

**CITY OF LAKE ELMO  
WASHINGTON COUNTY, MINNESOTA**

**ORDINANCE NO. 9757**

**AN ORDINANCE RELATING TO NON-AGRICULTURAL LOW IMPACT USES**

The Lake Elmo City Council ordains that Sections 150 (Non-Agricultural Low Impact), 300.07(4)A2(g), and 300.07(4)A(A)(6) are hereby added to the Lake Elmo Municipal Code and that those portions of Section 300.07(4)(A)(4) relating to accessory building or structure setbacks and animal building setbacks for farm dwellings and related structures and activities and non-farm dwellings if not clustered are amended to read as follows:

- 150                    **(Non-Agricultural Low Impact)**. Non Agricultural Low Impact Use means the outdoor storage of cars, trucks, boats, trailers, recreational vehicles, recreational equipment, and other vehicles or mobile equipment under 26,000 pounds tare weight; the indoor storage of the aforementioned items and other goods and materials which, in the determination of the City Council, do not jeopardize the health, safety, or welfare of the City; nature farms; agricultural museums; farmer’s markets; small engine repair shops; or office space as an accessory use to the aforementioned uses.
- 300.07 4A 2 (g)       **Non-Agricultural Low Impact Uses Pursuant to the Standards Described in Section 300.07 4A 6.**
- 300.07 4A 6           **Non-Agricultural Low Impact Use Standards.** The City desires to maintain and preserve open space and agricultural land within the City. The City recognizes the monetary regards that may be enjoyed by a farmer or larger property owner who sells their land for development. The City further recognizes that allowing non-agricultural low impact uses, strictly controlled and regulated by conditional use permit, might allow a farmer or large property owner an economical use of their property that is zoned for agriculture. The following standards shall apply to these types of uses:
- a.           All of the property owner’s real estate that is contiguous to the non-agricultural low impact use must be zoned Agricultural and remain so zoned while the Conditional Use Permit is in effect.
  - b.           The area where the non-agricultural low impact use is located shall be legally defined and is hereafter known as the “CUP Area”. The CUP Area shall not exceed 4% of the property owner’s contiguous agricultural zone area. The CUP Area impervious surface coverage shall not exceed 1.5% of the property owner’s contiguous

agricultural zone area.


- c. Non-agricultural low impact uses shall only be allowed on a parcel of a nominal 40 acres or larger.
- d. Non-agricultural low impact uses shall not generate, on the average, more than three vehicle trips per day per acre of contiguous agriculturally zoned area.
- e. Any use under this section involving the outside storage of vehicles, equipment, or goods shall be located a minimum of 200 feet from any public roadway or adjacent landowner's boundary. The use shall be landscaped, bermed and/or screened from view by a landscape plan approved by the City Council.
- f. Non-agricultural low impact uses may not generate more than 3.0 SAC units per 3.5 acres or 235 gallons per day per net acre of land based upon design capacity of facilities, whichever is more restrictive.
- g. The property owner shall maintain the remaining land or farm outside of the CUP Area in accordance with the permitted uses of the Agricultural zoning district and the required practices of the Soil and Water Conservation District.
- h. All lighting shall comply with the City's Regulations.
- i. All signs shall comply with the City's Regulations.
- j. Rate and volume of runoff from the CUP area shall not exceed the one percent rule and shall be verified by the City Engineer.
- k. In the event that the property owner, or future property owner, initiates a Comprehensive Plan Amendment and Rezoning of any or all of the contiguous real estate from Agriculture to a more intensive use, the Conditional Use Permit shall terminate and all non-conforming structures shall be removed from the site within one year from the date of the City Council's adoption of the Comprehensive Plan Amendment and rezoning, unless the City agrees otherwise. This section shall not apply if the City initiates rezoning or if property owner is forced to transfer title to any part of the contiguous real estate due to Eminent Domain.

1. All Conditional use Permits granted to a non-agricultural low impact use shall be reviewed on an annual basis, and maybe rescinded, after a two week notice and a public hearing, if the Council finds that the public health, safety, or welfare is jeopardized.
- m. The standards for buildings or structures, as listed in the minimum District Requirements of the Agricultural zone, shall not apply to structures built prior to the effective date of this ordinance.

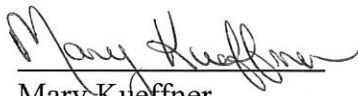
300.07(4)(A)(4) The front, interior side, rear, side corner and arterial street setbacks for accessory buildings or structure setbacks from property lines shall be increased from 100 feet to 200 feet. The property line setbacks for all animal buildings, feed lots, and manure storage sites shall be increased from 100 feet to 200 feet. The remaining provisions of Section 300.07(4)(A)(4) are not hereby amended.

**Effective Date.** This Ordinance shall be effective the day following its publication or on the day following the publication of an Ordinance Summary approved by the Lake Elmo City Council.

**Adoption Date.** Passed by the Lake Elmo City Council on the 18<sup>th</sup> day of July, 2000.

  
Lee Hunt, Mayor

ATTEST:

  
Mary Kueffner  
City Administrator

**Publication Date.** Published on the 24 day of July, 2000.

By enactment of this Section, the City Council hereby exercises its lawful police power and common law authority, and all statutory authority which is available to it, including, but not limited to, the powers conferred on it under Minn. Stat. §237.162 and §237.163, while preserving all power and authority to further require franchises from rights-of-way users under Minn. Stat. §216B.36, §222.37, §300.03, and §412.11 and other provisions of law.

**Sec. 1415.02. Definitions.**

The following definitions apply to this Section of the Code:

1. "Administrator" means the City Administrator of the City of Lake Elmo, or the Administrator's designee.
2. "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.
3. "City" means the City of Lake Elmo, Minnesota. For purposes of Section 1415.28, City means its elected officials, officers, employees and agents.
4. "Degradation" means the accelerated depreciation 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 did not occur.
5. "Degradation Cost" means money paid to the City to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation.
6. "Delay Penalty" means the penalty imposed as a result of unreasonable delays in right-of-way construction.
7. "Department" means the Department of Public Works of the City.
8. "Department Inspector" means any person authorized by the Administrator to carry out inspections related to the provisions of this Section.
9. "Disruptive Fee" means the penalty imposed as a result of the adverse impact on the residents of the City and others who are required to alter travel routes and times resulting from right-of-way obstructions.
10. (Reserved.)
11. "Emergency" means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.
12. "Equipment" means any tangible thing in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.
13. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way, except horticultural practices of penetrating the boulevard area to a depth of less than 12 inches.
14. "Excavation Permit" means the permit which, pursuant to this Section, 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.
15. "Excavation Permit Fee" means money paid to the City by an applicant to cover the costs as provided in Section 1415.11.
16. "Facility or Facilities" means any tangible asset in the right-of-way required to provide utility service.

17. "In" when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.
18. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Section.
19. "Management Cost" means the actual cost incurred by the City for public rights-of-way management; including but not limited to costs 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 equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; and revoking Right-of-Way Permits and performing all other tasks required by this Section, including other costs the City may incur in managing the provisions of this Section. Management Cost does not include payment by a Telecommunications right-of-way user for the use of the right-of-way, the fees and costs of litigation relating to the interpretation of Minnesota Session Laws 1997, Section 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the City's fees and costs related to appeals taken pursuant to Section 1415.30 of this Section.
20. "Obstruct" means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
21. "Obstruction Permit" means the permit which, pursuant to this Section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.
22. "Obstruction Permit Fee" means money paid to the City by a registrant to cover the costs as provided in Section 1415.11.
23. "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 (2) feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's five (5) year project plan.
24. "Performance Security" means a performance bond, a restoration bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in both a timely and quality manner.
25. "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Section.
26. "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, an utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have equipment in any right-of-way.
27. "Probation" means the status of a person that has not complied with the conditions of this Section.
28. "Probationary Period" means one year from the date that a person has been notified in writing that they have been put on probation.
29. "Registrant" means any person who (1) has or seeks to have its equipment 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 any equipment in the right-of-way.

30. "Repair" means the temporary construction work necessary to make the right-of-way usable for travel.
31. "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 that existed before the commencement of the work.
32. "Restoration Cost" means an amount of money paid to the City by a Permittee to cover the cost of restoration.
33. "Right of Way" means the surface and space above and below a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City.
34. "Right-of-Way Permit" means either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this Section.
35. "Service" or "Utility Service" includes but is not limited to (1) those services provided by a public utility as defined in Minn. Stat. §216B.02, Subds. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. §300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minn. Stat. Chap. 238; and A(6) Telecommunication Right-of-Way User.
36. "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.
37. "Telecommunication Rights-of-Way User" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.
38. "This Section" means Lake Elmo Code Section 1415 and its subdivisions.
39. "Unusable Equipment" means equipment in the right-of-way which has remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the equipment.

**Sec. 1415.03. Administration.**

The Administrator is the principal City official responsible for the administration of the Right-of-Way Permits, and the regulations related thereto. The Administrator may delegate any or all of the duties hereunder.

**Sec. 1415.04. Franchise: Franchise Supremacy.**

The City may, in addition, to the requirements of this Section, require that any person, which has or seeks to have equipment located in any right-of-way, obtain a franchise for the full extent permitted by law, now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this Section, whether granted prior or subsequent to enactment of this Section, shall control and supersede the conflicting terms of this Section, provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the City may be cumulative in the sole determination of the City or unless otherwise negotiated by the City and the franchise grantee. All other terms of this Section shall be fully applicable to all persons, whether franchised or not.

**Sec. 1415.05. Registration and Right-of-Way Occupancy.**

- Subd 1.**     **Registration.** Each person who occupies, uses, or seeks to occupy or use, the right-of-way or any equipment in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment in any right-of-way must register with the Administrator. Registration will consist of providing application information and paying a registration fee.
- Subd 2.**     **Registration Prior to Work.** No person may construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or any part thereof in any right-of-way without first being registered with the Administrator.
- Subd.3.**     **Exceptions.** Nothing herein shall be construed to repeal or amend the provisions of a City ordinance Permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Except as hereinafter provided, 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 maintain such boulevard plantings or gardens under this Section. However, excavations deeper than 12 inches are subject to the permit requirements of section 1415.08 of this Section. Nothing herein relieves a person from complying with the provisions of Minn. Stat. Section 216D, "one call" law.

**Section 1415.06. Registration Information.**

- Subd.1.**     **Information Required.** The information provided to the Administrator at the time of registration shall include, but not be limited to:
- A.     Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
  - B.     The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
  - C.     A certificate of insurance shall be on a form approved by the City:
    - 1.     Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or that registrant is covered by self insurance which the Administrator determines to provide the City with protections equivalent to that of a Minnesota licensed insurance company, legally independent from the registrant;
    - 2.     Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and Permittees, and (ii) placement and use of equipment in the right-of-way by the registrant, its officers, agents, employees and Permittees, and that registrant's insurance coverage includes, but is not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property;

3. Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
  4. Requiring that the Administrator be notified thirty (30) days in advance of cancellation of the policy; and
  5. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Administrator in amounts sufficient to protect the City and carry out the purposes and policies of this Section.
- 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 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.
- G. Such other information as the City may require.

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

**Sec. 1415.07. Reporting Obligations.**

- Subd.1.** Operations. Each registrant shall, at the time of registration and by December 1st of each year, file a construction and major maintenance plan with the Administrator.
- A. Such plan shall be submitted by using a format designated by the Administrator and shall contain the information determined by the Administrator to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.
  - B. The plan shall include, but not be limited to, the following information:
    1. 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
    2. The tentative locations and estimated beginning and ending dates for all Projects contemplated for the five years following the next calendar year (in this section, a "**Five-Year Project**").
  - C. The term "project" in this section shall include both Next-Year Projects and Five-Year Projects.



- D. By January 1st of each year, the Administrator will have available for inspection in the Administrator's office a composite list of all Projects of which the Administrator has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.
- E. Thereafter, by February 1, each registrant may change any Project in its list of NextYear Projects, and must notify the Administrator and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a Next-Year Project of another registrant listed by the other registrant.

**Subd.2.** **Additional Next-Year Projects.** Notwithstanding the foregoing, the Administrator will not deny an application for a Right-of-Way Permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

**Sec. 1415.08. Right-of-Way Permit Requirement.**

**Subd.1.** **Right-of-Way Permit Required.** Except as otherwise provided in the City's regulations, no person may obstruct or excavate any right-of-way without first having obtained the appropriate Right-of-Way Permit from the City Administrator and posting of the appropriate performance security with the City Administrator.

- A. **Excavation Permit.** An Excavation Permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein, to the extent and for the durations specified therein.
- B. **Obstruction Permit.** An Obstruction Permit is required by registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the durations specified therein.

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

**Subd.3.** **Delay Penalty.** Notwithstanding the provisions of Section 1415.08, B, 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.** **Right-of-Way Permit Display.** Right-of-Way Permits issued under this Section shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the Administrator.

**Subd.5.** **Performance Security.** Performance security shall be in an amount determined in the City's sole discretion, sufficient to serve as security for the full and complete performance of Permittee's obligation under this Section, including any costs, expenses, damages, or loss the City pays or incurs because of any failure to comply with this Section or any other applicable law, regulation, or standard. During the period of construction, repair or restoration of rights-of-way or equipment within the rights-of-way, the performance security shall be in an

amount sufficient to cover 125% of the estimated cost of such work, as documented by the person proposing to perform such work, or in a lesser amount as may be determined by the Administrator, taking into account the amount of equipment in the right-of-way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this Section. Sixty (60) days after completion of such work, the performance security may be reduced in the sole determination of the City.

**Sec. 1415.09. Application for a Right-of-Way Permit.**

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

- Subd.1.** Registration with the Administrator pursuant to this Section;
- Subd.2.** Submissions of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment;
- Subd.3.** Payment of all money due to 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, if applicable.
- Subd.4.** Payment of disputed amounts due the City by posting performance security or depositing in a City-approved escrow account an amount equal to at least 110% of the amount owing.
- Subd.5.** When an Excavation Permit is requested for purposes of installing additional equipment, and the posting of a restoration bond for the additional equipment is insufficient, the posting of an additional or larger restoration bond for the additional equipment may be required.

**Sec. 1415.10. Issuance of Permit; Conditions.**

- Subd.1.** **Permit Issuance.** If the Administrator determines that the applicant has satisfied the requirements of this Section, the Administrator may issue a permit.
- Subd.2.** **Conditions.** The Administrator 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 protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

**Sec. 1415.11. Right-of-Way Permit Fees.**

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

- A. the City Management Costs;
- B. degradation cost, if applicable.

**Subd.2.** **Obstruction Permit Fee.** The Obstruction Permit Fee shall be established by the Administrator 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.** **Non-refundable.** Permit fees that were paid for a permit that the Administrator has revoked for a breach as stated in Section 1415.21 are not refundable.

**Sec. 1415.12. Right-of-Way Patching and Restoration.**

**Subd.1.** **Timing.** The work to be done under the Excavation Permit, and the patching and/or restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the Permittee or when work was prohibited as unseasonal or unreasonable under Section 1415.15.

In addition to repairing its own work, the Permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for thirty-six (36) months thereafter.

**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 the City shall restore the right-of-way itself.

- A. **City Restoration.** If the City restores the right-of-way, Permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such restoration, the pavement settles due to Permittee's improper backfilling, the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing said pavement.
- B. **Permittee Restoration.** If the Permittee restores the right-of-way, it shall at the time of application for an Excavation Permit, post a performance security in an amount determined by the Administrator to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, thirty-six (36) months after completion of the restoration of the right-of-way, the Administrator determines that the right-of-way has been properly restored, the surety on the performance security shall be released.

**Subd.3.** **Standards.** The Permittee shall perform repairs and restoration according to the standards and with the materials specified by the Administrator. The Administrator shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Administrator in exercising this authority shall be guided by the following standards and considerations:

- A. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
- B. The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;

- C. The pre-excavation condition of the right-of-way; the remaining life-expectancy of the right-of-way affected by the excavation;
- D. Whether the relative cost of the method of restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and
- E. The likelihood that the particular method or restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

**Subd.4. Guarantees.** By choosing to restore the right-of-way itself, the Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period, it shall, upon notification from the Administrator, correct all restoration work to the extent necessary, using the method required by the Administrator. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Administrator, not including days during which work cannot be done because of the circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 1415.15.

**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 Administrator, or fails to satisfactorily and timely complete all restoration required by the Administrator, the Administrator 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 restoration bond.

**Subd.6. Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the costs to accomplish these responsibilities.

**Sec. 1415.13. Joint Applications.**

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

**Subd.2. With City Projects.** Registrants who join in a scheduled obstruction or excavation performed by the City, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee.

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

**Sec. 1415.14. Supplementary Applications.**

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

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

**Sec. 1415.15. Other Obligations.**

- Subd.1.** **Compliance with Other Laws.** Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, County, State or Federal rules, laws or regulations. A Permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. §§ 216D.01-09 ("**One Call Excavation Notice System**"). A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- Subd.2.** **Prohibited Work.** Except in an emergency, and with the approval of the Administrator, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- Subd.3.** **Interference with Right-of-Way.** A Permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles may not be parked within or next to a permit area. The loading or unloading of trucks next to a permit area is prohibited unless specifically authorized by the permit.

**Sec. 1415.16. Denial of Permit.**

The Administrator may deny a permit for failure to meet the requirements and conditions of this Section, or if the Administrator determines that the denial is necessary to protect the health, safety and welfare of the public, or if necessary to protect the right-of-way and its current use.

**Sec. 1415.17. Installation Requirements.**

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Engineering Standards adopted by the PUC or other applicable local requirements, insofar as they are not inconsistent with PUC Rules.

**Sec. 1415.18. Inspection.**

- Subd.1.** **Notice of Completion.** When the work under any permit hereunder is completed, the Permittee shall furnish a Completion Certificate in accordance with PUC Rules.
- Subd.2.** **Site Inspection.** Permittee shall make the work-site available to the Administrator 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 Administrator.**

- A. At the time of inspection, the Administrator 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 Administrator 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 Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 1415.21.

**Sec. 1415.19. Work Done Without a Permit.**

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

If the Administrator becomes aware of an emergency regarding a registrant's equipment, the Administrator may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Administrator may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose equipment 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, pay double the normal fee for said permit, pay double all the other fees required by the Legislative Code, deposit with the Administrator the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Section.

**Sec. 1415.20. Supplementary Notification.**

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

**Sec. 1415.21. Revocation of Right-of-Way 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 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 maintain the required bonds and/or insurance;
- E. the failure to complete the work in a timely manner; or
- F. the failure to correct a condition indicated on an order issued pursuant to Sec. 1415.18.

**Subd.2. Written Notice of Breach.** If the Administrator 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 Administrator 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. Further, a substantial breach, as stated above, will allow the Administrator, at his or her discretion, to place additional or revised conditions on the permit.

**Subd.3. Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, Permittee shall contact the Administrator with a plan, acceptable to the Administrator, for its correction. Permittee's failure to so contact the Administrator, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee's failure to reasonably implement the approved plan, shall automatically place the Permittee on probation for one (1) full year.

**Subd.4. Cause for Probation.** From time to time, the Administrator 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.

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

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

**Sec. 1415.22. Mapping Data.**

**Subd.1. Information Required.** Each year, registrant shall provide mapping information required by the Administrator in accordance with PUC Rules.

**Subd.2. Trade Secret Information.** At the request of any registrant, any information requested by the Administrator, which qualifies as a "trade secret" under Minnesota Statutes Section 13.37(b) shall be treated as trade secret information as detailed therein.

**Sec. 1415.23. Location of Facilities.**

- Subd.1.** **Undergrounding.** Unless otherwise permitted by an existing franchise or Minn. Stat. §216B.34, or unless existing above-ground facilities are repair or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- Subd.2.** **Corridors.** The Administrator may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the Administrator expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the Administrator involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
- Any registrant whose facility is in the right-of-way in a position at variance with the corridors established by the Administrator shall, no later than at the time of the next reconstruction or excavation of the area where the facility is located, move that facility to its assigned position within the right-of-way, unless this requirement is waived by the Administrator for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
- Subd.3.** **Nuisance.** One year after the passage of this Section, any facility found in a right-of-way that has not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facility and restoring the right-of-way to a useable condition.
- Subd.4.** **Limitation of Space.** To protect health and safety, the Administrator shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the Administrator 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 equipment in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

**Sec. 1415.24. Relocation of Facilities.**

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

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



**Section 1415.25. Pre-Excavation Facility and Facilities Location.**

In addition to complying with the requirements of Minn. Stat. §§ 216D.01-09 ("One-Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said equipment. Any registrant whose equipment is less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its equipment and the best procedure for excavation.

**Sec. 1415.26. Damage to Other Facilities.**

When the City does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's equipment to protect it, the City shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing.

Each registrant shall be responsible for the cost of repairing any equipment in the right-of-way which it or its equipment damages. Each registrant shall be responsible for the cost of repairing any damage to the equipment of another registrant caused during the City's response to an emergency occasioned by that registrant's equipment.

**Sec. 1415.27. Right-of-Way Vacation.**

- Subd.1. Reservation of Right.** If the City vacates a right-of-way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant or Permittee equipment, the City shall reserve, to and for itself and all registrants having equipment in the vacated right-of-way, the right to install, maintain, and operate any equipment in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
  
- Subd.2. Relocation of Facilities.** If the vacation requires the relocation of registrant or Permittee facilities; and (a) if the vacation proceedings are initiated by the registrant or Permittee, the registrant or Permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant or Permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or Permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or Permittee, such other person or persons must pay the relocation costs.

**Sec. 1415.28. Indemnification and Liability.**

By registering with the Administrator, or by accepting a permit under this Section, a registrant or permittee agree as follows:

- Subd.1. Limitation of Liability.** By accepting a registration or granting a Right-of-Way Permit, the City does not assume any liability (a) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant, or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.
  
- Subd.2. Indemnification.** A registrant or Permittee shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of registrant's or Permittee's facilities located in the Right-of Way.

The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits or inspections to ensure permit compliance. The City shall not be indemnified if the injury or damage results from the performance of a proper manner of acts which the registrant or Permittee reasonably believes will cause injury or damage, and the performance

is nevertheless ordered or directed by the City after receiving notice of the registrant's or Permittee's determination.

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

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

This part is not as to third-parties, a waiver of any defense, immunity or damage limitation otherwise available to the City.

In defending an action on behalf of the City, the registrant or Permittee is entitled to assert in an action every defense, immunity or damage limitation that the City could assert in its own behalf.

**Sec. 1415.29. Abandoned and Unusable Equipment.**

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

- A. Provide information satisfactory to the Administrator that the registrant's obligations for its equipment in the right-of-way under this Section have been lawfully assumed by another registrant; or
- B. Submit to the Administrator a proposal and instruments for transferring ownership of its equipment to the City. If a registrant proceeds under this clause, the City may, at its option:
  - 1. purchase the equipment; or
  - 2. require the registrant, at its own expense, to remove it; or
  - 3. require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the equipment.

**Subd.2.** **Abandoned Equipment.** Equipment of a registrant who fails to comply with Section 1415.30, Subd. A, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (i) abating the nuisance (ii) taking possession of the equipment and restoring it to a useable condition; or (iii) requiring removal of the equipment by the registrant, or the registrant's successor in interest.

**Subd.3.** **Removal.** Any registrant who has unusable and abandoned equipment in any right-of-way shall remove it from that Right-of-Way during the next scheduled excavation, unless this requirement is waived by the Administrator.

**Sec. 1415.30. Appeals.**

**Subd.1.** A Right-of-Way user that:

- A. has been denied registration;
- B. has been denied a permit;
- C. has had a permit revoked; or
- D. believes that the fees imposed are invalid, may have 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 in writing and supported by written findings establishing the reasonableness of the decision.

**Subd.2.** Upon affirmation by the City Council of the denial, revocation, or fee imposition, the right-of-way user shall have the rights to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Council and the right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way user and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be shared equally by the City and the right-of-way user. In the event there is a third arbitrator, each party shall pay the expense of its own arbitrator and shall jointly and equally share with the other party the expense of a third arbitrator and of the arbitration.

**Sec. 1415.31. Reservation of Regulatory and Police Powers.**


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

**Sec. 1415.32. Severability.**

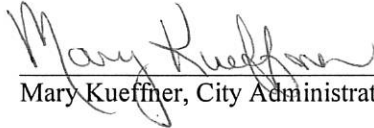
If any section, subsection, sentence, clause, phrase, or portion of this Section is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not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

**Adoption Date.**

Passed by the City Council of the City of Lake Elmo on the 20 day of June,2000.

  
\_\_\_\_\_  
Lee Hunt, Mayor

ATTEST:

  
\_\_\_\_\_  
Mary Kueffner, City Administrator

**Publication Date.** This Ordinance or an approved Summary thereof was published on the 13<sup>th</sup> of July, 2000.