15. Joint Applications.**

**Subd. 1. *Joint application.*** Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

**Subd. 2. *Shared fees.*** Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

**Subd. 3. *With city projects.*** Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

### **Sec. 704.16. Supplementary Applications.**

**Subd. 1. *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 (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

**Subd. 2. *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.

## **Sec. 704.17. Other Obligations.**

**Subd. 1. *Compliance With Other Laws.*** Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

**Subd. 2. *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.

**Subd. 3. *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.

**Subd. 4. *Trenchless Excavation.*** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

## **Sec. 704.18. Denial of Permit.**

**Subd. 1. *Reasons for Denial.*** The city may deny a permit for failure to meet the requirements and conditions of this chapter/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 use 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.

**Subd. 2. *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. 704.19. Installation Requirements.**

**Subd. 1. *General 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 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163. Installation of service laterals shall be

performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 704.24 subd. 2 of this ordinance.

### **Sec. 704.20. Inspection.**

**Subd. 1. *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. At the request of the Director, the permittee shall at their own expense provide a video-tape (televise) of all newly installed infrastructure.

**Subd. 2. *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.

### **Subd 3. *Authority of Director.***

(a) 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.

(b) The director may issue an order to the permittee for any work that 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 (10) 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 Sec. 1.22.

### **Sec. 704.21. Work Done Without a Permit.**

**Subd. 1. *Emergency Situations.*** Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. 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 ordinance for the actions it took in response to the emergency.

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

**Subd. 2. *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 ordinance.

### **Sec. 704.22. 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. 704.23. Revocation of Permits.**

Subd. 1. **Substantial Breach.** The city reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the right-of-way permit;
- (b) 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;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) 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; or
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.19.

**Subd. 2. 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. 704.18, subd. 2 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 its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**Subd. 3. 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. The 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, shall automatically place the permittee on probation for one (1) full year.

**Subd. 4. 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.

**Subd. 5. 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.

**Subd. 6. 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. 704.24. Mapping Data.**

**Subd. 1. *Information Required.*** Each registrant and permittee shall provide mapping information at their expense as required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. 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 and the withholding of any escrow funds.

**Subd. 2. *Service Laterals.*** All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any city approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) city approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors Also see Sec 1.13.

## **Sec. 704.25. Location and Relocation of Facilities.**

**Subd. 1.** Placement, location, and relocation of facilities must comply with the Act, 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. **See 1008.040.**

**Subd. 2. *Corridors.*** The city may assign a 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.

**Subd. 3. Nuisance.** One year after the passage of this ordinance, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

**Subd. 4. 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. 704.26 Pre-excavation Facilities Location.**

In addition to complying with the requirements of Minn. Stat. 216D.01-.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

### **Sec. 704.27. 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 damage. 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. 704.28. Right-of-Way Vacation.**

**Reservation of right.** If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

### **Sec. 704.29. Indemnification and Liability**

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

### **Sec. 704.30. Abandoned and Unusable Facilities.**

**Subd.1. Discontinued Operations.** A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this ordinance have been lawfully assumed by another

registrant.

**Subd. 2. 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. 704.31. Appeal.**

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6; or (5) disputes a determination of the director regarding Section 1.23 subd. 2 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. 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. 704.32. Severability.**

If any portion of this ordinance is for any reason held invalid by any court 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. Nothing in this ordinance precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.  
Revised: January 2018