

WABASHA COUNTY
MANAGEMENT OF UTILITIES
WITHIN COUNTY RIGHT-OF-WAY ORDINANCE

Adopted April 1, 2008

Wabasha County strives to keep its Right-of-Way in a state of good repair and free from unnecessary encumbrances in order to provide for the health, safety and welfare of its citizens, and to ensure the integrity of its roads and bridges and the appropriate use of the Right-of-Way.

The County Board of Wabasha County ordains:

MANAGEMENT OF UTILITIES WITHIN COUNTY RIGHT-OF-WAY ORDINANCE

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Section 1. General Provisions

1.01 Purpose and Intent

The County strives to keep its Right-of-Way in a state of good repair and free from unnecessary encumbrances in order to provide for the health, safety and welfare of its citizens, and to ensure the integrity of its roads and bridges and the appropriate use of the Right-of-Way.

The County hereby enacts this ordinance relating to Right-of-Way Permits and administration. This ordinance imposes regulation on the placement and maintenance of Facilities and equipment currently or to be placed at some future time within its Right-of-Way. It is intended to complement the regulatory roles of state and federal agencies. Under this ordinance, Persons excavating and obstructing 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 shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the County and users of the Right-of-Way. This ordinance shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This 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.

Nothing within this ordinance relieves a Registrant or Permittee from complying with the provisions of the Minnesota Statutes 216D, "Gopher One Call".

1.02 Authority

The County hereby elects pursuant Minnesota Statutes 237.163 subd.2(b), to manage Right-of-Way under its jurisdiction.

1.03 Administration

The Director or his/her designee is responsible for the administration of the Right-of-Way, Right-of-Way Permits, and this ordinance.

1.04 Severability

If any portion of this ordinance 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. Nothing in this ordinance precludes the County from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.

1.05 Indemnification and Liability

By registering with the County, or by accepting a Permit under this ordinance, 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.

1.06 Violations

A violation of any provision of this ordinance shall be a misdemeanor, which may result in prosecution by the County Attorney and upon conviction thereof, may be punished to the maximum extent allowed by law. Each day that a violation exists shall constitute a separate offense. The imposition of any fine or sentence shall not exempt the offender from compliance with the requirements of this ordinance.

Any violation of this ordinance is hereby declared to be a nuisance per se and the County through its qualified officers as provided by statute for maintaining suits, may institute proceedings in the Court for the purposes of restraining any violation of any of the provisions of this ordinance.

1.07 Right-of-Way Vacation

If the County vacates 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.

1.08 Amendments

The County Board of Commissioners may amend, supplement or repeal provisions of the ordinance after a public hearing has been held.

Section 2. Definitions

The following definitions apply in this ordinance:

Abandoned Facility: 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.

Applicant: any Person requesting permission to excavate or obstruct a Right-of-Way.

Commission: the Minnesota Public Utilities Commission (PUC).

Congested Right-of-Way: 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 216D.04, over a continuous length in excess of 500feet.

Construction Performance Bond: 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 subd.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: the County of Wabasha, Minnesota. For purposes of Indemnification and Liability, County means its elected and appointed officials, officers, employees and agents.

Degradation: 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 the cost to achieve a level of restoration equal to the degradation fee, 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 7819.9900 to 7819.9950.

Degradation Fee: 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, and which equals the degradation costs.

Delay Penalty: the penalty imposed as a result of unreasonable delays in Right-of-Way excavation, obstruction, patching, or restoration as established by Permit; or delays to the County's contractor (in the case of relocation in cooperation with a County project).

Department: the Wabasha County Highway Department.

Department Inspector: any designee authorized by the Director to carry out inspections related to the provisions of this ordinance.

Director: the Wabasha County Engineer or her/his designee.

Emergency: 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 a customer.

Equipment: any tangible asset used to install, repair, or maintain Facilities in any Right-of-Way.

Excavate: to dig into, remove, physically disturb or penetrate any part of a public Right-of-Way.

Facility or Facilities: any tangible asset in the Right-of-Way that is required to provide utility service.

High Density Corridor: a designated portion of the public Right-of-Way within which 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.

Local Representative: 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: the actual costs the County incurs in managing its public Right-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 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 Session Laws 1997, Chapter 123; Minnesota Statutes 237.162 or 237.163 or any ordinance enacted under those sections, or the County fees and costs related to appeals taken pursuant to this ordinance.

Obstruct: 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.

Patch or Patching: a method of pavement replacement that is temporary in nature. A patch consists of the compaction of the subbase, and the replacement, in kind, of the existing aggregate base and 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 scheduled by the County to be replaced within five years.

Pavement: 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: a Permit to perform work (excavation, obstruction or any other) in a public Right-of-Way.

Permittee: any Person to whom a Permit has been granted by the County under this ordinance.

Person: 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 who is installing or maintaining utilities on the county's Right-of-Way.

Probation: the status of a Person that has not complied with the conditions of this ordinance.

Probationary Period: one year from the date that a Person has been notified in writing that they have been put on probation.

Registrant: 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.

Restoration Cost: the amount of money paid to the County by a Permittee to achieve the level of restoration as determined by the Director.

Restore or Restoration: 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: the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk 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, or sidewalk are included as Right-of-Way.

Right-of-Way Permit: a Permit to perform work (excavation, obstruction or any other) in a public Right-of-Way.

Right-of-Way User: a telecommunications Right-of-Way user as defined by Minnesota Statutes 237.162, subd. 4, or 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.

Service or Utility Service: (1) those services provided by a public utility as defined in Minnesota Statutes 216B.02, subds. 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 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 308A; and (6) water, sewer, steam, cooling or heating services.

Supplementary Application: 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.

Telecommunication Rights-of-Way User: 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 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes 453 and 453A, or a cooperative electric association organized under Minnesota Statutes 308A, are not telecommunications Right-of-Way users for purposes of this ordinance.

Temporary Surface: the compaction of subbase and replacement, in kind, of existing aggregate base and pavement only to the edges of the excavation. Temporary surface is considered full restoration only when the pavement is scheduled by the County to be replaced within two years.

Unusable or Unused Equipment and Facilities: equipment and Facilities in the Right-of-Way which have remained unused for one year or for Facilities that are not registered or located by “Gopher One Call” under Minnesota Statutes 216D; 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 and user of the equipment or Facilities.

Section 3. Registration

3.01 Required

Each Person who occupies, uses, 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 on a form provided by the County. The County may require a fee to accompany the registration application.

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.

One year after the passage of this ordinance, any Facilities found in a Right-of-Way that have not been registered 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.

3.02 Registration Information.

The information provided to the Director at the time of registration shall include, and be on the form approved by the County, but not be limited to:

(a) Each Registrant’s name, Gopher One-Call registration certificate number, address, e-mail address (if applicable), and telephone and facsimile numbers.

(b) The name, address, e-mail address (if applicable) and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

- (c) A certificate of insurance or self-insurance (the County may require a copy of the actual policies):
- (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 Director;
 - (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 use and occupancy of the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, and 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 Director be notified 30days 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 Director in amounts sufficient to protect the County and the public and to carry out the purposes and policies of this ordinance.
- (d) If the Person is a corporation, a copy of the certificate required to be filed, as recorded and certified, by the Secretary of State of Minnesota.
- (e) A copy of the Person's order granting a certificate of authority from the PUC or other applicable state or federal agency, where the Person is lawfully required to have such certificate from said PUC or other state or federal agency.

The Registrant shall keep all of the information listed above current at all times by providing to the Director information as to changes within fifteen (15) days following the date on which the Registrant has knowledge of any change.

3.03 Reporting Obligations

Each Registrant that provides utility service shall, at the time of registration and by January 1 of each year, file a construction and major maintenance plan with the Director. Such plan shall be submitted using a format acceptable to the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of Right-of-Way. The construction and major maintenance plan shall be kept updated by the Registrant.

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

- (a) The locations and the estimated beginning and ending dates of all construction and major maintenance to be commenced during the next calendar year;
- (b) How the Registrant will accommodate the County's proposed construction;
- (c) To the extent known, the tentative locations and estimated beginning and ending dates for all construction and major maintenance contemplated for the next five years.

The Registrant's construction and major maintenance plan does not need to include individual service line hookups and minor maintenance unless they are part of an area wide program.

The Director will not deny an application for a Permit for failure to include a project in a plan submitted to the County if the Registrant has used reasonable efforts to anticipate and plan for the project.

3.04 Exceptions

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 a Permit for excavation and obstruction.

Section 4. Permits

4.01 Required

Except as otherwise provided in this ordinance, no Person may occupy, use, obstruct, or excavate any Right-of-Way without first registering, and obtaining the appropriate Permit from the County.

4.02 Application

Application for a Permit is made to the Director. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- (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.
- (c) Payment of money due the County 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 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 a Construction Performance Bond for any proposed work under the applied for Permit, if deemed necessary by the Director. The Director shall determine the amount based on the estimated costs of restoration of the Right-of-Way.

4.03 Joint Application

Registrants may jointly apply for excavation or obstruction of the Right-of-Way occurring at the same location and same time. Registrants who apply jointly may share in the payment of the Permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application.

4.04 Supplementary Application

Any Permittee which determines that an area greater than that specified in the Permit must be obstructed or excavated must before working in that greater area make application for a Permit extension and pay any additional fees required thereby, and be granted a new Permit or Permit extension.

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.

4.05 Fees

Permit fees shall be established by the County Board and may be amended at any public meeting. The County shall establish a Permit fee in an amount sufficient to recover the County management costs. Permit fees may also include degradation fees, if applicable. Permit fees that were paid for a Permit that the Director has revoked are not refundable. 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.

Registrants who join in a scheduled obstruction or excavation coordinated with a County performed or contracted construction project are not required to pay any costs of the Permit fee, but a Permit is still required.

No Permit shall be issued without payment of Permit fees unless the Director allows Applicants to pay such fees within 30days of billing.

4.06 Issuance

If the Applicant has satisfied the requirements of this ordinance, the County shall issue a Permit containing conditions as required by the Director. The Director may impose reasonable conditions upon the issuance of the Permit and the performance of the Applicant in order to protect the 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 for failure to meet the requirements and conditions of this ordinance or if the County determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the Right-of-Way and its current 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 a previous Permit are complied with.

4.07 Conditions of Permit

.01 General

The Applicant shall comply with all conditions of the Permit as required in this ordinance, stated on the Permit or ordered by the Director.

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 applicable rule, law or regulation. The Permittee is responsible for all work in the Right-of-Way pursuant to its Permit, regardless of who does the work.

.02 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.

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.

.03 Timing

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.

The work to be done under the 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 as prohibited by the Director. 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 Permit or Permit extension is granted.

The County may establish and impose a delay penalty for unreasonable delays in Right-of-Way excavation, obstruction, patching, or restoration. The delay penalty may include any cost of delays to traffic, and, where applicable, delays or damages charged by the County's construction contractor.

.04 Traffic Control

Traffic control shall conform to the latest edition of the Minnesota Manual on Uniform Traffic Control Devices and any directions of the County Engineer. Private vehicles of those doing work in the Right-of-Way may not be parked within or next to a Permit area, unless parked in conformance with applicable parking regulations. The loading or unloading of trucks must be done solely within the defined Permit area unless specifically authorized by the Permit.

.05 Restoration

The Permittee shall patch its own work. 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 Director 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 Director determines that the Right-of-Way has been properly restored, the surety on the construction performance bond shall be released.

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 with benefits, and equipment.

In lieu of Right-of-Way restoration, a Right-of-Way user may elect to pay a degradation fee. However, the Right-of-Way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

.06 Standards

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 and 7819.5000 and shall conform to MnDOT standard specifications and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes 237.162 and 237.163.

The Permittee shall perform restoration including backfill, compaction, and landscaping according to the standards and with the materials specified by the Director. The Director 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 Director in exercising this authority shall comply with PUC standards (set forth in Minnesota Rules 7819.9900 to 7819.9950) for Right-of-Way restoration and require conformance to MnDOT standard specifications and County specifications and shall further be guided by the following considerations:

- (a) The number, size, depth and duration of the excavations, disruptions or damage;
- (b) The traffic volume carried by the road within the Right-of-Way;
- (c) The character of the surrounding neighborhood;
- (d) The pre-excavation condition of the Right-of-Way including remaining life-expectancy;
- (e) 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
- (f) 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.

.07 Inspection of Work

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. Permits issued under this ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the County.

At any time, the Director 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.

The Director may issue a corrective order to the Permittee for any work, which 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. Said corrective work shall be completed within five (5) calendar days of the receipt of the order from the Director, 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. If the order has not been completed within the required time, the Director may revoke the Permit.

The cost of any action ordered by the Director shall be paid by the Permittee.

When the work under any Permit hereunder is completed, the Permittee shall furnish a completion certificate in accordance with Minnesota Rule 7819.1300.

.08 Guarantee and Corrective Work

The Permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During this twenty-four (24) month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Director, 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.

If the Permittee fails to restore the Right-of-Way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do such work. In that event 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.

Section 5. Work Done Without a Permit

5.01 Emergency

Each Registrant shall immediately notify the Director of any event regarding its Facilities that it considers 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.

If the County becomes aware of an emergency, the County will attempt to contact the local representative of each Registrant affected or potentially affected by the emergency. In any event, the County may take whatever actions it deems necessary to address the emergency, the cost of which shall be borne by the Registrant whose Facilities occasioned the emergency.

5.02 Non-Emergency

Except in an emergency, any Person who, without first having obtained the necessary Permit, obstructs or excavates a Right-of-Way must subsequently obtain a Permit, and as a penalty pay double the normal fee for said Permit, pay double all the other fees required by the County, 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.

Section 6. Breach and Revocation of Permit

6.01 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 not 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 ordered; or
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by the Director.
- (f) Failure of the utility to pay any required costs, fees, or charges billed by the county.

6.02 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 breach. The demand shall state that continued breaches may be cause for revocation of the Permit. A substantial breach, as stated above, will allow the County, at its discretion, to place additional or revised conditions on the Permit to mitigate and remedy the breach.

6.03 Response to Notice of Breach

Within twenty-four (24) hours of receiving notification of the breach, Permittee shall provide the County with a plan, acceptable to the County that will cure the breach. Permittee's failure to so contact the County, submit an acceptable plan, or reasonably implement the approved plan, shall be cause for revocation of the Permit and the placing of the Permittee on probation.

6.04 Cause for Probation

The County may establish a list of conditions of the Permit, which if breached will 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.

6.05 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.

If the County revokes a utility's Permit for breach of this ordinance, the utility will not be allowed to obstruct or excavate within the County Right-of-Way until the breach situation is corrected to the satisfaction of the Director and the Permit is reissued.

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.

Section 7. Placement, Location and Relocation of Facilities

7.01 Requirements

Placement, location, and relocation of Facilities must comply with this ordinance, other applicable law, and Minnesota Rules 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to the County. 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.

In addition to complying with the requirements of Minnesota Statutes 216D ("Gopher One Call"), each Registrant who has Facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said Facilities. 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 facility is not at the approved depth or location, it shall be exposed at the Registrant's expense or by the County upon written notice to the Registrant. The County may, upon said notice, locate said facility at the Registrant's expense.

7.02 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 excavation, 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 Facilities may be on file at the Director's office. This 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, 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.

7.03 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 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 which have been determined to be in the public interest.

7.04 Relocation of Facilities

A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the Director for good cause requests such removal and relocation, and shall restore the Right-of-Way consistent with PUC standards, as ordered by the Director, and MnDOT standard specifications. The Director may make such request to prevent interference by the Registrant'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.

The Director shall notify the Registrant (utility owner) in advance of the need to relocate existing Facilities. All relocations shall be completed prior to the beginning of County construction activities in the relocation area, unless otherwise approved by the Director. The Director may allow a different schedule if it does not interfere with the County's project. The Registrant (utility owner) shall diligently work to relocate the Facilities within the above schedule.

The Director shall notify the Registrant if the Registrant's progress will not meet the relocation schedule. If the Registrant does not take action to insure the relocation will be completed in accordance with the above schedule and the Director feels this delay will have an adverse impact to a County project, then the Director may hire a competent contractor to perform the relocation. In that event, the County may charge the Registrant all costs incurred to relocate the facility.

The County may charge the Registrant 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, a Person shall not be required to remove or relocate its Facilities 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. This does not exempt the utility company from paying for the value of any taking of said property by occupation without compensation.

Section 8. 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 Director shall notify the local representative as soon as 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. If the Permittee damages 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 the Permittee does not correct the damage, 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 thirty (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.

Section 9. Mapping Data

Each Registrant and Permittee shall provide mapping information, if required by the County, in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Section 10. Abandoned or Unusable Facilities

10.01 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 ordinance have been lawfully assumed by another Registrant.

10.02 Removal

Any Registrant who has abandoned or unusable Facilities in any Right-of-Way shall remove it from that Right-of-Way if required in conjunction with other Right-of-Way repair, excavation, or construction, unless the County waives this requirement.

Section 11. Appeals

A Person that: has been denied registration or a Permit, has had Permit revoked, or believes that the fees imposed are invalid, may appeal the denial, revocation or fee imposition to the County Board. In order to be considered, a written request shall be received in the Office of the County Administrator within thirty (30) days after the date of notice of any of the above. The County Board shall act on a timely written request at a regularly scheduled meeting within 30 days of receipt. A decision by the County Board concerning the written request of appeal shall be supported by findings establishing the reasonableness of the decision.

Section 12. Effective Date

This ordinance shall be in full force and effect after its approval and publication as provided by law.

Adopted this _____ day of _____ 2008 by the Wabasha County Board of Commissioners.

By: _____
Its Board Chair

Attest:

By: _____
Its County Administrator