

ORDINANCE NO. 43

PUBLIC RIGHT-OF-WAY REGULATION

THE PURPOSE OF THIS ORDINANCE IS TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE PUBLIC INTEREST AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS.

SECTION 1. REGISTRATION.

(a) Each person who occupies, 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 and paying a registration fee.

(b) 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 city, posting a bond in the amount equal to the cost of the project being done and showing proof of insurance to the City and providing information about the work being done and provide plans to the City Public Works department for approval.**

SECTION 2. EXCEPTIONS.

(a) Persons 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 the following;

1. Planting or maintaining boulevard plantings or gardens. **If a property owners plantings are placed in the right-of-way and the City needs to remove them to repair or maintain utilities the City will not pay to replace them. Plantings on corner lots will only be allowed 20' back from the right-of-way. Any other plantings in the right-of-way can not interfere with traffic or pedestrian visibility.**

2. Other surface landscaping work.

3. Maintenance of driveways and parking lots unless such maintenance requires excavation work in the right-of-way.

4. Construction or maintenance of street furnishings, bus stops benches, shelters, or posts and pillars.

5. Snow removal activities.

6. Construction and maintenance of irrigation systems provided that the system does not connect directly to the City water mains in the right-of-way.

SECTION 3. PATCH AND RESTORATION

(a) The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

1. City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.

2. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

SECTION 4. Standards.

The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100.

SECTION 5. 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.

SECTION 6. 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.

SECTION 7. Small Wireless Facilities.

1. **Small Wireless Facility Permit.** A Small Wireless Facility Permit is required by an applicant 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 of the right-of-way, to the extent and for the direction specified therein.

a. 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 with 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 the Public Works Director, 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 type 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.

2. Tolling of Deadline. The 90 day deadline on a Small Wireless Facility Permit application may be tolled if:

a. 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;

b. 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 of 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; or

c. The City and Small Wireless Facility applicant agree in writing to toll the review period.

3. Small Wireless Facility Conditions. In addition the erection or installation of a wireless support structure, the location 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:

a. A small wireless facility shall only be located on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

b. No new wireless support structure installed

within the right-of-way shall exceed 40 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 an applicant may replace an existing wireless support structure exceeding 40 feet in height with a structure of the same height subject to such conditions or requirements as may be improved in the applicable permit.

c. No wireless facility may extend more than 10 feet above its wireless support structure.

d. Where an applicant proposed to install a new wireless support structure in the right-of-way, the City may improve separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way. All new wireless support structure in the right-of-way shall be removed by applicant if and when the wireless facility is no longer used.

e. Where an applicant proposed location 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.

f. The small wireless facility shall have limited exposed cabling and mounting hardware. It shall also match the wireless support structure it is attached to in color and as close as practicable in material and design.

g. The small wireless facility shall not interfere with public safety wireless telecommunications.

h. Small wireless facilities in the right-of-way shall be removed and relocated at the City's request and at no cost to

the City when the Public Works Director determines that removal and relocation is necessary to prevent interference with:

1. present or future City use of the right-of-way for a public project;
2. the public health, safety or welfare; or
3. the safety and convenience of travel over the right-of-way.

- i. A small wireless facility attached to an existing wireless support structure shall not block light emanating from the wireless support structure and shall not otherwise interfere with the original use of the wireless support structure.

- j. Ground-mounted equipment associated with the small wireless facility is prohibited unless the applicant can show that ground-mounted equipment is necessary for the operation of the small wireless facility. If ground-mounted equipment is necessary then the following shall apply;

1. Ground-mounted equipment shall be placed below grade unless not technically feasible;
 2. Ground-mounted equipment shall not disrupt traffic or pedestrian circulation and shall not interfere with vehicle and pedestrian intersection sight lines;
 3. Ground-mounted equipment shall not create a safety hazard;
 4. If placed above-grade, ground-mounted equipment shall be separated from the nearest ground-mounted equipment on the same block by a minimum of 330 feet unless the equipment is placed underground or unless waived by the Public Works Director;
 5. If placed above grade, ground-mounted equipment shall be limited to three (3) feet in height and twenty-eight (28) cubic feet in cumulative size.

k. 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.

l. New wireless support structures erected for the siting of small wireless facilities in the right-of-way adjacent to any residential zoning district or historic preservation district established by federal, state or City ordinances, shall require a conditional use permit.

4. Small Wireless Facility Exemptions. No small wireless facility permit is required to conduct the following activities in the right-of-way:

a. Routine maintenance of a small wireless facility.

b. Replacement of a small wireless facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced.

c. Maintenance, operation or replacement of a small wireless facility that is suspended on a cable or cables strung between existing utility poles in compliance with National Fire Codes.

If any of the above activities will obstruct the right-of-way, the Small Wireless Facility Permit holder shall provide notification to the City at least ten (10) days in advance of such activity.

5. Small Wireless Facility Agreement. A small wireless facility shall only be located on a 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 Agreement with the City. The standard agreement may require the payment of the following:

- a. Up to \$150 per year for rent to locate on the City's structure.
- b. \$25 per year for maintenance associated with the collocation.
- c. A monthly fee for electrical service as follows:
 1. \$73 per month per radio node less than or equal to 100 maximum watts;
 2. \$182 per radio node over 100 maximum watts; or
 3. The actual costs of electricity, if the actual costs exceed the foregoing.

The standard location 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 locate. Issuance of a Small Wireless Facility Permit does not supersede, alter or affect any then-existing agreement between the City and the applicant.

6. Registration Requirements:

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

b. A copy of the applicant'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, where the applicant is lawfully required to have such authorization or approval from said Commission, or other State or Federal agency.

7. Permit Fees:

a. Small Wireless Facility Permit. The City shall establish the permit fee annually by resolution, which shall be an amount sufficient to recover the following costs:

1. Management costs.
2. Engineering, make-ready and construction costs associated with the collocation of small wireless facilities.

b. Nonrefundable. Permit fees that were paid for a permit that the City has revoked are not refundable.

c. Application to Franchise. 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. Franchise fees may not exceed amounts set by State law.

d. Payment of Permit Fees. No Excavation Permit, Obstruction Permit or Small Wireless Facility Permit shall be issued without payment of the applicable fees being paid at the time of issuance.

8. Denial of Permit:

a. 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 (3) 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 fees shall be imposed. The City must approve or deny the resubmitted application within thirty (30) days after submission.

SECTION 8. STATE STATUTES.

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

SECTION 9. PENALTIES.

(a) Violation of this ordinance is a misdemeanor.

THIS ORDINANCE SHALL SUPERSEDE AND REPEAL ALL PRIOR AND CONSISTENT ORDINANCES. THIS ORDINANCE SHALL BE EFFECTIVE UPON PASSAGE AND PUBLICATION REQUIRED BY LAW.

DATED: _____

CLERK

MAYOR