

DATE April 24, 2012

DEPARTMENT Public Works/Transportation

MOTION  
BY COMMISSIONER Weik

SECONDED BY  
COMMISSIONER Lehrke

**RESOLUTION ADOPTING THE WASHINGTON COUNTY  
ORDINANCE FOR THE MANAGEMENT OF  
COUNTY HIGHWAY RIGHT OF WAY NO. 188**

**WHEREAS**, the Washington County Board of Commissioners adopted the Right of Way Ordinance for Utilities in the Public Right of Way Ordinance No. 154 on November 3, 2000; and,

**WHEREAS**, Washington County is required, under the terms of its Municipal Separate Storm Sewer System (MS4) permit from the Minnesota Pollution Control Agency (Permit No. MNR040000), to adopt a Regulatory Mechanism to protect its storm water systems from chemical and sediment pollution; and

**WHEREAS**, on March 20, 2012 the Washington County Board of Commissioners held a workshop to consider proposed revisions to the Right of Way Ordinance for Utilities in the Public Right of Way No. 154 to incorporate the Municipal Separate Storm Sewer System requirements along with other updates and clarifications; and

**WHEREAS**, on April 24, 2012 the Washington County Board of Commissioners conducted a public hearing to consider a new Ordinance for the Management of County Highway Right of Way.

**NOW, THEREFORE, BE IT RESOLVED**, that the Washington County Board of Commissioners hereby adopts the Washington County Ordinance for the Management of County Highway Right of Way No. 188 to take effect upon the passage of this resolution and its publication according to law.

**BE IT FURTHER RESOLVED**, that Washington County Ordinance No. 154 is hereby repealed, said repeal to take effect on the date Washington County Ordinance No. 188 becomes effective.

ATTEST:

  
COUNTY ADMINISTRATOR

  
COUNTY BOARD CHAIR

	YES	NO
HEGBERG	<u>  x  </u>	<u>      </u>
KRIESEL	<u>  x  </u>	<u>      </u>
LEHRKE	<u>  x  </u>	<u>      </u>
PULKRABEK	<u>  x  </u>	<u>      </u>
WEIK	<u>  x  </u>	<u>      </u>

**Washington County  
Ordinance for the Management of County Highway Right of Way**

**Chapter 1  
Right of Way Management**

**Sec. 1.01. Findings, Purpose, and Intent.**

To provide for 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, Washington County strives to keep its right of way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the County hereby enacts this ordinance relating to management of County highway right of way usage, including permits and administration. This ordinance imposes regulation on the placement and maintenance of facilities and equipment currently within its right of way or to be placed therein at a future date. It is intended to complement the regulatory roles of state and federal agencies. Under this ordinance, persons excavating, obstructing, accessing, or placing utilities or other items within the right of way will bear financial responsibility for their work. This ordinance provides for recovery of out-of-pocket and projected costs from persons using the public right of way.

This Ordinance is created to manage and regulate the public use of the County's right of way along county roads pursuant to the authority granted to the County under state and federal statutory, administrative and common law. All right of way users, including the County, are subject to the provisions in this Ordinance. The County is exempt from the obligation of paying for permits or other fees imposed by this Ordinance.

This ordinance shall be interpreted consistently with Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086, Minnesota Statutes 160.2715, and the other laws governing applicable rights of the County and users of the right of way. This ordinance shall also be interpreted consistently with Minnesota Rules 7819.0050 – 7819.9950 where reasonably possible. To the extent any provision of this ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with statutes and applicable case law is intended. This ordinance shall not be interpreted to limit the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

### **Sec. 1.02. Election to Manage the Public Right of Way.**

Pursuant to the authority granted to the County under state and federal statutory, administrative and common law, the County hereby elects pursuant Minnesota Statutes Section 237.163, Subdivision 2(b), to manage right of way under its jurisdiction.

“Manage the Right of Way,” means the authority of the County 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 project data reasonably necessary to allow the County to develop a right of way mapping system including GIS system information;
7. require right of way users to submit, upon request of the County, existing data on the location of user’s facilities occupying the public right of way within the County. The data must 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 access, excavating/grading, landscaping, obstruction, and placement of utilities and other objects;
9. establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right of way repair, excavation or construction; and
10. impose reasonable penalties for unreasonable delays in construction.

### **Sec. 1.03. Definitions.**

The following definitions apply in this ordinance. References hereafter to "sections" are unless otherwise specified references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

- “Abandoned Facility” means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right of way user.
- “Access” means the physical connection to public or private property over right of- way for residential, agricultural, commercial or municipal street or driveway purposes.
- “Access Permit” means the permit that must be obtained from the County before a person may make a physical connection to a County road or highway or institute a change in use of an existing access.
- “Access Permit Fee” means money paid to the County by a permittee to cover the costs as provided in Sec. 1.12 and required to obtain the permit.
- "Applicant" means any Person requesting permission to install any utility or to excavate or obstruct a right of way.

- “Change in Use” means a substantial change in the operating characteristics of an access that may or may not include physical alterations to the access. Operating characteristics may include vehicle types, vehicle weights, or hourly, daily or yearly traffic volumes.
- “Commission” means the Minnesota Public Utilities Commission.
- “Commercial Access” means access requested for commercial, retail or industrial purposes or for public or institutional facilities.
- “Congested Right of Way” means a crowded condition in the subsurface of the public right of way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes Section 216D.04, Subdivision 3, over a continuous length in excess of 500 feet.
- "Construction Performance Bond" means any of the following forms of security provided at permittee's option:
  - Individual project bond;
  - Cash deposit;
  - Security of a form listed or approved under Minnesota Statutes Section 15.73, Subdivision 3;
  - Letter of Credit, in form acceptable to the County;
  - Self-insurance in form acceptable to the County;
  - Blanket bond for projects within the County or construction bond for a specified time and in a form acceptable to the County.
- "County" means the County of Washington in the State of Minnesota. For purposes of Sec. 1.29 of this Ordinance, “Indemnification and Liability”, “County” means its elected and appointed officials, officers, employees and agents.
- "Degradation" means a decrease in the useful life of the right of way caused by excavation in or disturbance of the right of way, resulting in the need to reconstruct such right of way earlier than would be required if the excavation did not occur.
- "Degradation Cost" subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration as determined by the County at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.
- "Degradation Fee" means the estimated fee established at the time of permitting by the County to recover costs associated with the decrease in the useful life of the right of way caused by the excavation. The Degradation Fee shall be equal to the Degradation Costs.
- "Delay Penalty" is the penalty imposed as a result of unreasonable delays in right of way excavation, obstruction, patching, or restoration as established by permit.
- "Department" means the Washington County Public Works Department.
- "Department Inspector" means any person authorized by the Washington County Engineer to carry out inspections related to the provisions of this Chapter.
- "County Engineer" means the Washington County Engineer or her or his designee.

- "Emergency" means a condition that (1) poses danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to customers.
- "Engineer" means the Washington County Engineer or her or his designee.
- "Equipment" means any tangible asset used to install, repair, or maintain facilities in any right of way.
- "Excavate/Grade" means to deposit or move earthen material or physically disturb or penetrate the earthen surface of any part of a public right of way.
- "Excavation/Grading Permit" means a permit issued by Washington County authorizing the permittee to excavate in County right of way as specifically described in the permit.
- "Excavation/Grading Permit Fee" means money paid to the County by an applicant to cover the costs as provided in Sec 1.12.
- "Facility or Facilities" means any tangible asset in the right of way required to provide utility service.
- "Five-year Capital Improvement Plan" shows projects adopted by the County for construction within the next five years.
- "High Density Corridor" means a designated portion of the public right of way within which telecommunications right of way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.
- "Hole" means an excavation in the pavement with the excavation having a length less than the width of the pavement.
- "Landscaping" means stones, bricks, lumber, fencing, wood chips, mulch, ponds, artificial edging, shapen earth, trees, shrubs, and related features used for decorative purposes.
- "Landscaping Permit" means a permit issued by Washington County authorizing the permittee to place landscaping in County right of way as specifically described in the permit.
- "Landscaping Permit Fee" means money paid to the County by an applicant to cover the costs as provided in Sec 1.12.
- "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept legal notice or service and to accept communications and to make decisions for that registrant regarding all matters within the scope of this ordinance.
- "Management Costs" means the actual costs the County incurs in managing its public rights of way, including such costs, if incurred, as those associated with registering applicants, issuing, processing, and verifying right of way permit applications, inspecting job sites and restoration projects, maintaining, supporting, protecting, or moving user equipment and facilities during public right of way work, determining the adequacy of right of way restoration, restoring work inadequately performed after providing notice and the opportunity to correct the work, and revoking right of way permits. Management costs do not include payment by a telecommunications right of way user for the use of the right of way, the fees and cost of litigation relating to the interpretation of Minnesota

statutes or any ordinance enacted under those statutes or the County fees and costs related to appeals taken pursuant to Sec. 1.31 of this ordinance.

- “Mapping Information” shall mean the information required in Sec. 1.24, Subd. 3 of this Ordinance.
- “MnDOT” means the Minnesota Department of Transportation.
- “MPCA” means the Minnesota Pollution Control Agency.
- "Obstruct" means to place any tangible object in a public right of way so as to hinder free and open passage over that or any part of the right of way.
- “Obstruction Permit” means the permit which, pursuant to this Ordinance, must be obtained before a person may obstruct any part of a right of way, allowing the holder to hinder free and open passage over the specified portion of that right of way by placing any tangible object therein for the duration specified.
- “Obstruction Permit Fee” means money paid to the County by a permittee to cover the costs as provided in Sec. 1.12 and required to obtain the permit.
- "Patch or Patching" means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement in kind of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in a project programmed by the County, or as approved by the Engineer.
- “Pavement” means any type of improved surface that is within the public right of way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.
- “Permit” means a permit granted by the County to an applicant authorizing a temporary or permanent impact or alteration to the public right of way, consistent with Minnesota Statutes Section 237.162 and/or Section 160.2715, Subdivision 4.
- "Permittee" means any person to whom a permit to impact or alter the Public Right of Way has been granted by the County under this ordinance.
- “Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.
- “Probation” means the status of a person that has not complied with the conditions of this ordinance.
- "Probationary Period" means one year from the date that a person has been notified in writing that they have been placed on probation.
- "Public Right of Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, public sidewalk or trail, or area in which the County has an interest, including other dedicated rights of way for travel purposes and utility easements of the County. A public right of way does not include the airwaves above a right of way with regard to cellular or other nonwire telecommunications or broadcast service. The lands described by an easement, deed, dedication, title, law or occupation of a road, highway, street, cartway, bicycle lane, sidewalk, or trail are included as right of way.

- “Registrant” means any person who (1) has or seeks to have its equipment or facilities located in any right of way, or (2) in any way occupies or uses, or seeks to occupy or use, the right of way or place its facilities or equipment in the right of way.
- “Residential/Agricultural Access” means access requested for individual, residential, or agricultural purposes.
- "Restoration Cost" means the amount of money paid to the County by a permittee to achieve the level of restoration according to plates 1 to 13 of the Minnesota Public Utilities Commission rules.
- "Restore or Restoration" means the process by which an excavated public right of way and surrounding area including pavement foundation is returned to the same condition (and life expectancy) that existed before excavation.
- "Right of Way Permit" has the same meaning as “Permit” defined above.
- “Right of Way User” means (1) a telecommunications right of way user as defined by Minnesota Statutes Section 237.162, Subdivision. 4; or (2) a person owning or controlling a facility in the right of way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right of way; or (3) the owner or operator of hazardous liquid or natural gas pipeline facilities when such facilities are located within the right of way; or (4) any person or entity to whom a permit to use the right of way has been issued by the County.
- “Routine Maintenance Activities” means the maintenance or repair of existing utilities. Routine Maintenance Activities do not include installation of new lines, closures of traffic lanes, or removal of trees.
- "Service" or "Utility Service “ includes (1) those services provided by a public utility as defined in Minnesota Statutes Section 216B.02, Subdivisions. 4 and 6; (2) services of a telecommunications right of way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes Chapter 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minnesota Statutes Chapter 308A; (6) water, sewer, steam, cooling or heating services; and (7) privately-owned utility services including drain tiles.
- “Service or Utility Service Permit” means a permit issued by Washington County authorizing the permittee to place a service or utility service in County right of way as specifically described in the permit.
- “Service or Utility Service Permit Fee” means money paid to the County by an applicant to cover the costs as provided in Sec. 1.12.
- “Street Access” means access requested for municipal or private street purposes.
- "Supplementary Application" means an application made to excavate or obstruct more of the right of way than allowed by, or to extend, a permit that has already been issued.
- "Telecommunication Rights-of-Way User" means a person owning or controlling a facility in the right of way, or seeking to own or control a facility in the right of way, that is used or is intended to be used for transporting telecommunication or

other voice or data information. For purposes of this ordinance, a cable communication system defined and regulated under Minnesota Statutes Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes Section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes Chapter 308A, are not telecommunications right of way users.

- “Temporary Surface” means the compaction of subbase and aggregate base and replacement in kind of existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the County’s two-year project plan, in which case it is considered full restoration.
- “Trench” means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
- “Two Year Capital Improvement Plan” means projects adopted by the County for construction within the next two years.
- "Unusable or Unused Equipment and Facilities" means equipment and facilities in the right of way that have remained unused for one year or for facilities that are not registered or located by Gopher One Call; or 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 or facilities.

#### **Sec. 1.04. Administration.**

The County Engineer is the principal County official responsible for the administration of the rights of way, right of way permits, and the ordinances related thereto. The County Engineer may delegate any or all of the duties hereunder.

#### **Sec. 1.05. Utility Coordination Committee**

The County may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the County in obtaining information and by making recommendations regarding use of the right of way, and to improve the process of performing construction work therein. The Engineer may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the County. The County Board shall make any appointments to such a committee by resolution.

#### **Sec. 1.06. 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 place any equipment or facilities in the right of way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the County. Registration will consist of providing application information and paying a registration fee. Registration fees shall be set by the County Board and may be amended by the Board at a public meeting.

**Subd. 2. 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 County.

**Subd. 3. Exceptions.** 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 ordinance. However, plantings must not violate applicable clear zone requirements nor obstruct visibility on the roadway, and the County may remove such plantings, if necessary for maintenance, safety, or construction purposes, with no compensation due the property owner. 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 if any irrigation system is removed or if it is damaged by any County or municipal activity or by any permitted utility activity. 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 County, but shall be required to obtain permits for excavation and obstruction. Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes Chapter 216D, the "Gopher State One Call" Law.

#### **Sec. 1.07. Registration Information.**

**Subd. 1. Information Required.** The information provided to the Engineer at the time of registration shall be on the form approved by the County or this ordinance and shall include, but not be limited to:

(A) Each registrant's name, Gopher One-Call registration certificate number, address and email 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 accessible for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(C) A certificate of insurance or self-insurance:

(1) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the Engineer;

(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 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;

(3) Naming the County 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;

(4) Requiring that the Engineer be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Engineer in amounts sufficient to protect the County and the public and to carry out the purposes and policies of this chapter.

(D) The County may require that a copy of the actual insurance policies be provided to the County.

(E) If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statutes Section 300.06 as recorded and certified to by the Secretary of State.

(F) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said Commission or other state or federal agency.

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

#### **Sec. 1.08. Reporting Obligations.**

**Subd. 1. Operations.** 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 Engineer. Such plan shall be submitted using a format designated by the Engineer and shall contain the information determined by the Engineer to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights of way. The County shall maintain in the file a copy of the County'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. Facility plans that a utility identifies in writing to the County as being "trade secret information" will be treated as general nonpublic data in accordance with Minnesota Statutes Section 13.37 if the County agrees that such designation is accurate.

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

(A) 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");

(B) How the registrant will accommodate the County plan;

(C) 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.

**Subd. 2. Additional Next-year Projects.** Notwithstanding the foregoing, the Engineer will not deny an application for a right of way permit for failure to include a project in a plan submitted to the County if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

### **Sec. 1.09. Permit Requirement.**

**Subd. 1. Permit Required.** Except as otherwise provided in this Code, no person may access, landscape, place a service utility, excavate/grade, or obstruct any County Road right of way without first registering and having obtained the appropriate right of way permit from the County to do so.

Additionally, no person may substantially change the intensity of use of an existing access, in such a way that the County Engineer determines that such change in use will adversely affect the safety or operations of the County road, without first registering and having obtained the appropriate access permit from the County to do so. Multiple permits may be required, as determined by the Engineer, for a single activity.

**Subd. 1(a). Access Permit.** An Access Permit shall be obtained from the County before a person may make a temporary or permanent physical connection to a County road or highway or institute a change in use of an existing access. The County may institute various fees and requirements for differing access uses including Commercial, Residential, Agricultural, and Street accesses. The Permittee shall not be required to obtain a separate Excavation/Grading Permit when such excavation and grading are directly incidental to the construction of an access for which an approved Access Permit has been obtained. The Engineer may require the applicant to obtain an Obstruction Permit in addition to an Access Permit when the construction of the proposed access will hinder free and open passage over the specified portion of the right of way.

**Subd. 1(b). Excavation/Grading Permit.** An Excavation/Grading Permit, or a written waiver of this requirement, shall be obtained from the County before a person may deposit or move earthen material or physically disturb or penetrate the earthen surface of any part of any County right of way. The applicant shall also obtain a Right of Way Permit in addition to any Excavation/Grading Permit.

**Subd. 1(c). Landscaping Permit.** A Landscaping Permit shall be obtained from the County before a person may place landscaping within County right of way. The applicant shall also obtain a Right of Way permit in addition to any Landscaping Permit.

**Subd. 1(d). Obstruction Permit.** An Obstruction Permit shall be obtained from the County before a person may obstruct any part of a County right of way when

the applicant's proposed activity will hinder free and open passage over the specified portion of the right of way. The applicant shall also obtain a Right of Way Permit or Access Permit, as determined by the Engineer, in addition to any Obstruction Permit. The County may institute differing fees for differing severities and durations of obstructions.

**Subd. 1(e). Right of Way Permit.** A Right of Way Permit shall be obtained from the County before a person may effect a temporary or permanent impact or alteration to any County right of way, including but not limited to excavating, grading, removal of vegetation, and placement of utilities, utility service connections, signing, structures or temporary obstructions. The Engineer may require the applicant to obtain an Excavation/Grading Permit, Landscaping Permit, and/or Obstruction Permit in addition to a Right of Way Permit.

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

**Subd. 3. Delay Penalty.** In accordance with Minnesota Rule 7819.1000, Subdivision 3, notwithstanding Subd. 2 of this section, the County 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 by County Board resolution and shall include any delays or damages charged by the County's construction contractor and may include liquidated damages consistent with the contract.

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

### **Sec. 1.10. Permit Applications.**

Application for a permit is made to the Engineer. Permit applications made under this ordinance shall contain, and will be considered complete only upon compliance with the requirements of, the following provisions except when waived by the Engineer:

- A. Registration with the County pursuant to this ordinance;
- B. 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 in the project area.
- C. Payment of money due the County for:
  1. permit fees, estimated restoration costs and other management costs;
  2. prior permits for which the applicant has not fully satisfied requirements;
  3. any undisputed loss, damage, or expense suffered by the County because of applicant's prior excavations or obstructions of the right of way or any emergency actions taken by the County;
  4. franchise fees or other charges, if applicable.
- D. Payment of disputed amounts due the County by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

- E. Posting an additional or larger construction performance bond for additional facilities when applicant requests a permit to install additional facilities and the County deems the existing construction performance bond inadequate under applicable standards.

**Sec. 1.11. Issuance of Permit; Conditions.**

**Subd. 1. Permit Issuance.** If the applicant has satisfied the requirements of this ordinance, the County shall issue a permit.

**Subd. 2. Conditions.** The Engineer 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.

**Sec. 1.12. Permit Fees.**

**Subd. 1. Establishment of Permit Fees.** The county shall establish a permit fee schedule for all permits listed in Sec. 1.09 of this ordinance specifying fees that are adequate to recover the following costs. Permit fees shall be established by the County Board and may be amended at any public meeting.

- (A) County Management Costs;
- (B) Degradation Costs, if applicable;
- (C) Mapping Costs;
- (D) Obstruction Costs.

**Subd 2. Permit Surcharge for Large Projects.** The county may establish additional permit fees for activities exceeding one mile in length to be calculated based on the total length of the affected right of way.

**Subd 3. Conditions.** The Engineer may impose conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public's health, safety and welfare or when necessary to protect the right of way and its current use including the recovery of any unusual management costs not recovered through the standard permit fee, including the cost of assigning a police officer to provide traffic management or the cost of assigning a field observer.

**Subd. 4. Payment of Permit Fees.** No right of way permit shall be issued without payment of any and all applicable permit fees unless the County allows applicants to pay such fees within thirty (30) days of billing.

**Subd. 5. Non refundable.** Permit fees that were paid for a permit that the Engineer has revoked for a breach as stated in Sec. 1.23 are not refundable. Permit fees paid for work that is subsequently cancelled are not refundable.

**Subd. 6. 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.

**Sec. 1.13. Municipal Separate Storm Sewer System (MS4) Requirements**

**Subd. 1. Large and Sensitive Projects**

- a) **Projects Greater Than or Equal to one (1) acre.** All permitted projects within county right of way that disturb one (1) acre or more of

land must comply with the “MPCA General Permit Authorization To Discharge Storm Water Associated With Construction Activity Under The National Pollutant Discharge Elimination System/State Disposal System Permit Program (NPDES Permit No.: MN R100001).

**b) Projects Near a Sensitive Resource.** For all projects that disturb one half (½) acre to one (1) acre of land and are within 300 feet of a sensitive water resource must comply with requirements noted in Subd. 1.a.

For both cases, a and b, applicants must submit a copy of the SWPPP and NPDES Permit (or completed application) with the ROW application.

**Subd. 2. Small Projects** All permitted projects within county right of way that create exposed soil areas of less than one (1) acre shall provide a plan that shows the type and location of all temporary and permanent erosion/sediment controls that meets the following requirements:

1. All exposed soil areas with a continuous positive slope within 200 lineal feet of a surface water, must have temporary erosion protection or permanent cover for the exposed soil areas year round according to the following table of slopes and time frames:

<u>Type of Slope</u>	<u>Time</u>	(Maximum time an area can remain open when the area is not actively being worked.)
▪ Steeper than 3:1	7 days	
▪ 10:1 to 3:1	14 days	
▪ Flatter than 10:1	21 days	

2. Pipe outlets must be provided with temporary or permanent energy dissipation within 24 hours of connection to a surface water.

3. Sediment control practices must be established on all down gradient perimeters before any upgradient land disturbing activities begin. These practices shall remain in place until final stabilization has been established in accordance with Part IV.G.

4. All storm drain inlets receiving runoff must be protected by appropriate BMPs (Best Management Practices) during construction until all sources with potential for discharging to the inlet have been stabilized.

5. Temporary soil stockpiles must have silt fence or other effective sediment controls, and cannot be placed in surface waters, including storm water conveyances such as curb and gutter systems, or conduits and ditches.

6. Vehicle tracking of sediment from the construction site must be minimized by BMPs such as stone pads, concrete or steel wash racks, or equivalent systems. Street sweeping must be used if such BMPs are not adequate to prevent sediment from being tracked onto the street (see Part IV.E.4.d.).

7. All water from dewatering or basin draining activities must be discharged in a manner that does not cause nuisance conditions, erosion in receiving channels or on downslope properties, or inundation in wetlands causing significant adverse impact to the wetland.

8. All nonfunctional BMPs must be repaired, replaced, or supplemented with functional BMPs. If sediment escapes the construction site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts (e.g., fugitive sediment in streets could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

The Permittee(s) shall implement the following pollution prevention management measures on the site:

1. Solid Waste: Collected sediment, asphalt and concrete millings, floating debris, paper, plastic, fabric, construction and demolition debris and other wastes must be disposed of properly and must comply with MPCA disposal requirements.
2. Hazardous Materials: Oil, gasoline, paint and any hazardous substances must be properly stored, including secondary containment, to prevent spills, leaks or other discharge. Restricted access to storage areas must be provided to prevent vandalism. Storage and disposal of hazardous waste must be in compliance with MPCA regulations.
3. External washing of trucks and other construction vehicles must be limited to a defined area of the site. Runoff must be contained and waste properly disposed of. No engine degreasing is allowed on site.

The Permittee(s) must ensure final stabilization of the site. After all soil disturbing activities at the site have been completed, all soils must be stabilized by a uniform perennial vegetative cover with a density of 70 percent over the entire pervious surface area, or other equivalent means necessary to prevent soil failure under erosive conditions and;

- a. All drainage ditches, constructed to drain water from the site after construction is complete, must be stabilized to preclude erosion;
- b. All temporary synthetic and structural erosion prevention and sediment control BMPs (such as silt fence) must be removed as part of the site final stabilization; and
- c. The Permittee(s) must clean out all sediment from conveyances and from temporary sedimentation basins that are to be used as permanent water quality management basins. Sediment must be stabilized to prevent it from being washed back into the basin, conveyances or drainageways discharging off-site or to surface waters. The cleanout of permanent basins must be sufficient to return the basin to design capacity.

#### **Sec. 1.14. Right of Way Patching and Restoration.**

**Subd. 1. Timing.** The work to be done under the right of way 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 Sec. 1.16.

**Subd. 2. Temporary Surfacing, Patch and Restoration.** Permittee shall patch its own work.

**(a) County Restoration.** If the County restores any part of the right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If the County restores only the surface of the right of way and during the twenty-four (24) months following such restoration the pavement settles, the permittee shall pay to the County, within thirty (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. These costs shall include administrative, overhead mobilization, material, labor, and equipment.

**(b) Permittee Restoration.** If the permittee restores the right of way itself, it shall, at the time of application for a permit, post a Construction Performance Bond in an amount determined by the Engineer to be sufficient to cover the cost of restoration. If, within twenty-four (24) months after completion of the restoration of the right of way, the Engineer determines that the right of way has been properly restored, the surety on the Construction Performance Bond shall be released.

**(c) Degradation Fee and Patching in Lieu of Restoration to PUC Standards.** In lieu of right of way restoration, a right of way user may elect to pay a degradation fee at the County's discretion. However, the right of way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

**Subd. 3. Standards.** The permittee shall perform temporary surfacing, patching and restoration including backfill, compaction, and landscaping according to the standards and with the materials specified by the Engineer. The Engineer 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 Engineer in exercising this authority shall comply with PUC standards for right of way restoration (see PUC Rules 7819.990 to 7819.9950) and require conformance to MnDOT standard specifications and local government specifications and drawing and shall further be guided by the following 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 of restoration would be effective in slowing the depreciation of the right of way that would otherwise take place.

**Subd. 4. Guarantees.** The permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. The obligation is limited to one

year for plantings and turf establishment. During this Twenty-four 24 month period it shall, upon notification from the Engineer, correct all restoration work to the extent necessary, using the method required by the Engineer. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Engineer, 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 Sec. 1.16.

**Subd. 4(a). Duty to Correct Defects.** The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee, upon notification from the County, shall correct all restoration work to the extent necessary, using the method required by the County. Said work shall be completed within five (5) calendar days of the receipt of the notice from the County, 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 Sec. 1.16.

**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 Engineer, or fails to satisfactorily and timely complete all restoration required by the Engineer, the Engineer shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee at least five (5) working days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event the permittee fails to cure or fails to respond to the notice, the County may, at its option, perform the necessary work and the permittee shall pay to the County, within thirty (30) days of billing, the cost of restoring the right of way. If permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond.

#### **Sec. 1.15. Joint Applications.**

**Subd. 1. Joint Application.** Registrants may be required to jointly apply for permits to access, excavate/grade, place a utility service, landscape, or obstruct the right of way at the same place and time.

**Subd. 2. Shared Fees.** Registrants who apply for permits for the same obstruction or right of way permit action that the Engineer does not perform may share in the payment of the obstruction or right of way permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

**Subd. 3. With County Construction Projects.** Registrants who join in a scheduled utility installation or obstruction or excavation coordinated with a County construction project by the Engineer, whether or not it is a joint application by two or more registrants or a single application, are not required to pay any fees, but a permit is still required.

#### **Sec. 1.16. 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 who

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 Engineer or the Engineer's designee may orally waive the requirement for a permit extension or the payment of an additional fee. County shall maintain a written record of any waivers granted.

**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. Permits for nonemergency work shall be submitted at least 72 hours prior to the planned start of work.

#### **Sec. 1.17. Other Obligations.**

**Subd. 1. Compliance With Other Laws.** The applicant must notify and obtain a permit from any township or city through which it passes if said township or city so requires. 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 the County or other appropriate jurisdiction or to follow any other applicable rule, law or regulation. 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 Minnesota Statutes Sections 216D.01 through 216D.09 ("Gopher 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 County, 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, culverts, ditches, tiles or other waterways shall be interfered with. Privately owned vehicles of persons doing work in the right of way may not be parked within or next to a permitted work site unless parked in conformance with State, County or applicable local parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit. 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 Engineer.

### **Sec. 1.18. Denial of Permit.**

The County may deny a permit for failure to meet the requirements and conditions of this ordinance or if the County 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 County may deny a permit if the applicant has failed to comply with previous permit conditions. The County may withhold issuance of a permit until conditions of previous permit have been satisfied.

### **Sec. 1.19. Installation Requirements.**

The excavation, backfilling, patching and restoration, and all other work performed in the right of way shall be done in conformance with Minnesota Rules 7819.1100, 7819.5000, and 7819.5100 and shall conform to MnDOT standard specifications and other applicable local requirements, including all requirements of this Ordinance, in so far as they are not inconsistent with the Minnesota Statutes Sections 237.162 and 237.163.

### **Sec. 1.20. 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 Minnesota Rule 7819.1300.

**Subd. 2. Site Inspection.** Permittee shall make the work-site available to the County 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 County.**

(a) At the time of inspection the Engineer may order the immediate cessation and correction of any work which poses a serious threat to the life, health, safety or well being of the public.

(b) The Engineer may issue an order to the permittee to correct any work that does not conform to the terms of the permit or other applicable standards, rules, laws, 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 Engineer that the violation has been corrected. If such proof has not been presented within the required time, the Engineer may revoke the permit pursuant to Sec. 1.23.

(c) The cost of any action required by the County shall be paid by the permittee.

### **Sec. 1.21. Work Done Without a Permit**

**Subd. 1. Emergency Situations.** Each registrant shall immediately notify the Engineer 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 Ordinance for the actions it took in response to the emergency. The permittee requirements shall not apply if the repair is caused by another permittee's work in the right of way. If the County becomes aware of an

emergency regarding a registrant's facilities, the County may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the County may take whatever action it deems appropriate to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

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

**Subd. 3. Routine Maintenance Activities.** Routine maintenance activities may be conducted without a permit specific to the location or activity. However, all utility owners conducting maintenance of facilities within County right of way shall first apply for a permit for these activities which shall be valid throughout all Washington County highway rights of way. This permit shall be valid for a period of one calendar year and fees for this permit shall be waived by the County.

#### **Sec. 1.22. 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 County of the accurate information as soon as this information is known.

#### **Sec. 1.23. Revocation of Permits.**

**Subd. 1. Substantial Breach.** The County 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 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 County or its citizens;
- (C) Any material misrepresentation of fact in the application for a right of way permit;
- (D) The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the permittee's control, or failure to relocate existing facilities as specified in Sec. 1.25;
- (E) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.20;
- (F) Failure of the utility to pay any required costs, fees, or charges billed by the County; or

(G) 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.

**Subd. 2. Written Notice of Breach.** If the County 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 County 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, authorizes the County, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**Subd. 3. Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, the permittee shall provide the County with a plan, acceptable to the Engineer, that will cure the breach. A permittee's failure to so contact the County, or 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. Permittee's failure to so contact the County, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically revoke the permit and may include placing the permittee on probation for one (1) full year.

**Subd. 4. Cause for Probation.** From time to time the County 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 outside of the permit authorization.

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

**Subd. 7. Revoked Permit.** If the County revokes a permittee's permit for breach of this ordinance, the permittee will not be allowed to install any utility or to obstruct or excavate within the County right of way until the breach situation is corrected to the satisfaction of the Engineer and the permit is reissued.

#### **Sec. 1.24. Mapping Data.**

**Subd. 1. Information Required.** Each registrant and permittee shall provide mapping information required by the County in accordance with Minnesota Rules 7819.4000 and 7819.4100.

In managing the use of its public rights of way, a local government unit may establish, develop, and implement a right of way mapping system as follows. The purpose of a mapping system is to:

- A. allow flexibility in its use by the local government as an effective management tool;
- B. enhance public safety and user facility safety;
- C. provide for long-term cost savings;
- D. improve public right of way design quality; and
- E. allow for better information collection and cooperative usage among local government units, telecommunications companies, and other users of the public right of way.

**Subd. 2. Application required.** The County requires a permit for excavation in or obstruction of its public right of way. A person wishing to undertake a project within the public right of way shall submit a right of way permit application, which will require the filing of mapping information pursuant to Subd. 3 of this section.

**Subd. 3. Mapping Information.** The County requires as part of its permit application the filing of all the following information for placement of utilities:

- A. location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:

- (1) offsets from property lines, distances from the centerline of the public right of way, and curb lines as determined by the County;
- (2) coordinates derived from the coordinate system being used by the County; or
- (3) any other system agreed upon by the right of way user and the County;

- B. the type and size of the utility facility;
- C. the location and a description of above-ground appurtenances;
- D. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the map, and
- E. any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes Section 216D.04, Subdivision 3.

**Subd. 4. Changes and corrections.** The application must provide that the applicant agrees to submit "as built" data reflecting any changes and variations from the information provided under Subd. 2 of this section, items A to E.

**Subd. 5. Additional construction information.** In addition, the right of way user shall submit to the County at the time the project is completed a completion certificate according to part 7819.1300.

**Subd. 6. Manner of conveying permit data.** 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 local unit of government. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process.

**Subd. 7. Data on existing facilities.** At the request of the County, 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 reasonably available.

#### **Sec. 1.25. Location and Relocation of Facilities.**

**Subd. 1. Placement, Location, and Relocation.** Placement, location, and relocation of facilities must comply with Minnesota statutes, with other applicable laws and ordinances, and with Minnesota Rules 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities and counties. 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 Minnesota Department of Transportation clear zone standards must be approved by the Engineer and the facility owner shall be required to indemnify and hold harmless the County.

**Subd. 2. Corridors.** The County may assign specific corridors within the right of way, or any particular segment thereof as may be necessary, as a best management practice for each type of facility that is, or, pursuant to current technology, the County expects will someday be, located within the right of way. All right of way, obstruction, or other permits issued by the County involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A typical cross section of the location for utilities may be on file at the Engineer's office.

This section is not intended to establish "high density corridors". Any registrant who has facilities in the right of way in a position at variance with the corridors established by the County shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right of way, to prevent interference with planned local government use of the right of way unless this requirement is waived by the County 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.** Any utility that is found to have been installed in violation of County ordinances and without a permit, in a County right of way shall be deemed to be a nuisance.

The County 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 facilities and restoring the right of way to a useable condition and requiring payment to the County for the costs involved.

**Subd. 4. Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the right of way and its current use, the County shall have the power to use best management practices to prohibit or limit the placement and location of new or additional facilities within the right of way. In making such decisions, the County shall strive to the extent reasonably 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 need 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 County plans for public improvements and development projects that have been determined to be in the public interest.

**Subd. 5. Relocation of Facilities.** A registrant shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right of way whenever the Engineer for good cause requests such removal and relocation, and shall restore the right of way consistent with PUC standards, local regulations and MnDOT standard specifications. The Engineer may make such request to prevent interference by the company's equipment or facilities with

- (i) a present or future County use of the right of way,
- (ii) a public improvement undertaken by the County,
- (iii) an economic development project in which the County 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.

**Subd. 5(a). Relocation Notification Procedure.** The Engineer shall notify the utility owner at least six (6) months in advance of the need to relocate existing facilities so the owner can plan the relocation. The Engineer shall provide a second notification to the owner one (1) month before the owner needs to begin the relocation. The utility owner shall begin relocation of the facilities within one (1) week of the second notification. All utilities shall be relocated within one (1) month of the second notification. The Engineer may allow a different schedule if it does not interfere with the County's project. The utility owner shall diligently work to relocate the facilities within the above schedule.

In the event that emergency work by the County or by a municipality in the County right of way requires relocation of a utility, the notification requirements above are waived. The County and utility shall coordinate efforts to minimize delay.

**Subd. 5(b). Delay to County Project.** The Engineer 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 Engineer feels this delay will have an adverse impact to a county project, then the Engineer may hire a competent contractor to perform the relocation. In that event, the County shall charge the utility owner all costs incurred to relocate the facility.

The County may charge the utility owner for all costs incurred and requested by a contractor working for the County who is delayed because the relocation is not completed in the scheduled timeframe and for all costs incurred by the County due to the delay.

Notwithstanding the foregoing, according to the PUC rules, a person shall not be required to remove or relocate its facilities from any right of way that has been

vacated in favor of a nongovernmental entity unless and until the reasonable costs thereof are first paid to the person.

This provision does not exempt the utility company from paying for the value of any taking of said property by occupation without compensation.

**Sec. 1.26. Pre-excavation Facilities Location.**

In addition to complying with the requirements of Minnesota Statutes Sections 216D.01 through 216D.09 ("One Call Excavation Notice System") before the start date of any right of way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal placement of all said facilities. Vertical locations shall be marked to the degree of accuracy that they are known. Any registrant whose facilities 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 depth or location, it shall be exposed at the permittee's expense or by the County upon written notice to the permittee. The County may, upon said notice, locate said utility at the permittee's expense.

**Sec. 1.27. Damage to Other Facilities.**

When the County does work in the right of way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Engineer 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 facilities in the right of way that it or its facilities damages. When the permittee does damage to County facilities in the right of way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, they shall correct the damage immediately. If they do not, the County may make such repairs as necessary and charge all of the expenses of the repair to the permittee. The permittee shall pay for said repairs 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 County's response to an emergency occasioned by that registrant's facilities.

**Sec. 1.28. Right of Way Vacation.**

***Reservation of Right.*** If the County 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 Minnesota Rule 7819.1250 and other applicable laws.

**Sec. 1.29. Indemnification and Liability.**

By registering with the County, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the County in accordance with the provisions of Minnesota Rule 7819.1250.

All permits are granted subject to the ownership rights the County may have in the property involved and to the extent that state, federal local laws, rules and regulations allow and said permit is subject to all such laws and rules.

**Sec. 1.30. Abandoned or Unusable Facilities.**

**Subd. 1. Discontinued Operations.** A registrant who has determined to discontinue all or a portion of its operations in the County must provide information satisfactory to the County that the registrant's obligations for its facilities in the right of way under this chapter have been lawfully assumed by another registrant.

**Subd. 2. Removal.** Any registrant who 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 County waives this requirement.

**Sec. 1.31. Appeal.**

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

**Sec. 1.32. Reservation of Regulatory and Police Powers.**

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

**Sec. 1.33. Severability.**

If any portion of this chapter is for any reason held invalid by any court 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. Nothing in this chapter precludes the County from requiring a franchise agreement with the applicant as allowed by law in addition to requirements set forth herein.

**Sec. 1.34. Penalty for Violation.**

Violation of this ordinance shall result in the assessment of a penalty of \$500 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 ordinance.

**Sec. 1.35. Permit Fee Schedule.**

The County Board shall periodically review and approve the fee schedule for permits issued under this ordinance.

**Sec. 1.36. Effective Date.**

This Ordinance shall be effective upon passage and publication by the Washington County Board of Commissioners.