

CHAPTER 26: STREETS, ALLEYS, AND SIDEWALKS

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26.01 Naming System for City Rights of Way

A. This section establishes a uniform system of names for city streets, avenues and rights of way.

B. That for the purpose of establishing sections within the City of Arlington, the City is divided into four (4) general sections as follows:

(1) All that part of the City of Arlington lying North of the center line of Main Street and West of the center line of First Street is hereby designated as the Northwest Section of the City of Arlington.

(2) All that part of the City of Arlington lying South of the center line of Main Street and west of the center line of First Street is hereby designated as the Southwest Section of the City of Arlington.

(3) All that part of the City of Arlington lying North of the center line of Main Street and East of the center line of First street is hereby designated as the Northeast Section of the City of Arlington.

(4) All that part of the City of Arlington lying South of the center line of Main Street and East of the center line of First Street is hereby designated as the Southeast Section of the City of Arlington.

C. The public ways running in an East and West direction shall be designated as streets and the public ways running in a North and South direction shall be designated as avenues.

D. In the Northwest Section of the City of Arlington, the names of the streets, avenues and public ways are designated as follows:

- West Alden Street
- West Brooks Street
- West Chandler Street
- Douglas Street
- Elgin Street
- Second Avenue Northwest
- Third Avenue Northwest
- Fourth Avenue Northwest

Fifth Avenue Northwest
Sixth Avenue Northwest
Seventh Avenue Northwest
Seventh 1/2 Avenue Northwest
Eighth Avenue Northwest

E. In the Southwest Section of the City of Arlington, the names of the streets, avenues and public ways are designated as follows:

West Adams Street
West Baker Street
Second Avenue Southwest
Third Avenue Southwest
Fourth Avenue Southwest
Fifth Avenue Southwest
Sixth Avenue Southwest
Seventh Avenue Southwest
Seventh 1/2 Avenue Southwest
Henderson Road

F. In the Northeast Section of the City of Arlington, the names of the streets, avenues and public ways are designated as follows:

East Alden Street
East Brooks Street
Second Avenue Northeast
Third Avenue Northeast
Fourth Avenue Northeast

G. In the Southeast Section of the City of Arlington, the names of the streets, avenues and public ways are designated as follows:

East Adams Street
East Baker Street
Clinton Street
Dayton Street
Elmwood Street
Freedom Drive
Second Avenue Southeast
Third Avenue Southeast
Fourth Avenue Southeast
Fifth Avenue Southeast
Henderson Road

H. That part of Main Street lying West of First Street shall be known as West Main Street, and that part of Main Street lying East of First Street shall be known as East Main Street.

I. That part of First Street lying North of Main Street shall be known as First Avenue North and that part of First Street lying South of Main Street shall be known as First Avenue South.

J. All street and avenue name designations filed as part of city-approved development plats are hereby adopted by reference.

26.02 Building Numbering System

This section establishes a uniform system for identifying homes and other primary buildings with numbers.

A. **Building Numbering Duty.** It shall be the duty of the owner of every primary structure, including homes, businesses and any other primary use structure in the City of Arlington, to place on each such primary structure a property street number using suitable waterproof material, so that the building number shall be clearly visible from the city street or avenue fronting the property. Accessory structures, such as garages and sheds, shall not be assigned separate building numbers. In the case of duplexes or other multi-housing structures, each separate residence shall be assigned and display a unique building number. In the case of apartment buildings, the primary structure shall be assigned and display a building number, and the building owner shall apply their own numbering or alphabetical designation of the individual apartment units, which shall be displayed on or near the primary entry door to each apartment. Numbers shall be placed on such houses and buildings within thirty days from the time said owners are notified of the assignment of numbers to said primary buildings as hereinafter provided.

B. **Assignment of Numbers.** Numbers shall be assigned to houses and buildings from First Avenue and Main Street as bases, and in the following manner:

(1) All houses and buildings situated within the first block East of First Avenue as the same now exists or of an imaginary line forming an extension of the center of said street, on all streets intersecting either with said First Avenue or such imaginary line, shall be given numbers between 100 and 199, inclusive, within the second block, numbers between 200 and 299, inclusive, shall be used, and so on in each succeeding block; and all such numbers shall be indicated by adding the word "East" to the name of the street.

(2) In like manner the numbers between 100 and 199, inclusive, shall be used in the first block west of First Avenue on streets intersecting with it, and each succeeding hundred in each succeeding block; and the word "west" shall be added to the street name.

(3) On avenues intersecting Main Street, numbers between 100 and 199, inclusive, shall be used within the first block from Main Street on either side, and each succeeding hundred in each succeeding block with the addition of the word "Northwest" or "Southwest" on all avenues west of First Avenue as the case may be; with the addition of the word "Northeast" or "Southeast", as the case may be used on all avenues east of First Avenue.

(4) On streets running in an East and West direction odd numbers shall be used on the North side and even numbers on the South side thereof. On avenues running in a North and South direction odd numbers shall be used on the West side and even numbers on the East side thereof.

(5) On the Henderson Road, odd numbers shall be used on the Northerly side and even numbers shall be used on the Southerly side thereof.

(6) Within any block, the houses or buildings nearer the base street shall use the smaller numbers. In assigning numbers to houses and buildings between which one or more lots lie unimproved, sufficient numbers shall be allowed for later assignment to such vacant lots, to include multiple number assignments for lots zoned for multi-family structures. In assignment of numbers in

business districts of the city, sufficient numbers shall be allowed to provide for buildings with more than one separate business establishment fronting on the street or avenue.

C. Duty of City Staff. It shall be the duty of the City Staff to assign numbers, as hereinbefore provided, to every house or other primary building in this city, and to report the numbers assigned to the next regular meeting of the Council following the assignment of said numbers. The Council shall at once consider such report, and accept, and by resolution approve, the same with such revision and amendments as it may deem necessary. A copy of the report as approved, shall be kept on file in the City Office; and, shall be revised from time to time by the Staff as additional numbers shall be assigned, so as to constitute a consolidated record of the same; and the numbers assigned may be entered upon the appropriate blocks and lots indicated on the plats of the City Office. It shall be the duty of the City Staff to notify the owners, agents, lessors, or occupants of such houses or buildings, either by mail, publication or telephone, of the number so assigned.

26.03 Sidewalk Repairs

A. The abutting property owner shall keep existing sidewalks in good repair. Any sidewalk found by the City to be in need of repair shall be reported to the abutting property owner by letter mailed to the owner's last known address, or by personal service upon the owner. The owner shall have 20 days from the mailing or delivery of the notice to arrange for the repairs. If the owner fails to make the repairs within the 20 day notice term, the City shall conduct the repairs and assess the cost to the abutting property. Repairs shall be allowed to be delayed during seasons or weather conditions which prevent effective concrete repairs.

B. Under special circumstances, such as the awarding of grants to the City for the purpose, or for projects of benefit to the City as a whole, or in other special cases in the discretion of the City Council, the City may share in the cost of repair of sidewalks. Any such cost sharing by the City shall not obligate the City to maintain or repair said sidewalks at any future time.

C. Sidewalks shall be repaired to the specifications established by the City. Prior to conducting such repair, the abutting property owner shall obtain a permit from the City.

D. Abutting property owners shall erect barricades and warnings to City specifications for any sidewalks in a state of repair, so as to prevent injury and accident to the public. All such repair shall be done in as rapid a manner as reasonably possible.

E. No sidewalks shall be removed by property owners within the City of Arlington without first obtaining a city permit. The City shall have the right to refuse the granting of any such permit if the City Council, in its sole discretion, determines that it is not in the best interest of the public, considering public convenience, health and welfare and property values, to allow the removal of such sidewalk.

F. The new construction or total replacement of sidewalks is covered under City Code Chapter 25, Special Improvement Assessments.

G. Repair Standards. The following guidelines shall govern decisions regarding the safety of sidewalks within the City of Arlington. Defective sidewalks in need of repair shall be classified as falling within three possible types of categories:

(1) Heaves. This is a condition in which one portion of sidewalk is raised higher than the elevation of the portion immediately adjacent. Heaving often results from either settling of the material beneath the sidewalk or from tree roots pushing up a portion of the sidewalk. All heaves of one inch or greater shall be considered

unacceptable.

(2) Separations. This is a condition in which a portion of sidewalk is separated, leaving a gap between the two sections. Separations of one and one-half inches or greater are considered unacceptable.

(3) Busted or Missing Sidewalks. This is a condition in which a portion of a sidewalk contains multiple cracks in any four square foot area or where portions of the entire sidewalk are missing.

26.04 Ice and Snow Removal

A. Public Nuisance. Any accumulation of snow or ice upon any public sidewalk is hereby declared to constitute a public nuisance, which shall be abated, by the owner or occupant of the property abutting such sidewalk within twelve hours after such snow or ice has ceased to be deposited upon such sidewalk.

B. City Removal. If the owner or occupant of the property abutting any public sidewalk upon which snow or ice has accumulated fails to abate the nuisance thereby created within twenty-four (24) hours after such snow or ice has ceased to be deposited upon such sidewalk, the City Administrator or a designated agent may cause the removal of such snow or ice. The agent causing such removal shall maintain a record showing the cost of such removal attributable to each separate lot and parcel and shall deliver such information to the City Administrator.

C. Assessment. Upon receipt of the information required by the preceding subdivision, the City Administrator shall forward to the Council a statement setting forth the unpaid charge for the cost of the removal of any snow or ice pursuant to subdivision B hereof for each separate lot or parcel. The Council may then, pursuant to the provisions of Minnesota Statutes, Chapter 429, assess any such charge against the property benefited, and any such assessment shall, at the time at which taxes are certified to the County Auditor, be certified for collection in the manner that other special assessments are so certified.

D. Civil Suit for Cost of Removal. The City Administrator may, as an alternative to the assessment procedure set forth in subdivision C, initiate a civil suit in a court of competent jurisdiction to recover from the owner of land adjacent to which sidewalks have been cleared as provided in subdivision B hereof, the cost of the removal of snow or ice, together with allowable costs and disbursements.

E. Placing Snow or Ice on Public Street or City Property. It is unlawful for any person, not acting under contract with the City, to remove snow or ice from private property and place such snow or ice upon a public street, in such quantity or manner as to cause a hazard to travel, without proper arrangements for the immediate removal thereof. It is unlawful for any person, not acting under contract with the City to place or deposit any snow or ice upon City property.

26.05 Public Rights of Way Controls

A. Election to Manage the Public Right-of-Way and Easements. In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage right-of-ways and easements within its jurisdiction. This ordinance has been enacted to require the owners of property containing a public easement or right-of-way to use the property in a manner consistent with the grant of the easement or right-of-way, and assure the city of reasonable access onto easements or right-of-ways in an emergency situation. This ordinance recognizes the need to maintain public right-of-ways and easements free of obstructions and accessible, while allowing non-conflicting uses by the property owner.

B. Definitions. For purposes of this ordinance, the following terms have the stated meanings:

(1) Landowner. Shall mean the fee owner(s), tenants or occupiers of a parcel of property over, on or under which the city holds a public easement or right-of-way.

(2) City. Shall mean the City of Arlington, Minnesota.

(3) Easement. An easement is the right to use another person's land for a stated purpose. For this ordinance it shall mean a public easement of any type, including but not limited to an easement for utility, drainage, roadway, ingress/egress, sidewalk, boulevard and other public purposes. The area of an easement shall not be limited to that portion of the easement actually put to use, but shall extend to the entire easement as described in the grant or dedication, including roadway ditches and boulevards lying within the designated areas.

(4) Pre-Existing Use. Means a use or activity existing within an easement or right-of-way at the time this ordinance was enacted.

(5) City's Easement Use. Shall be any use which the city is authorized to maintain by the grant or dedication of the easement as construed in accordance with the laws of the State of Minnesota.

(6) Boulevard. Shall mean that portion of a street or road easement located outside of the portion of the easements which is actually improved for street or road purposes and used for vehicular traffic or the parking of vehicles. With respect to streets or roads improved with curbing, the boulevard shall be that portion of the easement separated from the improved portion of the street or road by the curbing.

(7) Utility Easement. Shall mean any public easement which affords the city the right to install, locate or maintain any public utility, including but not limited to sanitary sewer lines, water lines, storm sewer lines, gas lines, electrical cables, and cable television.

(8) Right-of-way. A right-of-way is a type of easement that gives someone the right to travel across property owned by another person. For this ordinance, right-of-way shall mean 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.

The definitions included in Minnesota Statute Section 237.162, Minnesota Rules 7819.0100 subps. 1 through 23, and Minnesota Rules 7560.0100 subps. 1 through 12 is hereby adopted by reference and is incorporated into this ordinance as if set out in full.

C. Permit Required.

(1) 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 permit from the city.

(a) Excavation Permit. An excavation permit is required 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.

(b) Obstruction Permit. An obstruction permit is required 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.

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

(3) Delay Penalty. In accordance with Minnesota Rule 7819.1000 subp. 3 and notwithstanding subdivision (2) 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.

(4) Permit Display. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

D. Permit Applications. Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

(a) Each permittee's name, Gopher State One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

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

(1) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the city;

(2) Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, 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;

(3) 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;

- (4) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (5) Indicating a minimum comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage of \$500,000 each to protect the city and the public and to carry out the purposes and policies of this chapter. The city reserves the right to require higher insurance coverage, depending on the scope of the project.
- (6) The city may require a copy of the actual insurance policies.
- (7) If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06, 302A, or other appropriate state law, as recorded and certified to by the Secretary of State.
- (8) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

(2) Payment of money due 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 or other charges, if applicable.

E. Issuance of Permit; Conditions.

(1) Permit Issuance. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

(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 Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. In addition, all permitted projects shall be subject to delay or termination with the approval of the city, when seasonally prohibited or when weather or other conditions make it unreasonable to conduct such work.

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

F. Permit Fees.

(1) 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.

(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.

(3) 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 thirty (30) days of billing.

(4) Non refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Sub-section N are not refundable.

(5) 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.

(6) All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.100. All permit fees shall be established from time to time by city council resolution.

G. Right-of-Way Patching and Restoration.

(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 unseasonable or unreasonable under Sub-Section E (2).

(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 restores the right-of-way, permittee shall 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 having to correct 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 Rules 7819.3000 unless waived by the city in its sole discretion, as appropriate for small projects.
- (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.

(3) Standards. The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100.

(4) Duty to correct defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the city, correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Sub-section E (2).

(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.

H. Supplementary Applications.

(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.

(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. Extensions may be granted by the city for a maximum of five work days without further fees, provided such work delays was due to circumstances beyond the control of the permit holder or the work was prohibited as unseasonable or unreasonable. Any extension beyond five work days requires a new permit and permit fees may be prorated depending on the scope of work to be completed.

I. Denial of Permit.

The city may deny a permit for failure to meet the requirements and conditions of this chapter 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.

J. 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 other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Secs. 237.162 and 237.163.

K. Inspection.

(1) Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.

(2) Site Inspection. Permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(3) Authority of City.

(a) At the time of inspection the city 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 city 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 city may revoke the permit pursuant to Sub-section N.

L. Work Done Without a Permit.

(1) Emergency Situations. Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner 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 person whose facilities occasioned the emergency.

(3) 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 this 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 chapter.

M. 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.

N. Revocation of Permits.

(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 permittees 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 Sub-section K.

(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 make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations might 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.

(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, which will cure the breach. Permittee's failure to so contact the city, 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.

(4) 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.

O. Mapping Data.

(1) Information Required. Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

(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 city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence 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 city shall reasonably determine the appropriate method of providing such information. 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.

P. Location of Facilities.

(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.

(2) Corridors. The city may assign specific corridors 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.

(3) Limitation of Space. To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the director shall have the power to prohibit or director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

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

R. Right-of-Way Vacation. Reservation of right. If the city vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

S. Indemnification and Liability. By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

T. Abandoned Facilities. Removal of Abandoned Facilities. Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the director waives this requirement.

U. Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the city regarding Sub-section O (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. 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.

V. Limitation of Activities in Area of Easement.

(1) The following activities by the owner are permitted in an easement:

- (a) Lawn.
 - (b) Vegetable or flower garden.
 - (c) Maintenance of lawn ornaments, lawn furniture, recreation and play equipment and game apparatus which are not affixed or anchored to the ground.
 - (d) Driveway and sidewalks.
 - (e) The use and maintenance of (1) (a, b, c) above by the landowner and guests in a regular and intended manner.
- (2) Limited activities, such as gardens, are not allowed in city easement corridors which are designed as right-of-way for motor vehicle use, whether or not they are currently being used for motor vehicle travel.
- (3) All other uses, unless specifically permitted herein, shall be considered prohibited and shall not be maintained on or in an easement, except by written permit granted by the city after application pursuant to the following procedures:
- (a) The landowner shall submit a written request to the city administrator describing the easement to be affected and the proposed use for which permit is sought, together with an administration fee as may be set by resolution of the city council.
 - (b) The city administration shall refer the request to the city street supervisor for consideration and recommendation. If the easement to be affected by the request is a utility easement, the request shall also be referred to the city engineer for consideration and recommendation;
 - (c) Based upon the recommendations received from the street supervisor and city engineer, the city administrator shall make a recommendation to the city council and the city council shall approve or deny the request, taking into consideration the stated purpose of this ordinance. Any approval must be accompanied by specific conditions or modifications to the original request as deemed appropriate to protect the city's interests; the permit must contain the specific conditions to protect the city's interests.
 - (d) Fences may only be erected over an easement if the landowner meets the requirements of Code Chapter 17: Fences.
- (4) When landowners undertake permitted activities within easements, the city retains the right to require the landowner to remove or abate such activities wherein such activities interfere in any manner with the city's easement use. The city reserves the right to obtain access to the easement. The landowner shall bear all costs for removal and/or restoration of permitted activities in the event access to the easement is required. The city specifically reserves all rights of an easement holder afforded under the common law of the State of Minnesota.
- (5) Nothing stated herein shall deny the city the right to request a landowner to remove or abate any permitted use or activity existing in the easement where the use or activity directly interferes in any manner with the city's easement use, if the city is currently engaging in the use or intends on engaging in the use. The city specifically reserves all rights of an easement holder afforded under the common law of the State of Minnesota.

W. Pre-Existing Uses.

(1) A preexisting use, which is not otherwise specifically permitted by this ordinance, shall be discontinued and removed from the easement within 60 days of enactment of this ordinance, except as provided below:

(2) The following prohibited pre-existing uses shall be allowed to continue under the terms set forth in sub-paragraph (3) herein:

(a) Trees, shrubs, bushes, parking lots, and fences which are not inconsistent or interfering with the city's easements use.

(b) Structures or buildings which are not inconsistent or interfering with the city's easement use.

(3) No pre-existing prohibited uses, allowed to be continued under sub-paragraph (2) of this section, shall be enlarged, nor shall they be altered, improved, repaired or restored. If the pre-existing prohibited use is discontinued or substantially destroyed, the right to maintain the pre-existing prohibited use is lost.

X. Enforcement and Police Powers. If the landowner refuses to remove or abate a prohibited use within the easement or right-of-way, or if a pre-existing use permitted under Sub-section W (2) interferes with the city's easement use, in addition to the procedure set forth in Sub-section W (1), the city may take any reasonable steps to remove or abate the use and assess the cost of removal or abatement to the property. The city administrator shall send a written notice of a violation to the landowner directing the landowner to bring the property into compliance with the ordinance within 30 days.

If the landowner does not bring the property into compliance within the 30 day violation notice term, then the city shall have the right to remove or abate the prohibited use as set out in this section. The city also reserves the right to immediately remove or abate a prohibited use without advance notice to the property owner, if said prohibited use interferes with urgent repair or replacement of city utilities within the easement corridor.

The city shall not be liable for any damage to the property of the landowner in the easement or right-of-way or damage to any structures located in the easement or right-of-way which are removed or abated in the city while engaging in the city's easement or right-of-way use.

A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. Any violation of this ordinance shall be considered a misdemeanor punishable by the fines and penalties set out in state law for misdemeanor level offenses. Each day that a violation exists shall be considered a separate misdemeanor.

26.06 Penalties

In addition to any other remedies recited in this chapter, a violation of any provision of this chapter shall constitute a misdemeanor, punishable by the fines and other penalties established under state law for misdemeanors in effect on the date the violation occurs. Each day that a violation is allowed to exist shall be considered a separate misdemeanor violation, to be punishable by a separate fine and other penalties for each such day.