

**ORDINANCE NO. 375-A**

**AN ORDINANCE TO MANAGE AND ADMINISTER USE OF THE PUBLIC RIGHT-OF-WAY IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS**

The Board of Supervisors of the Township of Empire Ordains as follows:

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## **SECTION 1. FINDINGS, PURPOSE AND INTENT**

**1.01** To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the rights-of-way, the Township strives to keep the rights-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

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

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086 (the “Act”) and the other laws governing applicable rights of the Township and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the Township to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

## **SECTION 2. ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY**

**2.01** Pursuant to the authority granted to the Township under state and federal statutory, administrative and common law, the Township hereby elects pursuant to Minnesota Statutes 237.163 subdivision 2(b), to manage rights-of-way within its jurisdiction. All right-of-way users, including the Township, are subject to the provisions in this chapter. The Township is exempt from the obligation of paying for permits or other fees imposed by this chapter. This chapter shall be sections 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086 (the “act”), Minnesota Statutes Chapter 216D and other laws governing applicable rights of the Township and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota rules 7819.0050 – 7819.9950 where possible. To the extent any provisions of this chapter cannot be interpreted consistently with Minnesota rules, that interpretation most consistent with the act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the Township to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

## **SECTION 3. DEFINITIONS**

**3.01** The following definitions apply in this chapter and shall have the meanings ascribed to them. References hereafter to “sections” are unless otherwise specified references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

**ABANDONED FACILITY:** A facility no longer in service or physically disconnected from

any other facility that is in use or still carries service. A facility is not abandoned unless declared so by the owner of the facility.

**APPLICANT:** Any person requesting permission to excavate, place a utility service or obstruct a right-of-way.

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

**COMMISSION:** The state public utilities commission.

**CONGESTED RIGHT-OF-WAY:** A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota statutes section 216D.04, subdivision 3, over a continuous length in excess of five hundred feet (500').

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

- A. Individual project bond.
- B. Cash deposit
- C. Security of a form listed or approved under Minnesota statutes section 15.73, subdivision 3.
- D. Letter of credit, in a form acceptable to the Township.
- E. Self-insurance, in a form acceptable to the Township.
- F. A blanket bond for projects within the Township, or other form of construction bond, for a time specified and in a form acceptable to the Township.

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

**DEGRADATION COST:** Subject to Minnesota rules 7819.1100, means the cost to achieve a level of restoration as determined by the Township at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota rules parts 7819.9900 to 7819.9950.

**DEGRADATION FEE:** The estimated fee established at the time of permitting by the Township 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.

**DELAY PENALTY:** The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit. A delay penalty will not be imposed if the delay in project completion is due to circumstances constituting force majeure or when work is prohibited as unseasonable or unreasonable under section 16 of this chapter.

**EMERGENCY:** A condition that: a) immediately endangers the life or safety of persons; b) will cause an immediate threat of significant loss or injury to property; or c) requires immediate repair or replacement in order to restore service to customers.

**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 issued by the Township authorizing the permittee to excavate in a right-of-way as specifically described in the permit.

**EXCAVATION PERMIT FEE:** Money paid to the Township by a permittee to cover the costs as provided in section 12 of this chapter.

**FACILITY OR FACILITIES:** Any tangible asset, including equipment, in the right-of-way, which is required to provide utility service.

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

**HOLE:** An excavation having a length that is less than the width of the right-of-way for the section of the roadway where the work is occurring.

**LOCAL REPRESENTATIVE:** A local person or persons, or designee of such person or persons authorized by a registrant to accept legal notice or service and to accept communications and to make decisions for that registrant regarding all matters within the scope of this chapter.

**MAPPING INFORMATION:** The information required in section 23 of this chapter.

**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 issued by the Township authorizing the permittee to obstruct a right-of-way as specifically described in the permit.

**OBSTRUCTION PERMIT FEE:** Money paid to the Township by a permittee to cover the costs as provided in section 12 of this chapter.

**PATCH OR PATCHING:** A method of roadway surface replacement or restoration that consists of: a) the compaction of the subbase and aggregate base; and b) the replacement, in kind, of the existing roadway surface for a minimum of two feet (2') beyond the edges of the excavation in all directions.

**PAVEMENT:** Any type of improved surface that is within the 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 Minnesota statutes section 237.162.

**PERMITTEE:** Any person to whom an excavation permit or obstruction permit has been issued by the Township under this chapter.

**PERSON:** Any 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 nonprofit, and whether natural, corporate, or political.

**PUBLIC RIGHT-OF-WAY:** The surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, trail, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the Township owned by or under control of the Township, or dedicated or otherwise conveyed to the Township for general public use, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining utility service facilities. No reference herein to a "public right-of-way" shall be deemed to be a representation or guarantee by the Township that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining utility service facilities.

**PUBLIC RIGHT-OF-WAY USER:** a) A telecommunications right-of-way user as defined by Minnesota statutes section 237.162, subdivision 4; or b) a person or entity 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 right-of-way.

**REGISTRANT:** Any person who: a) has or seeks to have its facilities located in any right-of-way, or b) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities in the right-of-way.

**RESTORATION COST:** The amount of money paid to the Township by a permittee to achieve restoration requirements in accordance with plates 1 to 13 of the Minnesota public utilities commission rules.

**RESTORE OR RESTORATION:** The process, including patching, 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:** Has the same meaning as "permit," defined above.

**RIGHT-OF-WAY USER:** Defined as one of the following:

- A. A telecommunications right of way user as defined by Minn. Stat., § 237.162, subd. 4; or
- B. 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:

- A. Those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6;
- B. Services of a telecommunications right of way user, including transporting of voice or data information;
- C. Services of a cable communications systems as defined in Minn. Stat. ch. 238;
- D. Natural gas or electric energy or telecommunications services provided by the Township;

- E. Services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and
- F. Water, and 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:

- A. Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and 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 has 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 telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right of way users for purposes of this chapter except to the extent such entity is offering wireless service.

**TOWNSHIP:** Empire Township, Minnesota. For purposes of section 28 of this chapter, Township means its elected officials, officers, employees and agents.

**TOWNSHIP MANAGEMENT COSTS:** The actual costs incurred by the Township for managing its public rights of way, including, but not limited to, costs associated with registering applicants; issuing, processing and verifying right-of-way permit applications; inspecting jobs 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, including turf, sidewalks, trails and pavement, after providing notice and the opportunity to correct the work; revoking right-of-way permits; and creating and updating mapping systems. 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 in Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Section 237.162 or 237.163 or any ordinance enacted under those sections, or the Township fees and costs related to appeals taken pursuant to section 30 of this chapter.

**TRENCH:** An excavation having a length equal to or greater than the width of the right-of-

way for the section of the roadway where the work is occurring.

**UTILITY SERVICE:** See SERVICE.

**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, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

**WIRELESS SERVICE.** Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable 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.

#### **SECTION 4. ADMINISTRATION**

**4.01** The Township Clerk Administrator is the principal Township official responsible for the administration of the rights-of-way, right-of-way permits and the ordinances related thereto. The Township Clerk Administrator may delegate any or all of the duties hereunder.

#### **SECTION 5. FRANCHISE**

**5.01** The Township may, in addition to the requirements of this chapter, require any person which has or seeks to have facilities located in any right-of-way to obtain a franchise to the full extent permitted by law, now or hereinafter enacted.

#### **SECTION 6. REGISTRATION AND RIGHT-OF-WAY OCCUPANCY**

**6.01** Registration: Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by contract, lease, sublease or assignment, must register with the Township. Registration will consist of providing application information and paying a registration fee.

**6.02** 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 Township. A person seeking to install a new wireless support structure for the siting of a small wireless facility in a right-of-way in a district or areas zoned for single family residential uses, or in an established historic district, must also meet the conditions in Section 11.04 of this code.

**6.03 Exceptions:** Nothing herein shall be construed to repeal or amend the provisions of a Township 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 Minnesota Statute Chapter 216D, Gopher One Call Law.

Nothing herein relieves a person from complying with the provisions of the Minnesota statutes chapter 216D, "gopher state one call" law.

## **SECTION 7. REGISTRATION INFORMATION**

**7.01 Information Required:** The information provided to the Township at the time of registration shall be on the form approved by the Township and shall include, but not be limited to:

- A. Each registrant's name, gopher state one call registration number, address and e-mail address, if applicable, and telephone and facsimile numbers.
- B. The local representative's name, address and e-mail address, if applicable, and telephone and facsimile numbers.
- C. The local representative or designee shall be available for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration, including emergency information for the registrant's subcontractors.
- D. The name, address and telephone number of the person(s) or entities, other than the applicant, to perform the project work or any portion thereof.
- E. A Certificate of insurance or self-insurance:
  1. Shall be on a form approved by the Township;
  2. Shall verify 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 Township;
  3. Shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the: 1) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and 2) 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 contracts, independent contractors, products and completed operations, damage of underground facilities and collapse of property;
  4. Shall name the Township 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;

5. Shall require that the Township be notified thirty (30) days in advance of cancellation of the policy, nonrenewal or material adverse modification of a coverage term;
  6. Shall indicate comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the Township in amounts sufficient to protect the Township and the public and to carry out the purposes and policies of this chapter. The minimum amounts of coverage must equal or exceed the maximum liability limits set forth in Minnesota Statutes 466.04.
  7. The Township may require a copy of the actual insurance policies.
- F. If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statutes Section 300.06 as recorded and certified to by the secretary of state.
- G. 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.

**7.02** Notice of Changes: The registrant shall keep all of the information listed above current at all times by providing to the Township information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

## **SECTION 8. REPORTING OBLIGATIONS**

**8.01** Operations: Each registrant shall, at the time of registration and by January 1 of each year, file a construction and major maintenance plan for known underground utilities with the Township. Such plan shall be submitted using a format designated by the Township and shall contain the information determined by the Township to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The utility facility plans shall be kept up to date by the registrant. Facility plans which a utility identifies in writing to the Township as being "trade secret information" will be treated as general nonpublic data in accordance with Minnesota Statutes Section 13.37 if the data is within the statutory requirements for "trade secret information."

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 (5) years following the next calendar year (in this section, a "5 year project").

It is the registrant's responsibility to keep informed on available plans.

**8.02 Additional Next Year Projects:** Notwithstanding the foregoing, the Township will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the Township if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

## **SECTION 9. PERMIT REQUIREMENTS**

**9.01 Permits Required:** Except as otherwise provided in this code, no person may excavate, place a utility service or obstruct any right-of-way without first registering and having obtained the appropriate right-of-way permit from the Township to do so. The following permits may be required:

- A. **Excavation Permit:** An excavation permit is required by a registrant to excavate that part of the right-of-way as specifically described in such permit and to hinder free and open passage over the specified portion of that right-of-way by placing facilities described therein, for the duration specified therein.
- B. **Obstruction Permit:** An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of that right-of-way by placing facilities described therein, for the duration specified therein. An obstruction permit is required for any obstruction in connection with the installation, relocation, operation or maintenance of a utility service.
- C. **Small Wireless Facility Permit.** A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right of way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

**9.02 Permit Extensions:** No person may excavate, place a utility service or obstruct the right-of-way beyond the date or dates specified in the permit unless such 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.

**9.03 Delay Penalty:** In accordance with Minnesota Rule 7819.1000 subparagraph 3 and notwithstanding subsection B of this section, the Township 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 Township board resolution and shall include any delays or damages charged by the Township's construction contractor and may include liquidated damages consistent with the contract.

**9.04 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 Township.

## **SECTION 10. PERMIT APPLICATIONS**

**10.01 Application for a permit** is made to the Township on the form provided by the Township. 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 Township pursuant to this chapter;
- B. Submission of a completed permit application form, including all required attachments.
- C. Submission of a detailed description and drawing to a scale, as required by the Township, showing the location and area of the proposed project and the location of all known existing and proposed facilities of the permittee in the project area. Drawings and descriptions shall include, but not be limited to, the identification of the obstructions to be placed, the size and depth of any excavation, the schedule for commencement and completion of the proposed project, the identification of the existing right-of-way, the location of existing sidewalks, trail ways and other improvements and the location and size of any trees impacted in the designated work area.
- D. Payment of all money due the Township for:
  - 1. Permit fees, estimated restoration costs and other management costs;
  - 2. Prior excavation or obstruction permits;
  - 3. Any undisputed loss, damage, or expense suffered by the Township because of applicant's prior excavations or obstructions of the right-of-way or any emergency actions taken by the Township.
  - 4. Franchise fees or other charges, if applicable.
- E. Payment of disputed amounts due the Township by posting security or depositing in an escrow account an amount equal to at least one hundred ten percent (110%) of the amount owing.

**SECTION 11. ISSUANCE OF PERMIT; CONDITIONS**

**11.01 Permit Issuance:** If the applicant has satisfied the requirements of this chapter, the Township shall issue a permit.

**11.02 Conditions:** The Township may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare or, when necessary, to protect the right-of-way and its current and future use.

- A. Installation, placement, location and relocation of facilities shall comply with all federal, state and local laws.
- B. Installation of all underground utilities shall be in accordance with the underground utilities regulations set forth in this section and all other applicable federal, state and local laws.
- C. Precautions shall be taken as necessary to avoid creating unsafe and unsanitary conditions.

- D. Project operations and work shall be conducted in a manner so as to ensure the least obstruction to and interference with present and continued use of the right-of-way.
- E. Precautions shall be taken to assure the safety of the general public, employees, invitees and those who require access to abutting property, including appropriate signage.
- F. The permittee shall notify abutting property owners with a forty-eight (48) hour written notice prior to commencement of any permitted project.
- G. The permittee involved in underground projects shall register with gopher state one call and comply with the requirements thereof.
- H. The permittee shall comply with the "Minnesota Manual On Uniform Traffic Control Devices" (MMUTCD) at all times during any project work and shall protect and identify excavations and work operations with barricade flags in the daylight hours and by warning lights at dusk and night.
- I. The permittee shall comply with all conditions of the permit.
- J. When any trail, sidewalk or driveway has been cut, Township approved signage must be kept in place and maintained until restoration is complete.
- K. The permittees shall provide proper trench protection as required by OSHA to prevent any cave in; injury to property or persons; or enlargement of the excavation.
- L. Excavations, trenches and jacking pits off the roadway surface area or adjacent to the roadway or curbing shall be sheathed and braced. When unattended, all excavations, trenches and jacking pits shall be secured and protected to prevent surface drainage and access by unauthorized persons.
- M. The permittee shall protect the root growth of trees and shrubbery located within the right-of-way and adjacent thereto.
- N. The permittee shall coordinate project work and installation of facilities in co-locations involving other right-of-way users.
- O. The permittee shall maintain access to all properties and cross streets during project work, including emergency vehicle access.
- P. The permittee shall physically locate property lines abutting the project work. The permittee shall replace, with the services of a Minnesota licensed surveyor, any property corners or monuments disturbed as a result of the project.
- Q. The permittee shall complete restoration of the right-of-way in conformance with this section.
- R. No permittee, or any agent, subcontractor or employee thereof, shall use lugs (steel tracks) on any roadway surfaces.

- S. The permittee shall remove daily, or as required by the Township, all dirt or debris from sidewalks, trails, public and private roadways and curbs and gutters during project work.
- T. The permittee shall obtain all other necessary permits, licenses and approvals, pay all required fees therefore and comply with all requirements of local, state and federal laws.
- U. The permittee shall not do any work outside the project area as specified in the permit.
- V. The permittee shall conduct a public informational meeting for all major projects as deemed necessary by the Township.

**11.03 Small Wireless Facility Conditions.** In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

- A. 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.
- B. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the Township's written authorization, provided that the Township 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.
- C. No wireless facility may extend more than 10 feet above its wireless support structure.
- D. Where an applicant proposes to install a new wireless support structure in the right-of-way, the Township may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
- E. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the Township may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
- F. Where an applicant proposes to replace a wireless support structure, the Township may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

**11.04 Conditions for locating small cell wireless facilities in residential and historical districts:**

- A. Height of all facilities shall not exceed the average height of all structures on the block

or the maximum height of structures allowed in the district, whichever is less.

- B. All facilities shall be located in the right-of-way in the area defined by the side yard drainage and utility easement area. If an area does not have drainage and utility easements then the facilities shall be within five feet (5') of a side property line.
- C. All facilities within any front or rear setback areas shall be located closest to the property line, furthest from the road centerline as possible, but no further back from the curb or any sidewalk or trail than ten feet (10').
- D. All facilities shall be located as near as practicable to intersections.
- E. All facilities shall be located to the extent practicable on existing poles and other structures currently in the right-of-way.
- F. Other conditions unique to the proposed placement of facilities in the right-of-way may be attached to protect the health, safety and welfare of neighboring properties, other users of the right-of-way, and the public.

**11.05 Small Wireless Facility Agreement.** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the Township, or any other Township asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the Township. The standard collocation agreement may require payment of the following:

- A. Up to \$150 per year for rent to collocate on the Township structure.
- B. \$25 per year for maintenance associated with the collocation;
- C. A monthly fee for electrical service as follows:
  - 1. \$73 per radio node less than or equal to 100 maximum watts;
  - 2. \$182 per radio node over 100 maximum watts; or
  - 3. The actual costs of electricity, if the actual 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 Township and applicant,

**11.06 County or State Right-of-way:** Any right-of-way user who is required to obtain any county or state permit for excavation or obstruction in any Dakota County or Minnesota department of transportation right-of-way must provide notification of permitting to the Township within one week of obtaining the permit but no less than forty-eight (48) hours before the excavation would begin.

## **SECTION 12. ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS**

**12.01** Deadline for Action. The Township shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the Township fails to approve or deny the application within the review periods established in this section.

**12.02** Consolidated Applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

- A. are located within a two-mile radius;
- B. consist of substantially similar equipment; and
- C. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the Township 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.

**12.03** Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

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

## **SECTION 13. PERMIT FEES**

**13.01** The fee schedule for obstruction and excavation permit fees is as follows. The Township Board shall periodically review and approve the fee schedule for permits issued under this Chapter. All fees are to recover Township management costs, plan reviews, degradation costs, if applicable, and administrative costs.

**13.02** Fees:

- A. Excavation Permit Fee: \$180.00 plus \$0.25 per lineal foot for each excavation foot over 2,640 feet.

- B. Obstruction Permit Fees (per obstruction): \$90.00
- C. Delay Penalty: \$80.00
- D. Small Wireless Facility Permit Fee. The Township shall impose a small wireless facility permit fee in an amount sufficient to recover:
  - 1. Management costs, and;
  - 2. Township engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

**13.03** Payment of Permit Fees: No Excavation Permit or Obstruction Permit shall be issued without payment of Excavation or Obstruction permit fees. The Township may allow the applicant to pay such fees within thirty (30) days of billing.

**13.04** Non-refundable: Permit fees that were paid for a permit that the Township has revoked for a breach as state in Section 16 are not refundable.

**13.05** Application to Franchised: 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.

#### **SECTION 14. RIGHT-OF-WAY PATCHING AND RESTORATION**

**14.01** Timing: The work to be done under the right-of-way 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 constituting force majeure or when work was prohibited as unseasonable or unreasonable under Section 16.

**14.02** Temporary Surfacing, Patch and Restoration: Permittee shall patch its own work, restore the right-of-way and assume all costs therefore unless otherwise agreed upon.

- A. Township Restoration: If the Township restores any part of the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If the Township restores only the surface of the right-of-way and during the twenty-four (24) months following such restoration, the pavement settles, the permittee shall pay to the Township, within thirty (30) days of billing, all costs related to restoring the right-of-way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by the permittee. These costs shall include administrative, overhead mobilization, material, labor and equipment.
- B. Permittee Restoration: If the permittee restores the right-of-way, the Township may require, and the permittee shall provide at the time of application for the right-of-way permit, a Township specified type of security, in accordance with PUC rules, to cover the cost of repair and restoration. This security shall be in the amount of 110% of all restoration improvement costs as determines by the Township Engineer.



**14.03 Standards:** The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the Township, and shall comply with Minnesota Rule 7819.1100, within seven (7) days of completion of the work for any given area. The Township shall have the authority to prescribe additional restoration procedures and standards on a case by case basis based on the following considerations:

- A. the number, size, depth and duration of the excavation, disruption or damage to the right-of-way;
- B. the traffic volume carried by the right-of-way;
- C. the character of the neighborhood surrounding the right-of-way;
- D. the pre-project condition of the right-of-way;
- E. the remaining life-expectancy of the right-of-way due to the project;
- F. 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
- G. 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.

**14.04 Duty to Correct Defects:** The permittee shall guarantee its work and restoration of the right-of-way and maintain it for twenty-four (24) months following its completion. The obligation is limited to twelve (12) months for plantings and turf establishment. During this 24-month period, the permittee shall, upon notification from the Township, correct all defects in Patching or restoration to the extent necessary, using the method required by the Township. Said work shall be completed within five (5) working days of the receipt of the notice from the Township, not including days during which work cannot be done because of circumstances constituting force majeure or when work is prohibited as unseasonable or unreasonable under Section 16.

**14.05 Failure to Restore:** If the permittee fails to restore the right-of-way in the manner and to the condition required by the Township, or fails to satisfactorily and timely complete all repairs required by the Township, the Township shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee at least five (5) working days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event the permittee fails to cure or fails to respond with a plan to cure or fails to respond to the notice, the Township may, at its option, perform or cause to be performed the necessary work and the permittee shall pay to the Township, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the Township may exercise its rights and draw from the Township specified security.

## **SECTION 15. JOINT APPLICATIONS**

**15.01 Joint Application:** Registrants may jointly apply for permits to excavate, place utility service or obstruct the right-of-way at the same place and time.

**15.02 Shared Fees:** Registrants who apply for permits for the same excavation or obstruction permit action, which the Township does not perform, may share in the payment of the excavation or obstruction permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

**15.03 Township Construction Projects:** Registrants who join in a scheduled excavation or obstruction permit action coordinated with a Township construction project by the Township, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction portions of the permit fee, but a permit is still required.

## **SECTION 16. SUPPLEMENTARY APPLICATIONS**

**16.01 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 excavated or obstructed 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. The Township may orally waive the requirement for a permit extension or the payment of an additional fee. The Township shall maintain a written record of any waivers granted.

**16.02 Limitation on Dates:** A right-of-way permit is valid only for the dates specified in the permit. The Township Engineer has the authority to determine the appropriate timeframe for the work proposed. 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. The Township may orally waive the requirement for a permit extension for the payment of an additional fee. The Township shall maintain a written record of waivers granted.

## **SECTION 17. OTHER OBLIGATIONS**

**17.01 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 Township or other appropriate jurisdiction or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including road load restrictions, and Minnesota Statute 216D (Gopher State One Call) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

**17.02 Prohibited Work:** Except in an emergency or with the approval of the Township, no right-of-way excavation or obstruction may be done when seasonally prohibited or when conditions are unreasonable for such work.

**17.03 Interference with Right-of-Way:** A permittee shall not obstruct a right-of-way, except as expressly authorized by the permit, so as to hinder the natural free and clear passage of

water through the gutters, culverts, ditches, tiles or other waterways. 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 Township parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit. Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices (MMUTCD) and its field manual and any written directions of the Township.

**17.04 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 director.

## **SECTION 18. DENIAL OF PERMIT**

**18.01** The Township may deny a permit for failure to meet the requirements and conditions of this Chapter or if the Township 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 and future use. The Township may deny a permit if the utility has failed to comply with previous permit conditions. The Township may withhold issuance of a permit until conditions of previous permits are complied with.

## **SECTION 19. INSTALLATION REQUIREMENTS**

**19.01** The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100, 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.162. 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 Township in the applicable permits and/or agreements referenced in Section 23 of this ordinance.

## **SECTION 20. INSPECTION**

**20.01** Notice of Completion: When the work under any permit hereunder is completed, the permittee shall notify the Township and furnish a completion certificate in accordance with Minnesota Rule 7819.1300.

**20.02** Site Inspection: The permittee shall make the work-site available to the Township and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

**20.03** Authority of Township:

- A. At the time of inspection the Township may order the immediate cessation and correction of any work, which poses a serious threat to the life, health, safety or well-being of the public.
- B. The Township may issue an order to the permittee for any work which does not

conform to the terms of the permit or other applicable standards, rules, laws, conditions or codes so long as the nonconformance constitutes a “substantial breach” as set forth in Minnesota Statute 237.163, subd. 4(c)(1-5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within a reasonable time after issuance of the order, the permittee shall present proof to the Township that the violation has been or will be corrected within a time period set forth by the Township in the order. If such proof has not been presented within the required time, the Township may revoke the permit pursuant to Section 22.

C. The cost of any action required by the Township shall be paid by the permittee.

## **SECTION 21. WORK DONE WITHOUT A PERMIT**

**21.01** Emergency Situations: Each registrant shall immediately notify the Township of any event regarding its facilities that it considered to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency or as directed by the Township. Excavators notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the emergency. The permittee requirements shall not apply if the repair is caused by another permittee’s work in the right-of-way.

If the Township becomes aware of an emergency regarding a registrant’s facilities, the Township will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Township 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.

**21.02** Non-Emergency Situations: Except in an emergency, any person who, without first having obtained the necessary permit, excavates or obstructs a right-of-way must subsequently obtain a permit, deposit with the Township the fees necessary to correct any damage to the right- of-way and comply with all the requirements of this Chapter.

## **SECTION 22. SUPPLEMENTARY NOTIFICATION**

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

## **SECTION 23. REVOCATION OF PERMITS**

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

A. The violation of any material provision of the right-of-way permit or Township code;

- 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 Township or its citizens;
- C. Any material misrepresentation of fact in the application for a right-of-way permit;
- D. The failure to maintain the required security and/or insurance;
- E. The failure to complete the work within the time specified in the permit; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control;
- F. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 19 of this chapter; or
- G. The failure of the utility to pay any required costs, fees, or charges billed by the Township.

**23.02** Written Notice of Breach: If the Township 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 Township 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 Township, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**23.03** Response To Notice Of Breach: Within five (5) working days of receiving a written notification of the breach from the Township, the permittee shall provide the Township with a plan acceptable to the Township that will cure the breach. The permittee's failure to so contact the Township, 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.

**23.04** Reimbursement Of Township Management Costs: If a permit is revoked, the permittee shall reimburse the Township for the Township's reasonable costs, including removal and restoration costs, incurred in connection with the revocation.

**23.05** Revoked Permit: If the Township revokes a permittee's permit for breach of this chapter, the permittee will not be allowed to excavate or obstruct within the Township right-of-way until the breach situation is corrected to the satisfaction of the Township and the permit is reissued.

**23.06** Cause for probation. From time to time, the Township 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.

**23.07** 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. Notice of the revocation shall be mailed to the permittee within three business days of the decision.

## **SECTION 24. MAPPING DATA**

**24.01** Information Required: Each registrant and permittee shall provide project data in accordance with Minnesota rules and as follows:

- A. The location of applicant's mains, cables, conduits, switches and related equipment and facilities, identified by:
  - 1. Offsets from property lines, distances from the centerline of the right-of-way and curb lines and/or other reference points as determined by the Township.
  - 2. Coordinates derived from the Dakota County coordinate system. The information shall be supplied in an electronic file using a .dwg or .dxf format.
  - 3. Any other system agreed upon by the right-of-way user and the Township.
- B. The type, quantity and size of the equipment;
- C. A dimensional description of aboveground appurtenances;
- D. A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and
- E. The location of any facilities that were abandoned in conformance with Minnesota statutes.

**24.02** 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 director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005 shall be a condition of any Township approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes Chapter 429, and 2) Township approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes Chapter 462. The director shall reasonably determine the appropriate method of providing such information to the Township. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

**24.03** Submittal Requirements:

- A. Within six (6) months after the effective date of this chapter, all right-of-way users who own or control facilities within the right-of-way on the effective date of this chapter shall submit detailed mapping data in accordance with this section for all facilities and equipment located within the right-of-way. Following initial mapping,

all right-of-way users shall submit detailed mapping data within ninety (90) days following completion of any work pursuant to a permit, for all new facilities located within the right-of-way.

- B. At the request of any right-of-way user, information required by the Township, which qualifies as "trade secret" data under the Minnesota data practices act, shall be protected accordingly.

## **SECTION 25. LOCATION AND RELOCATION OF FACILITIES**

**25.01 Placement, Location and Relocation:** Placement, location and relocation of facilities must comply with Minnesota Statutes, with other applicable law and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

**25.02 Corridors:** The Township may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, as a best management practice for each type of facility or equipment that is, or, pursuant to current technology, the Township expects will someday be located, within the right-of-way. All excavation, obstruction, or other permits issued by the Township 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 of variance with the corridors established by the Township 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, to prevent interference with Township use of the right-of-way, unless this requirement is waived by the Township 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.

**25.03 Limitation Of Space:** To protect health, safety and welfare or when necessary to protect the right-of-way and its current use, the Township shall have the power to use best management practices to prohibit or limit the placement and location of new or additional facilities within the right-of-way. In making such decisions, the Township 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 need 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 Township plans for public improvements and development projects which have been determined to be in the public interest.

**25.04 Relocation Of Facilities:** A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for convenience of the Township, in connection with: 1) a present or future Township use of the right-of-way for a public improvement, 2) the public health or safety, or 3) the safety and convenience of travel over the right-of-way. The right-of-way user shall restore any rights of way in accordance with this chapter.

A right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless the reasonable costs to

do so are first paid to the right-of-way user.

**25.05 Undergrounding:** Unless otherwise permitted by an existing franchise, or unless existing aboveground equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment and the required relocation of old equipment in the right-of-way must be located or relocated and maintained underground in accordance with Section 11 of this title. The permittee shall comply with the following requirements when installing underground facilities:

- A. Underground facilities shall, where reasonably possible, be installed outside the paved or surfaced area. If unable to install outside the surfaced area, the installation shall be as close to the roadway surface as possible to allow access thereto without unnecessarily disturbing paved areas of the roadway;
- B. Right-of-way alignment and grade shall be maintained;
- C. Fiber facilities shall be buried in a proper conduit and at a depth of no less than three feet (3') deep and no more than four feet (4'); copper facilities below concrete or bituminous paved roadway surfaces shall be buried no less than three (3') deep and no more than four feet (3') deep, and all other copper facilities, except Township owned facilities, shall be buried no less than thirty inches (30") deep and no more than four feet (4') deep;
- D. All underground facilities which cross streets or hard surfaced driveways shall be bored and installed in conduit when requested by the Township. Gas does not need to be installed in conduit;
- E. When required, the permittee shall excavate an observation hole over a Township utility to ensure that a Township utility is not damaged;
- F. If the project work involves an open cut, the permittee shall install visual tracers twelve (12") over buried facilities. If other construction methods are used, substitute location methods may be used upon approval by the Township;
- G. During plowing or trenching of facilities, a warning tape shall be placed at a depth of twelve inches (12") above copper cables with over two hundred (200) pairs and fiber facilities and a locating wire or conductive shield shall be installed above buried telecommunication facilities, except for dielectric cables;
- H. Restoration of areas disturbed by facilities will include returning the right-of-way to the same condition that existed before excavation as per Minnesota Rules 7819.1100. Subject to this standard, plates 1 to 13, shown in parts 7819.9900 to 7819.9950, indicate maximum limits of restoration methods and area requirements the Township can impose when a right-of-way user excavates in the right-of-way. The Township and right-of-way user may agree to a lesser requirement. The right-of-way user is responsible for all of its work done in the right-of-way, whether by employees, agents or independent contractors. All levels of restoration include compaction of the materials placed in the excavation of the sub grade and aggregate base, plus pavement replacement, in kind. If required by the Township, all work must be performed according to the Township's specifications and drawings;



- I. All facilities shall be located so as to not interfere with existing and potential future traffic signals and signs;
- J. Unless approved by the Township, all aboveground appurtenances shall be located no closer than ten feet (10') to Township hydrants, waterline valves, manholes, lift stations and catch basins; not in front of or within usual sight lines of any Township sign, monument or amenity for facilities or parks; and no closer than two feet (2') from sidewalks and trails;
- K. Underground facilities shall not be installed between a hydrant and an auxiliary valve;
- L. Where utility easements exist beyond the roadway surface area of the right-of-way and space is available therein, underground facilities shall not be installed within five feet (5') of hydrants, waterline valves, lift stations, manholes or catch basins. In those areas in which no utility easement exists, placement of an underground facility shall be between the edge of the pavement and no closer than three feet (3') to an existing Township utility appurtenance, unless approved by the Township;
- M. The location and installation of telecommunications facilities shall comply with the national electrical safety code, as incorporated by reference in Minnesota statutes.

## **SECTION 26. PRE-EXCAVATION FACILITIES LOCATION**

**26.01** In addition to complying with the requirements of Minnesota Statutes 216D.01-.09 (Gopher State One Call) 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 placement of all said facilities.

## **SECTION 27. DAMAGE TO OTHER FACILITIES**

**27.01** The provisions of Minnesota Statutes 216D shall apply to all situations involving damages to facilities during excavation operations. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. This provision includes costs for damages to boulevard amenities, such as irrigation systems and invisible fences, placed by property owners. It is the registrant's responsibility to provide immediate notice of such damages to the affected property owners. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the Township's response to an emergency occasioned by that registrant's facilities.

## **SECTION 28. RIGHT-OF-WAY VACATION**

**28.01** Reservation of Right: If the Township vacates a right-of-way that contains the facilities of a registrant, the registrant's right in the vacated right-of-way are governed by Minnesota Rule 7819.3200 and other applicable laws.

## **SECTION 29. INDEMNIFICATION AND LIABILITY**

**29.01** Limitation of Liability: By registering with the Township, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the Township for any liability for: 1) injuries to person, damage to property or loss of service claims by parties

other than the registrant or the Township, or 2) claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.

**29.02 Indemnification:** By registering with the Township, a registrant agrees, or by accepting a permit under this chapter, a permittee is required to indemnify, keep and hold the Township free and harmless from any and all costs, specifically including attorney fees and other costs and expenses of defense, liabilities and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the Township for its own negligence except for claims arising out of or alleging the Townships negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf, including, but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permittee or the Township, and the registrant or permittee, in defending any action on behalf of the Township, shall be entitled to assert in any action every defense or immunity that the Township could assert in its own behalf. In defending the Township, any registrant or permittee shall obtain the consent of the Township board before any settlement shall be enforced.

### **SECTION 30. ABANDONED OR UNUSABLE FACILITIES**

**30.01 Discontinued Operations:** A registrant who has determined to discontinue all or a portion of its operations in the Township must provide information satisfactory to the Township that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

**30.02 Removal:** Any registrant who has abandoned or unusable facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation or construction unless the Township waives this requirement.

### **SECTION 31. APPEALS**

**31.01** A right-of-way user that: a) has been denied registration; b) has been denied a permit; c) has had permit revoked; or d) believes that the fees imposed are invalid may have the denial, revocation, or fee imposition reviewed; or e) disputes a determination of the director regarding Section 23 of this ordinance, upon written request, by the Township Board. The Township Board shall act on a timely written request at its next regularly scheduled meeting. A decision by the Township Board affirming the denial, revocation, or fee imposition or decision reviewed, will be in writing and supported by written findings establishing the reasonableness of the decision.

### **SECTION 32. FUTURE USES**

**32.01** In placing any equipment, or allowing it to be placed in the right-of-way the Township is not liable for any damages caused thereby to any registrant's equipment that is already in place. No registrant is entitled to rely on the provisions of the Chapter and no special duty is created as to any registrant.

**SECTION 33. RESERVATION OF REGULATORY AND POLICE POWERS**

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

**SECTION 34. SEVERABILITY**


**34.01** If any portion of this Chapter is for any reason held invalid by any court of competent jurisdiction, such portions shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 35. PENALTY FOR VIOLATION**

**35.01** A person shall be subject to a fee or delay penalty for violation of this Chapter when a person is obstructing the right-of-way beyond the date specified in the permit, is performing non-emergency work in the right-of-way without having been issued a permit or when a person causes the Township to incur costs as a result of actions or inaction of the person. Additional penalties for violation of this ordinance are listed in Section 23.06 and 23.07.

**SECTION 36. EFFECTIVE DATE**

This ordinance will take effect and be in force after its passage and official publication. Adopted this 22<sup>nd</sup> day of November, 2022 by the Town Board of Empire Township, Minnesota.

  
Terry Holmes, Chair

**ATTEST:**

  
Charles Seipel-Teng, Clerk-Treasurer

Official summary published in the Dakota County Tribune on December 2, 2022.



EMPIRE TOWNSHIP

Permit to work within Township property/right-of-way Excavation  Obstruction

1. Location \_\_\_\_\_  
(Street and property address or legal description, or distance and direction from nearest public street intersection)
2. Nature of Work \_\_\_\_\_
3. Indicate below items to be affected/disturbed and include information on drawing or plan of work to be done.
 

<input type="checkbox"/> Curb & Gutter <input type="checkbox"/> Trail/Sidewalk <input type="checkbox"/> Pond/Wetland <input type="checkbox"/> Traffic Control Device/Sign <input type="checkbox"/> Drainage <input type="checkbox"/> Structure/Building	<input type="checkbox"/> Street Surface <input type="checkbox"/> Tree <input type="checkbox"/> Public Utility (sewer, water) <input type="checkbox"/> Private Utility (electric, gas, etc.) <input type="checkbox"/> Small Cell <input type="checkbox"/> Other _____
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
4. Method of Installation or Construction \_\_\_\_\_  
(Attach a detailed description and scaled drawing of the project and project work including identification of obstructions/structures to be placed and size and depth of excavation.)
5. Work to start on or after \_\_\_\_\_ and shall be completed by \_\_\_\_\_ unless an extension is granted.  
Extension is granted to \_\_\_\_\_ (date) by \_\_\_\_\_ (staff).
6. Will lane closure or detouring of traffic be necessary? \_\_\_\_\_ If yes, state duration and suggested route for each instance: (attach detour map) \_\_\_\_\_

All detour plans are required as part of this permit and must be pre-approved in writing by the Engineering Department. The Township Engineer shall be notified in writing at least 4 working days in advance of any approved detour being established, changed, or discontinued.

<b>APPLICATION INFORMATION (Please Print):</b>			
Gopher State One Call Registration Number _____			
Name _____		Phone _____	
E-mail _____		Fax _____	
Address _____			
STREET	CITY	STATE	ZIP
<b>LOCAL REPRESENTATIVE INFORMATION (Please Print):</b>			
Name _____		Phone _____	
E-mail _____		Fax _____	
Address _____			
STREET	CITY	STATE	ZIP
Emergency (24 Hr.) Phone: _____			
<b>PARTY OR ORGANIZATION PERFORMING WORK (Please Print):</b>			
Gopher State One Call Registration Number _____			
Name _____		Phone _____	
Address _____			
STREET	CITY	STATE	ZIP

Applicant shall inform the Empire Township Engineer in writing of the actual completion date.

The undersigned herewith accepts the terms and conditions of this permit by Empire Township as herein contained and agrees to fully comply therewith to the satisfaction of Empire Township. The undersigned also declares that he/she has read, understands, and will comply with all relevant Township Ordinances and all Right-of-Way Regulations. **A Certificate of Insurance or Self Insurance verifying coverage has been provided to the Township.** (Empire Township to be named as additional insured.)

Signed \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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**AUTHORIZATION OF PERMIT (for Township use only)** DATED \_\_\_\_\_  
 FINANCIAL SECURITY AMOUNT: \$ \_\_\_\_\_ TYPE \_\_\_\_\_ (Cash or LOC)  
 Fee \$ \_\_\_\_\_ Receipt # \_\_\_\_\_ Permit # \_\_\_\_\_

In consideration of agreement to comply in all respects with the regulations and codes of Empire Township covering such operations, and pursuant to authorization duly given by said Township, permission is hereby granted for the work to be done as described in the above application with said work to be done in accordance with special provisions as hereby stated:

APPROVED BY ENGINEERING DEPARTMENT: BY \_\_\_\_\_ DATE \_\_\_\_\_