

ORDINANCE NO. _____
AN ORDINANCE AMENDING CHAPTER 151 OF THE CITY CODE RELATING TO
ADMINISTRATION AND REGULATION OF PUBLIC RIGHTS-OF-WAY AND
ADMINISTRATION OF SMALL WIRELESS FACILITIES

THE CITY COUNCIL OF THE CITY OF SPRING LAKE PARK, COUNTIES OF ANOKA AND RAMSEY, MINNESOTA ORDAINS:

Section 1. Chapter 151 of the Spring Lake Park Code of Ordinance is hereby amended to read as follows.

§ 151.01 MANAGEMENT OF RIGHTS-OF-WAY; AUTHORITY.

(A) To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

(B) Pursuant to the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects pursuant to M.S. § 237.163(2)(b), as it may be amended from time to time, to manage rights-of-way within its jurisdiction.

§ 151.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Defined terms remain defined terms whether or not capitalized.

ABANDONED FACILITY. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility that is in use or still carries service. A facility is not **ABANDONED** unless declared so by the right-of-way user.

APPLICANT. Any person requesting permission to excavate or obstruct a right-of-way.

CITY. The city of Spring Lake Park, Minnesota. For purposes of § 151.19 of this code, 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 on a 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 M.S. § 216D.04(3), as it may be amended from time to time, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under Minn. Stat. Sec. 15.73, subd. 3;
- (4) Letter of Credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;

(6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

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

DEGRADATION COST. Subject to Minn. Rules, part 7819.1100, as it may be amended from time to time, 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 in Plates 1 - 13, set forth in Minn. Rules, parts 7819.9900 - 7819.9950, as they may be amended from time to time.

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.

CITY INSPECTOR. Any person authorized by the city to carry out inspections related to the provisions of this subchapter.

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 of facilities 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 subchapter, must be obtained before a person may excavate in a right-of-way. An **EXCAVATION PERMIT** allows the holder to excavate that part of the right-of-way described in the permit.

EXCAVATION PERMIT FEE. Money paid to the city by an applicant to cover the costs as provided in § 151.06(A) of this code.

FACILITY or FACILITIES. Any tangible asset in the right-of-way required to provide utility service.

HOLE. An excavation in the right-of-way, with the excavation having a length less than the width of the pavement.

MANAGEMENT COSTS. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with 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 Laws 1997, Ch. 123, as it may be amended from time to time, being M.S. §§ 237.162 or 237.163, as they may be amended from time to time, or any ordinance

enacted under those sections, or the city fees and costs related to appeals taken pursuant to § 151.21 of this code.

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

OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in § 151.06(B) of this code.

PATCH or PATCHING. A method of pavement replacement that is 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.

PERMIT. Has the meaning given "right-of-way permit" in M.S. § 237.162, as it may be amended from time to time.

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

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or non-profit, and whether natural, corporate, or political.

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 non-wire telecommunications or broadcast service. (Note: this definition does not include other public grounds that may be the subject of other city requirements.)

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

RESTORATION COST. The amount of money paid to the city by a permittee to achieve the level of restoration according to Plates 1 - 13 of State Public Utilities Commission rules.

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

RIGHT-OF-WAY PERMIT. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this subchapter.

RIGHT-OF-WAY USER.

- (1) A "telecommunications right-of-way user" as defined by M.S. § 237.162(4); or
- (2) A person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

SERVICE or UTILITY SERVICE. Includes:

- (1) The services provided by a public utility as defined in M.S. §§ 216B.02(4) and 216B.02(6), as they may be amended from time to time;
- (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 M.S. Ch. 238, as it may be amended from time to time;
- (4) Natural gas or electric energy or telecommunications services provided by the city;
- (5) Services provided by a cooperative electric association organized under M.S. Ch. 308A, as it may be amended from time to time; and
- (6) Water, sewer, including service laterals, steam, cooling, or heating services.

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, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

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.

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 service, or transporting telecommunications or other voice or data information. A cable communication system defined and regulated under M.S. Ch. 238, as it may be amended from time to time, and telecommunications activities related to providing natural gas or electric energy services whether provided by a public utility as defined in M.S. § 216B.02, as it may be amended from time to time, a municipality, a municipal gas or power agency organized under M.S. Ch. 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under M.S. Ch. 308A, as it may be amended from time to time, are not ***TELECOMMUNICATIONS RIGHT-OF- WAY USERS***, except to the extent such entity is offering wireless service.

TEMPORARY SERVICE. The compaction of sub-base 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 capital improvement plan, and is scheduled for completion within two years, 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.

UTILITY POLE. A pole that is used in whole or in part to facilitate telecommunications or electric service.

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 cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireless backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

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 including services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

WIRELESS SUPPORT STRUCTURE. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

§ 151.03 OBSTRUCTION OR EXCAVATION; PERMIT REQUIRED.

(A) *Permit required.* Except as otherwise provided in this subchapter, 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 permit from the city.

(1) *Excavation permit.* An excavation permit is required to excavate the part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(3) *Small Wireless Facility Permit.* A small wireless facility permit is required 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 of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless that person:

(1) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

(2) A new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rules, part 7819.1000(3), as it may be amended from time to time, and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

§ 151.04 PERMIT APPLICATION; JOINT APPLICATION.

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

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

(a) Each ~~permittee's~~ applicant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers;

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times;

(c) A certificate of insurance or self insurance:

1. Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in this state, or a form of self insurance acceptable to the city;

2. Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage; including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property; arising out of:

a. The use and occupancy of the right-of-way by the permittee, its officers, agents, employees, and permittees; and

b. The placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees, and permittees.

3. 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;

4. Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and

5. Indicating comprehensive liability coverage, automobile liability coverage, worker's 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 subchapter.

(d) The city may require a copy of the actual insurance policies;

(e) If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as it may be amended from time to time, as recorded and certified to by the Secretary of State;

(f) A copy of the person's order granting a certificate of authority from the State Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency; and

(g) Prior to commencement of work, the permittee must deposit with the city security in the form of letter of credit or construction bond, in a sufficient amount as determined by the City Council for the completion of the work. The security will be held until the work is completed plus a period of three months thereafter satisfactorily completed. The security will then be returned to the permittee with interest if held for a sufficient length of time to be required by law and then interest at the applicable statutory rate.

(2) Payment of money due the city for:

(a) Permit fees, estimated restoration costs, security, and other management costs;

- (b) Prior obstructions or excavations;
- (c) Any undisputed loss, damage, or expense suffered by the city because of the applicant's prior excavations or obstructions of rights-of-way or any emergency actions taken by the city; and
- (d) Franchise fees or other charges, if applicable.

(3) Submission of a schedule for the proposed work, including a start date and completion date. The city reserves the right to modify the schedule as necessary in the issuance of the permit; therefore, the dates stated on the permit may not necessarily match those on the applicant's proposed schedule.

(B) Joint application. Applicants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(1) Shared fees. Applicants 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, applicants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(2) With city projects. Applicants who join in a scheduled obstruction or excavation performed by the city, whether it is a joint application by two or more applicants 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.

§ 151.05 PERMIT ISSUANCE; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this subchapter, 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 Minnesota Statutes §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

(C) *Small Wireless Facility Conditions.*

(1) In addition to (B), the erection or installation of a wireless support structure, to 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: 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 colloration 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 indeded 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 as 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:

(a) \$73 per radio node less than or equal to 100 maximum watts;

(b) \$182 per radio node over 100 maximum watts; or

(c) 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.

§ 151.06 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 dedeed approved if the city fails to approve or deny the application within the review period established in this section.

(B) *Consolidated applications.* An applicant may file a consolidated small wireless facility permit application addressing the proposed collection 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 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.

(3) The city and a small wireless facility applicant agree in writing to toll the review period.

§ 151.076 PERMIT FEES.

(A) *Excavation permit fee.* The city shall ~~impose~~establish an excavation permit fee in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(B) *Obstruction permit fee.* The city shall ~~impose~~anestabliish the obstruction permit fee and it shall be 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 the applicant to pay the fees within 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 § 151.14 of this code 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.

~~(G)~~ *State law applies.* All permit fees shall be established consistent with the provisions of Minn. Rules, part 7819.1000, as it may be amended from time to time.

§ 151.087 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 § 151.210(B) of this code.

(B) *Patch and restoration.* The 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, the permittee shall pay the costs thereof within 30 days of billing. If, following the restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall, at the time of application for an excavation permit, post a construction performance bond in accordance with the provisions of Minn. Rules, part 7819.3000, as it may be amended from time to time.

(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 costs to accomplish these responsibilities.

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules, part 7819.1100, as it may be amended from time to time.

(D) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by the 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. This work shall be completed within five 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 unseasonal or unreasonable under § 151.220(B) of this code.

(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 the work. In that event, the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

§ 151.098 SUPPLEMENTARY PERMIT 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 before working in that greater area shall:

(1) Make application for a permit extension and pay any additional fees required thereby; and

(2) 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.

§ 151.1009 DENIAL OR REVOCATION OF PERMIT.

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

(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.

§ 151.110 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching, restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules, part 7819.1100 and 7819.5000, as it may be

amended from time to time, and other applicable local requirements, in so far as they are not inconsistent with M.S. §§ 237.162 and 237.163, as they may be amended from time to time. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in this code.

§ 151.121 NOTICE; INSPECTION.

(A) *Notice of start and completion.* The permittee shall notify the city when the work under any permit hereunder begins. When the work under any permit hereunder is completed, the permittee shall furnish the city with a completion certificate in accordance with Minn. Rules, part 7819.1300, as it may be amended from time to time.

(B) *Site inspection.* The permittee shall make the work site available to city personnel 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 city.*

(1) At the time of inspection, the city may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The city may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the city that the violation has been corrected. If this proof has not been presented within the required time, the city may revoke the permit pursuant to § 151.14 of this code.

§ 151.132 WORK DONE WITHOUT PERMIT.

(A) *Emergency situations.* Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Excavators notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this subchapter for the actions it took in response to the emergency. If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

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

§ 151.143 SUPPLEMENTARY NOTIFICATION.

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

§ 151.154 PERMIT REVOCATION.

(A) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule, or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
 - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
 - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
 - (4) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control;
- or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by the city.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit, the city shall make a written demand upon the permittee to remedy the violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittee's failure to contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

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

§ 151.165 MAPPING DATA REQUIRED.

(A) *Information required.* Each permittee shall provide mapping information required by the city in accordance with Minn. Rules, parts 7819.4000 and 7819.4100, as they may be amended from time to time. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the city accurate maps and drawings certifying the "as-built" location of all equipment installed, owed and maintained by the permittee. 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 city. 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 Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence satisfactory to the city of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005 shall be a condition of any city approval necessary for:

(1) Payments to contractors working on a public improvement project including those under Minnesota Statutes Chapter 429 and

(2) City approval under development agreements or other subdivision or site plan approval under Minnesota Statutes Chapter 462. The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

§ 151.176 LOCATION AND RELOCATION OF FACILITIES.

(A) *Regulations apply.* Placement, location, and relocation of facilities must comply with this chapter, with other applicable law, and with Minn. Rules, parts 7819.3100, 7819.5000, and 7819.5100, as these statutes and rules may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.* The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any permittee who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where 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 permittee.

(C) *Limitation of space.* To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making these 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.

§ 151.187 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move 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 facility owner and must be paid

within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the city's response to an emergency occasioned by that owner's facilities.

§ 151.198 RIGHT-OF-WAY VACATION.

~~(A) *Reservation of rights.*~~ If the city vacates a right-of-way which contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minn. Rules, part 7819.3200, as it may be amended from time to time.

§ 151.20 INDEMNIFICATION AND LIABILITY.

~~(B) *Indemnification and liability.*~~ By applying for and accepting a permit under this subchapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules, part 7819.1250, as it may be amended from time to time.

§ 151.2149 ABANDONED AND UNUSABLE 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 chapter have been lawfully assumed by another registrant.

(B) *Removal.* Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

§ 151.220 ADDITIONAL OBLIGATIONS.

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including M.S. §§ 216D.01 - 216D.09 (Gopher One-Call Excavation Notice System), as they may be amended from time to time. 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 obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for that work.

(C) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(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 Minnesota Statutes, Chapter 216D and Minnesota Rules

Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating as determined by the city.

§ 151.231 APPEAL.

(A) A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked, ~~or~~ believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6 or disputes a determination of the city regarding Section 151.11 of this Ordinance invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council.

(B) The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition, will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 151.242 REGULATORY AND POLICE POWERS RESERVED.

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

§ 151.25 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.

Section 2. Effective Date of Ordinance. This ordinance shall be effective upon final passage, approval and publication as provided by law.

Passed by the City Council of the City of Spring Lake Park, Minnesota, this _____ day of _____, 2017.

APPROVED BY:

Cindy Hansen, Mayor

ATTEST:

Daniel R. Buchholtz, City Administrator/Clerk