

## 300 Public Property and Improvements

### 301. Parks

301.01 Closing hours. Except as provided in this ordinance, all parks and beaches shall be closed to the public from 1:30 A. M. until 5:30 A. M. each day. No person shall be in any city park or city beach between those hours.

301.02 Washington Park. The City of Detroit Lakes Park bounded by Washington Avenue, North Shore Drive, Lyndale Avenue, Parkview Street, Roosevelt Avenue and Detroit Lake shall be known for the purpose of this Ordinance as Washington Park.

Subd. 1 Washington Park shall be closed to the public from 10:00 o'clock p.m. to 5:30 o'clock a.m. the following day, except by special permit as provided hereafter.

Subd. 2 The City Administrator, from time to time, may issue a permit for use of Washington Park during normal closed hours in connection with a special event, pursuant to an application for such permit and subject to such terms and conditions as may be imposed by the City Administrator.

Subd. 3 Application for the permit provided in this Ordinance shall be submitted to the City Administrator in the form, and with the information, as required by the City Administrator. Amended: 05/07/96 Ord. No. 135

### 301.03 Natural and Scenic Park Use and Access.

Subd. 1. Application. The regulations in this section apply to Natural and Scenic Property acquired by the City from The Trust for Public Land being a part of Block 2 in the Plat of Ridgewood described in a deed filed as Becker County Recorder Document No. 477458. By resolution, the City Council may declare that additional city property is Natural and Scenic Property and subject to this ordinance.

Subd. 2. Regulation. Use of Natural and Scenic Property is limited to pedestrians. No person shall drive, ride, or operate any bicycle, motorcycle, horse or other animal used for riding or pulling a vehicle, or any other motorized or non-motorized vehicle upon Natural and Scenic Property, except in designated parking areas.

Subd. 3. Exception. The prohibitions set forth above shall not apply to the following:

- (a) use of a motorized or non-motorized wheelchair to transport a person who is in possession of a valid identifying certificate

issued by the State of Minnesota Driver and Vehicle Services Division under Minn. Stat. 169.345 for vehicles transporting physically disabled persons.

- (b) City employees, agents or contractors performing duties on Natural and Scenic Property.

Subd. 4. Penalty. Violation of this section is a petty misdemeanor; provided that a person's violation this section within two years of a prior conviction for an offense under this section is a misdemeanor.

Amended: 02/05/02 Ord. No. 220

## 302. Right-of-Way Management Street Excavations

### Sec. 302.01. Findings and Purpose.

1. To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the 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, a primary cause for the early and excessive deterioration of its right-of-way is frequent excavation.

Right-of-way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel or shopping plans because of them and has a detrimental effect on commerce. Persons whose equipment is within the right-of-way are the primary cause of these frequent obstructions.

The City holds the rights-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 rights-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.

As a result of all these intrusions in the right-of-way, it is necessary for the City to establish a system of documenting what is placed in the rights-of-way within its municipal boundaries and to serve as a central record agency to inform its citizens and the other public entities of the facilities that have been placed in the right-of-way that is held in trust for them.

2. In response to the foregoing facts, the City hereby enacts this new Chapter of the City Code relating to right-of-way permits and administration, together with making necessary revisions to other Code provisions. This Chapter imposes reasonable regulations on providers of electricity, light, heat, cooling energy, liquid and gaseous fuels, information and communication service to the public that place and maintain facilities or equipment currently within the City's 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 Chapter, persons disturbing and

obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this Chapter provides for recovery of out-of-pocket and projected costs from persons using the public right-of-way and adopts the standards developed by the Public Utilities Commission (PUC) on maximum restoration requirements 7819.9900 through 7819.9950.

3. In addition to the foregoing recovery of costs and regulation of use, the City Council determines that there is an existing and legitimate state and local public policy, which authorizes the City to require payments as reimbursement or return to the public for the use value of the public rights-of-way from those who obtain revenue or profits from such use. This reimbursement is provided for and defined in this ordinance as the "user fee." This fee does not apply to the repair, replacement or reconstruction of an existing facility. Telecommunication facilities are exempt for a user fee by state statute.

- a. Public Interest and Welfare.

The City Council finds that it is in the public interest to provide for the payment of a user fee by all persons who use and occupy the right-of-way for operating their businesses. This provides equity by requiring all users of the right-of-way to pay compensation apportioned equally among them all for the value and benefit of using such right-of-way. To ensure such fair treatment, this Chapter exempts franchise holders which pay franchise fees to the City on the date of adoption of this Chapter from the payment of a user fee.

- b. Legislative Power.

In these situations, the City Council desires to exercise its lawful police power and common law authority, and all statutory authority which is available to it, including but not limited to, the powers conferred on it under Minn. Stat. 216B.36, 222.37, 237.16 and 300.03,(410.09) and 412.211, Subdivisions 6, 23, and 32. The Council finds and determines that the public interest will be best protected by adopting this Chapter conferring the right to occupy the right-of-way in return for payment as authorized by law.

- c. Not a Rate.

The City Council finds and determines that the user fee authorized by this Chapter is not and is not intended to be a rate as that term is defined in Minn. Stat. 216B.02, Subd. 5. Such user fee is not a fee for a service that is provided to the customer of a person using the right-of-way, but is rather a fee paid for the right of that person to operate in the public right-of-way,

and to maintain the equipment of a utility in the right-of-way in the City of Detroit Lakes.

d. Notification requirement.

Registrants shall be notified of any proposed ordinance changes prior to adoption by the City Council

Sec. 302.02. Definitions.

The following definitions apply in this Part of this Code. References hereafter to sections are unless otherwise specified references to sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

(a) "Applicant" means any Person requesting permission to excavate or obstruct a right-of-way.

(b) "City" means the City of Detroit Lakes, Minnesota. For purposes of Section 1.28, City means its elected officials, officers, employees and agents.

(c) "Construction Performance Bond" means a performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction of work is completed in accordance with the terms of the Right-of-Way Permit, or other applicable State law or local regulation.

(d) "Management Costs" means 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 Permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user Facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way Permits. Management costs do not include payment by a Telecommunications right-of-way User for the use of the right-of-way, 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 302.30 of this Chapter.

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

(f) "Degradation Cost" 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 in plates 1 to 13, set forth in proposed PUC rules parts 7819.9900 to 7819.9950.

(g) "Degradation Fee" means 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 costs.

(h) "Department" means the Street Department of the City.

(i) "Department Inspector" means any person authorized by the Street Commissioner to carry out inspections related to the provisions of this Chapter.

(j) "Street Commissioner" means the head of the Street Department of the City, or her or his designee.

(k) [Blank]

(l) [Blank]

(m) "Emergency" means a condition that (1) poses a clear and immediate 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.

(n) "Equipment" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

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

(p) "Excavation Permit" means the permit which, pursuant to this Chapter, must be obtained before a person may excavate in a right-of-way. An Excavation Permit allows the holder to excavate that part of the right-of-way described in such permit.

(q) "Excavation Permit Fee" means money paid to the City by an Applicant to cover the costs as provided in Section 1.11.

(r) "Facility or Facilities" means any tangible asset in the right-of-way required to provide utility service.

(s) "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter

(t) "Obstruct" means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way for a period in excess of 8 consecutive hours.

(u) "Obstruction Permit" means the permit which, pursuant to this Chapter, 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 by placing Equipment described therein on the right-of-way for the duration specified therein.

(v) "Obstruction Permit Fee" means money paid to the City by a permittee to cover the costs as provided in Section 1.11.

(w) "Patch or Patching" means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's five-year project plan.

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

(y) "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Chapter.

(z) "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

(aa) "Probation" means the status of a person that has not complied with the conditions of this Chapter.

(bb) "Probationary Period" means one year from the date that a person has been notified in writing that they have been put on probation.

(cc) "Registrant" means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities in the right-of-way or (3) engages in the practice of excavation in the right-of-way.

(dd) "Restore or Restoration" means the process by which a right-of-way is returned to the same condition and life expectancy that existed before excavation.

(ee) "Restoration Cost" means the amount of money paid to the City by a permittee to achieve the level of restoration according to Plates 1 to 13 of PUC Rules.

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

(gg) "Right-of-Way Permit" means either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this Chapter.

(hh) "Service or Utility Service" includes but is not limited to (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. 300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minn. Stat. Chap. 238; and a (6) Telecommunication right-of-way User as defined in (jj).

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

(jj) "Telecommunication Rights-of-Way User" means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or

other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec.216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not Telecommunications right-of-way users for purposes of this Chapter.

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

Sec. 302.03. Administration.

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

Sec. 302.04. Franchise Supremacy.

The City may, in addition to the requirements of this Chapter, require any person which has or seeks to have equipment located in any right-of-way to obtain a franchise to the full extent permitted by law now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this Chapter whether granted prior or subsequent to enactment of this Chapter, shall control and supersede the conflicting terms of this Chapter. All other terms of this Chapter shall be fully applicable to all persons whether franchised or not.

Sec. 302.05. Registration and Right-of-Way Occupancy.

Subd. 1. Registration. Each Person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Street Commissioner. Registration will consist of providing application information and paying a registration fee.

Subd. 2. Registration Prior to Work. No Person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the Street Commissioner.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Chapter. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. Chap. 216D, "One call" Law.

Sec. 302.06. Registration Information.

Subd. 1. Information Required. The information provided to the Street Commissioner at the time of registration shall include, but not be limited to:

(a) Each registrant'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. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(c) A certificate of insurance or self-insurance:

(1) 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 Street Commissioner;

(2) 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 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;

(3) Naming the City as an additional insured as to whom the coverage's required herein are in force and applicable and for whom defense will be provided as to all such coverages;

(4) Requiring that the Street Commissioner be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Street Commissioner in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Chapter.

(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 Minn. Stat. 300.06 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 Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said Commission or other state or federal agency.

Subd. 2. Notice of Changes. The Registrant shall keep all of the information listed above current at all times by providing to the Street Commissioner information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

#### Sec. 302.07. Reporting Obligations.

Subd. 1. Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the Street Commissioner. Such plan shall be submitted using a format designated by the Street Commissioner and shall contain the information determined by the Street Commissioner to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

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

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

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

By January 1 of each year, the Street Commissioner will have available for inspection in the Street Commissioner's office a composite list of all projects of which the Street Commissioner has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the Street Commissioner 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.

Subd. 2. Additional Next-Year Projects. Notwithstanding the foregoing, the Street Commissioner 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. 302.08. Permit Requirement.

Subd. 1. Permit Required. Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the Street Commissioner to do so.

(a) 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. A construction/improvement/ upgrade project requiring excavation within the right-of-way requires an excavation permit.

Multiple excavations limited to one City block are considered one project and require an excavation permit except major reconstruction or extensions by a franchised utility will be issued under one permit.

(b) Obstruction Permit. An Obstruction Permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way for periods in excess of 8 consecutive hours 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. Failure to obtain an obstruction permit prior to the obstruction will require an after-the-fact obstruction permit fee plus payment of a delay penalty.

Applicants obtaining Becker County Highway or Minnesota Department of Transportation excavation permits for facilities in their rights-of-way must obtain a City obstruction permit and submit a copy of the plans with mapping data for recording purposes per Section 302.22.

c. Permit Waiver.

In the event of a major catastrophe or emergency declared by the City requiring the restoration of services that are within the right-of-way, the requirement for permits and permit fees may be waived by the City at its discretion.

After restoration of the service has been completed, an updated mapping plan per Section 302.22 must be submitted to the City within 60 days.

Subd. 2. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) 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.

Subd. 3..[Blank]

Subd. 4. Permit Display. Permits issued under this Chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Street Commissioner.

Sec. 302.09. Permit Applications.

Application for a permit is made to the Street Commissioner. Right-of-Way Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- (a) Registration with the Street Commissioner pursuant to this Chapter;
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- (c) Payment of money due the City for:
  - (1) permit fees, estimated restoration costs and other management costs,
  - (2) prior Obstructions or excavations;
  - (3) any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;
  - (4) franchise or user fees, if applicable.
- (d) Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

(e) When an excavation permit is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required.

Sec. 302.10. Issuance of Permit; Conditions.

Subd. 1. Permit Issuance. If the applicant has satisfied the requirements of this Chapter, the Street Commissioner shall issue a permit.

Subd. 2. Conditions. The Street Commissioner 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.

Sec. 302.11. Permit Fees.

Subd. 1. Excavation Permit Fee. The Excavation Permit Fee shall be established by the Street Commissioner in an amount sufficient to recover the following costs:

- (a) the City management costs;
- (b) degradation costs, if applicable.
- (c) City mapping cost.

Subd. 2. Obstruction Permit Fee. The Obstruction Permit Fee shall be established by the Street Commissioner and shall be in an amount sufficient to recover the City management costs associated with recording and inspecting the right-of-way obstructions.

Subd. 3. 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.

Subd. 4. Non refundable. Permit fees that were paid for a permit that the Street Commissioner has revoked for a breach as stated in Section 1.21 are not refundable.

Sec. 302.12. Right-of-Way Patching and Restoration.

Subd. 1. 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 extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 1.15.

Subd. 2. 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.

(a) City Restoration. If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such restoration, the pavement settles due to permittee's improper back filling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.

(b) Permittee Restoration. If the permittee Restores the right-of-way itself, it shall at the time of application for an Excavation Permit post a Construction Performance Bond in an amount determined by the Street Commissioner to be sufficient to cover the cost of Restoration. If, within thirty-six (36) months after completion of the restoration of the right-of-way, the Street Commissioner determines that the right-of-way has been properly restored, the surety on the Construction Performance Bond shall be released.

Subd. 3. Standards. The permittee shall perform patching and restoration according to the standards and with the materials specified by the Street Commissioner. The Street Commissioner shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Street Commissioner in exercising this authority shall comply with PUC standards for right-of-way restoration and shall further be guided by the following considerations:

(a) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;

(b) The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;

(c) The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;

(d) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and

(e) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Subd. 4. Guarantees. By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period it shall, upon notification from the Street Commissioner, correct all restoration work to the extent necessary, using the method required by the Street Commissioner. Said work shall be completed within ten (10) working days of the receipt of the notice from the Street Commissioner, 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 Section 302.15.

Subd. 5. Obligation. Construction triggers an obligation of the right-of-way user that the right-of-way restoration be completed according to the conditions set forth in this Chapter. The right-of-way user also assumes responsibility for “as built” drawings and for repairing facilities or structures, including right-of-way that was damaged during facility installation. The obligation is limited to one year for plantings and turf establishment.

Subd. 6. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Street Commissioner, or fails to satisfactorily and timely complete all restoration required by the Street Commissioner, the Street Commissioner 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.

Subd. 7. Degradation Cost 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.

Subd. 8. Site Restoration and Cleanup. As the excavation work progresses, all streets shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations at the locations of such excavation shall be accomplished at the expense of the permittee. From time to time, as may be ordered by the Street Commissioner, and in any event immediately after completion of said work, the permittee shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from said work may be done by the City and the cost thereof charged to the permittee. Whenever it may be necessary for the permittee to excavate through any landscaped area, said area shall be re-established in a like manner after the excavation has been back filled as required.

All construction and maintenance work shall be done in a manner designed to leave the area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove,

even temporarily, any existing trees or shrubs without first obtaining the consent of the Street Commissioner.

Subd. 9. Winter Construction. Between October first and May first all trenches must be back filled with gravel and tamped in six inch lifts or layers from main or sewer to at least one foot back of curb line. The upper 2 inches of the trench shall be composed of asphaltic cold materials to be kept at grade at all times between October first and May first and then restored to permanent resurfacing after May first.

#### Sec. 302.13. Joint Applications.

Subd. 1. Joint Application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subd. 2. 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 obstruction and degradation portions of the permit fee.

Subd. 3. Shared Fees. Registrants who apply for permits for the same obstruction or excavation, which the Street Commissioner does not perform, may share in the payment of the Obstruction or Excavation Permit Fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

#### Sec. 302.14. Supplementary Applications.

Subd. 1. 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.

Subd. 2. 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 done before the permit end date.

#### Sec. 302.15. Other Obligations.

Subd. 1. 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 Minn. Stat. § 216D.01-.09 (One Call Excavation Notice System). 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.

Subd. 2. Prohibited Work. Except in an Emergency, and with the approval of the Street Commissioner, no right-of-way Obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. 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.

Sec. 302.16. Denial of permit.

The Street Commissioner may deny a permit for failure to meet the requirements and conditions of this Chapter or if the Street Commissioner 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.

1. Mandatory Denial.

Except in an emergency, no right-of-way permit will be granted.

- a. To any person required by Section 302.05 to be registered who has not done so;
- b. To any person required by Section 302.07 to file an annual report but has failed to do so;
- c. To any person who has failed within the past two (2) years to comply, or is presently not in full compliance with the requirements of this Chapter.
- d. To any person as to whom there exists grounds for the revocation of a Permit under Section 302.21 or

e. In the discretion of the Street Commissioner, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Street Commissioner, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way, and by considerations relating to the public health, safety and welfare.

## 2. Permissive Denial.

The Street Commissioner may deny a permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The Street Commissioner, in her or his discretion, may consider one or more of the following factors:

- a. the extent to which right-of-way space where the permit is sought is available;
- b. the competing demands for the particular space in the right-of-way;
- c. the availability of other locations in the right-of-way;
- d. the availability of other locations in the right-of-way or in other rights-of-way that affect location of equipment in the right-of-way;
- e. the degree of compliance of the applicant with the terms and conditions of its franchise, this Chapter, and other applicable ordinances and regulations;
- f. the degree of disruption to surrounding neighborhoods and businesses that will result from the use of that part of the right-of-way;
- g. the condition and age of the right-of-way, and whether and it is scheduled for total or partial reconstruction; and
- h. the balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.

## 3. Discretionary Issuance.

Notwithstanding the provisions of this Section Subd. 1, the Street Commissioner may issue a permit in any case where the permit is necessary (a) to prevent substantial economic hardship to a customer of the permit applicant, or (b) to

allow such customer to materially improve its utility service, or (c) to allow a new economic development project, or otherwise required by law; and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when said applicant was required to submit its list of next year projects.

#### 4. Permits for Additional Next Year Projects.

Notwithstanding the provisions of the Section Subd. 1 above, the Street Commissioner may issue a permit to a registrant who was allowed under Section 302.08 Subd.2, to submit an additional New-year Project, such permit to be subject to all conditions and requirements of law, including such conditions as may be imposed under Section 302.10.

#### Sec. 302.17. Installation Requirements.

##### Subd. 1. General Excavation.

The excavation, back filling, Patching and Restoration, and all other work performed in the right-of-way shall be done in conformance with engineering standards adopted by the PUC or other applicable local requirements, in so far as they are not inconsistent with the PUC Rules.

Subd. 2. Excavation Protection. The permittee shall be responsible for barricading the excavation in conformance with the Uniform Traffic Control Manual as adopted by the Minnesota Department of Transportation.

It shall be the duty of every person cutting or making an excavation in or upon any public place, to place and maintain barricades and warning devices necessary for the safety of the general public. Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the administrative authority. All safety precautions and traffic control measures shall conform to current requirements as specified in the latest edition of the Uniform Traffic Control Manual as adopted by the Minnesota Department of Transportation.

The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions, as near normal as possible, shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public. Adequate pedestrian passageways shall be maintained.

The permittee shall maintain safe crossings for two lanes of vehicle traffic at all street intersections, where possible. If any excavation is made across any public street, alley, sidewalk, or established crosswalk, adequate crossings shall be maintained for vehicles and for pedestrians.

The City Street Commissioner may, by written approval, permit the closing of streets and alleys for a prescribed period of time. The City Street Commissioner may require that the permittee give notification to various public agencies and to the general public before approval becomes valid. In specific instances, even though the street may not be closed, the permittee may also be required to give such notice.

Subd. 3. Protection of Adjoining Property. The permittee shall at all times preserve and protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the process of the work and shall be responsible for all damage to public or private property resulting from its failure to properly protect and carry out said work.

Subd. 4. Maintenance of Roadway Drainage. The permittee shall maintain all gutters free and unobstructed for the full depth of the adjacent curb and for at least one foot in width from the face of such curb at the gutter line.

Subd. 5 Care of Excavated Material. All excavated material piled adjacent to the trench or in a street shall be maintained in such a manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using the streets and adjoining property. The City Street Commissioner may require the permittee to remove the excavation material from the work site. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

Subd. 6. Noise, Dust and Debris. Each permittee shall conduct and carry out excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the excavation work, the permittee shall take appropriate measures to reduce, to the fullest extent practical, noise, dust, and unsightly debris. Between the hours of 10 P.M. and 7 A.M., the permittee shall not use, except with the express written permission of the administrative authority, or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep of occupants of the neighboring property.

Subd. 7. Breaking through Pavement.

A. Heavy-duty pavement breakers may be prohibited by the City Street Commissioner when their use may endanger existing substructures or other property.

- B. Sections of sidewalks shall be removed to the nearest score line or joint.
- C. Unstable pavement shall be removed over cave outs and over breaks and the restoration shall be treated as part of the main excavation.
- D. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.
- E. Cutouts outside the trench lines must be normal or parallel to the trench line.
- F. Boring or other methods to prevent cutting of pavement may be required.
- G. All pavements shall be cut a minimum depth of 2" of the outside edge of the area to be excavated before excavation begins to prevent lifting of surfaces outside the area being excavated.

Subd. 8. Clearance for Emergency Facilities. The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes and any other emergency facilities.

Subd. 9. Placement and Compaction. Back filling shall progress uniformly in horizontal layers throughout the excavation area to be filled. Select materials shall be placed around the pipe, conduit, etc. and carefully compacted with mechanical equipment and non mechanical tamping within the pipe zone to at least six inches above the conduit. At this point, succeeding layers of backfill material shall be placed in uniform layers before compaction of approximately six inches, tamped by mechanical

means specially fabricated for this use only. Compacting with the backhoe bucket or front end loader tires will not be acceptable. Compaction of each layer shall continue until the density is equal to that of adjacent undisturbed materials at the same elevation in the trench. Compacted granular materials shall meet at least 100 percent Standard Proctor Density ASTM D-698-70 if density tests are required.

The permittee shall refill the excavation in a manner which is satisfactory to the administrative authority and is most effective to accomplish through consolidation and enable to public place to be restored to a condition equivalent to that in which it was prior to the excavation. When required, soil tests are to be furnished by a registered professional engineer specializing in soil engineering. Prior to resurfacing, tests must show that the backfill material meets the minimum requirements as prescribed by the administrative authority. The permittee shall be required to bear the expense of such tests.

Sec. 302.18. Inspection.

Subd. 1.. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a Completion Certificate in accordance PUC Rules.

- a. Unless waived by the city, a person designated by the right-of-way user as a responsible employee shall sign a completion certificate showing the completion date for the work performed. Identifying the installer and designer of record, and certifying that work was completed according to the requirements of the City.
- b. If necessary due to approved changes for the work as projected when the permit was applied for, the permittee shall submit "as built" drawings or maps within six months of completing the work, showing any deviations from the plan that are greater than plus or minus two feet.
- c. The City shall respond within 30 days of receipt of the completion certificate. Failure to approve or disapprove the permittee's performance within 30 days is deemed to be approval by the City.

Subd. 2. Site Inspection. Permittee shall make the work-site available to the Street Commissioner and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd 3. Authority of Street Commissioner.

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

The Street Commissioner 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 (10) days after issuance of the order, the permittee shall present proof to the Street Commissioner that the violation has been corrected. If such proof has not been presented within the required time, the Street Commissioner may revoke the permit pursuant to Sec. 1.21.

Sec. 302.19. Work Done Without a Permit.

Subd. 1. Emergency Situations. Each Registrant shall immediately notify the Street Commissioner of any event regarding its Facilities which it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to the Emergency. Within two business days after the occurrence of the Emergency the Registrant shall apply for the necessary

permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the Emergency.

If the Street Commissioner becomes aware of an Emergency regarding a Registrant's Facilities, the Street Commissioner will attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the Street Commissioner 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.

Subd. 2. 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 Legislative Code, deposit with the Street Commissioner the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.

#### Sec. 302.20. 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 Street Commissioner of the accurate information as soon as this information is known.

#### Sec. 302.21. Revocation of Permits.

Subd. 1. 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 permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the right-of-way Permit;
- (b) 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;
- (c) Any material misrepresentation of fact in the application for a right-of-way Permit;
- (d) 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 perimeter control; or

(e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an Order issued pursuant to Sec. 1.18.

Subd. 2. Written Notice of Breach. If the Street Commissioner 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 Street Commissioner shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the Street Commissioner, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the Street Commissioner with a plan, acceptable to the Street Commissioner that will cure the breach. Permittee's failure to so contact the Street Commissioner, or the permittee's failure to 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 Street Commissioner, or the 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.

Subd. 4. Cause for Probation. From time to time, the Street Commissioner may establish a list of conditions of the permit, which if breached will automatically place the Permittee on Probation for one full year, such as, but not limited to, working out of the allotted time period or working on Right-of-Way grossly outside of the permit authorization.

Subd. 5. Automatic Revocation. If a Permittee, while on Probation, commits a breach as outlined above, Permittee's permit will automatically be revoked and Permittee will not be allowed further permits for one full year, except for Emergency repairs.

Subd. 6. Reimbursement of City Costs. If a permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration Costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

#### Sec. 302.22. Mapping Data.

Subd. 1. Information Required. Each Registrant shall provide Mapping information required by the Street Commissioner in accordance with PUC Rules to include the following information:

- a. Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, 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. Coordinated derived from the coordinate system being used by the City; or
  3. Any other system agreed upon by the right-of-way user and City;
- b. Thee type and size of the utility;
- c. A description showing above-ground appurtenances;
- d. A legend explaining symbols, characters, abbreviations, scale, and other data shown on the map; and
- e. Mapping data shall be provided with the specificity requested by the Street Commissioner for inclusion on the mapping system used by the City.
- f. For mapping data provided to the City of Detroit Lakes in GIS compatible and City format, the mapping portion of the excavation/obstruction fee is waived.

Subd. 2. Submittal Requirement.

- a. Within six (6) months after the acquisition, installation, or construction of additional equipment or any relocation, abandonment, or disuse of existing equipment, each registrant shall submit the mapping data required herein.
- b. Within two (2) years after the date of passage of this Chapter, all right-of-ways users shall submit detailed plans as may be reasonable and practical for all facilities and equipment installed, used or abandoned within the public right-of-way.
- c. Notwithstanding the foregoing, mapping data shall be submitted by all registrants for all equipment which is to be installed or constructed after the date of passage or this Chapter at the time any permits are sought under these ordinances.
- d. Six (6) months after the passage of this Chapter, a new registrant, or a registrant who has not submitted a plan as required above, shall submit completed and accurate mapping data for all its

equipment at the time any permits are sought under these ordinances.

Subd. 3. Telecommunication Equipment. Information on existing facilities and equipment of telecommunications right-of-way users need only be supplied in the form maintained by the telecommunication right-of-way user.

Subd. 4. Trade Secret Information. At the request of any registrant, any information requested by the Street Commissioner, Which qualifies as a trade-secret under Minn. Stat 13.37(b) shall be treated as trade secret information as detailed therein.

#### Sec. 302.23. Location of Facilities.

Subd. 1. Under grounding. All new service areas shall be done underground or contained within buildings or other structures in conformity with applicable codes when directed by the City Council, except where emergency service is required.

Subd. 2. Corridors. The Street Commissioner 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 Street Commissioner expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the Street Commissioner 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 Street Commissioner 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 Street Commissioner 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.

Subd. 3. Limitation of Space. To protect public health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Street Commissioner 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 Street Commissioner 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, 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.

Subd. 4. Nuisance. Two years 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.

Subd. 5. Limitation of Space. To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Street Commissioner 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 Street Commissioner 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.

#### Sec. 302.24. Relocation of Facilities.

A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the Street Commissioner for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The Street Commissioner may make such request to prevent interference by the company's equipment or facilities with (I) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

#### Sec. 302.25. Pre-Excavation Facility and Facilities Location.

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 approximate vertical placement of all said facilities. Any registrant whose facilities is 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. 302.26. Damage to Other Facilities.

When the Street Commissioner does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Street Commissioner 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 damages. 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. 302.27. Right-of-Way Vacation.

Subd. 1. Reservation of Right. If the City vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

Subd. 2. Relocation of Facilities. If the vacation requires the relocation of registrant's or permittee's Facilities; and (i) if the vacation proceedings are initiated by the Registrant or permittee, the registrant or permittee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the City, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or permittee; or (iii) if the vacation proceedings are initiated by a person or persons other than the Registrant or permittee, such other Person or Persons must pay the relocation costs.

#### Sec. 302.28. Indemnification and Liability.

By registering with the Street Commissioner, or by accepting a permit under this Chapter, a Registrant or permittee agrees as follows:

Subd. 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 facilities by registrants or activities of registrants.

Subd. 2. Indemnification. A Registrant or Permittee shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to Persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of registrant's or permittee's Facilities located in the right-of-way. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the local government unit's negligence as to the issuance of permits or inspections to ensure permit compliance.

The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts that the registrant or permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the City after receiving notice of the registrant's or permittee's determination.

Subd. 3. Defense. If a suit is brought against the City under circumstances where the Registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the City in the suit if written notice of the suit is promptly given to the Registrant or permittee within a period in which the Registrant or permittee is not prejudiced by the lack or delay of notice.

If the Registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the City. Consent will not be unreasonably withheld.

This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the City. In defending an action on behalf of the City, the Registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the City could assert in its own behalf.

Sec. 302.29. Abandoned and Unusable Facilities.

Subd. 1. Discontinued Operations. A Registrant who has determined to discontinue its operations in the City must either:

(a) Provide information satisfactory to the Street Commissioner that the Registrant's obligations for its Facilities in the right-of-way under this Chapter have been lawfully assumed by another Registrant; or

(b) Submit to the Street Commissioner a proposal and instruments for transferring ownership of its Facilities to the City. If a Registrant proceeds under this clause, the City may, at its option:

(1) purchase the Facilities; or

(2) require the Registrant, at its own expense, to remove it; or

(3) require the Registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

Subd. 2. Abandoned Facilities. Facilities of a Registrant who fails to comply with subd. 1 of this Section, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned Facilities is 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, (i) abating the nuisance (ii) taking possession of the Facilities and restoring it to a useable condition, or (iii) requiring removal of the Facilities by the Registrant, or the registrant's successor in interest.

Subd. 3. Removal. Any Registrant who has unusable and abandoned Facilities in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the Street Commissioner.

Sec. 302.30. Appeal.

a) A Right-of-Way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

b) Upon affirmation by the City Council of the denial, revocation, or fee imposition, the right-of-way User shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Council and right-of-way User. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way User and one selected by the other two arbitrators. The costs and fees of single arbitrator shall be borne equally by the City and right-of-way User. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

Sec. 302.31. Reservation of Regulatory and Police Powers.

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

Sec. 302.32. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Chapter or any portions of this Chapter is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this Chapter precludes the City from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.

Adopted: 05/05/98 Ord. No. 165

### **303. Sidewalks**

303.01 Sales Prohibited. Except as provided in 303.03, no person shall place or suffer to be placed upon or over any sidewalk any goods, wares or merchandise for sale, show, or otherwise, or keep or maintain any peanut roaster or popcorn popping apparatus upon any sidewalk.

303.02 Storage Prohibited. Except as provided in 303.03, no person receiving goods, wares, or merchandise shall place or keep upon any sidewalk, any goods, wares, or merchandise received for a period no longer than one hour.

303.03 Exception. Sales of any goods, wares or merchandise on sidewalks within the Central Business District, as defined by City Code, Appendix B, Zoning Ordinance, Section 11, is permitted from Memorial Day through Labor Day of each year. Amended: 3/6/01 Ord. No. 210

303.04 Location. Placement of a seller's goods, wares or merchandise as allowed by this chapter is restricted to the length and portion of a sidewalk immediately adjoining the building occupied by the seller unless otherwise allowed by the City Code or by permit approved by the Council. Such property shall not unreasonably obstruct pedestrian use of the sidewalk. Added: 3/6/01 Ord. No. 210

## **304. Boulevards**

304.01 Required. Boulevards may be established and constructed along the streets and avenues of the city, in accordance with the provisions of this chapter. All curbs and boulevards shall be constructed according to standards adopted by the council.

### 304.02 Width.

Subdivision 1. Residential, Commercial and Industrial. The width of streets and boulevards in residential, commercial and industrial areas shall be determined by resolution of the council.

Subd. 2. Measurement. The width of boulevards shall, in all cases, be measured from the sidewalk line to the face of the curb.

## **305. Current Services Assessments**

305.01 Definition. "Current service" means one or more of the following: weed elimination from street grass plots adjacent to sidewalks, or from private property; street flushing; light street oiling, or other dust treatment of streets; repair of sidewalks; trimming and care of trees and removal of unsound trees from the public streets; and abatement of health or safety nuisances pursuant to Chapter 900.

305.02 Weed Elimination. On or before June 1 of each year, the city administrator shall publish once in the official newspaper a notice directing owners and occupants of property within the city to destroy all weeds defined to be a nuisance by 901.02(9). In the event that any owner or occupant shall fail to abate a weed nuisance after published notice, the city may cause the nuisance to be abated pursuant to Chapter 900.

### 305.03 Sidewalk Repair.

Subdivision 1. Owner Responsibility. The owner of any property in the city abutting a public sidewalk shall keep the sidewalk in repair and safe for pedestrians. Repairs shall be made in accordance with standard specifications approved by the council and filed with the city administrator. Before commencing such repair work, the property owner shall obtain a permit from the city administrator. The fee is as set forth in Section 210.

Subd. 2. Enforcement. The administrator or such other person as the council may designate, may inspect sidewalks to determine if they are in good repair and safe for pedestrians. If he finds that any sidewalk is in need of repair, he shall cause a notice to be served, by registered or certified mail or by

personal service upon the owner of the property and the occupant if the owner does not reside in the city or cannot be found therein, ordering the owner to have the sidewalk repaired and made safe within thirty days, and stating that if the owner fails to do so, the repairs will be made by the city, that the expense thereof must be paid by the owner, and that if unpaid it will be made a special assessment against the property concerned.

Subd. 3. Repair. If the sidewalk is not repaired within thirty days after receipt of the notice, the city administrator shall report that fact to the council. The council shall, by resolution, order the street department to repair the sidewalk, or order the work done by contract. The city administrator shall keep a record of the total cost of repair attributable to each lot or parcel of property.

#### 305.04 Street Sprinkling, Flushing, Tree Care, etc.

Subdivision 1. Notice. The council shall each year determine what streets and alleys shall be sprinkled, flushed, oiled, or given other dust treatment during the year, and the kind of work to be done on each. The council shall also determine from time to time the streets on which trees shall be trimmed and cared for and what unsound trees shall be removed. Before any work is done, the city administrator shall, under the council's direction, publish notice that the council will meet to consider such projects. The notice shall be published in the official newspaper at least once no less than two weeks prior to the meeting, the streets affected and the particular projects proposed, and the estimated cost of each project, either in total or on the basis of the proposed assessment per front foot or otherwise.

Subd. 2. Hearing. At such hearing or any adjournment thereof, the council shall hear property owners with reference to the scope and desirability of the proposed projects. The council shall thereupon adopt a resolution confirming the original projects with such modification as it deems desirable, and shall provide for the doing of the work by day labor through the street department or by contract. The city administrator shall keep a record of the cost and the portion of the cost properly attributable to each lot and parcel of property abutting on the street or alley on which the work is done.

305.05 Personal Liability. The owner of property on or adjacent to which a current service has been performed shall be personally liable for the cost of such service. As soon as the service is completed and the cost is determined, the city administrator shall prepare a bill and mail it to the owner. Thereupon, the amount shall be immediately due and payable at the city administrator's office.

305.06 Assessment. On or before September 1 of each year, the city administrator shall list the total unpaid charges for each types of current service against each separate lot or parcel to which they are attributable under this chapter. After notice of hearing as provided in Minnesota Statutes 429.061, the

council may spread the charges against the property benefited as a special assessment pursuant to Minnesota Statutes 429.101 and other pertinent statutes for certification to the county auditor and collection along with current taxes for the following year, or in annual installments, not exceeding ten, as the council may determine in each case.

### **306. Emergency Fire Protection Services**

#### **306.01. Purpose and Intent.**

This ordinance is adopted for the purpose of establishing that the City of Detroit Lakes will charge for all fire calls as allowed by Minnesota Statutes, which authorize a city to charge for fire service calls.

#### **306.02. Definitions.**

For the purposes of this article, the following terms or words shall be interpreted as follows:

(a) Fire Call shall mean any deployment of fire fighting personnel and/or equipment to provide: fire suppression, rescue, extrication, extinguishing of a fire, the performance of any preventative measures in an effort to protect or pre-empt a fire or fire hazard or to protect equipment, life or property in, an area threatened by fire, and to provide any other services related to fire and rescue as may occasionally occur.

#### **306.03. Parties Affected.**

(a) City of Detroit Lakes residents who receive fire service for any type of fire call.

(b) Township residents who receive fire service for any type of fire call and whose township has entered into a fire service contract with the City of Detroit Lakes.

(c) All fire calls in response to car accidents or fires where persons receiving service are either not residents of the City of Detroit Lakes or residents of townships served by a fire contract with the City of Detroit Lakes.

(d) All fire calls in response to grass fires and other natural disasters as requested by the Department of Natural Resources and other state and federal governments units.

#### **306.04 Rates.**

(a) The rates for fire service shall be as determined by resolution of the City Council and be set forth in Section 210 of the City Code.

#### **306.05. Billing and Collection.**

(a) Parties receiving fire service via a fire call will be billed directly by the City of Detroit Lakes within (30) thirty days of the fire call. If the party receiving fire

service does not initiate the contact for service but a fire or other situation exists which at the discretion of the Fire Department personnel in charge requires fire services and qualifies as a fire call as defined in Section 306.02, that party will be charged for a fire call.

(b) The City of Detroit Lakes will use all practical and reasonable legal means to collect billed fire calls. The party receiving the fire service shall be liable for all costs of collection incurred by the City including, but not limited to, reasonable attorney fees and court costs.

(c) Billing may be directed to the insurance carrier as a reasonable effort by the City to assist the party who received the fire service. Any billable amount of the fire call not covered by a party's applicable insurance remains a debt of the party receiving fire service.

(d) False alarms will be billed as a fire call unless the trucks do not leave the building.

(e) If the fire service charge remains unpaid for 30 days after notice of delinquency is sent, the City Council, may, on or before October 15 of each year, certify the unpaid fire service charge to the County Auditor of the County in which the recipient of the services owns real property, for collection with taxes. The County Auditor is responsible for remitting to the City all charges collected on behalf of the City. The City must give the property owner notice of its intent to certify the unpaid fire service charge by September 15. Added: 12/09/08, Ord. No. 328

#### 306.06. Mutual Aid Agreements.

(a) On fire calls where the City of Detroit Lakes provides "Mutual Aid" to another fire service, the associated billing will be determined by the Mutual Aid Agreement with that fire service. Added: 05/04/04, Ord. No. 253

(Pages reserved 87-100)