

ORDINANCE NO. 2025-04

AN ORDINANCE UPDATING THE RIGHT OF WAY PERMITTING AND MANAGEMENT REQUIREMENTS AND FEE SCHEDULE, THEREBY AMENDING CHAPTER 17 AND APPENDIX A OF THE CITY CODE

The City Council for the City of Bloomington, Minnesota, ordains:

Section 1. That Chapter 17 of the City Code is hereby amended by deleting those words within brackets and ~~[stricken through]~~ and adding those words that are underlined, to read as follows:

CHAPTER 17: STREETS AND RIGHTS-OF-WAY

ARTICLE IV: Right-of-Way Management and Locating of Underground Facilities

§ 17.65 DEFINITIONS.

The following words, terms and phrases, as used herein, have the following meanings unless the context clearly indicates otherwise.

REGISTRANT. Any person required to register pursuant to ~~[§ 17.66 of this Article IV]~~ Minnesota State Statute 326B.701:

§ 17.66 RESERVED ~~[REGISTRATION.~~

~~(a) *Registration required prior to work.* No person shall construct, install, repair, remove, relocate or perform any work within any right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, without first being registered pursuant to this section. Such registration shall be made on an application form provided by the city's Department of Public Works and shall be accompanied by the registration fee set forth in City Code Appendix A. Registration, and the accompanying fee, shall be required on an annual basis. A service or utility service operating under a franchise with the city shall register pursuant to this section but need not provide the registration information required by subsection (c) below if such information has been submitted pursuant to the franchise agreement. A person who pays a franchise fee to the city in accordance with a franchise agreement shall be exempt from payment of a registration fee. Nothing in this section relieves a person from complying with the provisions of M.S. Chapter 216D, the Gopher State One-Call Law, as it may be amended from time to time.~~

~~—(b) *Exceptions.* The following are not subject to the requirements of this section, but may be subject to regulation by other sections of this city code:~~

~~—(1) *Persons planting or maintaining boulevard surface plantings or gardens;*~~

~~—(2) Persons erecting fences, mail boxes, installing driveways, sidewalk, curb and gutter, or parking lots;~~

~~—(3) Persons engaged in snow removal activities;~~

~~—(4) Persons installing street furnishings, bus stop benches and shelters;~~

~~—(5) Persons installing irrigation systems;~~

~~—(6) City other than sewer and water utilities;~~

~~—(7) Plumbers licensed in accordance with § 15.141 of this code; and~~

~~—(8) Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this section.~~

~~—(c) *Registration Information.* The registrant must provide, at the time of registration and within 15 days following the date the registrant becomes aware of any change thereto, the following information:~~

~~—(1) Registrant's name, address, telephone number, facsimile number and Gopher One Call registration certificate number if required by state law;~~

~~—(2) Name, street address, e-mail address, telephone number and facsimile number of the person responsible for fulfilling the obligations of the registrant ;~~

~~—(3) A certificate of insurance from a company licensed to do business in the State of Minnesota providing minimum coverage in the following amounts:~~

~~—(A) Worker's compensation: \$500,000 each person, each occurrence.~~

~~—(B) General liability, including bodily injury and property damage: \$1,500,000 per occurrence, \$3,000,000 minimum general aggregate and \$2,000,000 products and completed operations aggregate.~~

~~—(C) Automobile liability insurance, including owned, non-owned and hired vehicles: \$1,500,000 per occurrence and \$3,000,000 general aggregate.~~

~~—(D) Property insurance, covering damages to the registrant's property in the right of way: in an amount sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements \$1,000,000 or greater.~~

~~—(E) The city may require an adjustment to insurance coverage limits for any installation in place longer than 12 months.~~

~~—Such certificate 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 (i) use and occupancy of the right-of-way by the registrant , its officers, agents, employees and permit holders ; and (ii) placement and use of equipment or facilities in the right of way by the registrant , its officers, agents, employees and permit holders , including, but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property. Such certificate shall also name the city as an additional insured as to whom the coverages~~

~~required herein are in force and applicable and for whom defense will be provided as to all such coverages. Such certificate shall require that the Director be notified 30 days prior to cancellation of the policy.~~

~~—(4) Twenty-four hour emergency number;~~

~~—(5) An acknowledgment by the registrant of the indemnification pursuant to § 17.85 of this code;~~

~~—(6) Certificate of authority to do business in the state and in the city, if applicable; and~~

~~—(7) Such additional information as the city may require.]~~

§ 17.67 RESERVED [REPORTING OBLIGATIONS.

~~—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 Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate coordination and reduction in the frequency of excavations and obstructions of rights-of-way. If by December 1 of any year the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the city as soon thereafter as it is developed.~~

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

~~—(a) To the extent known, the locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year; 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.~~

~~—The Director will have available for inspection in the Director's office a composite list of all projects of which the Director has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Each registrant must notify the Director immediately of any change in its list of projects.]~~

§ 17.68 PERMIT REQUIRED.

(a) *Permit required.* Except as otherwise provided in this code, no registrant may obstruct or excavate any right-of-way without first having been issued the appropriate right-of-way permit pursuant to this section and conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(1) Excavation permit . *An excavation permit is required by the registrant to excavate that part of the right-of-way described in each permit and to hinder free and*

open passage over the specified portion of the right-of-way by placing facilities therein, to the extent and for the duration specified in the permit.

(A) Applicant shall be restricted to 50,000 total feet of in progress right-of-way permits for horizontal directional drilling (HDD) unless authorized for additional footage by the City Engineer or designee. Upon completion of substantial restoration of 75% of the total permitted footage for an active right-of-way permit, that footage will be deducted from the total footage of in progress right-of-way permits.~~[Right-of-way horizontal directional drilling (HDD) shall be limited to 2,640 feet per right-of-way permit application.]~~

(B) Installation of cabinets, handholes, poles, transformers, and other such fixtures as determined by the City Engineer or designee shall require a right-of-way permit for all such fixtures within each right-of-way permit [2,640-foot project] area.

(2) *Obstruction*~~[aerial/interduct]~~ permit. An obstruction~~[aerial/interduct]~~ permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein within the right-of-way, to the extent and for the duration specified in the permit. An obstruction~~[aerial/interduct]~~ permit is not required if a registrant has been issued a valid excavation permit for the same project.

(3) *Pole attachment permit.* A pole attachment permit is required by the registrant in order to attach a wireless telecommunication facility to a new or existing wireless support structure in the public right-of-way. A wireless telecommunication facility shall only be co-located on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application. A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit. Wireless telecommunication facilities that are larger than what is defined as a small wireless facility in § 17.65 of this code are not permitted and therefore not eligible for a pole attachment permit.

(5) *Aerial permit.* An aerial permit is required by a registrant applicant for installation, repair or other work on above-ground facilities over the specified portion of right-of-way to the extent and for the duration specified in the permit.

(b) *Permit reprocessing fee.* No registrant may excavate or obstruct the right-of-way beyond the date or dates specified in the permit or do any work outside the area specified in the permit unless: (1) the registrant makes a supplementary application for an extension of the permit or a new permit before expiration of the initial permit, pays the applicable permit fee as set forth in City Code Appendix A; and (2) is granted a new permit or an extension of the initial permit by the Director .

Verbal extensions of the initial permit may be granted by the Director for a period of no greater than 48 hours or for emergencies without additional fee.

(f) *Permit issuances; conditions.* The Director shall grant a right-of-way permit upon finding the work will comply with the requirements of this Article IV. The Director 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, to ensure the structural integrity of the right-of-way, to ensure completion of restoration of the right-of-way within a specified period, to protect the property and safety of other users of the right-of-way and to minimize the disruption and inconvenience to the traveling public. ~~[No right-of-way permit shall be issued to any person who has failed to register pursuant to § 17.66 of this Article IV.]~~

§ 17.73 OTHER OBLIGATIONS.

(b) *Prohibited work.* Except in an emergency , and with the approval of the Director , no right-of-way excavation or obstruction may be done ~~[when seasonally prohibited]~~ between November 15 and April 15 or when conditions are unreasonable for such work.

§ 17.74 DENIAL OF PERMIT.

The Director may deny a permit based on any of the following grounds:

~~[(a)]~~ ~~Failure to register pursuant to § 17.66 of this code;~~

~~[(b)]~~(a) The applicant is subject to revocation of a prior permit issued pursuant to this Article IV:

~~[(c)]~~(b) The proposed schedule for work would conflict or interfere with an exhibition, celebration, festival or any other similar event;

~~[(d)]~~(c) The proposed schedule conflicts with scheduled or total or partial reconstruction of the right-of-way;

~~[(e)]~~(d) The applicant fails to comply with the requirements of this Article IV or other provisions of this code;

~~[(f)]~~(e) The proposed excavation within a street or sidewalk surface has been constructed or reconstructed within the preceding five years, unless the Director determines that no other locations are feasible or that an emergency exists necessitating the excavation;

~~[(g)]~~(f) The Director determines that the right-of-way would become unduly congested with the installation of the proposed facilities and equipment associated therewith;

~~[(h)]~~(g) Adjacent or nearby business or residential uses would be unreasonably disrupted; and

~~[(i)]~~(h) The Director determines that denial is necessary to protect the health, safety and welfare of the public or protect the right-of-way and its current use.

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Section 2. That Appendix A of the City Code is hereby amended by deleting those words within brackets and ~~[stricken through]~~ and adding those words that are underlined, to read as follows:

APPENDIX A: ADMINISTRATIVE RELIEF AND FEE SCHEDULE

This appendix contains the various fees adopted by ordinance in the listed sections of the City Code.

CODE SECTION	CROSS- REF	DESCRIPTION	FEE
<i>Chapter 17: Streets and Rights-of-way</i>			
§ 17.05(b)		<i>Driveway Approaches/curb cut-Application Permit Fee</i>	
		(1) Permit, first form inspection and final inspection	\$160
		(2) Additional form inspections	\$80 per inspection
<i>Right of way Permit fees</i>			
§ 17.66(a)		[Annual Registration fee]	[\$60 per registration]
§ 17.68(a)(1)	§17.68(d)	Right-of-Way Permit Fee	[\$560] <u>\$150 up to 100 ft, \$0.30 per each additional foot</u>
§ 17.68(a)(1)	§17.68(d)	[Right of Way Permit Fee (residential water and sewer repairs)]	[\$150]
§ 17.68(a)(2)		Obstruction [aerial/interduct] permit fee. The maximum length	\$129

		of an obstruction permit shall be 5,000 lineal feet.	
§ 17.68(a)(3)		Pole attachment permit fee	\$1,000 per attachment
<u>§ 17.68(a)(5)</u>		<u>Aerial Permit Fee</u>	<u>\$120 up to 100 ft, \$0.15 per each additional foot</u>
§ 17.68(b)		Permit reprocessing fee	\$36 for each permit extension
§ 17.68(c)		Delay penalty	\$84 plus \$11 per day for each late day over 3 days
§ 17.68(d)		[Right-of-way permit processing fee (non-refundable)]	[\$36 fee withheld from permit application fee if work is not completed]
§ 17.68(d)(1)	§ 17.79(a)(1)	Permit data conversion fee	\$36 for each data entry
§ 17.79(a)(1)	§ 17.68(d)(1)	Mapping Data - Data Conversion Fee	See §17.68, above.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed and adopted this 31st day of March, 2025.

/s/ Tim Busse
Mayor

ATTEST:

APPROVED:

/s/ Kaytlyn Danielzuk
Secretary to the Council

/s/ Melissa J. Manderschied
City Attorney