

400 Public Property and Improvements**401 Recreational Areas**

401.010 Applicability. The provisions of this ordinance shall be applicable to the use of all recreational areas within the City of Shoreview.

401.020 Recreational Area Defined. "Recreational areas" is any area, including parks, bathing beaches, parking lots, roadways and other lands open to the public for recreational purposes of any type, owned, leased, maintained, or managed by the City of Shoreview.

401.030 General Hourly Restrictions. Except as hereinafter provided, no person:

(A) shall be present in any recreational area, unless otherwise posted, between the hours of 10:00 p.m. and 6:00 a.m.;

(B) shall park, allow to remain, or leave standing any motor vehicle, recreational motor vehicle, house trailer, manufactured housing unit, camper, tent, tent trailer or similar device in or upon any recreational area or any road or highway adjoining any public water between the hours of 10:00 p.m. and 6:00 a.m.;

(C) shall voluntarily enter the water of any lake or public swimming pool between the hours of 10:00 p.m. and 6:00 a.m.

401.035 Special Hourly Restrictions-Bucher Park. No person:

(A) shall be present in Bucher Park, unless otherwise posted, between one-half hour after sunset and 6:00 a.m.; or

(B) shall park, allow to remain, or leave standing any motor vehicle, recreational motor vehicle, house trailer, manufactured housing unit, camper, tent, tent trailer or similar device in Bucher Park between one-half hour after sunset and 6:00 a.m.; or

(C) shall voluntarily enter the water of any lake between one-half hour after sunset and 6:00 a.m.

401.036 Special Permits. The City Council may upon written application, grant a Special Permit for the use of a recreational area during hours otherwise prohibited.

401.040 Vehicles.

(A) Operation. No person shall operate or park a motor vehicle or recreational motor vehicle in a recreational area except in areas clearly designated for such purposes.

(B) Speed. The maximum speed limit on any roadway or parking area within any recreational area shall be 15 miles per hour.

401.050 Liquor. No person shall transport, possess, offer for sale, consume or be under the influence of any alcoholic beverage in a recreational area. Exceptions to these provisions are allowed within designated Ramsey County parks in accordance with Ramsey County rules or at the Shoreview Commons Pavilion subject to obtaining a special permit in conjunction with a Pavilion reservation and in accordance with the rules set forth by the City of Shoreview. The special permit for the use of alcoholic beverages at the Shoreview Commons Pavilion shall be limited to beer and wine.

401.060 Animals. No person who owns, controls or harbors a domestic animal of any description shall permit such animal to be within a recreational area unless on an adequate leash and accompanied by a person capable of controlling such animal. No person who owns or is in control of a non-domestic animal, including but not limited to horses, shall permit such animal to be within a recreational area.

401.070 Use of Facilities.

(A) Fires. No person shall have a fire of any description on any recreational area unless such is in a grill or similar device clearly designed for such purpose.

(B) Signs. No person shall post or affix any printed or written bill, plaque, notice or other paper or sign upon any tree, structure, or thing within a recreational area, without the consent of the City Council or its designated agent.

(C) Swimming and Launching. No person shall swim, launch, dock or beach any boat, raft or other water vehicle at a recreational area, except at specific areas set aside and designated for such use by the City Council or its designated agent.

(D) Vegetation and Structures. No person shall climb any tree or pick any cultivated flowers or fruit or break, cut down, trample upon, remove, or in any manner, injure or deface any statute, ornament, tree, plant (other than common grasses), shrub, flower, flower bed, turf, or any of the buildings, fences, bridges, or other construction within a recreational area, nor shall any person write upon or deface any building, structure, statute, fence or bench within a recreational area.

401.080 Prohibited Acts.

- (A) Weapons and Fireworks. No person shall fire, possess or discharge any gun, pistol, BB gun, bows and arrows, or any fireworks of any description within a recreational area (except at a designated area) without the consent of the City Council or its designated agent.
- (B) Disorderly Conduct. No person shall engage in any violent, abusive, boisterous, vulgar, lewd, wanton, obscene or otherwise disorderly conduct tending to create a breach of the peace, or disturb or annoy others, while in or on any recreational area.
- (C) Gambling. No person shall conduct or participate in any form of gambling, lottery or game of chance within a recreational area.
- (D) Noise. No person shall use a loudspeaker, public address system or amplifier within a recreational area without the consent of the City Council or its designated agent.
- (E) Refuse. No person shall discard or throw any bottles, paper, food or other debris on a recreational area, except that which is deposited in a designated container.
- (F) Nudity. No person shall enter the water of any lake or public swimming pool without being garbed in a bathing suit sufficient to cover his or her person and equal to the standards generally adopted and accepted by the public.
- (G) No person shall hit or drive a golf ball with a golf club or other object in a recreational area.

401.090 Exclusive Use. No person, firm, corporation, or group shall make any use of any recreational area to the exclusion of the general public, or charge admission to any such area for any event, without the prior consent of the City Council or its designated agent.

401.100 Special Permit.

- (A) Generally. Notwithstanding any of the provisions of this ordinance, the City Council or its designated agent may upon written application grant permits for specific uses when in the opinion of the City Council or its designated agent special considerations are warranted.
- (B) Agent. The Park and Recreation Director of the City of Shoreview or, in his absence, the City Manager, is hereby designated as agent of the City

Council for purposes of issuing consents or permits pursuant to this ordinance.

401.110 Disposal of Recreational Areas. Property which has been acquired by the City by any means as recreational areas shall not be diverted to other uses or disposed of by the City except in the following manner:

- (A) A proposal to divert recreational areas to other uses or to dispose of recreational areas shall be forwarded to the City's Park and Recreation Committee for review and recommendations. The Park and Recreation Committee shall submit its recommendations no later than sixty (60) days from the date upon which it receives the proposal for review.
- (B) Upon receipt of the Park and Recreation Committee's recommendations, the City Council shall conduct a public hearing preceded by ten (10) days published notice.
- (C) At the conclusion of the public hearing, the Council may, by four (4) affirmative votes, authorize the diversion or disposal of recreational areas if it determines that such action is in the best interest of the City. The Council shall require that additional recreational areas be acquired to replace those areas diverted or disposed.
- (D) The Council shall obtain from a qualified independent appraiser an appraisal of the fair market value of the recreational areas to be diverted or disposed and in the event the City receives less than the appraised fair market value of such land, the Council shall allocate funds from the Capital Improvement Budget to equal the deficiency.
- (E) The net proceeds or funds received or allocated, and interest earned thereon, from the diversion or disposal of recreational areas shall be maintained in a separate fund and shall be used only for the purpose of acquiring additional recreational areas.
- (F) All property conveyed or dedicated at any time to the City specifically for recreational uses shall be restricted in use for recreational purposes only and upon acceptance by the City, the property may not be thereafter disposed of in the manner provided in this Section or in any other manner.

402 Streets

402.010 Application. This ordinance shall apply to all public streets hereafter constructed within the City. The purpose of this chapter is to safeguard the health, safety, and general welfare of the residents of the City.

402.020 Definitions. The following definitions apply to Sections 402 and 403:

- (A) Arterial. A fast or heavy traffic street of considerable continuity used primarily as a heavy artery for inter-communication among large areas.
- (B) Collector Street. A street designed to collect traffic from individual properties and minor streets and feed it to thoroughfares. These streets are intended to be designated as segments of the City's Municipal State Aid or Ramsey County's County State Aid system(s).
- (C) Local Street. A street of limited continuity used primarily for access to abutting properties, which is intended to discourage use by through traffic which does not have its origin or destination on the street.
- (D) Cul-de-sac. A minor street with only one outlet which is permanently terminated by a vehicular turn-around meeting the requirements of the Public Works Department.
- (E) Grade. The established elevation of the center line of the finished surface of the street.
- (F) Minnesota Department of Transportation. All reference to MnDOT specifications or methods shall be understood to refer to the latest published addition of the "Specifications for Highway Construction" as published by the Minnesota Department of Transportation.
- (G) Plans. All drawings and standard details or reproductions thereof pertaining to details of construction or of the contract work which are made a part of the contract.
- (H) Specifications. The directions, provisions and requirements that are prepared for the project under consideration and made a part of the contract.

402.030 Arterial and Collector Streets. Design criteria for arterial and collector streets shall be as follows:

- (A) In general, minimum right-of-way widths should be as follows: arterials – 100 feet and collectors – 60 feet. Pavement widths shall be dictated by County or Municipal State Aid standards.

- (B) Design criteria for arterial and collector roadways shall be dictated by Municipal State Aid standards. Vertical alignments, roadway surface grades and other roadway design elements shall meet minimum requirements appropriate for the roadway's intended function.

402.040 Local Streets. Design criteria for local streets shall be as follows:

- (A) Horizontal Alignment. When connecting street lines deflect from each other by more than ten degrees, they shall be connected by a curve with a minimum radius of 100 feet.
- (B) Vertical Alignment. Different connecting street gradients shall be connected with vertical curves. Minimum sight distance shall be 200 feet for local streets measured from a point five feet above the street centerline.
- (C) Vertical Curves. Different connecting street gradients shall be connected with vertical curves. Minimum length in feet of these curves shall be twenty (20) times the algebraic difference in the percent of grade of the two adjacent slopes.
- (D) Width. Minimum right-of-way width should be 50 feet. Pavement widths for local streets may vary depending on parking scenarios, unusual right-of-way widths, topographical constraints, etc. The minimum desired pavement width for local streets is 28 feet. Greater or lesser widths may be required depending upon anticipated traffic volumes, the planned function of the street, and the character of anticipated or planned abutting land uses. The final determination of minimum street width shall be made by the Public Works Director.
- (E) Alleys. Alleys should have a minimum right-of-way width of 30 feet and shall conform to the gradient requirements of local streets.
- (F) Cul-de-sacs. Minimum radius of turnaround right-of-way – 60 feet with a minimum pavement radius of 45 feet.
- (G) Minimum and Maximum Grades. Minimum – 0.5 percent, maximum – 8 percent.

402.050 Intersections.

- (A) Angle of Intersection. Streets shall intersect as close to 90 degrees as possible. In no case shall streets intersect at less than 75 degrees.
- (B) Number of Streets. No more than two streets shall cross at any one intersection.

- (C) Centerline Offsets. The minimum distance between the centerlines of offset intersections of public streets shall be 150 feet.

402.060 Loads.

- (A) Minimum Carrying Capacity. Seven-ton axle loading for local streets; ten-ton axle loading for arterial and collector streets.
- (B) Street Pavement. Design of street pavement for all streets covered by this ordinance shall be in accordance with the State of MnDOT Road Design Manual for flexible pavements. The designed thickness of the surfacing elements shall be in accordance with the flexible pavement design standard for the appropriate minimum carrying capacity.

402.070 Construction.

- (A) Curb and Gutter. Permanent concrete curb and gutter shall be constructed on both sides of streets. The construction shall be in accordance with Standard Specifications for Highway Construction, MnDOT Spec. 2531. Concrete curb and gutter cross-sections shall be MnDOT Design No. B618 or as approved by the Public Works Director.
- (B) Street Grading. Streets shall be graded in accordance with a plan approved by the Public Works Director and the City Council. The grading shall include the entire width of the right-of-way and shall provide a boulevard section, in addition to the minimum pavement width.
- (C) Soil Tests. To determine subgrade soil classifications, soil samples shall be collected and analyzed by a reputable testing laboratory. Reports of the soil analysis shall be submitted to the Public Works Director with the pavement plans. Soil samples shall be taken along the center line of the proposed road at intervals not exceeding 300 feet.
- (D) Drainage. Proper drainage of all streets shall be provided for by the installation of an adequately designed storm sewer system or a system of open ditches, culverts, ponds, pipes, and catch basins, or both systems. The installation of the drainage system shall be considered part of the essential street construction requirements of this chapter. The drainage systems shall fit into the overall drainage plan for the City and reflect the intent and standards of the Rice Creek Watershed District, the Grass Lake Water Management Organization, and Shoreview's Local Surface Water Management Plan.
- (E) Boulevards. The boulevards (area between the backs of the curbs and property line) shall be uniformly finished to match the top of the curb and restored to present a pleasing finished appearance.

(F) Public Utilities. All wires, cables, pipes, conduit and other installations of public and private utilities which are to be buried within the street right-of-way, together with such service lines, leads, stubs, and other appurtenances, as may be required to connect the adjacent property to these utilities, shall be constructed and installed prior to the installation of the finished surfacing of the street.

(G) Standard Detail Plates. All improvements to public property or infrastructure on extensions thereof shall be constructed in accordance with standard detail plates showing typical standard minimum requirements of construction as maintained by the Public Works Director. These detail plates may be revised or added to from time to time and such revised or additional plates shall be considered part of this ordinance.

402.080 Street Names. Street names shall comply with the Ramsey County Street Naming and Numbering System, if appropriate, or be approved by the Public Works Director.

402.090 Signs and Traffic Control Devices. The Public Works Director shall approve the type and place of installation of street name signs and any other regulatory or warning signage. All signage shall conform to the requirements of the Minnesota Manual of Uniform Traffic Control Devices. No person, other than an employee or duly authorized agent of the City, shall erect any sign purporting to be a street name or traffic control sign or device on any public property or right-of-way.

402.100 Street Lighting. Street lighting shall be required in all subdivisions. The type and layout of all proposed street lighting shall be approved by the Public Works Director.

402.110 Walkways/Bikeways. The City may require the construction of walkways and/or bikeways in conformance with the Comprehensive Guide Plan according to plans which shall be approved by the Public Works Director.

402.120 Permit Required for Work on Public Property. No person, other than the City or its employees, shall do any work of any kind whatsoever in any public right-of-way or any other public property within the City, without first having obtained a permit for such work from the properly designated city employee, after the application for such work has been approved by the Public Works Director in accordance with Section 405, Right-of-Way Management. The term "work" includes, but is not limited to, any improvement, construction, or alteration of sidewalks, curb or gutter, driveways, tree planting, boulevards and drainage facilities.

402.130 Street Improvement Petition Required. All requests for street construction, improvement or reconstruction shall be initiated by a request to the City Council

upon a street improvement petition form. Processing of the petition shall be in accordance with the applicable provisions of the Minnesota Statutes relative to public improvements.

- 402.140 Certain Vehicle Restrictions.** The Shoreview City Council may, upon the recommendation of the Public Works Director, authorize the placement and enforcement of restrictions pertaining to the operation of certain motor vehicle types on local residential streets. These restrictions may be established to protect the health, safety and welfare of the City and its residents/businesses, as well as to generally protect public property or infrastructure.

403 Access to Public Streets

- 403.010 Purpose.** The purpose of this chapter is to control the location and construction of driveways and curb cuts so that traffic hazards and congestion are reduced or avoided and that ingress and egress from properties shall not constitute a hazard or impair public health, safety, or general welfare.
- 403.020 Permit Requirements.** No new curb cut or driveway shall be constructed in any location where motor vehicles will be provided with access to any City public right-of-way without first obtaining a building permit for the construction. The Public Works Director or his/her designee shall review the building permit application for compliance with the provisions of this ordinance and may require a grade to establish the driveway.
- 403.030 Application.** Any person desiring a permit shall present a written application to the Public Works Director or his/her designee describing the improvements to be made with plans which indicate that the requirements of this section will be met.
- 403.040 General Requirements.**
- (A) Licensed Contractor. All work done within the right-of-way of the street shall be done by a regularly licensed contractor under the supervision of the proper city employee, who will see that all regulations are rigidly followed.
 - (B) Driveways. All that portion of the boulevard designated as driveways shall be surfaced with durable materials appropriate for use as a driving surface, as determined by the Public Works Director or his/her designee.
 - (C) Scope. The requirements of this section apply to all new construction and to repairs and changes to existing driveways that do not conform to these requirements except that, if the reconstruction or modification is the result of a City public improvement project, the non-conforming driveway may be replaced in its original configuration but may not be expanded in any way that would increase the non-conformity.
 - (D) Notification of Construction. A complete building permit application must be submitted to the City at least 5 business days in advance of the planned date the construction will start.
 - (E) Plot Plan. Prior to the construction of a driveway, a Plot Plan must be submitted which shall indicate the location and specifications for driveways and curb cuts in accordance with this chapter. The Plot Plan submitted shall be approved prior to the issuance of a permit for a driveway.

403.050 Standards. The following regulations shall apply to the portion of all driveways and curb cuts within the public right-of-way, unless waived by the Public Works Director:

(A) Width

- (1) In Retail Service (C1), Limited Retail Service (C1A), General Commercial (C2), Industrial (I), Business Park (BPK), Office (OFC), and Tower (T) zones, driveway widths within the unimproved portion of the publicly dedicated right-of-way and at the curb cut shall not exceed 36 feet.
- (2) In Multiple Dwelling Residential (R3) zones, driveway widths within the unimproved portion of the publicly dedicated right-of-way and at the curb cut shall not exceed 30 feet.
- (3) In Detached Residential (R1) and Attached Residential (R2) zones, driveway widths within the unimproved portion of the publicly dedicated right-of-way and at the curb cut shall not exceed 24 feet.
- (4) In Mobile Home Residential (R4) zones and for public or quasi-public uses within any zone, driveway widths within the unimproved portion of the publicly dedicated right-of-way and at the curb cut shall be as approved by the City Council.

(B) Distance Between Driveways. The minimum distance between curbs of driveways at right-of-way line shall be ten (10) feet in any Residential District. In all other districts, the minimum distance shall be twenty (20) feet.

(C) Distance From Intersection. No driveway or curb cut shall be less than 20 feet from any right-of-way line of any street intersection, except that in Industrial (I) zones, the minimum distance shall be 50 feet.

(D) Driveway Angle. The minimum driveway angle from a two-way access street shall be ninety (90) degrees. The minimum driveway angle from a one-way street shall be thirty (30) degrees.

(E) Control of Traffic. Where commercial land uses are adjacent to Residential Districts, ingress and egress from the commercial uses on local streets leading to or through the Residential Districts shall not be permitted unless it can be demonstrated that adequate access to public right-of-way is thereby denied. In this matter, traffic shall be controlled to insure that the location of driveways shall not constitute a hazard to adjacent residential uses.

- (F) Access to Arterials. On properties having frontage on both arterials and local or collector roads, access shall be provided via the local or collector roads wherever feasible in order to reduce the number of curb cuts on arterials.
- (G) State and County Arterial Requirements. If the proposed access is to be constructed so that it opens into any street designated as a state or county arterial, all additional specifications of the appropriate jurisdiction will apply.
- (H) Shared Driveways at the Street. If two or more driveways are shared, the portion of the driveway located within the street right-of-way shall:
- (1) Be clearly identified as an access to more than one dwelling.
 - (2) Comply with maximum driveway width requirements set forth in Section 403.050(A).
- (I) Number of Curb Cuts. In the RE, R-1, and R-2 Residential Districts each property shall be limited to one curb cut per dwelling unit, unless the width of the lot exceeds 120 feet or is a corner lot in which case a second curb cut may be permitted, subject to the standards of Section 403.050.

Rev. Date 7/17/06 Ord. #802

404 Bikepaths, Trailways and Sidewalks

404.010 Obstructions Prohibited. Unless authorized by the City Council, it shall be unlawful for any person to park a truck, passenger automobile, or recreational motor vehicle upon, or otherwise place any type of sign or obstruction within, the dedicated width of a bikeway, trailway or sidewalk owned by or dedicated for use to the City.

405 Right-of-Way Management

405.010 Findings and Purpose. To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, a primary cause for the early and excessive deterioration of its rights-of-way is frequent excavation.

Right-of-way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel or shopping plans because of them and has a detrimental effect on commerce. Persons whose equipment is within the right-of-way are the primary cause of these frequent obstructions.

The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property.

The Minnesota Legislature has recognized that it is in the public's interest that the use and regulation of rights-of-way be carried on in a fair, efficient, competitively neutral and substantially uniform manner while recognizing such regulation must reflect distinct engineering, construction, operation, maintenance, and public and worker safety requirements and standards applicable to various users of rights of way. Further, the legislature has determined that because increasing numbers of persons may seek usage of rights-of-way, municipalities such as the City must be and have been authorized to regulate use of rights-of-way. Consistent with this mandate, the City has endeavored to model its right-of-way regulations consistent with those of models enacted or under consideration by municipalities throughout the state. Further, the City has endeavored to create competitively neutral rights-of-way standards and regulations of general applicability.

In response to the foregoing facts, the City hereby enacts this Chapter relating to Right-of-Way Management. This Chapter imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed thereon at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Chapter, persons disturbing and obstructing the rights-of-way will bear a fair share of the

financial responsibility for the integrity of the City's rights-of-way. Finally, this Chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

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

405.020 **Definitions.** The following definitions apply in this Chapter of this Code. References hereafter to "sections" are unless otherwise specified references to section in this Chapter. Defined terms remain defined terms whether or not capitalized.

- (1) "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.
- (2) "City" means the City of Shoreview, Minnesota. For purposes of Section 405.280, City means its elected officials, officers, employees and agents.
- (3) "Degradation" means the accelerated depreciation of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.
- (4) "Degradation Cost" means money paid to the City to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation.
- (5) "Delay Penalty" means the penalty imposed as a result of unreasonable delays in right-of-way construction.
- (6) "Department" means the Department of Public Works of the City.
- (7) "Department Inspector" means any person authorized by the Manager to carry out inspections related to the provisions of this Chapter.
- (8) "Disruptive Fee" means the penalty imposed as a result of the adverse impact on the residents of the City and others who are required to alter travel routes and times resulting from right-of-way obstructions.
- (9) (Reserved.)

- (10) "Emergency" means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.
- (11) "Equipment" means any tangible thing in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.
- (12) "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way, except horticultural practices of penetrating the boulevard area to a depth of less than 12 inches.
- (13) "Excavation Permit" means the permit which, pursuant to this Chapter, must be obtained before a person may excavate in a right-of-way. An Excavation Permit allows the holder to excavate that part of the right-of-way described in such permit.
- (14) "Excavation Permit Fee" means money paid to the City by an applicant to cover the costs as provided in Section 405.110.
- (15) "Facility or Facilities" means any tangible asset in the right-of-way required to provide utility service.
- (16) "In" when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.
- (17) "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter.
- (18) "Management Cost" means the actual cost incurred by the City for public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying Right-of-Way Permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; and revoking Right-of-Way Permits and performing all other tasks required by this Chapter, including other costs the City may incur in managing the provisions of this Chapter. Management Cost does not include payment by a Telecommunications right-of-way user for the use of the right-of-way, the fees and costs of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the City's fees

and costs related to appeals taken pursuant to Section 1.30 of this Chapter.

- (19) "Manager" means the City Manager of the City of Shoreview, or the Manager's designee.
- (20) "Obstruct" means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- (21) "Obstruction Permit" means the permit which, pursuant to this Chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.
- (22) "Obstruction Permit Fee" means money paid to the City by a registrant to cover the costs as provided in Section 405.110.
- (23) "Patch or Patching" means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the sub-base and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two (2) feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's five (5) year project plan.
- (24) "Performance Security" means a performance bond, a restoration bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in both a timely and quality manner.
- (25) "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Chapter.
- (26) "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, an utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have equipment in any right-of-way.
- (27) "Probation" means the status of a person that has not complied with the conditions of this Chapter.
- (28) "Probationary Period" means one year from the date that a person has been notified in writing that they have been put on probation.

- (29) "Registrant" means any person who (1) has or seeks to have its equipment located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment in the right-of-way.
- (30) "Repair" means the temporary construction work necessary to make the right-of-way usable for travel.
- (31) "Restore or Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before the commencement of the work.
- (32) "Restoration Cost" means an amount of money paid to the City by a Permittee to cover the cost of restoration.
- (33) "Right of Way" means the surface and space above and below a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City.
- (34) "Right-of-Way Permit" means either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this Chapter.
- (35) "Service" or "Utility Service" includes but is not limited to (1) those services provided by a public utility as defined in Minn. Stat. §216B.02, Subds. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. §300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minn. Stat. Chap. 238; and A(6) Telecommunication Right-of-Way User.
- (36) "Supplementary Application" means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.
- (37) "Telecommunication Rights-of-Way User" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.

(38) "Unusable Equipment" means equipment in the right-of-way which has remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the equipment.

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

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

405.050 Registration and Right-of-Way Occupancy.

- (A) Registration. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or any equipment in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment in any right-of-way must register with the Manager. Registration will consist of providing application information and paying a registration fee.
- (B) Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or any part thereof in any right-of-way without first being registered with the Manager.
- (C) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Except as hereinafter provided, persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintain such boulevard plantings or gardens under this Chapter. However, excavations deeper than 12 inches are subject to the permit requirements of section 405.080 of this Chapter. Nothing herein relieves a

person from complying with the provisions of Minn. Stat. Chapter 216D, "one call" law.

405.060 Registration Information.

(A) Information Required. The information provided to the Manager at the time of registration shall include, but not be limited to:

- (1) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (3) A certificate of insurance shall be on a form approved by the City:
 - (a) Verifying that an insurance policy has been issued to the registrant by an insurance company license to do business in the State of Minnesota, or that registrant is covered by self insurance which the Manager determines to provide the City with protections equivalent to that of a Minnesota licensed insurance company, legally independent from the registrant;
 - (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 (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and Permittees, and (ii) placement and use of equipment in the right-of-way by the registrant, its officers, agents, employees and Permittees, and that registrant's insurance coverage includes, but is not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property;
 - (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 such coverages;
 - (d) Requiring that the Manager be notified thirty (30) days in advance of cancellation of the policy; and
 - (e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage

established by the Manager in amounts sufficient to protect the City and 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 Minn. Stat. §300.06 as recorded and certified to by the Secretary of State.
 - (6) A copy of the person's certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
 - (7) Such other information as the City may require.
- (B) Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the Manager information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

405.070 Reporting Obligations.

- (A) Operations. Each registrant shall, at the time of registration and by December 1st of each year, file a construction and major maintenance plan with the Manager.
- (1) Such plan shall be submitted by using a format designated by the Manager and shall contain the information determined by the Manager to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.
 - (2) 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**"); and
 - (b) 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**").
 - (3) The term "project" in this section shall include both Next-Year Projects and Five-Year Projects.

- (4) By January 1st of each year, the Manager will have available for inspection in the Manager's office a composite list of all Projects of which the Manager has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.
- (5) Thereafter, by February 1, each registrant may change any Project in its list of Next-Year Projects, and must notify the Manager and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a Next-Year Project of another registrant listed by the other registrant.
- (B) Additional Next-Year Projects. Notwithstanding the foregoing, the Manager will not deny an application for a Right-of-Way Permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

405.080 Right-of-Way Permit Requirement.

- (A) Right-of-Way Permit Required. Except as otherwise provided in the City's regulations, no person may obstruct or excavate any right-of-way without first having obtained the appropriate Right-of-Way Permit from the City Manager and posting of the appropriate performance security with the City Manager.
- (1) Excavation Permit. An Excavation Permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein, to the extent and for the durations specified therein.
- (2) Obstruction Permit. An Obstruction Permit is required by registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the durations specified therein.
- (B) Right-of-Way Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person makes a supplementary application for another Right-of-Way permit before the expiration of the initial permit, and a new Right-of-Way Permit, or Right-of-Way Permit extension, is granted.
- (C) Delay Penalty. Notwithstanding the provisions of Section 405.080(B), the City shall establish and impose a delay penalty for unreasonable delays in

right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by City Council Resolution.

- (D) Right-of-Way Permit Display. Right-of-Way Permits issued under this Chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the Manager.
- (E) Performance Security. Performance security shall be in an amount determined in the City's sole discretion, sufficient to serve as security for the full and complete performance of Permittee's obligation under this Chapter, including any costs, expenses, damages, or loss the City pays or incurs because of any failure to comply with this Chapter or any other applicable law, regulation, or standard. During the period of construction, repair or restoration of rights-of-way or equipment within the rights-of-way, the performance security shall be in an amount sufficient to cover 125% of the estimated cost of such work, as documented by the person proposing to perform such work, or in a lesser amount as may be determined by the Manager, taking into account the amount of equipment in the right-of-way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this Chapter. Sixty (60) days after completion of such work, the performance security may be reduced in the sole determination of the City.

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

- (A) Registration with the Manager pursuant to this Chapter;
- (B) Submissions of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment;
- (C) Payment of all money due to the City for:
- (1) Permit fees, 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 applicant's prior excavations or obstructions of the Rights-of-Way or any emergency actions taken by the City;

(4) Franchise fees, if applicable.

(D) Payment of disputed amounts due the City by posting performance security or depositing in a City-approved escrow account an amount equal to at least 110% of the amount owing.

(E) When an Excavation Permit is requested for purposes of installing additional equipment, and the posting of a restoration bond for the additional equipment is insufficient, the posting of an additional or larger restoration bond for the additional equipment may be required.

405.100 Issuance of Permit; Conditions.

(A) Permit Issuance. If the Manager determines that the applicant has satisfied the requirements of this Chapter, the Manager may issue a permit.

(B) Conditions. The Manager may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

405.110 Right-of-Way Permit Fees.

(A) Excavation Permit Fee. The Excavation Permit Fee shall be established by the Manager in an amount sufficient to recover the following costs:

- (1) the City Management Costs;
- (2) degradation cost, if applicable.

(B) Obstruction Permit Fee. The Obstruction Permit Fee shall be established by the Manager 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 such fees within thirty (30) days of billing.

(D) Non-Refundable. Permit fees that were paid for a permit that the Manager has revoked for a breach as stated in Section 405.210 are not refundable.

405.120 Right-of-Way Patching and Restoration.

- (A) Timing. The work to be done under the Excavation Permit, and the patching and/or restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the Permittee or when work was prohibited as unseasonal or unreasonable under Section 405.150.

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

- (B) Patch and Restoration. Permittee shall patch its own work. The City may choose either to have the Permittee restore the right-of-way or the City shall restore the right-of-way itself.

(1) City Restoration. If the City restores the right-of-way, Permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such restoration, the pavement settles due to Permittee's improper backfilling, the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing said pavement.

(2) Permittee Restoration. If the Permittee restores the right-of-way, it shall at the time of application for an Excavation Permit, post a performance security in an amount determined by the Manager to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, thirty-six (36) months after completion of the restoration of the right-of-way, the Manager determines that the right-of-way has been properly restored, the surety on the performance security shall be released.

- (C) Standards. The Permittee shall perform repairs and restoration according to the standards and with the materials specified by the Manager. The Manager 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 Manager in exercising this authority shall be guided by the following standards and considerations:

- (1) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
- (2) The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;

- (3) The pre-excavation condition of the right-of-way; the remaining life-expectancy of the right-of-way affected by the excavation;
- (4) 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
- (5) The likelihood that the particular method or restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

- (D) Guarantees. By choosing to restore the right-of-way itself, the Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period, it shall, upon notification from the Manager, correct all restoration work to the extent necessary, using the method required by the Manager. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Manager, not including days during which work cannot be done because of the circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 405.150.
- (E) Failure to Restore. If the Permittee fails to restore the right-of-way in the manner and to the condition required by the Manager, or fails to satisfactorily and timely complete all restoration required by the Manager, the Manager at its option may do such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If Permittee fails to pay as required, the City may exercise its rights under the restoration bond.
- (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. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the costs to accomplish these responsibilities.

405.130 Joint Applications

- (A) Joint Application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same time and place.
- (B) With City Projects. Registrants who join in a scheduled obstruction or excavation performed by the Manager, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee.

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

405.140 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 (i) make application for a permit extension and pay any additional fees required thereby, and (ii) 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 done before the permit end date.

405.150 Other Obligations.

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

parked within or next to a permit area. The loading or unloading of trucks next to a permit area is prohibited unless specifically authorized by the permit.

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

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

405.180 Inspection.

(A) Notice of Completion. When the work under any permit hereunder is completed, the Permittee shall furnish a Completion Certificate in accordance with PUC Rules.

(B) Site Inspection. Permittee shall make the work-site available to the Manager 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 Manager.

(1) At the time of inspection, the Manager 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 Manager may issue an Order to the Permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The Order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the Order, the Permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 405.210.

405.190 Work Done Without a Permit.

(A) Emergency Situations. Each registrant shall immediately notify the Manager of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are

necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the emergency.

If the Manager becomes aware of an emergency regarding a registrant's equipment, the Manager may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Manager may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

(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, pay double the normal fee for said permit, pay double all the other fees required by the Legislative Code, deposit with the Manager the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.

405.200 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 Manager of the accurate information as soon as this information is known.

405.210 Revocation of Right-of-Way 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 condition of the permit. A substantial breach by 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 maintain the required bonds and/or insurance;
- (5) the failure to complete the work in a timely manner; or

- (6) the failure to correct a condition indicated on an order issued pursuant to Sec. 405.180.
- (B) Written Notice of Breach. If the Manager 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 manager shall make a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the Manager, at his or her discretion, to place additional or revised conditions on the permit.
- (C) Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, Permittee shall contact the Manager with a plan, acceptable to the Manager, for its correction. Permittee's failure to so contact the Manager, or the Permittee's failure to so contact the Manager, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee's failure to reasonably implement the approved plan shall automatically place the Permittee on probation for one (1) full year.
- (D) Cause for Probation. From time to time, the Manager may establish a list of conditions of the permit, which if breached will automatically place the Permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit.
- (E) 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.
- (F) Reimbursement of City Costs. If a permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

405.220 Mapping Data.

- (A) Information Required. Each year, registrant shall provide mapping information required by the Manager in accordance with PUC Rules.
- (B) Trade Secret Information. At the request of any registrant, any information requested by the Manager, which qualifies as a "trade secret" under

Minnesota Statutes Chapter 13.37(b) shall be treated as trade secret information as detailed therein.

405.230 Location of Facilities.

(A) Undergrounding. Unless otherwise permitted by an existing franchise or Minn. Stat. §216B.34, or unless existing above-ground facilities are repair or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

(B) Corridors. The Manager 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 Manager expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the Manager involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant whose facility is in the right-of-way in a position at variance with the corridors established by the Manager shall, no later than at the time of the next reconstruction or excavation of the area where the facility is located, move that facility to its assigned position within the right-of-way, unless this requirement is waived by the Manager 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.

(C) Nuisance. One year after the passage of this Chapter, any facility found in a right-of-way that has not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facility and restoring the right-of-way to a useable condition.

(D) Limitation of Space. To protect health and safety, the Manager shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the Manager shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing equipment in the right-of-way, and future City plans for public

improvements and development projects which have been determined to be in the public interest.

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

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

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

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

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

405.270 Right-of-Way Vacation.

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

405.280 Indemnification and Liability. By registering with the Manager, or by accepting a permit under this Chapter, a registrant or permittee agree as follows:

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

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

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

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

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

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

405.290 Abandoned and Unusable Equipment.

- (A) Discontinued Operations. A registrant who has determined to discontinue its operation in the City must either:

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

- (B) Abandoned Equipment. Equipment of a registrant who fails to comply with Section 405.300, Subd. A, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has at least or in equity, including, but not limited to, (i) abating the nuisance (ii) taking possession of the equipment and restoring it to a

useable condition; or (iii) requiring removal of the equipment by the registrant, or the registrant's successor in interest.

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

405.300 Appeals.

(A) A Right-of-Way user that:

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

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

405.310 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.

405.320 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be

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

406 Vacation

406.010 Vacation. The public's interest in an easement, right-of-way or publicly dedicated land may be vacated in accordance with Minnesota Statutes 412.851 and 462.358, Sub. 7. Vacation of an easement, right-of-way or publicly dedicated land may be initiated by the City or by a petition of a majority of property owners of land abutting the easement, right-of-way, publicly dedicated land or part thereof to be vacated.

(A) Application. A vacation application may be submitted by a property owner(s) abutting the easement, right-of-way, publicly dedicated land, or part thereof.

(B) Submittal Requirements. Applications shall be made on forms on file with the City Manager or his/her designee and shall include the following information:

(1) Completed application form and the required filing fee as established from time to time by City Council resolution.

(2) A petition signed by a majority of the property owners abutting the easement, right-of-way, publicly dedicated land, or part thereof to be vacated.

(3) A map that identifies the exact location of the easement, right-of-way or publicly dedicated land to be vacated.

(4) A legal description of the easement, right-of-way or publicly dedicated land to be vacated.

(5) A statement describing the intended use of the property once the public interest is vacated.

(C) Review Process. Upon receipt of a completed application, the City Council shall hold a public hearing in consideration of the vacation request, preceded by published and mailed notice as prescribed in Section 406(D) below. If the vacation request was initiated by petition, the City Council may by resolution grant or deny the vacation request based on a majority vote of its entire membership. If the vacation request was initiated by the City, the City Council may by resolution grant or deny the vacation request only by a vote of four-fifths of its entire membership. In any case, the City Council may only grant the vacation request upon a finding that the vacation is in the public interest.

(D) Notice and Hearing Procedure.

(1) Publication. Notice of the purpose, time and place of a public hearing shall be published at least 14 days before the date of the hearing in the

official newspaper of the City of Shoreview. Affidavits of publication shall be made a part of the record of the proceedings.

- (2) Mailed Notice. Notice of the proposed vacation shall be mailed at least 10 days before the date of the hearing to each property owner affected by the proposed vacation and to companies that may have a legal interest in the property. The notice shall contain, at a minimum, a copy of the proposed vacation as well as the time, place, and date of the public hearing. An affidavit containing the names of the property owners and the addresses to which the notices were mailed shall be made a part of the record of the proceedings.
 - (3) Department of Natural Resources Notification. In the event that any portion of the easement, right-of-way or publicly dedicated land terminates at or abuts upon any public water, no vacation shall be made unless written notice of the proposed vacation is served by certified mail upon the Commissioner of the Department of Natural Resources at least 30 days before the hearing on the matter. The notice to the Commissioner is for notification purposes only and does not create a right of intervention by the Commissioner.
- (E) Record of Vacation. A certified copy of the resolution vacating public interest in an easement, right-of-way or publicly dedicated land shall be filed with the Ramsey County Auditor who shall then file the notice with the Ramsey County Recorder. Any failure to file the notice shall not invalidate the vacation proceedings.