

Chapter 28

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Article I. In General

Secs. 28-1--28-18. Reserved.

Article II. Driveways

Sec. 28-19. Variance.

Sec. 28-20. Permits required.

Sec. 28-21. Fee.

Sec. 28-22. Driveway requirements.

Sec. 28-23. Hard-surface driveways.

Secs. 28-24--28-47. Reserved.

Article III. Treadways, Pathways on New or Upgraded Roads

Sec. 28-48. Definitions.

Sec. 28-49. Purpose and requirement.

Sec. 28-50. Exceptions.

Sec. 28-51. Design standard.

Article IV. Right-of-Way Management

Sec. 28-52. Findings, Purpose and Intent.

Sec. 28-53. Definitions.

Sec. 28-54. Administration.

Sec. 28-55. Conduct Prohibited.

Sec. 28-56. Registration and Right-of-Way Occupancy

Sec. 28-57. Registration Information.

Sec. 28-58. Reporting Obligations.

Sec. 28-59. Permit Requirement.

Sec. 28-60. Permit Applications.

Sec. 28-61. Issuance of Permit; Conditions.

Sec. 28-62. Action on small-wireless-facility permit applications

Sec. 28-63. Permit Fee.

Sec. 28-64. Right-of-Way Patching and Restoration.

Sec. 28-65. Supplementary Applications.

Sec. 28-66. Other Obligations.

Sec. 28-67. Denial of Permit.

Sec. 28-68. Installation Requirements.

Sec. 28-69. Inspection.

Sec. 28-70. Work Done without a Permit.

Sec. 28-71. Revocation of Permits.

Sec. 28-72. Mapping Data.

Sec. 28-73. Location and Relocation of Facilities.

Sec. 28-74. Pre-excavation Facilities Location.

Sec. 28-75. Damage to Other Facilities.

Sec. 28-76. Interference by Other Facilities.

Sec. 28-77. Right-of-Way Vacation.

Sec. 28-78. Indemnification and Liability.

Sec. 28-79. Abandoned and Unusable Facilities.

Sec. 28-80. Appeal.

Sec. 28-81. Reservation of Regulatory and Policy Powers.

Sec. 28-82. Severability.

Sec. 28-83. Penalty.

Article V. Small Wireless Facilities

Sec. 28-84. Findings, Purpose, and Intent

Sec. 28-85. Definitions.

Sec. 28-86. Administration.

Sec. 28-87. Permit Requirement and Application.

Sec. 28-88. General Standards for Small Wireless Facilities and Wireless Support Structures.

Sec. 28-89. Permit Application Review Process.

Sec. 28-90. Issuance of Permit; Conditions.

Sec. 28-91. Permit Fee.

Sec. 28-92. Denial of Permit.

Sec. 28-93. Inspection.

Sec. 28-94. Mapping Data.

Sec. 28-95. Right-of-Way Vacation.

Sec. 28-96. Indemnification and Liability.

Sec. 28-97. Abandoned and Unusable Facilities.

Sec. 28-98. Appeal.

Sec. 28-99. Reservation of Regulatory and Policy Powers.

Sec. 28-100. Severability.

Sec. 28-101 Penalty.

ARTICLE I.

IN GENERAL

Secs. 28-1--28-18. Reserved.

ARTICLE II.

DRIVEWAYS

Sec. 28-19. Variance.

A variance from the standards set forth in this article may be allowed by the city council when the variance will facilitate the safe, efficient use of the property for a lawful purpose and will not interfere with the construction, maintenance or safe and efficient use of the street and its appurtenances by the public.
(Ord. No. 38, § 5, 11-6-1974)

Sec. 28-20. Permits required.

No person, firm or corporation shall construct or lay out any driveway providing for access by vehicles from a public street of the city onto adjacent private property unless there shall have first been issued a permit by the building inspector for such driveway access to the public street. Such permit shall be granted by the building inspector upon application in writing by the owner or occupant of the premises, accompanied by a layout of the property and proposed driveway. The driveway layout shall include buildings or proposed buildings and any other relevant present or planned appurtenances that would affect the traffic pattern.
(Ord. No. 38, § 1, 11-6-1974)

Sec. 28-21. Fee.

The fee for each such driveway permit shall be as established by ordinance and which shall be paid to the building inspector at the time the application is submitted.
(Ord. No. 38, § 2, 11-6-1974)

Sec. 28-22. Driveway requirements.

The building inspector shall determine the appropriate location, size and design of such driveways and may limit the number of driveways in the interest of public safety and efficient traffic flow. The building inspector shall also determine if a culvert is necessary and, if so, the required dimensions of the culvert.
(Ord. No. 38, § 3, 11-6-1974)

Sec. 28-23. Hard-surface driveways.

No driveway from private property entering a public street of the city shall be covered with a bituminous, cement or other hard surface beyond the outer edge of the road right-of-way.
(Ord. No. 38, § 4, 11-6-1974)

Secs. 28-24--28-47. Reserved.

ARTICLE III.

TREADWAYS, PATHWAYS ON NEW OR UPGRADED ROADS

Sec. 28-48. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to

them in this section, except where the context clearly indicates a different meaning:

Treadway or *pathway* are used interchangeably in this article. Either term means an area, separate from the main-traveled portion of the road, which is designed for nonmotorized travel (such as pedestrians, bicyclists, and/or equestrians).

Upgrade of existing roads means when an existing road is upgraded from a gravel road to a paved road or when a paved road is rebuilt so that the existing pavement is removed, subgrade corrective (repair) work is done, and the road is repaved.

(Ord. No. 2000-86, § 86.02, 2-1-2000)

Sec. 28-49. Purpose and requirement.

(a) *Purpose.* This article is passed in order to meet the two main goals expressed with the transportation component of the city's comprehensive plan, namely as follows:

- (1) *Goal 1.* Maintain a transportation network at reasonable costs and adequate to meet the safety, health and welfare needs of the community.
- (2) *Goal 2.* Enhance the rural character of the community through the design and construction of roadways.

(b) *Requirement.* Treadways shall be constructed within the right-of-way of new and upgraded roads within the city. Treadways shall be designed to enhance a sense of community connectivity and to provide rural recreational opportunities and alternative transportation avenues.

(Ord. No. 2000-86, § 86.01, 2-1-2000)

Sec. 28-50. Exceptions.

As the city is already a partially developed community, it is clear that some areas of the city will not be conducive to the establishment of treadways. In evaluating whether or not a treadway, or treadway segment, should be required, the city council shall take into consideration the existing topography, structures, landscape, and/or features of the area that have particular historic, cultural or aesthetic beauty. It is envisioned that rarely, if ever, will exceptions exist with respect to new developments. Exceptions will generally be considered only as it relates to the upgrading of an existing road. The council will be guided in determining when exceptions should exist by the "key policy" outlined within goal 2 of the comprehensive plan set forth in section 28-49(a)(2), namely that roadway design and layout criteria shall be established to work with the existing physical characteristics of the landscape in order to maintain the rural character and quality of the city. Additionally, economic considerations alone shall not be considered as grounds for the approval of an exemption as authorized under this article.

(Ord. No. 2000-86, § 86.04, 2-1-2000)

Sec. 28-51. Design standard.

The city shall, with the advice of the city engineer (and others), approve of a design standard for treadways. It is not the intent of the city council that all treadways will be alike, but that, instead, they shall be tailored to meet the needs of the neighborhood where they will be constructed. Some treadways will be built on ditch bottoms. Others could be built along the side of a paved public road (for example, by extending two additional feet onto a gravel shoulder). All proposed treadways and pathways shall be evaluated to ensure that they promote the purposes and intent of this article.

(Ord. No. 2000-86, § 86.03, 2-1-2000)

ARTICLE IV.

Right-of-Way Management

Section 28-52. Findings, Purpose, and Intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in good repair and free from unnecessary encumbrances. Accordingly, the city enacts this Article IV of Chapter 28 of the Code establishing reasonable regulations concerning the placement and maintenance of facilities and equipment within the city's rights-of-way and obstructions of such rights-of-way.

This Article is intended to implement Minnesota Statutes Sections 237.162 and 237.163 Minnesota Rules 7819.0050 – 7819.9950, and other applicable laws governing use of rights-of-way. Pursuant to Minnesota Statutes, Sections 237.163 subdivision 2(b), and all authority granted to the city, the city hereby elects to manage rights-of-way within its jurisdiction.

Section 28-53. Definitions.

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.

Applicant means any person that has applied for a permit to excavate or obstruct a right-of-way.

City means the city of Grant, Minnesota, its elected officials, officers, employees and agents.

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

Commission means the Minnesota Public Utilities Commission.

Congested Right-of-Way means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, Section 216D.04. Subdivision 3, over a continuous length in excess of 500 feet.

Construction Performance Bond means any of the following forms of security provided at a permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under Minnesota Statutes, section 15.73, subdivision;
- (4) Letter of Credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specific^{3d} and in a form acceptable to the city.

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

Degradation Cost means the cost, subject to Minnesota Rules 7819.1100, 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 fee established by the city at the time of permitting in an amount estimated to recover the degradation cost.

Department means the office of the City Engineer.

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

Director means the City Engineer of the city, or his or her designee.

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

Equipment means any tangible asset used to install, repair, or maintain facilities in any 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 that, pursuant to this article, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

Excavation permit fee means money paid to the city by an applicant to cover the costs as provided by section 28-63.

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

Local Representative means a local person authorized by a right-of-way user to accept service and to make decisions for that right-of-way user regarding all matters within the scope of this Article IV.

Management Costs means the actual costs the city incurs in managing its rights-of-way, including costs 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 for the use of the right-of-way or the fees and costs of any litigation or appeals relating to this Article IV.

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

Obstruction Permit Fee means money paid to the city by a permittee to cover the costs as provided in section 28-63.

Patch or Patching means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

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

Permit has the meaning given "right-of-way permit" in 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 Article IV.

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

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

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

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

Public Right-of-Way or Right-of-Way has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

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

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

Restoration Cost means the amount of money paid to the city by a right-of-way user to achieve the level of restoration according to plates 1 to 13 of Minnesota Rule 7819.1100 Subpart 1.

Right-of-Way User means any person who has or seeks to have its equipment or facilities located in any right-of-way.

Service means and includes (1) services provided by a public utility as defined in Minnesota Statutes 216B.02, subdivisions 4 and 6; (2) services of a telecommunications provided including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperate electric association organized under Minnesota Statutes, chapter 308A.

Service Lateral means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

Small wireless facility means a wireless facility that meets both of the following qualifications: (1) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and (2) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than twenty-eight (28) cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

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

Small-Wireless-Facility Permit Fee means money paid to the city by a permittee to cover the costs as provided section 28-63.

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

Telecommunication right-of-way user means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this article, a cable communication system defined and regulated under Minn. 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. Stat. 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. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this article except to the extent such entity is offering wireless service.

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

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

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

Wireless facility means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, that are not otherwise immediately adjacent to and directly associated with a specific antenna.

Wireless service means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

Wireless support structure means a new or existing structure in a right of way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

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

Section 28-54. Administration

The City Engineer 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 Engineer may delegate any or all of the duties hereunder.

Section 28-55. Conduct Prohibited.

Except as authorized pursuant to a permit issued by the city, no person shall:

- (a) Obstruct or excavate any right-of-way.
- (b) Place any equipment, facilities, or structures in any right-of-way.
- (c) Deposit snow or ice on any right-of-way.
- (d) Erect a fence or other barrier on or across any right-of-way.
- (e) Obstruct any ditch in or abutting a right-of-way.

- (f) Place any advertisement or sign other than a traffic control sign or other governmental sign in any right-of-way.
- (g) Deface, mar, damage or tamper with any sign, marker, signal, monument, equipment facility, structure, material, tools, or any appurtenance in any right-of-way.
- (h) Drive a vehicle over, through, around, or past any fence, barrier, sign, or obstruction erected to prevent traffic from passing over the right-of-way, or portion of the right-of-way.

Section 28-56. Registration and Right-of-Way Occupancy.

(a) *Registration.* Each right-of-way user, including persons with installation and maintenance responsibilities by contract, lease, sublease or assignment, must register with the city. Registration will consist of providing registration information and paying a registration fee.

(b) *Registration prior to work.* No person may construct, install, repair remove, relocate any equipment or facilities or perform any other work in any right-of-way without first being registered with the city.

(c) *Exceptions.* Persons shall not be required to register, obtain permits or satisfy any other requirements under this Section for the following:

- (1) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots pursuant to a driveway permit, except repairs or restoration necessitated by utility cuts or other work;
- (2) Plowing and preparing the land for planting a perennial hay crop, and harvesting said crop;
- (3) Snow removal activities;
- (4) Placement of flexible fiberglass markers at the edge of the paved road to assist snow plow operators (metal posts are prohibited).

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

Section 28-57. Registration Information.

(a) *Information Required.* The information provided to the city at the time of registration shall include, but not be limited to:

- (1) The right-of-way user'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 local representative accessible for consultation at all times. Current contact information shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance:
 - i. Verifying that an insurance policy has been issued to the right-of-way user by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;
 - ii. Verifying that the right-of-way user 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 right-of-way user, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the right-of-way user, its officers, agents, employees and permittees, including but not limited to, protection against liability rising from completed operations, damage of underground facilities and collapse of property;
 - iii. Either naming the city as an additional insured or otherwise providing evidence satisfactory to the Administrator that the city is fully covered and will be defended;
 - iv. Requiring that the city be notified thirty (30) days in advance of cancellation 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 Article.

- vi. Evidencing adequate third part claim coverage and city indemnification for all actions included in Minnesota Rule part 7819.1250.
- (4) Such evidence as the city may require to demonstrate that the person is authorized to do business in Minnesota.
- (5) Such evidence as the city may require to demonstrate that the person is authorized to use or occupy the right-of-way.
- (b) *Notice of Changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

Section 28-58. Reporting Obligations.

- (a) *Operations.* Each right-of-way user shall, at the time of registration and by December 1 of each year, file a construction and maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.
- (b) *Plan.* The plan shall include, but not be limited to, the following information:
 - (1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a “next-year project”); and
 - (2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a “five-year project”).
- (c) *Failure to Include Projects in Plan.* The city may deny an application for a right-of-way permit for failure to include a project in the plan submitted to the city for next-year projects unless the right-of-way user demonstrates that it used commercially reasonable efforts to identify the project. The city may annually produce for inspection a list of all planned projects for inspection.

Section 28-59. Permit Requirement.

- (a) *Permit Required.* A permit is required to excavate the right-of-way, to place equipment of facilities in or on the right-of-way, or to obstruct or otherwise hinder free and open passage over the right-of-way. The permit shall specify the extent and the duration of the work permitted.
 - (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) *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 (i) routine maintenance of a small wireless facility; (ii) 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 (iii) 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.

(4) *Special/Conditional Use Permit.* A special or conditional use permit is required to install a new wireless support structure for the siting of a small wireless facility in a right of way in a district or area that is zoned for single-family residential use or within a historic district established by federal or state law or city ordinance as of the date of application for a small wireless facility permit.

(b) *Permit Extensions.* No person may excavate or obstruct 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) a new permit or permit extension is granted.

(c) *Delay Penalty.* In accordance with Minnesota Rule 7819.1000 subp. 3, the city may 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. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(d) *Permit Delay.* Permits issued under this Section 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 28-60. Permit Applications.

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

(a) Registration with the city pursuant to this Article.

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

(c) Payment of money due to 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 to the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

(e) Posting an additional or larger construction performance bond should the city deem the existing construction performance bond inadequate.

Section 28-61. Issuance of Permit; Conditions.

(a) *Permit Issuance.* If the Applicant has satisfied the requirements of this Article IV the city shall issue a permit.

(1) An excavation or obstruction permit within five (5) business days.

(2) A Small-Wireless-Facilities permit within ninety (90) days.

(b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. The city may establish and define location and relocation requirements for equipment and facilities to be located in the right-of-way. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§216D.01-0.9 (Gopher One Call Excavation Notice System) and Minn. R. ch. 7560.

(c) *Small wireless facility conditions.* In addition to subd. (b), 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 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.
- (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 existing wireless support structure or other facilities in and around the right-of-way.
- (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.

(d) *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:

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

Section 28-62. Action on small-wireless facility permit applications.

- (a) *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 approval if the city fails to approve or deny the application within the review period established in this section.
- (b) *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 be a local government unit, provided that all small wireless facilities in the application:
 - (1) Are located within a two-mile radius;
 - (2) Consist of substantially similar requirement;
 - (3) And 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 it may not use denial of one or more

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

- (1) 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.
- (2) 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 of information, the city shall have ten (10) days to notify the applicant in writing of any still-missing information.
- (3) The city and small wireless facility applicant agree in writing to toll the review period.

Section 28-63. Permit Fee.

- (a) *Fee Schedule and Fee Allocation.* The city's permit fees shall be designed to recover the city's actual costs and shall be based on an allocation among all users of the right-of-way, including the city.
- (b) *Permit Fee Amount.* The city shall establish a permit fee sufficient to recover the following costs:
 - (1) The city's management costs;
 - (2) Degradation costs, if applicable
- (c) *Payment of Permit Fees.* No permit shall be issued without payment of permit fees. The city may allow an applicant to pay such fees within thirty (30) days of billing. Permit fees paid for a permit that the city has revoked for a breach are not refundable.
- (d) *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.

Section 28-64. Right-of-Way Patching and Restoration.

(a) *Timing.* The work to be done under a permit, and the required patching and restoration of the right-of-way, 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 28-66 (b).

(b) *Patching.* The permittee must patch its own work.

(c) *Restoration.* The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or the city may restore the surface portion of right-of-way itself. If the city restores the surface portion of 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. If the permittee restores the right-of-way itself, it shall at the time of filing the permit application post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

(d) *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 in an amount identified by the city. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate base material in the excavation and degradation fee shall not include the cost to accomplish these responsibilities.

(e) *Standards.* The permittee shall perform patching and restoration according to the standards in Minnesota Rule 7819.1100, and with the materials specified by the city.

(f) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents upon notification from the city, using the method required by the city.

(g) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee ten (10) days from receipt of notice to cure said failure or failures. In the event the permittee fails to cure, the city may at its option perform the necessary work and 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.

Section 28-65. Supplementary Applications.

- (a) *Limitation on Area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee that 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.
- (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 state 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.

Section 28-66. Other Obligations.

(a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to apply 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 Minn. Statute 216D.01-.09 (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with the applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(b) *Prohibited Work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(c) *Interference with right-of-way.* A permittee shall not so obstruct or interfere with the natural passage of water through the gutters or other waterways. Private vehicles must be parked in conformance with city parking regulations. Unless specifically authorized by a permit, trucks must be loaded and unloaded within the defined permit area.

(d) *Traffic control.* A permittee shall implement traffic control measures in the area of the work and use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the State of Minnesota.

Section 28-67. Denial of Permit.

- (a) *Reasons for Denial.* The city may deny a permit for failure to meet the requirements and conditions of this article or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current 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.
- (b) *Procedural Requirements.* The denial of a right-of-way permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing 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.

Section 28-68. Installation Requirements.

The installation of facilities in the right-of-way and associated excavation, backfilling, patching, and restoration work shall be done in conformance with Minnesota Rule 7819.1100 and other applicable local requirements.

Section 28-69. 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.* The permittee shall make the work site available to the city for inspection at all reasonable times during the execution of and upon completion of the work.

(c) *Authority of Director.* 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, or order the permittee to correct work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a “substantial breach” within the meaning of Minnesota Statute 237.163 subd. 4(c), the order shall state the failure to correct the violation will be cause for revocation of the permit after a specified period determined by the director. The permittee shall present proof to the director that the violation has been timely corrected. If the violation is not timely corrected, the director may revoke the permit.

Section 28-70. Work Done without a Permit.

(a) *Emergency Situation.* Each right-of-way user shall immediately notify the director of any event regarding its facilities that the right-of-way user considers to be an emergency. The right-of-way user may take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the right-of-way user shall apply for the necessary permits and fulfill the rest of the requirements necessary to comply with this Article.

(b) If the city becomes aware of an emergency affecting facilities in the right-of-way, the city will attempt to contact the local representative of each potentially affected right-of-way user. The city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by affected right-of-way users.

(c) *Non-Emergency Situation.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay an unauthorized work permit fee in an amount established from time to time by the city council, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all the requirements of this Article.

Section 28-71. Revocation of Permits.

(a) *Substantial Breach.* The city reserves its right 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 a permit
- (2) An evasion or attempt to evade any material provision of a 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 permit;
- (4) The failure to complete work in a timely manner; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated in an order issued by the director.

(b) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of term or condition of any statute, ordinance, rule regulation or any condition of the permit the city shall follow the procedural requirements of Sec. 28-97 (b) of this article.. 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 to place additional or revised conditions on the permit to mitigate and remedy the breach.

(c) *Response to notice of breach.* Within a time established by the director following permittee’s receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee’s failure to submit a timely and acceptable plan, or permittee’s failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

(d) *Cause for Probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one (1) full year, such as, but not limited to, working out the allotted time period or working on right-of-way grossly outside of the permit authorization.

(e) *Automatic Revocation.* If a permittee, while on probation, commits a breach as outlines above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one (1) full year, except for emergency repairs.

(f) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 28-72. Mapping Data.

Each right-of-way user and permittee shall provide mapping informational a form required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Section 28-73. Location and Relocation of Facilities.

- (a) *Compliance.* 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 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 in writing 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 article, any unregistered facilities that are found in the right-of-way and that are required by this article to be 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.
- (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 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 that have been determined to be in the public interest.
- (e) *Relocation.* A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection with: (1) a present of future city use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

Section 28-74. Pre-excavation Facilities Location

In addition to complying with the requirements of Minn. Stat. 216D.01-.09 (“One Call Excavation Notice System”) before the state 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 the approximate vertical placement (or assumed vertical placement is accurate data is not available) 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.

Section 28-75. Damage to Other Facilities.

The provisions of Minn. Stat. 216D shall apply to all situations involving damages to facilities during excavation operations. Each registrant shall be responsible for the cost of repairing or the value of damage to any facilities in the right-of-way that it or its facilities damages. This provision includes costs for damages to boulevard amenities, such as trees, landscaping, irrigation systems and invisible fences placed by property owners. It is the registrant’s responsibility to provide immediate notice of such damages to the affected property owners. 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.

Section 28-76. Interference by Other Facilities.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a right-of-way user’s facilities to carry out the work without damaging right-of-way user’s facilities, the city shall notify the local representative as early as is reasonable possible. The city costs associated therewith will be billed to that right-of-way user and must be paid within thirty (30) days from the date of billing. Each right-of-way user shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

Section 28-77. Right-of-Way Vacation.

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

Section 28-78. Indemnification and Liability.

By registering with the city, or by accepting a permit under this Article, a right-of-way user or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

Section 28-79. Abandoned and Unusable Facilities.

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

(b) *Removal.* Any right-of-way user 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.

Section 28-80. Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are not in conformity with Minnesota Statute 237.163, Section 410.06 may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing.

Section 28-81. Reservation of Regulatory and Policy Powers.

A permittee’s or right-of-way user’s rights are subject to the regulatory and police power authority of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Section 28-82. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Article IV is for any reason held invalid or unconstitutional by any court, regulatory body or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 28-83. Penalty.

Any person violating any provision of this Article IV, or any permit or order issued hereunder, shall, upon conviction thereof, be guilty of a misdemeanor punishable in accordance with Section 2-102 of the City Code.

(Ord. No. 2017-51, 3-6-2017; Ord. No. 2017-55, 1-18-2018)

ARTICLE V.

Small Wireless Facilities

Section 28-79. Findings, Purpose, and Intent

The purpose of this Article is to establish specific requirements for obtaining a Small Wireless Facility Permit for the installation, mounting, maintenance, modification, operation, and replacement of Small Wireless Facilities and installation or replacement of Wireless Support Structures by Commercial Wireless Providers on public and private property, including in the Public Right-of-Way. Where this ordinance is inconsistent with Article IV of this Chapter, pertaining only to Small Wireless Facilities as defined herein, the rules and regulations contained in this Article shall be enforced.

This Article does not apply to any Wireline Facilities, including Wireline Backhaul Facilities. A Wireless Provider must obtain a right-of-way permit pursuant to Article IV, Chapter 28 or other applicable authorization.

Section 28-80. Definitions.

Applicant means any person, group or company that has applied for a permit to excavate or obstruct a right-of-way.

City means the City of Grant, Minnesota, its elected officials, officers, employees and agents.

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 the City.

Decorative Pole means a Utility Pole owned, managed, or operated by or on behalf of the City or any other governmental entity that: (a) is specifically designed and placed for an aesthetic purpose; and (b)(i) on which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than: (A) a Small Wireless Facility, (B) a specialty designed informational or directional sign; or (C) a temporary holiday or special event attachment; or (b)(ii) on which no appurtenance or attachment has been placed, other than: (A) a Small Wireless Facility, (B) a specialty designed informational or directional sign; or (C) a temporary holiday or special event attachment.

Director means the City Engineer of the City, or his or her designee.

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

Micro Wireless Facility means a Small Wireless Facility that is no larger 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.

Permittee means a person, group, company, or similar that has been granted a Small Wireless Facility Permit by the City.

Small Wireless Facility means: (a) a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment associated with the Small Wireless Facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, in aggregate no more than twenty eight (28) cubic feet in volume; or (b) a Micro Wireless Facility.

Small Wireless Facility Permit (Permit) means a permit issued by the City authorizing the installation, mounting, maintenance, modification, operation, or replacement of a Small Wireless Facility or installation or replacement of a Wireless Support Structure in addition to Collocation of a Small Wireless Facility on the Wireless Support Structure.

Utility Pole means a pole that is used in whole or in part to facilitate telecommunications or electric service. It does not include a traffic signal pole.

Wireless Facility means equipment at a fixed location that enables the provision of Wireless Service between user equipment and a wireless service network, including a) equipment associated with Wireless Service; b) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and c) a Small Wireless Facility. Wireless Facility does not include: a) Wireless Support Structures; b) Wireline Backhaul Facilities; or c) Coaxial or fiber-optic cables (i) between utility Poles or Wireless Support Structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

Wireless Provider means a provider of Wireless Service, including, but not limited to, radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates and/or terminates on the public switched network or its functional equivalent, regardless of the radio frequencies used.

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 a cable service under United States Code, title 47, section 522, clause (6).

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, including, but not limited to, a Utility Pole or a building, as reasonable determined by the City.

Wireline Backhaul Facility means a facility used to transport communications data by wire from wireless facility to a communications network.

Section 28-81. Administration

The City Engineer, Director, is the principal city official responsible for the administration of the Small Wireless Permit and the ordinances related thereto. The City Engineer may delegate any or all of the duties hereunder.

Section 28-82. Permit Requirement and Application.

- (a) *Permit Required.* A Small Wireless Facility Permit is required, in addition to any required right-of-way permits, to excavate the right-of-way, to place Small Wireless equipment or facilities in or on the

right-of-way, or to obstruct or otherwise hinder free and open passage over the right-of-way. The Small Wireless Facility permit shall specify the extent and the duration of the work permitted, and the conditions which vary from those of a standard right-of-way permit.

- (b) *Complete Application.* A form of Application will be provided to the Applicant, and such form must be complete prior to any permit being issued. To the extent possible, Consolidated Applications pursuant to the following section shall be permitted.
- (c) *Consolidated Application.* A Wireless Provider may apply for up to 15 Small Wireless Facility Permits in a Consolidated Application, provided all Small Wireless Facilities in the Consolidated Application are located within a two-mile radius, consist of substantially similar equipment, and are to be Collocated on similar types of Wireless Support Structures. The City shall review a Consolidated Application as allowed by this Article. If necessary, the applied for Small Wireless Facility Permits in a Consolidated Application may be approved or denied individually, but the City may not use the denial of one or more permits as a basis to deny all Small Wireless Facility Permits in a Consolidated Application. Any Small Wireless Facility Permits denied in a Consolidated Application shall be subject to a single appeal.

Section 28-83. General Standards for Small Wireless Facilities and Wireless Support Structures.

General Standards. The Director shall establish and maintain a set of standards for the installation, mounting, maintenance, modification, operation, or replacement of Small Wireless Facilities and placing new or replacement Wireless Support structures in the Public Right-of-way applicable to all Permittees under this section (the “General Standards”). The General Standards shall include, but not be limited to, information to be required in a Small Wireless Facility Permit Application, design and aesthetic standards, construction standards, a form Application, permitting conditions, insurance and security requirements, and Rates and Fees.

- (a) *Design and Aesthetic Standards.* Any design standards established by the Director shall be: (a) reasonable and nondiscriminatory, and (b) include additional installation and construction details that do not conflict with this Article, or Article IV, of this Chapter, including, but not limited to, a requirement that: (i) an industry standards pole load analysis be completed and submitted to the City indicating that the Wireless Support Structure to which the Small Wireless Facility is to be attached will safely support the load, and (ii) Small Wireless Facility equipment on new and existing Wireless Support Structures be placed higher than fifteen (15) feet above ground level. The Director shall additionally include the following in any design standards established under this Section:
 - i. Any Wireless Support Structure installed in the Public Right-of-Way after May 31, 2017 may not exceed fifty (50) feet above ground level, unless the City agrees to a greater height, subject to local zoning regulations, and may be subject to separation requirements in relation to other Wireless Support Structures.
 - ii. Any Wireless Support Structure replacing an existing Wireless Support Structure that is more than fifty (50) feet above ground level may be placed at the height of the existing Wireless Support Structure, unless the City agrees to a greater height, subject to zoning regulations.
 - iii. Wireless Facilities constructed in the Public Right-of-Way after May 31, 2017 may not extend more than ten (10) feet above an existing Wireless Support Structure in place as of May 31, 2017.
 - iv. And reasonable accommodations for a decorative pole.
- (b) *Construction Standards.* Any construction standards established by the Director shall include at least the following terms and conditions:
 - i. *Compliance with Applicable Law.* To the extent this requirement is not preempted or otherwise legally unenforceable, a Permittee shall comply with all Applicable Law and applicable industry standards.
 - ii. *Prevent Interference.* A Permittee shall Collocate, install, and continuously operate any authorized Small Wireless Facilities and Wireless Support Structures in a manner that prevents interference with other Wireless Facilities and other facilities in the

- Right-of-Way and the operation thereof. With appropriate permissions from the City, a Permittee shall, as is necessary for the safe and reliable operation and maintenance of its facilities, maintain landscaping and trees as prescribed by standards promulgated by the City.
- iii. *Other Rights not Affected.* A Permittee shall not construe a contract, permit, correspondence, or other communication from the City as affecting a right, privilege, or duty previously conferred or imposed by the City to or on another person.
 - iv. *Restoration.* Restoration shall be completed in compliance with the standards as specified within Article IV Right-of-Way of this Chapter.
 - v. *Permittee's Liability.* A Permittee is solely responsible for the risk and expense of the Collocation of the Permittee's Small Wireless Facility and installing or replacing the Permittee's Wireless Support Structure. The City neither warrants nor represents that any area within the Public Right-of-Way is suitable for such Collocation or installation or replacement. A Permittee shall accept the Public Right-of-Way "as is" and "where is" and assumes all risks related to any use. The City is not liable for damage to Small Wireless Facilities due to an event of damage to a Wireless Support Structure in the Public Right-of-Way.

Section 28-84. Permit Application Review Process.

An Application shall be eligible for review if the Application conforms to the General Standards adopted by the Director. A Small Wireless Facility Permit issued pursuant to any Application processed hereunder shall authorize: (1) the installation, mounting, modification, operation, and replacement of a Small Wireless Facility in the Public Right-of-way or City-owned property; or (2) construction of a new, or replacement of an existing, Wireless Support Structure, and Collocation of a Small Wireless Facility on a Wireless Support Structure.

- (f) *Review Process.* An Application submitted pursuant to this Section shall be review as follows:
 - i. *Submission of Application.* Applicant shall submit a complete Application accompanied by the appropriate application fee as set forth in Section 28-86. Prior to submitting a Small Wireless Facility Permit Application, an Applicant shall inspect any Wireless Support Structure on which it proposed to Collocate a Small Wireless Facility and determine, based on a structural engineering analysis by a Minnesota registered professional engineer, the suitability of the Wireless Support Structure for the proposed Collocation. The structural engineering analysis shall be submitted to the City with the Application, and shall certify that the Wireless Support structure is capable of safely supporting the proposed Small Wireless Facility considering conditions at the proposed location, including the condition of the Public Right-of-Way, hazards from traffic, exposure to wind, snow and/or ice, and other conditions affecting the proposed Small Wireless Facility that may be reasonably be anticipated.
 - ii. *Application Review Period.* The City shall, within sixty (60) days after the date of a complete Application issue or deny a Small Wireless Facility Permit pursuant to the Application. The City shall within ninety (90) days after the date a complete Application for a new or replacement Wireless Support Structure in addition to the Collocation of a Small Wireless Facility is submitted to the City, issue or deny a Small Wireless Facility Permit pursuant to the Application. If the City receives applications within a single seven-day period from one or more Applicants seeking approval of a Small Wireless Facility Permit for more than thirty (30) Small Wireless Facilities of ten (10) Wireless Support Structures, the City may extend the ninety (90) day review period of this Article by an additional thirty (30) days. IF the City elects to invoke this extension, it must inform in writing any Applicant to whom the extension will be applied.
 - iii. *Completeness Determination.* The City shall review a Small Wireless Facility Permit Application for completeness following submittal. The City shall provide a written notice of incompleteness to the Applicant within ten (10) days of receipt of the Application, clearly and specifically identifying all missing documents or information. If an Applicant fails to respond

to the City's notice of incompleteness within ninety (90) days, the Application shall be deemed expired and no Small Wireless Facility Permit shall be issued. Upon an Applicant's submittal of additional documents or information in response to a notice of incompleteness, the City shall within ten (10) days of submission notify the Applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not identified in the original notice of incompleteness.

- iv. *Reset and Tolling of Review Period.* In the event that a Small Wireless Facility Permit Application is incomplete, and the City has provided a timely and complete written notice of incompleteness, then the applicable review period shall be reset, pending the time between when a notice is mailed and the submittal of information in compliance with the notice. Subsequent notices shall toll the applicable review period. An Applicant and the City can mutually agree in writing to toll applicable review period at any time.
- v. *Permit Not Required.* A Permittee shall provide thirty (30) days advance written notice to the City, but shall not be required to obtain a Small Wireless Permit, or pay an additional Small Wireless Facility Permit fee for:
 - a. Routine maintenance;
 - b. The replacement of a Small Wireless Facility with a Small Wireless Facility that is substantially similar to or smaller in size; or
 - c. The installation, placement, maintenance, operation, or replacement of a Micro Wireless Facility that is strung on a cable between existing Utility Poles, in compliance with the National Electrical Safety Code.

Section 28-85. Issuance of Permit; Conditions.

(e) *Permit Issuance.* If the Applicant has satisfied the requirements of this Article V the City shall issue a permit.

(f) *Conditions.* The City may impose reasonable conditions upon the issuance of the Small Wireless 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. Additional conditions may address:

- i. Reasonable accommodations for a Decorative Pole;
- ii. Any reasonable restocking, replacement, or relocation requirement when a new Wireless Support Structure is placed in the Public Right-of-Way;
- iii. Construction of the proposed Small Wireless Facility within six (6) months from the date the Small Wireless Facility Permit is issued;
- iv. Obtaining additional authorization for use of the Public Right-of-Way for the construction of Wireless Backhaul Facilities or any other wired facilities;
- v. Compliance with applicable sections of Article IV of this Chapter, and other applicable City Code;
- vi. Compliance with Applicable Law.

(g) *Authorized Use.* An approval of a Small Wireless Facility Permit under this Section authorizes the Collocation of a Small Wireless Facility on an existing Wireless Support Structure to provide Wireless Services, or the installation or replacement of a Wireless Support Structure and Collocation of a Small Wireless Facility, and shall not be construed to confer authorization to:

- i. Provide any service other than Wireless Service;
- ii. Construct, install, maintain, or operate any Small Wireless Facility or Wireless Support Structure in a Right-of-Way other than the approved Small Wireless Facility or Wireless Support Structure;
or
- iii. Install, place, maintain or operation a Wireline Backhaul facility in the Right-of-Way

(h) *Other Permits Required.* Any Applicant desiring to obstruct or perform excavation in a Public Right-of-Way within the City for purposes of Collocating a Small Wireless Facility or installing or replacing a Wireless Support Structure shall, consistent with Article IV of this Chapter, obtain the necessary permit from the City prior to conducting such activities.

(i) *Exclusive Arrangement Prohibited.* The City shall not enter into an exclusive arrangement with an Applicant for use of a Public Right-of-Way for the Collocation of a Small Wireless Facility or for the installation or operation of a Wireless Support Structure.

(j) *Unauthorized Small Wireless Facility.* No Applicant shall install, mount, modify, operate, or replace a Small Wireless Facility in the Public Right-of-Way or on City-owned property, or install or replace a Wireless Support Structure without first obtaining a Small Wireless Facility Permit from the City. If the City determines that any activity has occurred without the required permit the procedures set forth in Article IV pertaining to removal shall be followed.

(k) *Relocation.* The City may require a Permittee to relocate or modify a Small Wireless Facility or Wireless Support Structure in a Public Right-of-Way or on City-owned property in a timely manner and at the Permittee's cost if the City determines that such relocation or modification is required to protect public health, safety and welfare, or to prevent interference with other facilities authorized pursuant to this Article and Article IV of this Chapter, or to prevent interference with public works projects of the City.

(l) *Security Required.* Each Permittee shall submit and maintain with the City a bond, cash deposit, or other security acceptable to the City, in a form and amount determined by the City in accordance with the General Standards, securing the faithful performance of the obligations of the Permittee and its agents under any and all Small Wireless Facility Permits issued to the Permittee under this Article. If, in accordance with this Article, the City deducts an amount from such security, the Permittee must restore the full amount of the security prior to the City's issuance of any subsequent Small Wireless Facility Permit. The City shall return or cancel the security, less any fees necessary to restore the Right-of-Way and the City owned appurtenances to an acceptable condition to the Director, should the Permittee cease to operate any Small Wireless Facility in the Right-of-Way.

(m) *Insurance Required.* Each Permittee shall maintain in full force and effect, throughout the term of a Small Wireless Facility Permit, an insurance policy or policies issued by an insurance company satisfactory to the City. Such insurance shall be required to meet the requirements as stated within Article IV of this Chapter.

(n) *Payment of Fees Required.* A Small Wireless Facility Permit shall not be issued prior to the complete payment of all applicable Fees.

(o) *Notice of Assignment Required.* A Permittee upon or within ten (10) calendar days after transfer, assignment, conveyance, or sublet of an attachment that changes the permit and/or billing entity or ownership responsibilities shall provide written notification to the City.

(p) *Term.* A Small Wireless Facility Permit for a Small Wireless Facility in the Public Right-of-Way shall have a term equal to the length of time that the Small Wireless Facility in use, unless the Small Wireless Facility Permit is revoked under this Article or is otherwise allowed to be limited by Applicable Law. The term for all other Small Wireless Facility Permits shall be for a period of up to ten (10) years.

(q) *Revocation.* The City may revoke a Small Wireless Facility Permit, with or without refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule, regulation, or any material condition of the Small Wireless Facility Permit. Substantial Breach and the process of Revocation shall follow the applicable sections contained within Article IV of this Chapter.

(r) *Written Notice Required.* Any denial or revocation of a Small Wireless Facility Permit shall be made in writing and shall document the basis for the denial or revocation. If a Small Wireless Facility Permit Application is denied, the Applicant may cure the deficiencies identified by the City and submit its Application. If the Applicant 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. If a Small Wireless Facility Permit or a Wireless Support Structure Permit is revoked, the Small Wireless Facility or Wireless Support Structure shall be subject to removal.

Section 28-86. Permit Fee.

(e) *Fee Schedule and Fee Allocation.* The City's permit fees shall be designed to recover the City's actual costs and shall be based on an allocation among all users of the right-of-way, including the City.

(f) *Permit Fee Amount.* The City shall charge a fee for reviewing and processing a Small Wireless Facility Permit Application. The purpose of this fee is to enable the City to recover its costs directly associated with reviewing a Small Wireless Facility Permit Application

(1) The City shall charge a fee of \$500 for a Small Wireless Facility Permit Application seeking to Collocate up to five (5) Small Wireless Facilities. This fee shall increase by \$100 for each additional Small Wireless Facility that an Applicant seeks to Collocate.

(2) The City shall charge a fee of \$1,000 for a Small Wireless Facility Permit Application seeking to install or replace a Wireless Support Structure in addition to Collocating of a Small Wireless Facility on the Wireless Support Structure.

(3) Commencing on January 1, 2020 the City shall adjust the Application Fees annually by the consumer price index for the Minneapolis-St. Paul area.

(g) *Payment of Permit Fees.* No permit shall be issued without payment of permit fees. The City may allow an applicant to pay such fees within thirty (30) days of billing. Permit fees paid for a permit that the City has revoked for a breach are not refundable.

(h) *Annual Small Wireless Permit Fee.* The City shall charge an Annual Small Wireless Permit Fee for each Small Wireless Facility Permit issued to a Permittee. The Annual Small Wireless Permit Fee shall be determined by the City and listed in the City's Fee Schedule. The Annual Small Wireless Permit Fee shall be based upon the recovery of the City's right-of-way management costs.

(i) *City-owned Wireless Support Structure Fees.* The City shall charge the following fees to the owner of any Small Wireless Facility Collocated on a Wireless Support Structure owned by the City or its assigns located in the Public Right-of-Way:

(1) \$150 per year for rent to occupy space on the Wireless Support Structure;

(2) \$25 per year for maintenance associated with the space occupied on the Wireless Support Structure; and

(3) A monthly fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, at the rate of:

i. \$73 per radio node less than or equal to 100 max watts;

ii. \$182 per radio node over 100 max watts; or

iii. Actual costs of electricity, if the actual costs exceed the above.

(j) *Discretion to Require Additional Fees.* In instances where the review of a Small Wireless Facility Permit Application is or will be unusually costly to the City, the Director, in his or her discretion, may require an Applicant to pay a sum in excess of the other fee amounts charged pursuant to this Article. This additional sum shall be sufficient to recover the actual, reasonable costs incurred by the City and/or other regulatory reviewers, in connection with a Small Wireless Facility Permit Application and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director, upon request, shall provide in writing the basis for the additional fees and an estimate of the additional fees. The City may not require a fee imposed under this Chapter through the provision of in-kind services by an Applicant as a condition of consent to use the City's Public Right-of-Ways or to obtain a Small Wireless Facility Permit.

(k) *Reimbursement of City Costs.* The City may determine that it requires the services of an expert in order to evaluate a Small Wireless Facility Permit Application. In such cases, the City shall not issue a Small Wireless Facility Permit pursuant to the Application unless the Applicant agrees to reimburse the City for the actual, reasonable costs incurred for the services of a technical expert.

Section 28-87. Denial of Permit.

The City may deny a permit for failure to meet the requirements and conditions of this Article, to protect the public health, safety, and welfare, or to protect the right-of-way and its current use. Such denial shall be provided in writing and will delineate all reasons for such denial.

Section 28-89. Inspection.

(d) *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.

(e) *Site Inspection.* The Permittee shall make the work site available to the City for inspection at all reasonable times during the execution of and upon completion of the work. The City may inspect, at any time, a

Permittee's Collocation of Small Wireless Facility or installation or replacement of a Wireless Support Structure. The City shall determine during an inspection whether the Permittee's Small Wireless Facility or Wireless Support Structure is in accordance with the requirements of the Small Wireless Facility Permit and other Applicable Law.

(f) *Authority of Director.* 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, or order the Permittee to correct work that does not conform to the terms of the Permit or other applicable standards, conditions, or code. If the work failure is a "substantial breach" within the meaning of Minnesota Statute 237.163 subd. 4(c), the order shall state the failure to correct the violation will be cause for revocation of the permit after a specified period determined by the Director. The Permittee shall present proof to the Director that the violation has been timely corrected. If the violation is not timely corrected, the Director may revoke the Permit.

Section 28-90. Mapping Data.

Each right-of-way user and Permittee shall provide mapping information in a form required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Section 28-91. Right-of-Way Vacation.

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

Section 28-92. Indemnification and Liability.

By accepting a permit under this Article, a right-of-way user or Permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

Section 28-93. Abandoned and Unusable Facilities.

(c) *Discontinued Operations.* A right-of-way user who has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the right-of-way user's obligations for its facilities in the right-of-way under this Article have been lawfully assumed by another right-of-way user.

(d) *Removal.* Any right-of-way user 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.

Section 28-94. Appeal.

A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; or (3) believes that the fees imposed are not in conformity with Minnesota Statute 237.163, Section 410.06 may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing.

Section 28-95. Reservation of Regulatory and Policy Powers.

A Permittee's or right-of-way user's rights are subject to the regulatory and police power authority of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Section 28-96. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Article V is for any reason held invalid or unconstitutional by any court, regulatory body or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 28-97. Penalty.

Any person, group or company violating any provision of this Article V, or any permit or order issued hereunder, shall, upon conviction thereof, be guilty of a misdemeanor punishable in accordance with Section 2-102 of the City Code.

(Ord. No. 2019-59, 4-2-2019)