

**ORDINANCE NO. 207**

**CITY OF ORONO  
HENNEPIN COUNTY, MINNESOTA**

**AN ORDINANCE REPEALING AND REPLACING  
IN ITS ENTIRETY CITY CODE TITLE III,  
CHAPTER 18, ARTICLE IV REGARDING  
RIGHT-OF-WAY MANAGEMENT**

**THE CITY COUNCIL OF ORONO ORDAINS:**

**SECTION 1.** Orono City Code Title III, Chapter 18, Article IV is repealed in its entirety and replaced with the following language:

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

**Section 18-171. - Election to Manage the Public Right-of-Way.**

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant to Minnesota Statutes Section 237.163 to manage the right-of-way within its jurisdiction.

**Section 18-172. - Definitions.**

The definitions included in Minnesota Statutes Section 237.162 and Minnesota Rules 7810.0100 subparts 1 through 25 are hereby adopted by reference and are incorporated into this chapter as if set out in full.

**Section 18-173. - Permit Requirement.**

- (a) *Permit Required.* Except as otherwise provided in this code, no person may obstruct, excavate or install or place any facilities in any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.
- (1) *Excavation Permit.* An excavation permit is required 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 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) *Small Wireless Facility Permit.* A small wireless facility permit is required to erect or install a wireless support structure or collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use unless lawfully revoked.
- (b) *Permit Extension.* No person may excavate or obstruct or install or place any facilities in the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) the new permit or permit extension is granted.
- (c) *Delay Penalty.* In accordance with Minnesota Rule 7819.1000 subp. 3 and notwithstanding subd. 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 and in placing new wireless support structures and small wireless facilities.
- (d) *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.

**Section 18-174. - Permit applications.**

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

- (a) 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, and the following information:
  - (1) Each permittee's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
  - (2) The name, address, and email address, if applicable, and telephone and facsimile numbers of a local representative or designee shall be available at all times.
  - (3) A certificate of insurance or self-insurance:

- i. 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.
- ii. Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the
  - a) Use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and
  - b) Placement and use of facilities and equipment in the right-of-way by 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;
- iii. 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;
- iv. Requiring that the city be notified thirty (30) days in advance of cancelation of the policy or material modification of a coverage term;
- v. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter;
- vi. The city may require a copy of the actual insurance policies;
- vii. If the person is a corporation, a copy of the certificate required to be filed with the Secretary of State as recorded and certified to by the Secretary of State.
- viii. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such certificates from said commission or other state or federal agency.

(b) Payment due the city for:

- (1) Permit fees, estimated restoration fees and other management costs;
- (2) Prior obstructions, excavations, and installations and placements of wireless support structures and small wireless facilities.
- (3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the right-of-way or installation of new wireless support structures or collocation of small wireless facilities;
- (4) Franchise fees or other charges, if applicable.

**Sec. 18-175. - Issuance of Permit; Conditions.**

- (a) *Permit Issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.
- (b) *Conditions.* The following conditions shall apply to all permits:
  - (1) Barricades, warning signs and warning lights on all street excavations shall be placed in accordance with the Minnesota Uniform Traffic Control Service Manual.
  - (2) A permittee shall take precautions to avoid creating unsafe or unsanitary conditions.
  - (3) A permittee shall not obstruct a public right of way, except as expressly authorized by a permit, so as to hinder the natural, free and clear passage of water through the gutters or other waterways.
  - (4) A permittee shall provide owners of property abutting the right of way where work will occur written notice 48 hours in advance of such work.
  - (5) A permittee shall provide proper trench protection as required by O.S.H.A. to prevent any cave-in, injury to property or persons, or enlargement of the excavation.
  - (6) Excavations, trenches and jacking pits off the roadway surface area or adjacent to the roadway or curbing shall be sheathed and braced. When unattended, all excavations, trenches and jacking pits shall be protected to prevent erosion from surface drainage.
  - (7) A permittee shall protect the root growth of significant trees and shrubbery located within the public right of way and adjacent thereto. A permittee

shall protect sprinkler systems, pet containment systems, and sod located adjacent to the public right of way.

- (8) A permittee shall coordinate project work and installation of facilities in co-locations with other public right of way users.
- (9) A permittee shall maintain access to all properties and cross streets during project work, including emergency vehicle access.
- (10) A permittee shall physically locate property lines abutting the project work. The permittee shall replace, with the services of a Minnesota licensed surveyor, any property corners or monuments disturbed as a result of the project.
- (11) A permittee shall remove daily all dirt from sidewalks, trails, public and private roadway surfaces and curbs and gutters during project work.
- (12) Fiber facilities shall be buried in a proper conduit and at a depth of no less than three feet deep and no more than four feet deep; copper facilities below concrete or bituminous paved roadway surfaces shall be buried no less than three feet deep and no more than four feet deep, and all other copper facilities shall be buried no less than 30 inches deep and no more than four feet deep.
- (13) All underground facilities which cross streets or hard surfaced driveways shall be bored and installed in conduit when requested by the City. Gas mains and services do not need to be installed in conduit.
- (14) When using trenchless installation methods to cross an area where an existing utility is located or when directed by the City, the permittee shall excavate an observation hole to expose the existing utility prior to crossing such utility to ensure that existing utilities are not damaged. When an observation hole must be excavated in an existing pavement section, the pavement must be cut using the coring method. Saw cutting, jack hammering or any other means of excavating the observation hole shall be strictly prohibited without prior approval from the City Engineer.
- (15) Unless approved by the City Engineer, all above ground appurtenances: shall be located no closer than 10 feet to City hydrants, waterline valves, manholes, lift stations, catch basins; shall be located no closer than two feet from sidewalks or trails; and shall not be located in front of any city or private sign, monument or amenity for facilities or parks.

- (16) Underground facilities shall not be installed within five feet of hydrants, waterline valves, lift stations, manholes or catch basins unless approved by the City Engineer.
  - (17) 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.
  - (18) A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.
- (c) *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.
- (d) *Small wireless facility conditions.* In addition to subdivisions (b) and (c), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right of way, shall be subject to the following conditions:
- (1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
  - (2) No new wireless support structure installed within the right of way shall exceed fifty (50) feet above ground level in height without the city's written authorization, provided that a wireless support structure that replaces an existing wireless support structure in the public right of way that is greater than fifty (50) feet above ground level in height may be placed at the height of the existing wireless support structure, subject to such conditions or requirements as may be imposed in the applicable permit.
  - (3) No wireless facility may extend more than ten (10) feet above its wireless support structure.
  - (4) Where an applicant proposes to install a new wireless support structure in the right of way, the city may impose separation requirements between such structure and any existing wireless support structure.

- (5) 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.
  - (6) 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.
- (e) *Small wireless facility agreement.* A small wireless facility shall only be collocated on a wireless support structure owned or controlled by the city, or any other city asset in the right of way, after applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:
- (1) Management costs;
  - (2) Rent on the city structure as provided in Minnesota Statutes § 237.163 subd. 6(g);
  - (3) Maintenance associated with the collocation as provided in Minnesota Statutes § 237.163 subd. 6(g);
  - (4) A monthly fee for electrical service as provided in Minnesota Statutes § 237.163 subd. 6(g).

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

- (f) *Deadline for action.* The city shall approve or deny a small wireless facility permit application within ninety (90) days after receiving a complete application. The small wireless facility permit, and any associated encroachment or building permit shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
- (g) *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 by the city, provided that all small wireless facilities in an application:
- (1) are located within a two-mile radius;
  - (2) consist of substantially similar equipment; and

- (3) are to be placed on similar types of wireless support structures.

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.

- (h) *Tolling of deadline for action.* The ninety (90) day deadline for action may be tolled if:

- (1) The city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than thirty (30) small wireless facilities. In such case, the city may extend the ninety (90) day deadline for all such applications by an additional thirty (30) days by informing the affected applicants in writing of such extension.

- (2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within thirty (30) business days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the city's determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon applicant's submittal of additional information in response to a notice of incompleteness, the city has ten (10) days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the ninety (90) day deadline for action.

- (3) The city and applicant may agree in writing to toll the review period.

#### **Sec. 18-176. - Permit Fees.**

- (a) *Excavation Permit Fee.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

- (1) City management costs;
- (2) Degradation costs, if applicable.

- (b) *Obstruction Permit Fee.* The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover city management costs.



- (c) *Small Wireless Facility Permit Fee.* The city shall impose a small wireless facility permit fee for the placement of small wireless facilities and wireless support structures in the public right-of-way in an amount sufficient to recover:
- (1) management costs; and
  - (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
- (d) *Cost of initial work associated with collocation.* Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge to recover costs associated with a proposed attachment.
- (e) *Payment of Permit Fees.* No excavation permit, obstruction permit or small wireless facility permit shall be issued without payment of excavation, obstruction, or small wireless facility permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.
- (f) *Nonrefundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 18.184 are not refundable.
- (g) *Application to Franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

**Sec. 18-177. - Right-of-Way Patching and Restoration.**

- (a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work is prohibited as unseasonal or unreasonable.
- (b) *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.
  - (1) *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 correcting the defective work.
  - (2) *Permittee Restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit, post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.
  - (3) *Degradation Fee in Lieu of Restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- (c) *Standards.* The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100.
- (d) *Duty to Correct Defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of 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.
- (e) *Failure to Restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city 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.

**Sec. 18-178. - Supplementary Applications.**

- (a) *Limitations 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 work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area, make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.
- (b) *Limitation on Dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

**Sec. 18-179. - 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. Any denial of a right-of-way or small wireless facility permit shall be in writing and must document the basis for the denial. The city must notify the telecommunications right-of-way user within three (3) business days of the decision to deny the permit. If the permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the city and resubmit its application. If the telecommunications right-of-way user resubmits the application within thirty (30) days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The city must approve or deny the revised application within thirty (30) days after the revised application is submitted.

**Sec. 18-180. - 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 applicable permits and/or agreements referenced in Section 18.185 (b) of this ordinance.

**Sec. 18-181. - Inspection.**

- (a) *Notice of Completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minnesota Rule 7819.1300.
- (b) *Site Inspection.* Permittee shall make the work-site available to the city and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (c) *Authority of City.*
  - (1) 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.
  - (2) 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 city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to Sec. 18.184.

**Sec. 18-182. - Work Done Without a Permit.**

- (a) *Emergency Situations.* Each permittee shall immediately notify the city of any event regarding its facilities that it considers to be an emergency. The owner of the facilities 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 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.

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.

- (b) *Non-Emergency Situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all other fees required by the city ordinance, 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.

**Sec. 18-183. - 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. 18-184. - Revocation of Permits.**

- (a) *Substantial Breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - (1) The violation of any material provision of the right-of-way permit;
  - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens.
  - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
  - (4) The failure to 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
  - (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 18-181.
- (b) *Written Notice of Breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. 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.

- (c) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the 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 the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- (d) *Revocation.* Revocation of a right of way permit or small wireless facility permit shall be made in writing within three (3) business days of the decision to revoke the permit and shall document the basis for the revocation.
- (e) *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. 18-185. - Mapping Data.**

- (a) *Information Required.* Each permittee shall provide mapping information 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 city accurate maps and drawings certifying the "as-built" location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall be provided consistent with the city's electronic mapping system. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit.
- (b) *Service Laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence satisfactory to the city of the installed service lateral locations.

Compliance with this subdivision (b) and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005 shall be a condition 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 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 future permits to the offending permittee or its subcontractors.

**Sec. 18-186. - Location Facilities.**

- (a) *Placement, Location, Relocation.* 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.
- (b) *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 permittee 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.

- (c) *Nuisance.* One year after the passage of this chapter, any facilities found in the right-of-way that have not been registered shall be deemed 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.
- (d) *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 or 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. 18-187. - Pre-excavation Facilities Location.**

In addition to complying with the requirements of Minnesota Statutes Sections 216D.01-.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each permittee who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of said facilities. Any permittee 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. 18-188. - Damage to Other Facilities.**

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a permittee’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 the 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 damage. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another permittee caused during the city’s response to an emergency occasioned by the permittee’s facilities.

**Sec. 18-189. - Right-of-Way Vacation.**

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.

**Sec. 18-190. - Indemnification and Liability.**

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

**Sec. 18-191. - Abandoned and Unusable Facilities.**

- a. *Discontinued Operations.* A permittee who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the permittee’s obligations for its facilities in the right-of-way under this ordinance have been lawfully assumed by another permittee.
- b. *Removal.* Any person who has abandoned facilities in any right-of-way shall remove them from the 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. 18-192. - Appeal.**

A right-of-way user that has been denied a permit; has had a permit revoked; believes that the fees imposed are invalid; or disputes any determination of the city under 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 request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

**Sec. 18-193. - Reservation of Regulatory and Police Powers.**

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

**Sec. 18-194. - Severability.**

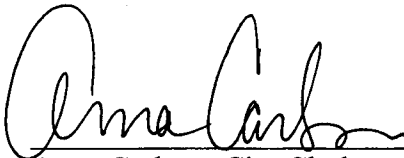
If any portion of this ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this ordinance precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

**SECTION 2.**

**SECTION 3.** The ordinance shall be effective immediately upon its passage and publication.

**ADOPTED** this 29<sup>th</sup> day of May, 2018 on a vote of 5 ayes and 0 nays by the City Council of Orono, Minnesota.

ATTEST:



Anna Carlson, City Clerk



Dennis Walsh, Mayor

*Ordinance published in The Laker and The Pioneer newspapers the week of June 23, 2018.*