

# CHAPTER 16

## RIGHT-OF-WAY

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## CHAPTER 16

### RIGHT-OF-WAY

#### **SECTION 16.01. ELECTION TO MANAGE THE PUBLIC RIGHT OF WAY..**

- A. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.
- B. Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant Minn. Stat. 237.163 Subd. 2(b), to manage rights-of-way within its jurisdiction.

**SECTION 16.02. DEFINITIONS.** The following definitions apply in this chapter of this code. References hereafter to “sections” are, unless otherwise specified references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

- A. **“Abandoned Facility”** - means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.
- B. **“Applicant”** - means any person requesting permission to excavate or obstruct a right-of-way.
- C. **“City”** - means the city of Lexington, Minnesota. For purposes of section 16.28, city means its elected officials, officers, employees and agents.
- D. **“Commission”**- means the State Public Utilities Commission.
- E. **“Congested Right-of-Way”** - means 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 500 feet.
- F. **“Degradation”** - means 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.

- G. **“Degradation Cost”** - subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.
- H. **“Degradation Fee”** - means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.
- I. **“City Inspector”** - means any person authorized by the city to carry out inspections related to the provisions of this chapter.
- J. **“Delay Penalty”** - is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.
- K. **“Emergency”** - means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
- L. **“Equipment”** - means any tangible asset used to install, repair, or maintain facilities in any right-of-way.
- M. **“Excavate”** - means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- N. **“Excavation Permit”** - means the permit which, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.
- O. **“Excavation Permit Fee”** - means money paid to the city by an applicant to cover the costs as provided in Section 16.06.
- P. **“Facility or Facilities”** - means any tangible asset in the right-of-way required to provide Utility Service.
- Q. **“Hole”** - means an excavation in the right-of-way, with the excavation having a length less than the width of the pavement.
- R. **“Management Costs”** - means the actual costs the city incurs in managing its rights-of-Way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work;

determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way User for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 16.21 of this chapter.

- S. **“Obstruct”** - means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- T. **“Obstruction Permit”** - means the permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.
- U. **“Obstruction Permit Fee”** - means money paid to the city by a permittee to cover the costs as provided in Section 16.06.
- V. **“Patch or Patching”** - means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the sub-base and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's Street Improvement Plan for reconstruction within the next two (2) years.
- W. **“Pavement”** - means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.
- X. **“Permit”** - has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.
- Y. **“Permittee”** - means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.
- Z. **“Person”** - means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.
- AA. **“Registrant”** - means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way

- BB. **“Restore or Restoration”** - means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.
- CC. **“Restoration Cost”** - means the amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota public Utilities Commission rules.
- DD. **“Public Right-of-Way”** - means the area on, below, or above a public roadway, highway, street, cart-way, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.
- EE. **“Right-of-Way Permit”** - means either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.
- FF. **“Right-of-Way User”** - means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, Subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
- GG. **“Service or Utility Service”** - includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, Subd’s. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minn. Stat. Chapter. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; and (6) water, sewer, steam, cooling or heating services.
- HH. **“Supplementary Application”** - means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.
- II. **“Temporary Surface”** - means the compaction of sub-base and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's capital improvement plan, and is scheduled for completion within 2 years, in which case it is considered full restoration.
- JJ. **“Trench”** - means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

KK. **“Telecommunication Right-of-Way User”** - means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, which is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. SECTION 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter.

### **SECTION 16.03. PERMIT REQUIREMENT.**

**Subd. 1. Permit Required.** Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.

- A. **Excavation Permit.** An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing Facilities described therein, to the extent and for the duration specified therein.
- B. **Obstruction Permit.** An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

**Subd. 2. Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

**Subd. 3. Delay Penalty.** In accordance with Minnesota Rule 7819.1000 Subd. 3 and notwithstanding Subd. 2 of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.

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

**SECTION 16.04. PERMIT APPLICATIONS.** Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

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

- A. Each applicant's name, Gopher One-Call registration certificate number, address, e-mail address, if applicable, and telephone and facsimile numbers.
- B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- C. A certificate of insurance or self-insurance:
  - 1) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;
  - 2) Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
  - 3) Naming the city and City Engineer as an additional insured as to whom the coverage's required herein are in force and applicable and for whom defense will be provided as to all such coverage's;
  - 4) Requiring that the City be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
  - 5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- D. The city may require a copy of the actual insurance policies.

- E. If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.
- F. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

**Subd. 2. Payment.** Payment of money due the city for:

- A. permit fees, estimated restoration costs and other management costs,
- B. prior obstructions or excavations;
- C. any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
- D. franchise fees or other charges, if applicable.

***SECTION 16.05. ISSUANCE OF PERMITS; CONDITIONS.***

**Subd. 1. Permit Issuance.** If the Applicant has satisfied the requirements of this chapter, the City shall issue a permit.

**Subd. 2. Conditions.** The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

***SECTION 16.06. PERMIT FEES.*** (Note: Sample fee schedules included in the appendix)

**Subd. 1. Excavation Permit Fee.** The city shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

- A. The city management costs.
- B. Degradation costs, if applicable.

**Subd. 2. Obstruction Permit Fee.** The city shall establish the obstruction permit Fee and shall be in an amount sufficient to recover the city management costs.

**Subd. 3. Payment of Permit Fees.** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

**Subd. 4. Nonrefundable.** Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 16.14 are not refundable.

**Subd. 5. Application to Franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

**Subd. 6. Establishment of Fees.** All permit fees shall be established consistent with the provisions of Minnesota Rule 7819, Plates 1 – 13 (see end of chapter).

### ***SECTION 16.07. RIGHT-OF-WAY PATCHING AND RESTORATION.***

**Subd. 1. Timing.** The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 16.08.

**Subd. 2. Patch and Restoration.** Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

- A. City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.
- B. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
- C. Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

**Subd. 3. Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819, Plates 1-13 (see back of chapter).

**Subd. 4. Duty to Correct Defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the City, correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the

receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 16.08.

**Subd. 5. Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

#### ***SECTION 16.08. SUPPLEMENTARY APPLICATIONS.***

**Subd. 1. Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

**Subd. 2. Limitation on Dates.** A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

#### ***SECTION 16.09. DENIAL OF PERMIT.***

**Subd. 1. Reasons for Denial.** The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

#### ***SECTION 16.10. INSTALLATION REQUIREMENTS.***

**Subd. 1. Compliance.** 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 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Sees. 237.162 and 237.163.

#### ***SECTION 16.11. INSPECTION.***

**Subd. 1. Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a Completion Certificate in accordance Minnesota Rules 7819.1300.

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

**Subd. 3. Authority of City.**

- A. At the time of inspection the City may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- B. The City may issue an order to the permittee for any work, which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to SECTION 16.13.

***SECTION 16.12. WORK DONE WITHOUT A PERMIT.***

**Subd. 1. Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the Emergency.

- A. If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

**Subd. 2. Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

***SECTION 16.13. SUPPLEMENTARY NOTIFICATION.***

**Subd. 1. Date Change.** If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known.

#### **SECTION 16.14. REVOCATION OF PERMITS.**

**Subd. 1. Substantial Breach.** The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- A. The violation of any material provision of the right-of-way permit;
- B. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- C. Any material misrepresentation of fact in the application for a right-of-way permit;
- D. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- E. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to SECTION 16.07.

**Subd. 2. Written Notice of Breach.** If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy 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 city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**Subd. 3. Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach, permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

**Subd. 4. Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

### ***SECTION 16.15. MAPPING DATA.***

**Subd. 1. Information Required.** Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. The information shall be compatible with City Engineer's mapping software.

### ***SECTION 16.16. LOCATION OF FACILITIES.***

**Subd. 1. Compliance.** Placement, location, and relocation of facilities must comply with the act, 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. (Note: Cities wishing to require the undergrounding of utilities should adopt the separate undergrounding ordinance included with appendix)

**Subd. 2. Corridors.** The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

**Subd. 3. Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular Utility Service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

***SECTION 16.17. DAMAGE TO OTHER FACILITIES.*** When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the City shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the city's response to an emergency occasioned by that owner's facilities.

### ***SECTION 16.18. RIGHT-OF-WAY VACATION.***

**Subd. 1. Reservation of Right.** If the city vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

**SECTION 16.19. INDEMNIFICATION AND LIABILITY.** By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

**SECTION 16.20. ABANDONED FACILITIES.**

**Subd. 1. Removal of Abandoned Facilities.** Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

**SECTION 16.21. APPEAL.**

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

**SECTION 16.22. RESERVATION OF REGULATORY AND POLICE POWERS.**

**Subd. 1. Permittee's Rights.** A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

COST ESTIMATES FOR FEES

			Base \$	Quantity	Total
1.	Excavation Permit Fees				
	A. HOLE		0.25	40	\$10.00
	Administration Verification				
	1) Plan Review		0.5	45	\$22.50
	2) Inspection				\$ -
	a) Location before work		0.5	30	\$15.00
	b) Compliance during work		0.5	30	\$15.00
	c) Completion after work		0.5	30	\$15.00
	d) Re-inspection		0.25	40	\$10.00
	3) Testing Result Review				
	a) Compaction		0.083	40	\$3.32
	b) Material		0.083	40	\$3.32
	4) Mapping				
	a) Review Data		0.25	45	\$11.25
	b) Transfer to AutoCAD		0.25	45	\$11.25
	c) Insert to overlay to tie in		0.25	45	\$11.25
	Total Cost				\$127.89
	Proposed Fee				\$125.00
	B. EMERGENCY HOLE				
	Administration		0.25	40	\$10.00
	Inspection after completion		1.5	30	\$45.00
	Total Cost				\$55.00
	Proposed Fee				\$55.00
	C. TRENCH				
	Administration Verification		0.25	40	\$10.00
	1) Plan Review		1.5	45	\$10.00
	2) Inspection				\$ -
	a) Location before work		0.5	30	\$15.00
	b) Compliance during work		1.5	30	\$45.00
	c) Completion after work		1.5	30	\$45.00
	d) Re-inspection		0.75	40	\$30.00

3) Testing					
Result Review					
	a)	Compaction	0.083	40	\$3.32
	b)	Material	0.083	40	\$3.32
4) Mapping					
	a)	Review Data	0.5	45	\$22.50
	b)	Transfer to AutoCAD	0.25	45	\$11.25
	c)	Insert to overlay to tie in	0.5	45	\$22.50
Total Cost					\$275.39

The average trench is 330 lin. Ft. past the width of the hole.  
Therefore, the number of 100 lin. Ft. (or portion thereof) units is 4.  
The cost per 100 lin. ft. unit is  $275.40/4 = \$68.85/100'$  unit

Proposed Fees \$70.00/100 lin. Ft.  
(plus hole fee)

2.	Obstruction Permit Fee				
	A. Administration		0.25	40	\$10.00
	B. Recording		0.25	40	\$10.00
	C. Review		0.75	45	\$33.75
	Minimum Base Coat				
	Proposed Base Fee				\$53.75
	Plus additional fee based on length				\$50.00
	Inspection				
	1) compliance during work		1.5	30	\$45.00
	2) completion after		0.25	30	\$7.50
	additional fee on assumed 1000 ft. permit				
	additional cost per lineal foot = $\$52.50/1000$				
	Proposed Fee				\$50.00 plus 0.05 lin. Ft.
3.	Permit Extension Fee				
	A. Administration		0.25	40	\$10.00
	B. Recording		0.083	40	\$3.32
	C. Review		1	40	\$40.00
	Proposed Fee				\$55.00
4.	Delay Penalty				
	A. Administration		1.5	40	\$60.00
	For up to 3 days of non-completion and non-prior notice before specified completion date.				
	After 3 days, an additional charge of \$10/day will be levied.				
	Total Penalty Charge				\$60.00
	(Up to 3 days late)				
	Each day over 3 days late				Plus \$10.00/day

5. Degradation Fee Formula

This formula covers degradation for depreciation caused by intrusion into the right-of-way. The depreciation applies to the original surface of the right-of-way and to the overlays and seal-coats applied to the surface. The formula includes life expectancy schedules for each and has an estimated cost per square yard based on the quality of the right-of-way surface required for different levels of traffic. This formula creates a degradation fee which is determined by the cost per square yard of street, overlay, and seal-coat, multiplied by the depreciation schedule, multiplied by the area of street patch.

Degradation Fee: (Cost per Square Yard for Street, Overlay, and Seal-coat x Depreciation Schedule Rates) x Area of Street Patch = Degradation Fee

RESTORATION OF RIGHT-OF-WAY

PART NUMBER		SUBJECT
		UTILITY TRENCH RESTORATION
1	7819.9900 Subpart 1	Pavement 0 to 5 years old
2	7819.9900 Subpart 2	Pavement 0 to 5 years old
3	7819.9905 Subpart 1	Pavement 5 years old to 5 yr. project plan
4	7819.9905 Subpart 2	Pavement 5 years old to 5 yr. project plan
5	7819.9910	Pavement in 5 year project plan
6	7819.9915	Pavement in 2 year project plan
		UTILITY HOLE RESTORATION
7	7819.9920	Pavement 0 to 5 years old
8	7819.9925	Pavement 5 years old to 5 yr. project plan
9	7819.9930	Pavement in 5 year project plan
10	7819.9935	Pavement in 2 year project plan
		MISCELLANEOUS
11	7819.9940	Gravel roads with driveways
12	7819.9945	Gross sections from plate 11

13 7819.9950

Road shoulder restoration