

CITY OF FALCON HEIGHTS, RAMSEY COUNTY, MINNESOTA

ORDINANCE NO. 18-01

**AN ORDINANCE AMENDING CHAPTER 42, ARTICLE II PERTAINING TO
TELECOMMUNICATION FACILITIES RIGHT OF WAY MANAGEMENT**

**THE CITY COUNCIL OF FALCON HEIGHTS, RAMSEY COUNTY, MINNESOTA,
ORDAINS:**

SECTION 1. Chapter 42, Article II of the Falcon Heights City Code is amended by adding the underlined language and deleting the strikethrough language as follows:

Sec. 42-23. - Purpose; intent; interpretation.

- (a) *Purpose.* To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its roads and streets and the appropriate use of the rights-of-way, the city strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances.
- (b) *Intent.* Accordingly, the city hereby enacts this new article relating to right-of-way permits and administration. This article imposes regulation on the placement and maintenance of facilities and equipment currently within its right-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this article, persons excavating and obstructing the right-of-way will bear financial responsibility for their work. Finally, this article provides for recovery of out-of-pocket and projected costs from persons using the public right-of-way.
- (c) *Interpretation.* This article shall be interpreted consistently with Minn. Stats. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This article shall also be interpreted consistently with Minn. Rules 7819.0050—7819.9950 where possible. To the extent any provision of this article cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This article shall not be interpreted to limit 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. 42-24. - Management of the right-of-way.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to Minn. Stats. § 237.163, subd. 2(b), to manage the right-of-way under its jurisdiction. The term "manage the right-of-way" means the authority of the city to do any or all of the following:

- (1) Require registration;
- (2) Require construction performance bonds and insurance coverage;

- (3) Establish installation and construction standards;
- (4) Establish and define location and relocation requirements for equipment and facilities;
- (5) Establish coordination and timing requirements;
- (6) Require right-of-way users to submit henceforth required by the city project data reasonably necessary to allow the city to develop a right-of-way mapping system including GIS system information;
- (7) Require right-of-way users to submit, upon request of the city, existing data on the location of user's facilities occupying the public right-of-way within the city. The data may be submitted in the form maintained by the user in a reasonable time after receipt of the request based on the amount of data requested;
- (8) Establish right-of-way permitting requirements for excavation and obstruction;
- (9) Establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right-of-way repair, excavation or construction; and impose reasonable penalties for unreasonable delays in construction.

Sec. 42-25. - Definitions.

The definitions included in Minn. Stats. § 237.162 and Minn. Rule 7819.0100, subpt. 1—25 are hereby adopted by reference and incorporated into this article as if set out in full.

Sec. 42-26. - Administration.

The city administrator is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The city administrator may delegate any or all of the duties hereunder. Authority granted to the city administrator under this section may, in the alternative, be exercised by the deputy clerk.

Sec. 42-27. - Registration; bond; exceptions.

- (a) *Registration.* Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment or facilities located in any right-of-way must register with the city. Registration will consist of providing application information to, and as required by the city, paying a registration fee, and posting a performance and restoration bond. Registration fee and bond amount shall be set by resolution of the city council.
- (b) *Performance and restoration bond.* The performance and restoration bond required in this section, and in sections 42-31(5) and 42-34(d) shall be in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of the obligations 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 laws, regulations or standards. During periods of construction, repair or restoration of rights-of-way or equipment or facilities in rights-of-way, the performance and restoration bond shall be in an amount sufficient to cover 100 percent of the estimated cost of such work, as documented by the person proposing to perform such

work, or in such lesser amounts as may be determined by the city administrator, taking into account the amount of equipment and facilities in the right-of-way, the location and method of installation of the equipment and facilities, the conflict or interference of such equipment or facilities with the equipment or facilities of other persons, and the purposes and policies of this section. Sixty days after completion of the work, the performance and restoration bond may be reduced in the sole determination of the city.

- (c) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.
- (d) *Exceptions.*
 - (1) Nothing herein shall be construed to repeal or amend the rights of persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this article. However, plantings must not violate applicable clear zone requirements nor obstruct visibility on the roadway, and the city may remove such plantings, if necessary for maintenance, safety, or construction purposes, with no compensation due the property owner.
 - (2) Irrigation systems shall be allowed in the right-of-way without a permit and installers shall be exempt from registration. There shall be no compensation for removal necessary for any permitted utility project. No compensation shall be paid for any irrigation system if removal is required or if it is damaged by any city or municipal activity or by any permitted utility activity.
 - (3) Resident-owned sewer and water service lines to a city main and resident-owned drain tile lines shall not be required to register, unless requested by the city, but shall be required to obtain permits for excavation and obstruction.
 - (4) Nothing herein relieves a person from complying with the provisions of Minn. Stats. ch. 216D ("One Call Excavation Notice System").

Sec. 42-28. - Registration information.

- (a) *Required information.* The information provided to the city administrator at the time of registration shall include, and be on the form approved by the city or this article, but not be limited to:
 - (1) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
 - (2) 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.
 - (3) A certificate of insurance or self-insurance:

- a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed or otherwise authorized to do business in the state, or a form of self insurance acceptable to the city administrator;
 - b. Verifying that the registrant is insured against claims for bodily and personal injury, including death, as well as claims for property damage arising out of the: (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - c. Naming the city as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage;
 - d. Requiring that the city administrator be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
 - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city administrator in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this article.
- (4) The city may require a copy of the actual insurance policies if necessary to ensure the city administrator that the policy provides adequate third party claim coverage and city indemnity and defense coverage.
- (5) If the person is a corporation, a copy of the certificate required to be filed as recorded and certified to by the secretary of state.
- (6) A copy of the person's order granting a certificate of authority from the state public utilities commission (PUC) or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval certificate from said commission or other state or federal agency.
- (b) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city administrator information as to changes within 15 days following the date on which the registrant has knowledge of any change.

Sec. 42-29. - Construction plan; exceptions.

- (a) *Construction/major maintenance plan.* Each registrant that provides utility service shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city administrator. Such plan shall be submitted using a format designated by the city administrator and shall contain the information determined by the city administrator to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The city shall maintain in the file a copy of the city's construction plan for construction projects. The utility facility plans shall be kept up-to-date by the registrant. The plans shall be on file and available for public inspection. 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");
- (2) How the registrant will accommodate the city plan;
- (3) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

It is the registrant's responsibility to keep informed on available plans. The term "project" in this section shall include both next-year projects and five-year projects but does not include individual service line hookups and minor maintenance unless they are part of an area-wide program.

- (b) *Exception.* Notwithstanding the foregoing, the city 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. 42-30. - Permit requirement; extensions; penalty.

- (a) *Permit required.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first registering and having obtained the appropriate right-of-way permit from the city.
 - (1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
 - (2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein 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.
 - (3) *Small wireless facility permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right of way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
- (b) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person:
 - (1) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and
 - (2) A new permit or permit extension is granted.An extension can, at the discretion of the city administrator, or the city administrator's designee, be granted orally and without application of a separate permit fee.
- (c) *Delay penalty.* In accordance with Minn. Rules 7819.1000 subpt. 3 notwithstanding subsection (b) of this section, the city shall establish and may 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 and shall include any delays or damages charged by the city's construction contractor and may include liquidated damages consistent with the contract. A delay penalty will not be imposed if the delay in project completion is due to circumstances beyond the control of the applicant including, without limitation, inclement weather, acts of God, or civil strife.

- (d) *Permit display.* Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

Sec. 42-31. - Permit applications; additional bond.

- (a) Application for a permit is made to the city administrator. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
- (1) Registration with the city pursuant to this article.
 - (2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
 - (3) 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 right-of-way or any emergency actions taken by the city;
 - d. Franchise fees or other charges, if applicable.
 - (4) Payment of disputed amounts due the city for prior disputed fees, penalties or other charges by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
 - (5) When an excavation permit is required for purposes of installing additional equipment or facilities, and a performance and restoration bond which is in existence is insufficient with respect to the additional equipment or facilities in the sole determination of the city, the permit applicant may be required by the city to post an additional performance and restoration bond in accordance with section 42-27(b).
- (b) *Deadline for Action.* The City shall approve or deny a small wireless facility permit application within ninety (90) days after receiving a complete application. The small wireless facility permit, and any associated encroachment or building permit shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
- (c) *Consolidated Applications.* An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to fifteen (15) small wireless facilities, or a greater number if agreed by the city, provided that all small wireless facilities in an application:
1. are located within a two-mile radius;

2. consist of substantially similar equipment; and
3. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

(d). Tolling of Deadline for Action. The ninety (90) day deadline for action may be tolled if

1. The city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than thirty (30) small wireless facilities. In such case, the city may extend the ninety (90) day deadline for all such applications by an additional 30 days by informing the affected applicants in writing of such extension.
2. The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within thirty (30) business days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the city's determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon applicant's submittal of additional information in response to a notice of incompleteness, the city has ten (10) days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the ninety (90) day deadline for action.
3. The city and applicant may agree in writing to toll the review period.

Sec. 42-32. - Issuance of permit; conditions.

- (a) *Permit issuance.* If the applicant has satisfied the requirements of this article, the city shall issue a permit.
- (b) *Conditions.* The city administrator may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current and future use.
- (c) *Small Wireless Facility Conditions.* In addition to part b, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right of way, shall be subject to the following conditions:

1. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
 2. No new wireless support structure installed within the right of way shall exceed 50 feet above ground level in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right of way and its current use, and further provided that a wireless support structure that replaces an existing wireless support structure in the public right of way that is greater than fifty (50) feet above ground level in height may be placed at the height of the existing wireless support structure, subject to such conditions or requirements as may be imposed in the applicable permit.
 3. No wireless facility constructed in the right of way after May 30, 2017 may extend more than ten (10) feet above a wireless support structure existing on May 30, 2017.
 4. Where an applicant proposes to install a new wireless support structure in the right of way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right of way.
 5. Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure.
 6. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
- (d) *Small Wireless Facility Agreement.* A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right of way, after applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:
1. Management costs;
 2. Up to \$150 per year for rent on the city structure;
 3. \$25 per year for maintenance associated with the collocation;
 4. A monthly fee for electrical service as follows:
 - a. \$73 per radio node less than or equal to 100 maximum watts;
 - b. \$182 per radio node over 100 maximum watts;
 - c. The actual cost of electricity, if the actual cost exceed the foregoing.
- The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

- (e) Routine obstructions and excavations. A public right-of-way user may negotiate a permit plan that, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for projects. Projects that do not involve excavation of the paved surface and lasting less than four hours in duration may be included in such plan.

Sec. 42-33. - Permit fees.

- (a) Excavation permit fee. The city shall ~~establish~~ impose an excavation right-of-way permit fee schedule specifying fees that are adequate to recover the following costs:
- (1) City management costs;
 - (2) Degradation costs, if applicable;
 - (3) Mapping costs.

Permit fees shall be established by resolution of the city council, as amended from time to time.

- (b) Obstruction permit fee. The city shall establish the obstruction permit fee that shall be in an amount sufficient to recover the city management costs.
- (c) Small wireless facility permit fee. The city shall impose a small wireless facility permit fee in an amount sufficient to recover:
- (1) management costs, and;
 - (2) city engineering, make-ready, and construction costs associated with collection of small wireless facilities.
- (d) Payment of permit fees. No right-of-way permit shall be issued without payment of any and all applicable permit fees unless the city allows applicants to pay such fees within 30 days of billing.
- (e) Nonrefundable. Permit fees that were paid for a permit that the city administrator has revoked for a breach as stated in section 42-43 are not refundable. Permit fees paid for work that is subsequently cancelled are not refundable.
- (f) Management costs; franchise fees. 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.

Sec. 42-34. - Right-of-way patching and restoration.

- (a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under section 42-37
- (b) *Temporary surfacing, patch and restoration.* The permittee shall patch its own work.
- (c) *City restoration.* If the city restores any part of the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If the city restores only the surface of the right-of-way and during the 24 months following such restoration, the pavement settles due to improper back-filling, the permittee shall pay to the city, within 30 days of billing, all costs related to restoring the right-of-way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by

the permittee, provided, however, that the city will first give the permittee notice of the pavement defect and reasonable opportunity to correct the defect. These costs shall include administrative overhead, mobilization, material, labor, and equipment.

- (d) *Permittee restoration.* If the permittee restores the right-of-way itself, the city may require, at the time of application for a permit, posting of a performance and restoration bond in an amount determined by the city administrator to be sufficient to cover the cost of repair and restoration. The permittee shall determine the type of security it will provide in accordance with Minn. Rule § 7819.3000. If, within 24 months after completion of the restoration of the right-of-way, the city administrator determines that the right-of-way has been properly restored, the posted security shall be released.
- (e) *Degradation fee and patching.* 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.
- (f) *Standards.* The permittee shall perform temporary surfacing, patching and restoration including back-fill, compaction, and landscaping according to the standards and with the materials specified by the city administrator. The city 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 city administrator in exercising this authority shall comply with PUC standards for right-of-way restoration and require conformance to MN/DOT standard specifications.
- (g) *Guarantees.* The permittee guarantees its work and shall maintain it for 24 months following its completion. During this 24-month period it shall, upon notification from the city administrator, correct all restoration work to the extent necessary, using the method required by the city administrator. Said work shall be completed within five business days of the receipt of the notice from the city administrator, 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 42-37
- (h) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration of the public right-of-way performed by permittee or its agents. The permittee, upon notification from the city, shall correct all restoration work to the extent necessary under state law and Minnesota Rules, using the method required by the city. Said work shall be completed within ten business 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 42-37
- (i) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city administrator, or fails to satisfactorily and timely complete all restoration required by the city administrator, the city, at its option, may do or sub-contract such work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Sec. 42-35. - Joint applications; fees.

- (a) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- (c) *City construction projects.* Registrants who join in a scheduled utility installation or obstruction or excavation coordinated with a city construction project by the city administrator, 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, but a permit is still required.

Sec. 42-36. - Supplementary applications; permit extensions.

- (a) *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:
 - (1) Make application for a permit extension and pay any additional fees required thereby; and
 - (2) Be granted a new permit or permit extension.

The city administrator or the city administrator's designee may orally approve the permit extension and an additional fee will not be required.

- (b) *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. Permits for nonemergency work shall be submitted at least three business days prior to the planned start of work.

Sec. 42-37. - Obligations; prohibitions.

- (a) *Compliance with other laws.* Obtaining a right-of-way permit does not release the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other appropriate jurisdiction or other applicable rule, law or regulation. The permittee shall comply with other local codes and with road load restrictions. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stats. ch. 216D ("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.

- (b) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (c) *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, culverts, ditches, tiles or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- (d) *Traffic control.* Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual and any directions of the city engineer.

Sec. 42-38. - Denial of permit.

- (a) The city may deny a permit for failure to meet the requirements and conditions of this article or if the city determines that the denial is necessary to protect the public health, safety, and welfare or when necessary to protect the right-of-way and its current and future use. The city may deny a permit if the applicant has failed to comply with previous permit conditions. The city may withhold issuance of a permit until conditions of previous permit are complied with.
- (b) *Procedural Requirements.* The denial of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant in writing within three business days of the decision to deny a permit. If an application is denied, the applicant may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within thirty (30) days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission

Sec. 42-39. - Work requirements.

The excavation, back-filling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules 7819.1100 and 7819.5000 and shall conform to MN/DOT standard specifications and other applicable local requirements, insofar as they are not inconsistent with Minn. Stats. §§ 237.162 and 237.163.

Sec. 42-40. - Completion; inspection.

- (a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minn. Rules 7819.1300.
- (b) *Site inspection.* The permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (c) *Authority of city.*

- (1) At the time of inspection the city administrator may order the immediate cessation and correction of any work that poses a serious threat to the life, health, safety or well-being of the public.
- (2) The city administrator may issue an order to the permittee to correct any work which does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes, so long as the nonconformance constitutes a "substantial breach" as set forth in Minn. Stats. § 237.163, subd. 4(c)(1)—(5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the city administrator that the violation has been corrected. If such proof has not been presented within the required time, the city administrator may revoke the permit pursuant to section 42-43
- (3) The cost of any action required by the city shall be paid by the permittee.

Sec. 42-41. - Work done without a permit.

- (a) *Emergency situations.*
 - (1) Each registrant shall immediately notify the city administrator of any event regarding its facilities that 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 article for the actions it took in response to the emergency.
 - (2) If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to correct the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
- (b) *Nonemergency 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 this article, and 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 article.

Sec. 42-42. - Supplementary notification.

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

Sec. 42-43. - Permittee breach; probation; revocation of permits.

- (a) *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 including a threat to the safety of workers, or the right-of-way user or the utility users. A substantial breach by the permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
 - (2) 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;
 - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
 - (4) 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 permittee's control, or failure to relocate existing facilities as specified in section 42-45
 - (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 42-40
 - (6) Failure of the utility to pay any required costs, fees, or charges billed by the city; or
 - (7) Failure to provide traffic control that conforms to the provisions of the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual on Uniform Traffic Control Devices.
- (b) *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.
- (c) *Response to notice of breach.* Within three business days of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall automatically revoke the permit and may include placing the permittee on probation for one full year. No plan will be unreasonably rejected.
- (d) *Cause for probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.
- (e) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable management costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.
- (f) *Revoked permit.* Revocation of a right of way permit or small wireless facility permit shall be made in writing within three (3) business days of the decision to revoke the permit and shall document the basis for the revocation. If the city revokes a utility's

permit for breach of this article, the utility will not be allowed to install any utility or to obstruct or excavate within the city right-of-way until the breach situation is corrected to the satisfaction of the city administrator and the permit is reissued.

Sec. 42-44. - Mapping information.

- (a) *Mapping information.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. Rules 7819.4000 and 7819.4100.
- (b) *Required application information.* The city requires as part of its permit application the filing of all the following information:
 - (1) Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:
 - a. Offsets from property lines, distances from the centerline of the public right-of-way, and curblines as determined by the city;
 - b. Coordinates derived from the coordinate system being used by the city; or
 - c. Any other system agreed upon by the right-of-way user and city.
 - (2) The type and size of the utility facility;
 - (3) A description showing aboveground appurtenances;
 - (4) A legend explaining symbols, characters, abbreviations, scale, and other data shown on the map; and
 - (5) Any facilities to be abandoned, if applicable, in conformance with Minn. Stats. § 216D.04, subd. 3.
- (c) *Changes and corrections.* The application must provide that the applicant agrees to submit "as built" drawings, reflecting any changes and variations from the information provided under subsection (b) of this section.
- (d) *Additional construction information.* In addition, the right-of-way user shall submit to the city at the time the project is completed a completion certificate according to Minn. Rules 7819.1300.
- (e) *Conveying permit data; conversion costs.* A right-of-way user is not required to provide or convey mapping information or data in a format or manner that is different from what is currently utilized and maintained by that user. A permit application fee may include the cost to convert the data furnished by the right-of-way user to a format currently in use by the city. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process.
- (f) *Data on existing facilities.* At the request of the city, a right-of-way user shall provide existing data on its existing facilities within the public right-of-way in the form maintained by the user at the time the request was made, if available.

Sec. 42-45. - Location and relocation of facilities.

- (a) *Conformity to regulations.* Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. Rules 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities. By submitting a request for a permit the person recognizes they must conform to the existing ordinances and codes of other units of government related to underground placement regardless of how the application is written or permit granted. Utility poles and guy anchors, and any other equipment, shall conform to NCHRP 350 standards for

crashworthiness or must be located outside of applicable clear zones. Any installation that does not conform to the state department of transportation clear zone standards must be approved by the city administrator, and the facility owner shall indemnify and hold harmless the city.

- (b) *Relocation of facilities.* A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way in accordance with the provisions of Minn. Rule 7819.3100, which is incorporated herein and made a part hereof.
- (c) *Relocation notification procedure.*
 - (1) The city administrator shall notify the utility owner at least six months in advance of the need to relocate existing facilities so the owner can plan the relocation.
 - (2) The city administrator shall provide a second notification to the owner one month before the owner needs to begin the relocation.
 - (3) The utility owner shall begin relocation of the facilities within one week of the second notification. All utilities shall be relocated within one month.
 - (4) The city administrator may allow a different schedule if it does not interfere with the city's project.
 - (5) The utility owner shall diligently work to relocate the facilities within the above schedule.
 - (6) When emergency, natural disaster, or unforeseen changes to a programmed project necessitate relocation of a facility, the city shall notify the utility owner as soon as possible, but shall be exempt from the notification schedule described above.
 - (7) In the event that emergency work by the city or another governmental entity in the city right-of-way requires relocation of a utility, the notification requirements above are waived. The city and utility shall coordinate efforts to minimize delay.
- (d) *Delay to city project.* The city administrator shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner does not take action to insure the relocation will be completed in accordance with the above schedule and the city administrator determines this delay will have an adverse impact on a city project, the city administrator may hire a competent contractor to perform the relocation. In that event, the city may charge the utility owner all costs incurred to relocate the facility. The city may charge the utility owner for all costs incurred and requested by a contractor working for the city that is delayed because the relocation is not completed in the scheduled timeframe and for all other additional costs incurred by the city due to the delay. However, this does not exempt the utility company from paying for the value of any taking of said property by occupation without compensation.

Sec. 42-46. - Pre-excavation facilities location.

In addition to complying with the requirements of Minn. Stats. ch. 216D ("One Call Excavation Notice System"), before the start date of any right-of-way excavation, each registrant that has facilities or equipment in the area to be excavated shall mark the horizontal placement of all said facilities. Any registrant's facilities or equipment that are in the area of work shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation to protect the safety of workers and right-of-way users and other

utility users. If the utility is not at the approved location, it shall be exposed at the permittee's expense or by the city upon written notice to the permittee. The city may, upon said notice, locate said utility at the permittee's expense.

Sec. 42-47. - 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 facilities to protect it, the city administrator 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 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way that it or its facilities damage. When the registrant does damage to city facilities in the right-of-way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, it shall correct the damage immediately. If it does not, the city may make such repairs as necessary and charge all of the expenses of the repair to the registrant, which shall be paid within 30 days of billing. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

Sec. 42-48. - Right-of-way vacation.

- (a) *Rights of registrant.* If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules 7819.3200 and other applicable laws.
- (b) *Relocation of facilities.* If the vacation requires the relocation of the public right-of-way user's equipment or facility; and the vacation proceedings are initiated by the public right-of-way user or the city for a public project, the public right-of-way user shall pay the relocation costs. If the vacation proceedings are initiated by a person other than the public right-of-way user, the person initiating the vacation shall pay the relocation costs.

Sec. 42-49. - Indemnification and liability.

- (a) *Limitation of liability.* Upon the issuance of a public right-of-way permit, the city does not assume any liability for:
 - (1) Injuries to persons, damage to property or loss of service claims by parties other than the registrant or the city; or
 - (2) Claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.
- (b) *Indemnification; defense of registrant; litigation.*
 - (1) *Indemnification of city, city officials.* A registrant or permittee shall indemnify, keep and hold the city, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a public right-of-way permit. The foregoing does not

indemnify the city for its own negligence except for claims arising out of or alleging the city's negligence in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit.

- (2) *Defense of registrant.* This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permittee or city, and the registrant or permittee, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert on its own behalf.
- (3) *City consent for litigation settlement.* 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. The city's consent shall not be unreasonably withheld.
- (4) Permits conditional to ownership rights. All permits are granted subject to the ownership rights the city may have in the property involved and to the extent that state, federal or local laws, rules, and regulations allow and said permit is subject to all such laws and rules.

Sec. 42-50. - Discontinued operations; abandoned or unusable facilities.

- (a) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this article have been lawfully assumed by another registrant.
- (b) *Removal of facilities.* Any registrant that has abandoned or unusable 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 the city waives this requirement.

Sec. 42-51. - Appeal.

A right-of-way user that:

- (1) Has been denied registration;
- (2) Has been denied a permit;
- (3) Has had a permit revoked; or
- (4) Believes that the fees imposed are invalid;

may have the denial, revocation or fee imposition reviewed, upon request, by the city council. The city council shall act on a timely written request. 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.

Sec. 42-52. - 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. 42-53. - Penalty for violation.


Violation of this article shall result in the assessment of a penalty of \$500.00 per occurrence per site per mile per day as long as may be applicable unless a penalty or fine is otherwise specifically designated in this article.

Secs. 42-54—42-79. - Reserved.


SECTION 2. This ordinance shall be effective upon its passage and a summary published in the official newspaper.

ADOPTED by the Falcon Heights City Council this 11th day of April, 2018.

Moved by: Miazga

Approved by: 
Peter Lindstrom
Mayor

LINDSTROM 3 In Favor
GUSTAFSON
BROWN THUNDER 0 Against
MELANIE LEEHY
MARK MIAZGA

Attested by: 
Sack Thongvanh
City Administrator