

**TITLE 8. STREETS/SIDEWALKS**

## Chapter 800 Right-of-Way Regulations

**Chapter 800 - Right-of-Way Regulations**

**800.01 Election to Manage the Public Right-of-way.** In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage rights-of-ways within its jurisdiction.

**800.02 Definitions and Adoption of Rules by Reference.** Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in Minn. Rules part 7819.0100, subds. 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this chapter.

**800.03 Permit Requirement.**

- (A) **Permit required.** Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.
- (1) **Excavation permit.** An excavation permit is required to excavate that part of the right-of-way described in the 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 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.
- (B) **Permit extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit and a new permit or permit extension is granted.
- (C) **Delay penalty.** In accordance with Minn. Rules part 7819.1000, subp. 3, as it may be amended from time to time, and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by resolution of the Council.

- (D) **Permit display.** Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Public Works Director or other authorized employee.

Penalty, see § 100.99

**800.04 Permit Applications.** Application for a permit shall contain and will be considered complete only upon compliance with the requirements of the following provisions:

- (A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities and the following information:
- (1) Each permittee'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 to do business in the state or a form of self-insurance acceptable to the Public Works Director or other authorized employee;
    - (b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees and placement and use of facilities and equipment 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 coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;
    - (d) Requiring that the Public Works Director or other authorized employee 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, worker's compensation and umbrella coverage established by the Public Works Director or other authorized employee in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

- (4) The City may require a copy of the actual insurance policies.
  - (5) If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as it may be amended from time to time, 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 Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.
- (B) Payment of money due the city for:
- (1) Permit fees, as established from time to time by ordinance of the Council, estimated restoration costs and other management costs;
  - (2) Prior obstructions or excavations;
  - (3) Any undisputed loss, damage or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or
  - (4) Franchise fees or other charges, as established from time to time by ordinance of the Council, if applicable.

#### **800.05 Issuance of Permit; Conditions.**

- (A) **Permit issuance.** If the applicant has satisfied the requirements of this chapter, the Public Works Director or other authorized employee shall issue a permit.
- (B) **Conditions.** The Public Works Director or other authorized employee 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 use.

#### **800.06 Permit Fees.** Permit fees shall be in an amount established from time to time by ordinance of Council.

- (A) **Excavation permit fee.** The city shall establish an excavation permit fee, as established from time to time by ordinance of Council, in an amount sufficient to recover the following costs:
- (1) The city management costs; and
  - (2) Degradation costs, if applicable.

- (B) **Obstruction permit fee.** The city shall establish the obstruction permit fee, as established from time to time by ordinance of Council, and shall be in an amount sufficient to recover the city management costs.
- (C) **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 those fees within 30 days of billing.
- (D) **Non-refundable.** Permit fees, as established from time to time by ordinance of Council, that were paid for a permit that the Public Works Director or other authorized employee has revoked for a breach as stated in § 800.14 are not refundable.
- (E) **Application to franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.
- (F) **Fees to be consistent.** All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.100, as it may be amended from time to time.

Penalty, see § 100.99

#### **800.07 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 circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under this chapter.
- (B) **Patch and restoration.** The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
  - (1) **City restoration.** If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.
  - (2) **Permittee restoration.** If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.
- (C) **Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The Public Works

Director or other authorized employee 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.

- (D) **Duty to correct defects.** The permittee shall correct defects in patching or restoration performed by the permittee or its agents. The permittee, upon notification from the Public Works Director or other authorized employee, shall correct all restoration work to the extent necessary, using the method required by the Public Works Director or other authorized employee. The work shall be completed within five calendar days of the receipt of the notice from the Public Works Director or other authorized employee, 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 this chapter.
- (E) **Failure to restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the Public Works Director or other authorized employee or fails to satisfactorily and timely complete all restoration required by the Public Works Director or other authorized employee, the Public Works Director or other authorized employee at its option may do the 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.
- (F) **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, as established from time to time by ordinance of the Council. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

#### **800.08 Supplementary Applications.**

- (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 make application for a permit extension and pay any additional fees required thereby and be granted a new permit or permit extension.
- (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 submitted before the permit end date.

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

**800.10 Installation Requirements.** The excavation, backfilling, patching and restoration and all other work performed in the right-of-way shall be done in conformance with Minn. Rules part 7819.1100, as it may be amended from time to time, and other applicable local requirements, in so far as they are not inconsistent with M.S. §§ 237.162 and 237.163, as they may be amended from time to time.

**800.11 Inspection.**

- (A) **Notice of completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300, as it may be amended from time to time.
- (B) **Site inspection.** The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (C) **Authority of Public Works Director.**
  - (1) At the time of inspection, the Public Works Director or other authorized employee may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
  - (2) The Public Works Director or other authorized employee 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 days after issuance of the order, the permittee shall present proof to the Public Works Director or other authorized employee that the violation has been corrected. If proof has not been presented within the required time, the Public Works Director or other authorized employee may revoke the permit pursuant to § 800.14.

**800.12 Work Done Without a Permit.**

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

emergency.

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

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

**800.13 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 Public Works Director or other authorized employee of the accurate information as soon as this information is known.

**800.14 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. 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
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 800.11.

- (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 that 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 24 hours of receiving notification of the breach, the 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, 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.
- (D) **Reimbursement of city costs.** If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

**800.15 Mapping Data; Information Required.** Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.

**800.16 Location of Facilities.**

- (A) **Compliance required.** Placement, location and relocation of facilities must comply with applicable laws and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.
- (B) **Corridors.** The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
- (C) **Limitation of space.** To protect the health, safety and welfare or when necessary to protect the right-of-way and its current use, the Public Works Director or other authorized employee shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Public Works Director or other authorized employee shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way and future city plans for public improvements and development projects which have been determined to be in the public interest.

- 800.17 Damage to Other Facilities.** When the city does work in the right-of-way and finds it necessary to maintain, support or move facilities to protect it, the Public Works Director or other authorized employee 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 facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each facility owner 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 owner's facilities.
- 800.18 Right-of-Way Vacation.** If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.
- 800.19 Indemnification and Liability.** By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rule 7819.1250, as it may be amended from time to time.
- 800.20 Abandoned Facilities; Removal of Abandoned Facilities.** Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation or construction, unless this requirement is waived by the Public Works Director or other authorized employee.
- 800.21 Appeal.** A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked or believes that the fees imposed are invalid may have the denial, revocation or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request within 30 days. A decision by the City Council affirming the denial, revocation or fee as imposition will be in writing and supported by written findings establishing the reasons for the decision.
- 800.22 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.
- 800.23 Special Requirements.**
- (A) When the trench excavation is within the right-of-way of a state or county highway, the backfilling of the trench, compaction of materials and the like shall be done in accordance with the requirements and specifications of the State or County Highway Department.
  - (B) All deficiencies in the quantity of material for backfilling the trenches or for filling depressions caused by settlement shall be supplied by the contractor forthwith upon notice to the contractor by the Public Works Director or other authorized employee.

- (C) In all cases, the contractor shall blade and compact the roadway after the trench has been backfilled, so that it shall be passable to traffic at all times. The contractor shall maintain the roadway in a condition acceptable to the street original ground surface or to grades specified. The backfill shall begin as soon as practical after the pipe or other construction has been placed and shall thereafter be carried on as rapidly as the protection of the balance of the work will permit. Depositing of the backfill shall be done so that shock of falling material will not injure the pipe or adjacent structures.
- (D) Grading over and around all parts of the work shall be done as directed by the engineer or Public Works Director or other authorized employee.

**800.24 Trench Fill.** Granular or other suitable material as determined by the Public Works Director or other authorized employee, free from rocks and boulders, shall be deposited in the trench simultaneously on both sides of the pipe for the full width of the trench to a height at least six inches above the top of the pipe, shovel placed and hand tamped to fill completely all spaces under and adjacent to the pipe. Every two feet of material must be packed by a vibrator tamper until filled.

**800.25 Backfill Materials.** Succeeding layers of backfill may contain coarse materials, but shall be free from large pieces of rock, frozen material, concrete, roots, stumps, tin cans, rubbish and other similar articles whose presence in the backfill, in the opinion of the Public Works Director or other authorized employee, would cause excessive future settlement of the trench or damage to the pipe.

**800.26 Replacing Excavated Material.** Wherever suitable material existing within the upper four feet of the finished grade of the paved or traveled portions of the street or roadway is removed by the trench excavation, the contractor shall replace said material (or material of equal quality) as backfill in the upper four feet of the finished grade.

**800.27 Special Requirements.**

- (A) When the trench excavation is within the right-of-way of a state or county highway, the backfilling of the trench, compaction of materials and the like shall be done in accordance with the requirements and specifications of the State or County Highway Department.
- (B) All deficiencies in the quantity of material for backfilling the trenches or for filling depressions caused by settlement shall be supplied by the contractor forthwith upon notice to the contractor by the Public Works Director or other authorized employee.
- (C) In all cases, the contractor shall blade and compact the roadway after the trench has been backfilled, so that it shall be passable to traffic at all times. The contractor shall maintain the roadway in a condition acceptable to the Public Works Director or other authorized employee at all times until final approval of the entire work by the city.

- (D) The contractor shall remedy, at his or her own expense, any defects that appear in the backfill for a period of one year following completion.

**800.99 Penalty.** Any person, firm or corporation violating any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, be punished as provided in § 100.99.