

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

#### Sec. 62-140. - Findings and purpose.

This article imposes reasonable regulations and restrictions on the placement, maintenance and construction of equipment and facilities within rights-of-way and imposes a fee for rights-of-way users. The city holds the public rights-of-way in trust for the benefit of all of its citizens, and is thus charged with the responsibility of ensuring that all citizens have the benefit of using and enjoying the public rights-of-way. A primary cause of the deterioration of the city's rights-of-way is the increased use by persons who have equipment and facilities within the rights-of-way. The city finds that rights-of-way users should contribute to the costs of maintaining the rights-of-way since these users receive revenue through their use of the public rights-of-way. Additionally, the placement and maintenance of equipment and facilities within the rights-of-way is an inconvenience to the general public. Therefore, in order to provide for the health, safety and welfare of its citizens, and to preserve the structural and aesthetic integrity of its public rights-of-way, the city council finds that it is necessary to enact the regulations set forth in this article.

This section shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stats. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This section shall also be interpreted consistent with Minnesota Rules 7819.0050—7819.9950 where possible. To the extent that any provision of this section cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the full delegation of statutory and common law police power to the city is intended.

(Ord. No. 202, § I(subd. A), 2-1-2006; Ord. No. 31, Second Series, § 1, 10-5-2011)

#### Sec. 62-140A. - Election to manage the public rights-of-way.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city elects and has previously elected pursuant to Minn. Stats. § 237.163, subd. 2(b), to manage rights-of-way within its jurisdiction.

(Ord. No. 31, Second Series, § 2, 10-5-2011)

#### Sec. 62-141. - 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:

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

*City* means the City of East Bethel, Minnesota. For purposes of section 62-167, the term "city" means its elected officials, officers, employees and agents.

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

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

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

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

*Director* means the city administrator or his designee.

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

*Equipment* means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

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

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

*Excavation permit fee* means money paid to the city by an applicant to cover the costs as provided in section 62-150.

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

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

*Management costs* means the actual costs the city incurs in managing its rights-of-way, including, but not limited to, such costs as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits.

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

*Obstruction permit* means the permit which, pursuant to this article, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder the free and open passage over the specified portion of that right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.

*Obstruction permit fee* means money paid to the city by a permittee to cover the costs as provided in section 62-150.

*Patch* or *patching* means a method of pavement replacement that is temporary in nature. A patch consists of the compaction of the subbase and aggregate base, and the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

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

*Person* means any natural person or corporation, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity; **or resident protecting their driveway surfacing with the installation of a snow fence or other City approved means of restricting crossings of driveway access points by off road vehicles, including but not limited to snowmobiles .**

*Probation* means the status of a person that has not complied with certain 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.

*PUC* means the state public utilities commission.

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

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

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

*Right-of-way* means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. The term "right-of-way" does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

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

*Right-of-way user* means (1) a telecommunications right-of-way user as defined by Minn. Stats. § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way; or a resident who desires to protect their driveway surfacing with the installation of a snow fence or other City approved means of restricting crossings of driveway access points by off road vehicles, including but not limited to snowmobiles..

*Service* or *utility service* means and includes (1) those services provided by a public utility as defined in Minn. Stats. § 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minn. Stats. ch. 238.02, subd. 3; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stats. ch. 308A; and (6) water, sewer, including service laterals, steam, cooling or heating services.

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

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

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

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

(Ord. No. 202, § I(subd. B), 2-1-2006; Ord. No. 31, Second Series, §§ 3, 4, 10-5-2011)

#### Sec. 62-142. - Administration.

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

(Ord. No. 202, § I(subd. C), 2-1-2006)

#### Sec. 62-143. - Utility coordination committee.

The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and by

making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The director may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

(Ord. No. 202, § I(subd. D), 2-1-2006)

Sec. 62-144. - Registration and right-of-way occupancy.

- (a) *Registration.* Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the director. Registration will consist of providing application information and paying a registration fee.
- (b) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the director.
- (c) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits under this article or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this article. **This exception shall also apply to persons protecting their driveway with the installation of a snow fence or other City approved means of restricting driveway crossings by off road vehicles, including but not limited to snowmobiles. This exception applies only as there is compliance with the specifications set forth in the City Engineering Manual, Standard Plate 902, Temporary Barricade and is only excepted between the dates of October 15th to April 30th .**

(Ord. No. 202, § I(subd. E), 2-1-2006)

Sec. 62-145. - Registration information.

- (a) *Information required.* The information provided to the director at the time of registration shall include, but not be limited to:
  - (1) Each registrant's name, Gopher One Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
  - (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
  - (3) A certificate of insurance or self-insurance:
    - a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the director;

- b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and placement and use of facilities in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
  - c. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
  - d. Requiring that the director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
  - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this article.
- (4) The city may require a copy of the insurance policies.
  - (5) If the person is a corporation, a copy of the certificate of corporation that has been recorded and certified to by the secretary of state pursuant to state statutes.
  - (6) A copy of the person's order granting a certificate of authority from the state public utilities commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
- (b) *Notice of changes.* The registrant shall keep all of the information listed in subsection (a) of this section current at all times by providing to the director information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Ord. No. 202, § I(subd. F), 2-1-2006)

Sec. 62-146. - Reporting obligations.

(a) *Operations.*

- (1) Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the director. Such plan shall be submitted using a format designated by the director and shall contain the information determined by the director to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.
- (2) The plan shall include, but not be limited to, the following information:
  - a. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
  - b. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

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

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

(Ord. No. 202, § I(subd. G), 2-1-2006)

Sec. 62-147. - Permit—Requirements.

- (a) *Permit required.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the director to do so.
- (1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder the 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 the free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- (3) *Overhead facilities.* Permits for installation, repair or other work on above-ground facilities within the meaning of Minn. Stat. § 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augured or hand dug for the purpose of placing a pole type structure.
- (b) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date specified in the permit unless such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.
- (c) *Delay penalty.* Notwithstanding subsection (b) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.
- (d) *Permit display.* Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the director or his designee.

(Ord. No. 202, § I(subd. H), 2-1-2006; Ord. No. 31, Second Series, § 5, 10-5-2011)

Sec. 62-148. - Same—Applications.

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

- (1) Registration with the director pursuant to this article;
- (2) 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;
- (3) Payment of money due the city for:
  - a. Permit fees, estimated restoration costs and other management costs;
  - b. Monies owed for any loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of a right-of-way or any emergency actions taken by the city; and

- c. Franchise or user fees, if applicable;
- (4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
- (5) When an excavation permit is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required.

(Ord. No. 202, § I(subd. I), 2-1-2006)

Sec. 62-149. - Same—Issuance; conditions.

- (a) *Permit issuance.* If the applicant has satisfied the requirements of this article, the director shall issue a permit.
- (b) *Conditions.* The director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare of the citizens of the city or when necessary to protect the interests of the city in the rights-of-way.

(Ord. No. 202, § I(subd. J), 2-1-2006)

Sec. 62-150. - Same—Fees.

- (a) *Excavation permit fee.* The excavation permit fee shall be established by the director in an amount sufficient to recover the following costs:
  - (1) The management costs; and
  - (2) Restoration costs, if applicable.
- (b) *Obstruction permit fee.* The obstruction permit fee, shall be established by the director and shall be in an amount sufficient to recover the management costs.
- (c) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees.
- (d) *Nonrefundable.* Permit fees that were paid for a permit that the director has revoked for a breach as stated in section 62-160 are not refundable.
- (e) *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.

(Ord. No. 202, § I(subd. K), 2-1-2006)

Sec. 62-151. - Right-of-way patching and restoration.

- (a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way, as required herein, must be completed within the dates specified in the permit.
- (b) *Patch and restoration.* The permittee shall patch its own work under any excavation permit. The city may choose either to have the permittee restore the right-of-way or the city may undertake to restore the right-of-way.
  - (1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If, during the 36 months following such restoration, the pavement

settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

- (2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in an amount determined by the director to be sufficient to cover the cost of restoration. If, within 36 months after completion of the restoration of the right-of-way, the director determines that the right-of-way has been properly restored, the surety on the construction performance bond shall be released.
- (c) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the director. The director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The director in exercising this authority shall comply with PUC standards for right-of-way restoration and shall further be guided by the following considerations:
- (1) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
  - (2) The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
  - (3) The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;
  - (4) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and
  - (5) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.
- (d) *Guarantees.* If the permittee is required by the director to restore the right-of-way, it shall have an obligation to guarantee the restoration work for a period of 36 months following its completion. During this 36-month period it shall, upon notification from the director, correct all restoration work to the extent necessary, using the method required by the director. Said work shall be completed within five calendar days of the receipt of the notice from the director.
- (e) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the director, or fails to satisfactorily and timely complete all restoration required by the director, the director at its option may do such work. In that event the permittee shall pay to the city, within ten days of billing, the cost of restoring the right-of-way. If the permittee fails to pay within ten days of billing, the city may exercise its rights under the construction performance bond.

(Ord. No. 202, § I(subd. L), 2-1-2006)

Sec. 62-152. - Joint applications.

- (a) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(Ord. No. 202, § I(subd. M), 2-1-2006)

Sec. 62-153. - Supplementary applications.

- (a) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area, make application for a permit extension and pay any additional fees required thereby; and be granted a new permit or permit extension.
- (b) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or 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 done before the permit end date.

(Ord. No. 202, § I(subd. N), 2-1-2006)

Sec. 62-154. - Other obligations.

- (a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- (b) *Prohibited work.* Except in an emergency, and with the approval of the director, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (c) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(Ord. No. 202, § I(subd. O), 2-1-2006)

Sec. 62-155. - Denial of permit.

The director may deny a permit for failure to meet the requirements and conditions of this article or if the director determines that the denial is necessary to protect the health, safety and welfare of the citizens of the city or when necessary to protect the interests of the city in the rights-of-way.

(Ord. No. 202, § I(subd. P), 2-1-2006)

Sec. 62-156. - Installation requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with engineering standards adopted by the PUC or other applicable local requirements, in so far as they are not inconsistent with the PUC Rules. Installation of service laterals shall be performed in accordance with Minnesota Rules ch. 7560 and this article. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in section 62-161.

(Ord. No. 202, § I(subd. Q), 2-1-2006)

Sec. 62-157. - Inspection.

- (a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with PUC Rules.
- (b) *Site inspection.* The permittee shall make the work site available to the director and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (c) *Authority of director.*
  - (1) At the time of inspection the director may order the immediate cessation of any work which poses a serious threat to, the life, health, safety or well-being of the public.
  - (2) The director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to section 62-160.

(Ord. No. 202, § I(subd. R), 2-1-2006)

Sec. 62-158. - Work done without a permit.

- (a) *Emergency situations.*
  - (1) Each registrant shall immediately notify the director of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency.
  - (2) If the director becomes aware of an emergency regarding a registrant's facilities, the director will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the director may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
- (b) *Nonemergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fees for said permit, deposit with the director the amounts necessary to correct any damage to the right-of-way and comply with all of the requirements of this article.

(Ord. No. 202, § I(subd. S), 2-1-2006)

Sec. 62-159. - Supplementary notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the director of the accurate information as soon as this information is known.

(Ord. No. 202, § I(subd. T), 2-1-2006)

Sec. 62-160. - Revocation of permits.

- (a) *Breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A breach by the permittee shall include, but shall not be limited to, the following:
- (1) The violation of any material provision of the right-of-way permit;
  - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
  - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
  - (4) The failure to complete the work in a timely manner; unless a permit extension is obtained; or
  - (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 62-157.
- (b) *Written notice of breach.* If the director determines that the permittee has committed a breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the director shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A breach will allow the director, at his discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- (c) *Response to notice of breach.* Within 24 hours of receiving the written demand to remedy the violation, the permittee shall provide the director with a plan, acceptable to the director that will cure the breach. The permittee's failure to so contact the director, the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the director, the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan shall automatically place the permittee on probation for one full year.
- (d) *Cause for probation.* From time to time, the director may establish a list of conditions of the permit, which, if breached, will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or otherwise outside of the permit authorization.
- (e) *Automatic revocation.* If a permittee, while on probation, commits a breach as outlined in subsection (a) of this section, the permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.
- (f) *Removal of facilities/equipment and reimbursement.* If a permittee's permit is revoked, the city may make a demand in writing that the permittee remove its facilities and equipment from the right-of-way. If the permittee fails to remove its facilities and equipment within ten days of receiving such demand, the city may remove the permittee's facilities and equipment and seek reimbursement from the permittee for such removal costs. Additionally, the city may require the permittee to restore the right-of-way after its facilities and equipment have been removed, or the city may choose to undertake the restoration and seek reimbursement from permittee for such restoration costs. In addition to any removal and/or restoration costs, the permittee shall reimburse the city for all other costs incurred by the city in connection with such revocation, including, but not limited to, attorneys' fees.

(Ord. No. 202, § I(subd. U), 2-1-2006)

Sec. 62-161. - Mapping data.

- (a) *Information required.* Each registrant shall provide mapping information required by the director in accordance with PUC Rules.
- (b) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules § 7560.0150, subpt. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subsection and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for payments to contractors working on a public improvement project including those under Minn. Stats. ch. 429, and city approval of performance under development agreements, or other subdivision or site plan approval under Minn. Stats. ch. 462. The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

(Ord. No. 202, § I(subd. V), 2-1-2006)

Sec. 62-162. - Undergrounding.

- (a) *Purpose.* The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the city consistent with its Comprehensive Plan. Location and relocation, installation and reinstallation of facilities in the right-of-way or in or on other public ground must be made in accordance with this section and is intended to be enforced consistently with state and federal law regulating right-of-way users, to the fullest extent of the city's statutory and common law authority.
- (b) *Undergrounding of facilities.* All facilities newly installed, constructed or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of existing meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. These requirements shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.
- (c) *Undergrounding of permanent replacement, relocated or reconstructed facilities.* If the city finds that one or more of the purposes set forth in section 62-162(a) would be promoted, the city may require a permanent replacement, relocation or reconstruction of a facility to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this subdivision, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the city in connection with (1) the present or future use by the city or other local government unit of the right-of-way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way. Subject to subdivision (d) below, all relocations from previously placed underground facilities shall be to another underground location.
- (d) *Exceptions to undergrounding.* The following exceptions to the strict application of this subdivision shall be allowed upon the conditions stated:

- (1) *Technical feasibility; promotion of policy.* Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:
    - a. Underground placement is not technically feasible due to topographical, subsoil or other existing conditions which significantly and adversely affect underground facilities placement; or,
    - b. Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under section 62-162(a) would be advanced by underground placement of facilities on the project in question, or the city determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.
  - (2) *Temporary service.* Above-ground installation, construction, or placement of temporary service lines shall only be allowed:
    - a. During new construction of any project for a period not to exceed three months;
    - b. During an emergency in order to safeguard lives or property within the city;
    - c. For a period of not more than seven months when soil conditions make excavation impractical.
  - (3) *Facilities subject to preemptive public utilities commission siting and routing jurisdiction.* Facilities that are subject to certificate of need and siting and routing requirements of the Minnesota Public Utilities Commission are exempted from this section 62-162 to the extent that the city's undergrounding authority is preempted by law.
- (e) *Developer responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this subdivision, and prior to final approval of any plat or development plan, shall submit to the director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such facilities have been made.

(Ord. No. 31, Second Series, § 6, 10-5-2011)

**Editor's note**— Ord. No. 31, Second Series, § 6, adopted Oct. 5, 2011, repealed the former § 62-162, and enacted a new § 62-162 as set out herein. The former § 62-162 pertained to location of facilities and derived from Ord. No. 202, § I(subd. W), adopted Feb. 1, 2006.

Sec. 62-163. - Relocation of facilities.

A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the director for good cause requires such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The director may require removal and relocation to prevent interference with a present or future city use of the right-of-way; a public improvement undertaken by the city; an economic development project in which the city has an interest or investment; when the public health, safety and welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

(Ord. No. 202, § I(subd. X), 2-1-2006)

Sec. 62-164. - Pre-excavation facility and equipment location.

Each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all such facilities. Any registrant whose facilities are less than 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.

(Ord. No. 202, § I(subd. Y), 2-1-2006)

Sec. 62-165. - Damage to other facilities.

- (a) When the director does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the director shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing.
- (b) Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way. 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.

(Ord. No. 202, § I(subd. Z), 2-1-2006)

Sec. 62-166. - Right-of-way vacation.

- (a) *Reservation of right.* If the city vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of a registrant's or permittee's facilities, the city shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
- (b) *Relocation of facilities.* If the vacation requires the relocation of a registrant's or permittee's facilities and if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs. If the vacation proceedings are initiated by the city, the registrant or permittee must pay the relocation costs unless, otherwise agreed to by the city and the registrant or permittee. If the vacation proceedings are initiated by a person other than the registrant or permittee, such other person must pay the relocation costs.

(Ord. No. 202, § I(subd. AA), 2-1-2006)

Sec. 62-167. - Indemnification and liability.

By registering with the director, or by accepting a permit under this article, a registrant or permittee agrees as follows:

- (1) *Limitation of liability.* By reason of the acceptance of a registration or the grant of a right-of-way permit, the city does not assume any liability for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city, or for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.
- (2) *Indemnification.* A registrant or permittee shall indemnify, keep, and hold the city free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of the registrant's or permittee's facilities located in the right-of-way.
- (3) *Defense.* If a suit is brought against the city under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the city in the suit if written notice of the suit is promptly given to the registrant or

permittee within a period in which the registrant or permittee is not prejudiced by the lack or delay of notice.

If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the city. Such indemnification shall not constitute a waiver of any defense, immunity, or damage limitation otherwise available to the city. In defending an action on behalf of the city, the registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the city could assert in its own behalf.

(Ord. No. 202, § I(subd. BB), 2-1-2006)

Sec. 62-168. - Abandoned and unusable facilities.

- (a) *Discontinued operations.* A registrant who has determined to discontinue its operations in the city must either:
- (1) Provide information satisfactory to the director that the registrant's obligations for its facilities in the right-of-way under this article have been lawfully assumed by another registrant;
  - (2) Submit to the director a proposal and instruments for transferring ownership of its facilities to the city. If a registrant proceeds under this clause, the city may, at its option:
    - a. Purchase the facilities;
    - b. Require the registrant, at its own expense, to remove the facilities; or
    - c. Require the registrant to post a bond in an amount sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the facilities.
- (b) *Abandoned facilities.* Facilities of a registrant that remain continuously unused for two years shall be deemed to be abandoned. Abandoned facilities are 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, taking possession of the facilities and restoring them to a useable condition, or requiring removal of the facilities by the registrant, or the registrant's successor in interest.
- (c) *Removal.* Any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the director.

(Ord. No. 202, § I(subd. CC), 2-1-2006)

Sec. 62-169. - Appeal.

A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked, or believes that the fees imposed are invalid 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 writing and supported by written findings establishing the reasonableness of the decision.

(Ord. No. 202, § I(subd. DD), 2-1-2006)

Sec. 62-170. - Reservation of regulatory and police powers.

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

(Ord. No. 202, § I(subd. EE), 2-1-2006)

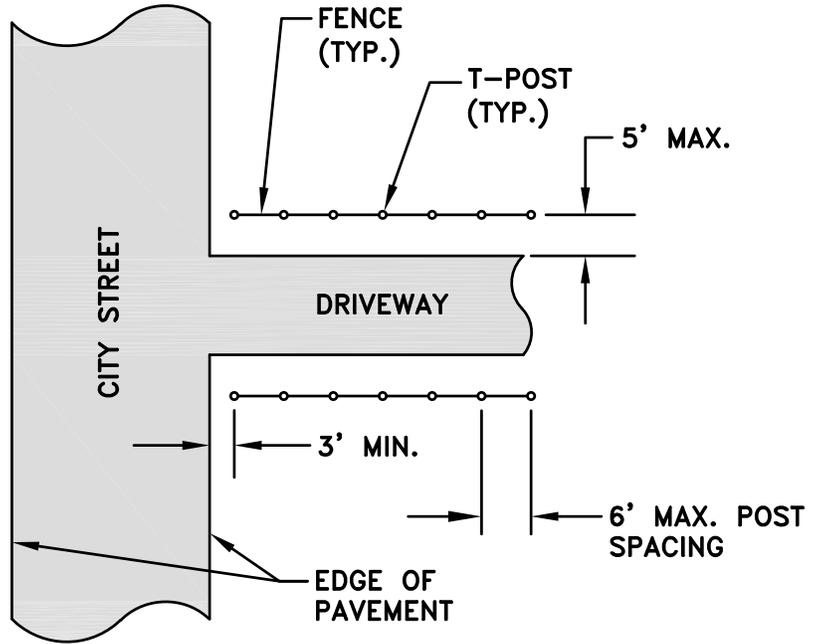
Sec. 62-171. - Severability.

If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court 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. If a regulatory body or a court of competent jurisdiction should determine by a final, nonappealable order that any permit, right or registration issued under this article or any portions of this article is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days' written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this article precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

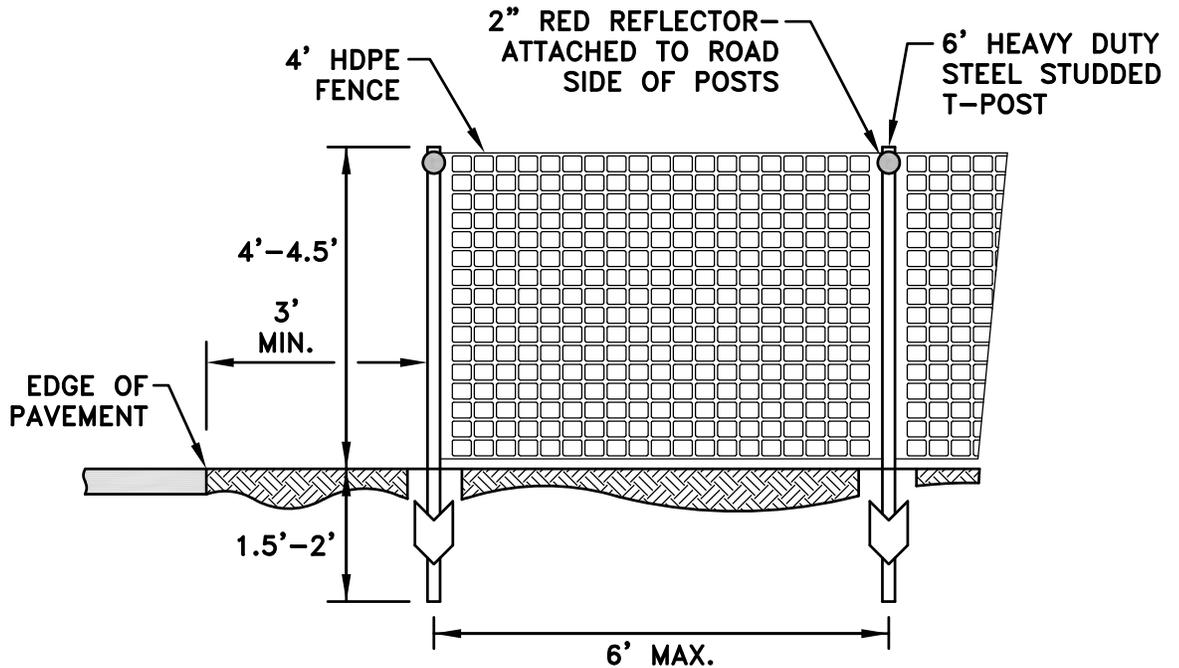
(Ord. No. 202, § I(subd. FF), 2-1-2006)

**NOTES:**

1. FENCES SHALL BE INSTALLED IN A NEAT AND WORKMANLIKE MANNER.
2. FENCES SHALL BE SECURELY ATTACHED TO THE POSTS AND PROPERLY MAINTAINED.
3. FENCE SHALL BE GREEN IN COLOR OR OTHER AS APPROVED BY THE CITY.
4. FENCE SHALL BE "HEAVY DUTY SAFETY FENCE MODEL NO. S-22226" AS DISTRIBUTED BY ULINE OR APPROVED EQUAL.
5. POSTS SHALL BE "6-FOOT T-POST BY CHICAGO HEIGHTS STEEL" OR APPROVED EQUAL. POSTS SHALL HAVE AN INDUSTRIAL QUALITY FINISH COAT, GREEN IN COLOR.



**PLAN VIEW**



**PROFILE VIEW**

**TEMPORARY BARRICADE—  
FENCE STANDARDS**

NO SCALE

Oct 11, 2018 - 11:09am  
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APPROVED  
10-9-18  
REVISED



CITY OF  
EAST BETHEL

**STANDARD PLATE No.**  
**902**