

**An Ordinance Repealing All Provisions of Chapter 32, Article I, Division 2 –  
Public Rights-of-Way and Replacing Them with New Provisions and  
Subsequently Renumbering Sections of Chapter 32, Article II**

The Maplewood City Council approves the following revisions to the Maplewood Code of Ordinances:

**Section 1. Sections 32-04 to 32-26 of the Maplewood City Code are hereby amended by deleting those sections in entirety.**

**Section 2. The Maplewood City Code is hereby amended by adding the following:**

DIVISION 2. - PUBLIC RIGHTS-OF-WAY

Sec. 32-4. - Findings, purpose and intent.

The City of Maplewood holds the right-of-way within its geographical boundaries as an asset in trust for its citizens. The city and other public entities have invested millions of dollars in public funds to build and maintain the right-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the city for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases necessary and proper use of the right-of-way, the city must regulate and manage such uses.

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its streets and the appropriate use of right-of-way, the city strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the right-of-way, one of the causes for the early and excessive deterioration of its right-of-way is frequent excavation or other intrusions into its subsurface area.

Accordingly, the city hereby enacts this new division of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this division, persons excavating and obstructing the right-of-way will bear financial responsibility for their work. Finally, this division provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This division shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Section 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Session Laws, Chapter 94 amending the Act and the other laws governing applicable rights of the city and users of the right-of-way. This division shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 and Minnesota Rules Chapter 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit 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.

The provisions and requirements of this division shall apply to inter-governmental entities that have joint powers agreements with the city in accordance with the terms of such agreements, and shall not apply to other right-of-way users exempted by applicable law.

#### Sec. 32-5. – 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 hereby elects, pursuant Minn. Stat. 237163 subd. 2(b), to manage rights-of-way within its jurisdiction.

#### Sec. 32-6. - Definitions.

The following definitions apply in this division of this code. References hereafter to “sections” are, unless otherwise specified, references to section of this division. Defined terms remain defined terms, whether or not capitalized.

*Abandoned Facility.* A facility no longer in service and physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is also abandoned if declared so by the right of way user.

*Applicant.* Any person or entity requesting permission to excavate or obstruct a right-of-way.

*City.* The City of Maplewood, Minnesota. For purposes of this division, city also means the City's elected officials, officers, employees and agents.

*Collocate or Collocation.* To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.

Note: See, Minn. Stat. 237.162, Subd. 10.

*Commission.* The State Public Utilities Commission.

*Congested Right-of-Way.* 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 of 500 feet.

*Construction Performance Bond.* Any of the following forms of security provided at permittee's option:

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under Minn. Stat. Sec. 15.73, subd. 3;
- Letter of Credit, in a form acceptable to the city.

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

*Degradation Cost.* Subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown on Maplewood Plates 1 to 13, and set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

*Degradation Fee.* The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

*Department.* The department of public works for the city.

*Director.* The director of the department of public works of the city, or her or his designee.

*Delay Penalty.* The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

*Emergency.* 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 in order to restore service to a customer.

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

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

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

*Excavation Permit Fee.* Money paid to the city by an applicant to cover the costs as provided in Section 32.15.

*Facility or Facilities.* Any tangible asset in the right-of-way required to provide utility service. The term does not include facilities to the extent the location and relocation of such facilities are preempted by Minn. Stats. § 161.45, governing utility facility placement in state trunk highways.

*Five-Year Project Plan.* Shows capital improvement projects (CIP) adopted by the city for construction within the next five years.

*High Density Corridor.* A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

*Hole.* An excavation in the pavement, with the excavation having the excavation length less than the width of the pavement.

*Local Representative.* A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for the registrant regarding all matters within the scope of this section.

*Management Costs.* The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility 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 or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 32-28 on this division.

*Obstruct.* 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.* The permit which, pursuant to this division, 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 in the permit.

*Obstruction Permit Fee.* Money paid to the city by a permittee to cover the costs as provided in Section 32-15.

*Patch or Patching.* A method of pavement replacement that is considered temporary in nature. A patch consists of (1) the compaction of the sub base 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. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

*Pavement.* 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.

*Pavement Repair Plates.* Drawings and details for the reconstruction and repair of Maplewood right-of-way pavements (all types) that are herewith copied and adopted from the original 13 plates as suggested and provided by the Minnesota Public Utilities Commission and any supplemental additions as provided by the City of Maplewood.

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

*Permitee.* Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this division.

*Person.* An individual or entity subject to all 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.

*Registrant* means any person or entity that digs, excavates, intrudes or has or seeks to have its facilities or equipment located in any right-of-way for temporary or permanent placement.

*Probation.* The status of a person that has not complied with the conditions of this division.

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

*Registrant.* Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies 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.* The process by which the right-of-way and surrounding area, including pavement, foundation, and turf areas is returned to the same or better condition and life expectancy that existed before excavation.

*Restoration Cost.* The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

*Public Right-of-Way or Right-of-Way.* The area on, below, or above a public roadway, highway, street, cart way, 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. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast services.

*Right-of-Way Permit.* Either an excavation permit or obstruction permit, or both, depending on the context, required by this division.

*Right-of-Way User.* (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or is 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.

*Service or Utility Service.* Includes:

- (1) Those services provided by a public utility as defined in Minn. Stat. 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. Chapter 238;
- (4) Natural gas or electric energy or telecommunications services provided by a local government unit;
- (5) Services provided by a cooperative electric association organized under Minn. Stats. Chapter 308A; and
- (6) Water, sewer, steam, cooling, heating services, community television antenna system, fire and alarm communications, storm sewer, light, or power services including wind generation.

*Service Lateral.* 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.* 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 28 cubic feet in volume , not including electric meters, concealment elements, telecommunications demarcation boxes, batter backup power systems, grounding equipment, power transfer switches, cutoff switches, and any equipment concealed from public view within or behind an existing structure or concealment.

Note: Minn. Stat. 237.162, Subd. 11.

*Small Wireless Facility Permit.* The permit which, pursuant to this division, must be obtained to create or install a wireless support structure, to collocate a small wireless facility, or otherwise install a small wireless facility in the right-of-way.

*Supplementary Application.* 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.

*Temporary Surface.* 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 two-year plan, in which case it is considered full restoration.

*Trench.* An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

*Telecommunications Right-of-Way User.* 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 providing wireless services, or transporting telecommunication or other voice or data information. For purposes of this division, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chap. 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 division except to the extent such entity is offering wireless services.

*Two Year Project Plan.* Shows projects adopted by the city for construction within the next two years.

*Utility Pole.* A pole that is used in whole or in part to facilitate telecommunications or electrical service.

Note: Minn. Stat. 237.162, Subd. 12.

*Wireless Facility.* 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, 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, or not otherwise immediately adjacent to and directly associated with a specific antenna.

Note: Minn. Stat. 237.162, Subd. 13.

*Wireless Service.* 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 services.

*Wireless Support Structure.* Any 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.

Note: Minn. Stat. 237.162, Subd. 16.

#### Sec. 32-7. – Administration.

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

#### Sec. 32-8. – Registration and Right-of-Way Occupancy.

- (a) *Registration.* Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information.
- (b) *Registration Required Prior to Work.* No person may construct, install, repair, remove, relocate or perform any work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city. Such registration shall be made on an application form provided by the city's department of public works and shall be accompanied by the registration fee set forth in this Code. Registration and the accompanying fee shall be required each calendar year.
- (c) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting person to plan or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street. 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 or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this division. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. Chap. 216D, Gopher One Call Law.

In addition, the following are not subject to the requirements of this section:

- (1) Person or persons planting or maintaining pre-approved boulevard surface plantings or gardens.
- (2) Person or persons installing mail boxes or private sidewalk from street or curb to dwelling or commercial structure.
- (3) Person or persons engaged in commercial or private snow removal activities.
- (4) Person or persons installing street furnishings.
- (5) Person or persons installing irrigation systems.
- (6) City of Little Canada.\*

- (7) City of Maplewood.
- (8) City of North Saint Paul.
- (9) City of Oakdale.\*
- (10) City of Saint Paul.\*
- (11) City of Woodbury.\*
- (12) Board of Water Commissioners of the City of Saint Paul.\*
- (13) Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this section.

\* See appendix I.

Sec. 32-9. – Registration Information.

- (a) *Information Required.* The information provided to the city 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 email address, if applicable, and telephone and facsimile numbers.
  - (2) The name, address, and email address, if applicable, and telephone and facsimile numbers of a local representative. 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:
    - (i) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the city;
    - (ii) Verifying that the registrant 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 registrant, its officers, agents, employees, and permittees, and (ii) placement and use of facilities and equipment in the right of way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;
    - (iii) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
    - (iv) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and

- (v) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- (vi) The city may require a copy of the actual insurance policies.
- (vii) If the person is a corporation, a copy of the certificate is required to be filed under Minn. Stat. § 300.06 as recorded and certified to by the secretary of state.
- (viii) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.

(ix) *General liability.*

Public liability, including premises, products and complete operations:

Bodily injury liability - \$1,500,000.00 each person, \$3,000,000.00 each occurrence.

Property damage liability - \$3,000,000.00 each occurrence.

In lieu of (1) and (2) bodily injury and property damage combined - \$3,000,000.00 single limit.

(x) *Comprehensive.*

Automobile liability insurance, including owned, non-owned and hired vehicles:

Bodily injury liability - \$1,500,000.00 each person, \$3,000,000.00 each occurrence.

Property damage liability - \$3,000,000.00 each occurrence.

In lieu of (1) and (2) bodily injury and property damage combined - \$3,000,000.00 single limit.

(4) An acknowledgment by the registrant of the indemnification pursuant to this Code.

(5) Such additional information as the city may require.

(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.

Sec. 32-10. - Reporting Obligations.

(a) *Operations.* Each registrant shall, at the time of registration and not later than November 1 of each year, file a proposed construction and major 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 construction coordination and reduction in the frequency of excavations and obstructions of right-of-way.

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

- (1) To the extent known, 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").

The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year, the city will have available for inspection in the public works department office a composite list of all projects of which the city has been informed of 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 city 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 city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 32-11. - Permit requirement.

- (a) *Permit Required.* Except as otherwise provided in this code, no person may obstruct or excavate any right of way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so.
  - (1) *Excavation Permit.* An excavation permit is required 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.

Note: Minn. Stat. 237.163, Subd. 13.

- (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. No person may do any work outside the area specified in the permit unless such person makes a supplementary application before the expiration of the permit. Payment of all fees for an extension of the permit is required before extension may be granted by the city;

If the work could not be completed because of circumstances beyond the control of the permit holder or the work was delayed or prohibited by unseasonable or unreasonable conditions, the city may grant and extend the completion date of the work.

- (c) *Delay penalty.* In accordance with Minn. Rule 7819.1000 subp. 3 and notwithstanding subsection (b) of this section, the city shall establish and may 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 if the delay is due to circumstances beyond the control of the applicant, including without limitation inclement weather, acts of God, or civil strife.
- (d) *Permit Display.* 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.

#### Sec. 32-12. - Permit Applications.

- (a) *Applications.* An application for a permit is made to the city and shall be made on forms provided by the city. If the work is to be performed by an agent, contractor, or subcontractor on behalf of the registrant, such application shall be signed by the registrant. 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 city pursuant to this division.
  - (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:
    - (i) permit fees, estimated restoration costs, and other management costs;
    - (ii) prior obstructions or excavations;
    - (iii) 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;
    - (iv) franchise fees or other charges, 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) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.
  - (6) Any other information reasonably required by the city.
- (b) *Security.* A construction performance bond in an amount determined by the city shall be required from each applicant. The applicant, at its option, may post security sufficient to cover all projects contemplated for the current calendar year. The bond must be approved by the city attorney. Security required pursuant to this subsection shall be conditioned that the holder will perform the work in accordance with this division and applicable regulations and will pay to the city any costs incurred by the city in performing work pursuant to this division. Said conditions will indemnify and save the city and its officers, agents and employees harmless against any and all claims, judgment or other costs arising from any excavation and related work covered by the permit. The bond or any unused portions of a cash deposit shall be released by the city upon completion of the work and compliance with all conditions imposed by the right-of-way permit. For permits allowing excavations within public streets, such bond or unused part of a cash deposit shall be held for a period of 24 months to guarantee adequacy of all restoration work.

Sec. 32-13. – Issuance of Permit; Conditions.

- (a) *Permit Issuance.* If the applicant has satisfied the requirements of this division, the city shall issue a permit.
- (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. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.
- (c) *Small Wireless Facility Conditions.* In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:
- (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 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 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 10 feet above its wireless support structure.
  - (4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure 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 shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation 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) 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 not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

- (e) *Dumpsters/portable-on-demand-storage (POD) units.* The placement of dumpsters or POD units in the street portion of the right-of-way is not allowed. Dumpsters or POD units may be placed within the boulevard or driveway portions of the right-of-way provided that they do not obstruct pedestrian traffic along sidewalks or trails and the boulevard is restored to previous conditions. In extraordinary circumstances, the city right-of-way engineer may make exceptions to this provision and applicant shall be subject to the permitting and fee requirements of this division.
- (f) *Exceptions.* No permit shall be required for the following:
- (1) Approved surface landscaping work.
  - (2) Approved private sidewalks, street furnishings, posts and pillars.
  - (3) Snow removal activities.
  - (4) Irrigation systems provided that the system does not connect directly to water mains in the right-of-way installed at the property owner risk.
  - (5) Activities of the City of Maplewood.

- (6) If granted approval by the city, piercing or drilling a street or sidewalk/trail pavement for the purpose of exploratory examination or utility depth determination.

Sec. 32-14. – Action on Small Wireless Facility Permit Applications.

- (a) *Deadline for Action.* The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
- (b) *Consolidated Applications.* An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
  - (1) are located within a two-mile radius;
  - (2) consist of substantially similar equipment; and
  - (3) are to be placed on similar types of wireless support structures.

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

- (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 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
  - (2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.
  - (3) The city and a small wireless facility applicant agree in writing to toll the review period.

Sec. 32-15. - Permit Fees.

- (a) *Excavation Permit Fee.* The city shall impose an excavation permit fee in an amount sufficient to recover the following costs:
  - (1) the city management costs;
  - (2) degradation costs, if applicable.
- (b) *Obstruction Permit Fee.* The city shall impose an obstruction permit fee in an amount sufficient to recover the city management costs.

- (c) *Small Wireless Facility Permit Fee.* The city shall impose a small wireless facility permit fee in an amount sufficient to recover:
  - (1) management costs, and;
  - (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
- (d) *Payment of Permit Fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.
- (e) *Non Refundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 32-26 are not refundable.
- (f) *Application to Franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right of way user in the franchise.

Sec. 32-16. - Right of Way Patching and Restoration.

- (a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right of way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 32-20.
- (b) *Patch and Restoration.* Permittee shall patch its own work. The city may choose either to have the permittee restore the right of way or to restore the right of way itself.
  - (1) *City Restoration.* If the city restores the right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.
  - (2) *Permittee Restoration.* If the permittee restores the right of way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.
  - (3) *Degradation Fee in Lieu of Restoration.* In lieu of right of way restoration, a right of way user may elect to pay a degradation fee. However, the right of way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- (c) *Standards.* The permittee shall perform excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule 7819.1100.
- (d) *Duty to Correct Defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force

majeure or days when work is prohibited as unseasonable or unreasonable under Section 32-20.

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

Sec. 32-17. - Standards for construction or installation.

- (a) *General standards.* The permit holder shall comply with the following standards, to the extent consistent with applicable Minnesota rules, when performing the work authorized under the permit:

- (1) Take such precautions as are necessary to avoid creating unsanitary or unsafe conditions. Observe and comply with all laws, rules and regulations of the state and local governments.
- (2) Conduct the operations and perform the work in a manner as to insure the least obstruction to and interference with traffic.
- (3) Take adequate precautions to insure the safety of the general public and those who require access to abutting property.
- (4) Notify adjoining property owners prior to commencement of work which may disrupt the use of and access to such adjoining properties.
- (5) Comply with the Minnesota Manual of Uniform Traffic Control Devices at all times during construction or installation.
- (6) Exercise precaution at all times for the protection of persons, including employees and property.
- (7) Protect and identify excavations and work operations with barricade flags and if required, by flagmen in the daytime and by warning lights at night.
- (8) Provide proper trench protection as required by O.S.H.A.
- (9) Protect the root growth of trees and shrubbery.
- (10) Where possible, provide for space in the installation area for other telecommunication right-of-way users and companies which install facilities in public right-of-way.
- (11) Maintain maximum access to all properties and cross streets as possible during construction operations and maintain emergency vehicle access at all times.
- (12) Maintain planned alignment and grade unless otherwise authorized by the city. Field changes not approved by the city will require removal and reconstruction.

- (13) During trenching of facilities, a warning tape must be placed at a depth of 12 inches above all copper cables with over 200 pairs and above any fiber facilities.
  - (14) Beneath concrete or bituminous paved road surfaces, directional bore facilities shall be installed in conduit of a type approved by the city.
  - (15) The placing of all telecommunications facilities must comply with the National Electric Safety Code, as incorporated by reference in Minn. Stats. § 326.243.
  - (16) Locate all property lines near right-of-way lines and replace any disturbed property corner markers or judicial monuments. A Minnesota licensed surveyor must be used in the replacement of disturbed property corners markers or judicial monuments.
  - (17) Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability and as directed by the city.
  - (18) Excavating, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage.
  - (19) All backfilling materials must be placed in six-inch lifts (maximum) at optimum moisture and compacted with the objective of attaining 95 percent of standard Proctor density. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate.
  - (20) Backfill material shall be subject to the approval of the city. The city may permit backfilling with the material from the excavation provided such material is granular in nature and acceptable to the city.
  - (21) Compacted backfill shall be brought to bottom of the gravel of the approved street section.
  - (22) All work performed in the right-of-way shall be done in conformance with Maplewood Plates 1 to 13, unless a less stringent standard is approved by the city.
  - (23) Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.
  - (24) No road surface damaging lugs, cleats or equipment may be used or driven upon paved city street surfaces.
  - (25) Dirt, trash or other debris must be periodically removed during construction.
  - (26) Other reasonable standards and requirements of the city.
- (b) *Standards for installation of underground utilities.* The permit holder shall comply with the following standards when installing facilities underground:
- (1) Underground facilities must be placed as far off the roadway as possible to provide access from outside of the paved area.
  - (2) Buried fiber facilities shall be at a minimum depth of three feet and a maximum depth of four feet unless an alternate location is approved by the city. Buried copper facilities

beneath concrete or bituminous paved road surfaces must be placed at no less than three feet but no more than four feet deep. Other buried copper facilities must be placed at a minimum depth of 30 inches and a maximum depth of four feet.

- (3) Crossing of streets and hard surfaced driveways shall be directional bored unless otherwise approved by the city.
- (4) If construction is open cut, the permit holder must install the visual tracers approximately 12 inches above buried facilities. If other construction methods are used, substitute location methods will be considered.
- (5) The permit holder shall register with Gopher State One Call and comply with the requirements of that system.
- (6) Compaction in trench backfill material shall be 95 percent of the standard Proctor density and copies of test results shall be submitted to the city. All tests and their locations shall be determined by the city. Tests must be conducted by an independent testing firm approved by the city. Street pavement replacement will not be permitted until sub-base densities are approved by the city. Testing shall be required at the discretion of the right-of-way engineer.

Street pavement structure and materials shall be as specified by the city and repaved in accordance with Maplewood Plates 1-13. All pavement replacement shall be done in the presence of a city inspector with certified pavement material to city specifications.

- (7) The facilities shall be located so as to avoid traffic signals and signs which are generally placed a minimum of five feet behind the curb.
- (8) When utilizing trenchless installation methods to cross an area in which a municipal utility is located, and/or when directed by the city, the permit holder shall excavate an observation hole over the utility to ensure that the city utility is not damaged. Observation holes shall not be backfilled until viewed and approved by the city right-of-way inspector.
- (9) All junction boxes or access points shall be located no closer than ten feet from municipal fire hydrants, valves, manholes, lift stations or catch basins unless an alternate location is approved by the city.
- (10) Underground facilities shall not be installed between a hydrant and an auxiliary valve.
- (11) Underground facilities shall not be installed within five feet of hydrants, valves, lift stations or manholes in areas where utility easements exist beyond the right-of-way. In those areas in which no utility easement exists, placement of an underground facility shall be between the edge of pavement and no closer than three feet to an existing municipal utility appurtenance unless approved by the city.
- (12) In areas where an extensive effort to determine the location of municipal utility lines will be required to accommodate the installation of private facilities, the city's representative for Gopher State One Call must be contacted by the permit holder two weeks prior to the beginning of the work to schedule meetings.

- (13) Buried telecommunication facilities must have a locating wire or conductive shield, except for di-electric cables.
  - (14) Buried fiber facilities must be placed in a conduit of a type determined by the right-of-way user unless the permit holder obtains a waiver from the city.
  - (15) The standards set forth in the standards of installation of water mains required by the Board of Water Commissioners of the City of Saint Paul.
- (c) *Standards for installation of overhead facilities.* The permit holder shall comply with the following standards when installing facilities overhead:
- (1) All wires must be in compliance with the National Electric Safety Code and at a location that does not interfere with traffic signals, overhead signs, or streetlights.
- (d) *Standards for wireless telecommunication facilities.*
- (1) *Purpose.* The City of Maplewood desires high quality wireless communication services to accommodate the needs of residents and businesses. At the same time, the city strives to minimize the negative impacts that wireless telecommunication facilities can have on aesthetics and public safety. Due to the many services that must be delivered within its limited area, the city also strives to avoid unnecessary encumbrances within the public right-of-way. The city allows and regulates wireless telecommunication facilities outside of the public right-of-way through performance standards and height limits. The purpose of this section is to regulate wireless telecommunication facilities within the public right-of-way in a manner that balances desire for service with aesthetic, public safety, and right-of-way flexibility concerns.
  - (2) *Wireless telecommunication facilities as pole attachments.* Wireless telecommunication facilities that comply with the following requirements may be attached to existing public utility structures within the right-of-way after issuance of a pole attachment permit.
    - a. The wireless telecommunication facility shall not extend above the top of the existing public utility structure and the height of the existing public utility structure shall not be increased to accommodate the wireless telecommunication facility.
    - b. If the public utility structure must be replaced to structurally accommodate the wireless telecommunication facility, the replacement public utility structure height shall not exceed the existing public utility structure height and the replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50 percent.
    - c. The wireless telecommunication facility shall not be larger than three cubic feet and shall have no individual surface larger than four square feet.
    - d. The wireless telecommunication facility shall not extend outward from the existing pole or tower or arm thereof by more than two and one-half feet, except that an antenna one-half-inch in diameter or less may extend an additional six inches.
    - e. The wireless telecommunication facility shall include no ground-mounted equipment.

- f. The wireless telecommunication facility shall not interfere with public safety communications and shall meet the requirements of this Code.
  - g. Wireless telecommunication facilities in the right-of-way shall be removed and relocated at city request subject to the provisions of this division.
  - h. The wireless telecommunication facility shall not block light emanating from the public utility structure and shall not otherwise interfere with the original use of the public utility structure.
- (3) *Wireless telecommunication facilities as pole extensions or with ground-mounted equipment.* Wireless telecommunication facilities that require increased public utility structure height or that have ground-mounted equipment may be erected in the public right-of-way only when in compliance with the following provisions and after issuance of a pole attachment permit or excavation permit:
- a. The applicant shall demonstrate to the satisfaction of the city or his/her designee that the wireless telecommunication facility cannot be placed in a Code-complying location outside the right-of-way within one-quarter-mile of the proposed location.
  - b. The replacement public utility structure, including lightning rods and all other attachments, shall not exceed the height of the existing public utility structure by more than 15 feet. Once the height of a public utility structure has been increased under the provisions of this section, the height shall not be further increased.
  - c. The replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50 percent.
  - d. The wireless telecommunication facility shall not extend outward from the public utility structure by more than two feet.
  - e. If feasible and desirable, as determined by the city, the replacement public utility structure shall match the original and surrounding public utility structures in materials and color.
  - f. The wireless telecommunication facility shall not interfere with public safety communications and shall meet the requirements of this Code.
  - g. A pole attachment or excavation permit for a wireless telecommunication facility that has ground-mounted equipment will be issued only if the issuing authority finds the following:
    - 1. The ground-mounted equipment will not disrupt traffic or pedestrian circulation;
    - 2. The ground-mounted equipment will not create a safety hazard;
    - 3. The location of the ground-mounted equipment minimizes impacts on adjacent property; and,

4. The ground-mounted equipment will not adversely impact the health, safety, or welfare of the community.
- h. Ground-mounted equipment associated with the wireless telecommunication facility shall meet the following performance standards:
1. Be set back a minimum of ten feet from the edge of street or curb line;
  2. Be separated from a sidewalk by a minimum of three feet;
  3. Be set back a minimum of 50 feet from the nearest intersecting right-of-way line;
  4. Be separated from the nearest ground-mounted wireless telecommunication equipment installation on the same block face by a minimum of 330 feet unless the equipment is placed underground;
  5. If located adjacent to residential uses, ground-mounted equipment shall be limited to three feet in height above grade and 27 cubic feet in cumulative size;
  6. If located adjacent to nonresidential uses, ground-mounted equipment shall be limited to five feet in height above grade and 81 cubic feet in cumulative size;
  7. Ground-mounted equipment located outside the public right-of-way shall conform to the requirements of this Code.
  8. Vegetative or other screening compatible with the surrounding area shall be provided around the ground-mounted equipment if deemed necessary by the city.
- i. Wireless telecommunication facilities in the right-of-way shall be removed and relocated at city request subject to the provisions of this division.
- (4) *New poles.* The construction in the right-of-way of a new pole to support wireless telecommunication facilities is not allowed, except as a replacement of an existing public utility structure subject to the requirements of this section.
- (5) *Charges.* In addition to the permit fees outlined in this Code, the city reserves the right to charge telecommunication providers for their use of the public right-of-way to the extent that such charges are allowed under state law. Telecommunication providers shall be responsible for payment of property taxes attributable to their equipment in the public right-of-way.

Sec. 32-18. - 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, which the city does not perform, may share in the payment of the obstruction or excavation permit fee.

In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

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

Sec. 32-19. - 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 (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 start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

Sec. 32-20. - 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 pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right of way pursuant to its permit, regardless of who does the work.
- (b) *Prohibited Work.* Except in an emergency, and with the approval of the city, no right-of-way excavation or obstruction may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (c) *Interference with Right-of-way.* A permit holder 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.
- (d) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

Sec. 32-21. - Denial of permit.

(a) *Reasons for Denial.* The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use or for any of the following grounds:

- (1) Failure to register pursuant to requirements of this Code.
- (2) The applicant is subject to revocation of a prior permit issued pursuant to this division.
- (3) The proposed schedule for work would conflict or interfere with an exhibition, celebration, festival or any other similar event.
- (4) The proposed schedule conflicts with scheduled or total or partial reconstruction of the right-of-way.
- (5) The applicant fails to comply with the requirements or other provisions of this Code.

(b) *Procedural Requirements.* The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 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 30 days after submission.

#### Sec. 32-22. - Emergencies and work done without a permit.

Each registrant shall immediately notify the city and all other affected parties or property owners 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. If the registrant has not been issued the required permit, the registrant shall, within two business days after the occurrence of the emergency, apply for the necessary permits, pay the permit fees (where necessary) and fulfill the remaining requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency.

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

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 (where appropriate) as a penalty, pay twice the normal fee for the permit and shall deposit with the city the fees determined to correct any damage to the right-of-way.

#### Sec. 32-23. - Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right of way shall be done in conformance with Minn. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat., §§ 237.162 and

237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 32-29 subd. (b) of this ordinance.

Sec. 32-24. - Inspection.

- (a) *Notice of Completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300.
- (b) *Site Inspection.* Permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (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 that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Sec. 32-26.

Sec. 32-25. - Work Done Without a Permit.

- (a) *Emergency Situations.* Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

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

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

Sec. 32-26. - Revocation of permits.

- (a) *Substantial breach.* The city may revoke a right-of-way permit, without a fee refund, if there is a substantial breach of the terms or conditions of any statute, this Code, rule or regulation, or any condition of the permit. A substantial breach of a permit holder shall include, but not limited to, the following:
- (1) The violation of any material provision of the permit.
  - (2) Any material misrepresentation of fact in the application for a permit.
  - (3) The failure to maintain the required bonds or other security and insurance.
  - (4) The failure to complete the work in a timely manner.
  - (5) The failure to correct, in a timely manner, work that does not conform to applicable standards, conditions or codes, upon inspection and notification by the city of the faulty condition.
  - (6) 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.
  - (7) The failure to comply with the terms and conditions of any applicable federal, state and local laws, rules and regulations, including any provision of this division.
- (b) *Notice of breach.* If the city determines that a permit holder has committed a substantial breach of a term or condition of any statute, this Code, rule or regulation or any condition of the permit, the city shall make a written demand upon the permit holder to remedy such violation within a reasonable period of time or be subject to potential revocation of the permit. The city may impose additional or revised conditions on the permit to mitigate or remedy the breach.
- (c) *Response to Notice of Breach.* Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.
- (d) *Reimbursement of city costs.* If a permit is revoked, the permit holder shall reimburse the city for its reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees incurred in connection with the revocation.

Sec. 32-27. - Supplementary Notification.

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

Sec. 32-28. - Appeal.

- (a) *Filing of appeal.* Any person aggrieved by, (i) the denial of a permit application; (ii) the denial of a registration; (iii) the revocation of a permit, or (iv) the application of the fee schedule imposed by this Code, may appeal to the city council by filing a written notice of appeal with the city clerk. Said notice must be filed within 20 days of the action causing the appeal.
- (b) *Notice of hearing.* The city council shall hear the appeal at its next regularly scheduled meeting, unless the time is extended by agreement of the parties. Notice of the date, time, place and purpose of the hearing shall be mailed to the appellant.
- (c) *Hearing and decision.* The city council shall, at the hearing, consider any evidence offered by the appellant, the city and any other person wishing to be heard. The council shall issue a written decision within 30 days of the completion of the hearing.

Sec. 32-29. - Mapping data.

- (a) *Information Required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the “as-built” location of all equipment installed, owned, and maintained by the permittee with the location based on:
  - (1) Offsets from property lines, distances from the centerline of the public right-of-way and curb lines as determined by the city; or
  - (2) Ramsey County Coordinate System; or
  - (3) Any other system agreed upon by the right-of-way user and the city;
  - (4) The type and size of the utility;
  - (5) A description showing above-ground appurtenances;
  - (6) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and
  - (7) Any facilities to be abandoned, if applicable, in conformance with Minn. Stats. § 216D.04, subd. 3.

Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city’s electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder’s registration.

- (b) *Service Laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any city approval necessary for:

- (1) payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429, and
- (2) city approval under development agreements or other subdivision or site plan approval under Minn. Stat. 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 future permits to the offending permittee or its subcontractors.

Sec. 32-30. - Location and Relocation of Facilities.

- (a) *Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.*

Unless otherwise agreed in a franchise or other agreement between the applicable right-of-way user and the City, Facilities in the right-of-way must be located or relocated and maintained underground in accordance with Chapter 32 of the City Code.

- (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 facility that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.

- (c) *Nuisance.* One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.
- (d) *Limitation of Space.* To protect the health, safety, and welfare of the public, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, remove and relocate its facilities in the right-of-way when it is necessary to prevent interference or obstruction, but not merely for the convenience of the city, in connection with: (1) a present or future city use of the right-of-way for a public project or facility, (2) the public

health or safety; or (3) the safety and convenience of travel over the right-of-way. The registrant shall restore any right-of-way to the condition it was in prior to removal and relocation.

Sec. 32-31. – Pre-Excavation Facilities Locations.

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

Sec. 32-32. - Damage to other facilities.

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

Sec. 32-33. – Right-of-way vacation.

- (a) *Reservation of Right.* If the city vacates a right of way that contains the facilities of a registrant, the registrant’s rights in the vacated right of way are governed by Minn. R. 7819.3200.
- (b) *Reservation of right.* If the city vacates a right-of-way which contains the equipment or facilities of a registrant or permit holder, and if the vacation does not require the relocation of the registrant’s or permit holder’s equipment or facilities, the city shall reserve, to and for itself and all registrants or permit holders having equipment and facilities in the vacated right-of-way, the right to install, maintain and operate any equipment and facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.
- (c) *Relocation of facilities.* If the vacation requires the relocation of the registrant’s or permit holder’s equipment or facilities; and (i) if the vacation proceedings are initiated by the registrant or permit holder, the registrant or permit holder must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the city, the registrant or permit holder must pay the relocation costs unless otherwise agreed to by the city and the registrant or permit holder; or (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, such person or persons must pay the relocation costs.

Sec. 32-34. - Indemnification and liability.

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

- (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 (i) for injuries to persons, damage to

property or loss of service claims by parties other than the registrant or the city, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permit holders or activities of registrants or permit holders.

- (2) *Indemnification.* A registrant or permit holder shall indemnify, keep and hold the city, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the city for its own negligence except for claims arising out of or alleging the city's negligence in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permit holder or the city, and the registrant or permit holder, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert on its own behalf.

If the registrant or permit holder is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permit holder may not settle the litigation without the consent of the city. Such consent will not be unreasonably withheld.

#### Sec. 32-35. - Abandoned and unusable equipment and facilities.

- (a) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this division have been lawfully assumed by another registrant.
- (b) *Removal of abandoned facilities.* Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way to the extent such facilities interfere with another right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

#### Sec. 32-36. - Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6; or (5) disputes a determination of the director regarding Section 32-26, subd. b of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

#### Sec. 32-37. - Reservation of Regulatory and Police Powers

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

Sec. 32-38. - Severability.

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

Sec. 32-39. - Franchise holders.

If there is a conflict in language between the franchise of a person holding a franchise agreement with the city or the water service agreement with the city and this division, the terms of the franchise or water service agreement shall prevail.

#### APPENDIX I. ESSENTIAL MUNICIPAL SERVICES

Special conditions and provisions to regulate and control right-of-way intrusions by essential service providers for which previous agreements or ordinances have been enacted and approved by the city in concurrence with the respective service providers.

INDEX	
Article	Participating Municiple Provider
A.	City of Little Canada
B.	City of North Saint Paul
C.	City of Saint Paul
D.	City of Oakdale
E.	City of Woodbury
F.	Board of Water Commissioners of the City of Saint Paul

Secs. 32-40 to 32-46 - Reserved.

#### **Section 3. This section rennumbers sections of Chapter 32, Article II as follows:**

Sec. 32-47. – Definitions.

Sec. 32-48. – Duty to prevent discharges of dirt, debris, or other material.

Sec. 32-49 – Removal of dirt, debris, snow, or other material.

Sec. 32-50 – Notice to remove dirt, debris, snow, or other material; removal by city.

Sec. 32-51 – 32.60. – Reserved.

#### **Section 4. This ordinance shall take effect after the approval by City Council and publishing in the official newspaper.**

**APPROVED** by the City Council of Maplewood, Minnesota, this 11th day of December, 2017.