

**CITY OF DELANO  
WRIGHT COUNTY, MINNESOTA**

**ORDINANCE NO. O-17-07**

**AN ORDINANCE AMENDING DELANO CITY CODE SECTION 301.01 RELATING TO RIGHT-OF-WAY MANAGEMENT, DELANO SUBDIVISION CODE SECTION 7-8 RELATING TO PUBLIC UTILITIES AND ADOPTING BY REFERENCE CITY CODE SECTION 105.01 AND SUBDIVISION CODE SECTION 12 WHICH AMONG OTHER THINGS CONTAINS PENALTY PROVISIONS**

**THE CITY COUNCIL OF THE CITY OF DELANO ORDAINS:**

**Section 1.** City Code Chapter 3 is amended by deleting Section 301.01 in its entirety and replacing it with the following:

**SECTION 301.01 RIGHT-OF-WAY MANAGEMENT**

**Subd. 1. Findings, Purpose and Intent.** To provide for the health, safety, and welfare of its citizens, and to ensure the 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.

Accordingly, the City hereby enacts this Section of the Code relating to right-of-way management. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of State and Federal agencies. Under this Section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this Section provides for recovery of out-of-pocket and projected costs from persons using the rights-of-way.

This Section shall be interpreted consistently with Minnesota Statutes Chapter 237, Minnesota Rules Chapter 7819, and other laws governing applicable rights of the City and users of the right-of-way. This Section shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

**Subd. 2. Election to Manage the Rights-of-Way.** Pursuant to the authority granted to the City under state and federal statutory, administrative, and common law, the City hereby elects, pursuant to Minn. Stat. § 237.163, subd. 2(b), to manage rights-of-way within its jurisdiction.

**Subd. 3. Administration.** The Director is the principal City official responsible for the administration of the right-of-way, right-of-way permits, and other ordinances related thereto. The Director may delegate any or all of the duties hereunder.

**Subd. 4. Definitions.** Except as otherwise defined in the City Code or where the context clearly indicates a contrary intent, the words and terms defined in Minnesota Statutes Chapter 237 and Minnesota Administrative Rules Chapter 7819, both as amended from time to time, shall

be applicable to this Section. Wherever reference is made to an individual or position in this Section, it shall mean the individual or person or his/her designee. The following words, terms and phrases, as used herein, have the following meanings unless the context clearly indicates otherwise:

- A. "Applicant" means any person applying for a right-of-way permit or registration under this Section.
- B. "Director" means the City's Public Works Director or his or her designee.
- C. "Emergency" means a condition that poses a clear and immediate danger to life or health; may result in a significant loss of property; or requires immediate repair or replacement in order to restore service.
- D. "Excavate" means to dig into or in any way remove, physically disturb, or penetrate any part of a right-of-way.
- E. "Facility" means a tangible object for use in connection with the storage or conveyance of: water; sewage; lighting; electronic, telephone or telegraphic communications; fiber optics; cable television; electric energy; oil; natural gas; or hazardous liquids. Facility includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments. Facility includes a telecommunications facility.
- F. "Obstruct" means to place any tangible object upon a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- G. "Permit Holder" means any person to whom a right-of-way permit has been issued by the City.
- H. "Registrant" means any person for whom a registration has been confirmed by the City.
- I. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, trail, and public sidewalk in which the City has an interest, including but not limited to dedicated or deeded rights-of-way for travel and utility purposes
- J. "Right-of-Way User" means a person owning or controlling or desiring to own or control a facility in the right-of-way. Right-of-way user includes a telecommunication user.
- K. "Section" means this entire Section 301.01.
- L. "Structure" means any ground or building mounted pole, spire, tower, building or combination thereof used to support or convey any facility within the right-of-way.
- M. "Telecommunications Facility" means a tangible object used to provide wireless telecommunication services, including all antennas, support devices, and

telecommunications mechanical equipment including ground-mounted equipment, associated cables, and attachments.

- N. “Telecommunications User” means a person owning or controlling or desiring to own or control a telecommunications facility in the right-of-way.

**Subd. 5. Application and Scope.** Except as otherwise stated herein, the provisions of this Section are applicable to all private and public right-of-way users, including but not limited to those rights-of-way owned or operated by private entities, the United States, the State of Minnesota, or any county, town, city, district, or other political subdivision located wholly or partially within the corporate limits of the City. All right-of-way users shall comply with all applicable provisions of this Section.

**Subd. 6. Right-of-Way Vacation.** If the City vacates a right-of-way that contains facilities, the facility owner’s rights in the vacated right-of-way are governed by Minnesota Rule 7819.3200.

**Subd. 7. Abandoned Facilities.** A facility within the right-of-way shall be considered “abandoned” when one of the following occurs:

- A. A right-of-way user notifies the City that a facility has been abandoned;
- B. The City determines a facility has been abandoned based on lack of repair or maintenance, or a significant deterioration in the facility’s physical condition; or
- C. The City determines that the owner or party responsible for the facility is unable to adequately maintain or operate the facility due to a bankruptcy filing, appointment of a receiver, or other information indicating the financial incapacity of the owner or responsible party.

In the event the City determines that a facility has been abandoned, the City shall provide written notice by ordinary mail to the owner of the facility or responsible party, and the owner or responsible party shall, within 30 days of the date notice is mailed, complete the following:

- A. Remove the facility from the right-of-way, pursuant to a plan approved in advance by the City;
- B. Restore the ground and turf where the facility was located to a good and satisfactory condition, pursuant to a plan approved in advance by the City; and
- C. Provide a financial security to the City, on such terms and amount as the City requires, to ensure that the removal of the facility from the right-of-way and restoration of the ground and turf are accomplished according to the City-approved plan.

In the event a facility is abandoned, no permit or registration shall be issued by the City to that owner and responsible party for work or placement of a facility in the right-of-way (a) until there has been full compliance with the notice of removal, and (b) for a period determined by the City, but in no event for less than a one-year period of time from the date the facility was deemed abandoned.

**Subd. 8. Right-of-Way Permits.**

**A. Right-of-Way Permits.**

1. Permit Required. In addition to all other requirements in this Section, including but not limited to the requirement for a telecommunications user to register each facility and the requirements relating to siting of new structures, and except as otherwise provided in the City Code, no person may construct, install, repair, remove, or relocate a facility or temporarily or permanently obstruct or excavate any right-of-way without first having obtained a right-of-way permit from the City.
2. Exceptions. A right-of-way permit is not required for the following activities. These exceptions do not relieve the person from fully complying with all applicable provisions of this Code.
  - a. No right-of-way permit is required of the property owner for gardening or sodding otherwise allowed in the boulevard area adjacent to the paved portion of the public streets, or for gardening or sodding in boulevard areas where a public easement exists for underground purposes. Trees and shrubbery placed in the boulevard by the property owner are allowed only by permission of the Director, and shall be removed and the right-of-way restored to its condition prior to placement promptly by the owner at the owner's expense upon a finding by the Director that the existence of such encroachment upon the boulevard interferes with maintenance of the boulevard, interferes with maintenance or replacement of a utility or right-of-way improvement, or constitutes a safety hazard.
  - b. No right-of-way permit is required of the property owner for driveway replacement or repair that does not involve any of the following in the boulevard area:
    - i. Enlargement or reduction of the driveway area.
    - ii. Relocation of the driveway from its existing location.
    - iii. Change to the driveway grade.
    - iv. Repair to or change of the driveway curb, gutter, or apron.
  - c. No right-of-way permit is required of City employees acting within the course and scope of their employment and contractors acting within the course and scope of a contract with the City.

- d. No right-of-way permit is required of persons who install mailboxes in the right-of-way in accordance with requirements of the U.S. Postal Service.
- e. No right-of-way permit is required of persons who temporarily place residential household refuse containers in the right-of-way for the collection of solid waste or recyclables.

B. Application for Right-of-Way Permits.

1. A written application for a right-of-way permit shall be submitted to the Public Works Department at least two weeks prior to the anticipated project start date. The application shall be made on a form provided by the City and shall include or be accompanied by all of the following:
  - a. plans and specifications prepared and signed by an engineer licensed to practice in the State of Minnesota. Applications for a telecommunications facility shall also include engineered construction drawings of the structure and any facility to be attached or connected to the structure, including but not limited to structure and facility design, materials, height, diameter, foundation details, capacity for collocation, wind load capacity, and collapse zone information;
  - b. a scaled drawing showing the location and area of the proposed project and the location of all proposed facilities. Applications for a telecommunications facility shall also include a site plan and cross section illustrating the distance of the structure and facilities from all existing utilities, structures, facilities, streets, sidewalks, trails, curbs, property lines, and buildings any of which are located within 100 feet of the structure or facility;
  - c. confirmation that other right-of-way users have been notified and existing facilities located pursuant to local, state and federal laws, rules, and regulations including but not limited to Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560 (Gopher One Call Excavation Notice System);
  - d. a traffic control plan;
  - e. a restoration plan;
  - f. a timeline for the proposed project;
  - g. a public notification plan and a copy of the property owner notice required by provision I 1 d below;
  - h. proof of insurance required by provision D 3 below;
  - i. a description of the method for backfilling and compacting, the specifications as to the materials to be used, and the method for street excavation which must protect abutting property and existing facilities; and
  - j. required attachments;

All such applications shall be consistent with the provisions of this Section and good engineering, safety, and maintenance practices shall be followed for the work or activity conducted under the right-of-way permit.

2. If the City has suffered any undisputed loss, damage, or expense because of the applicant's prior excavations, obstructions, or other work in the right-of-way or any emergency actions relating thereto, the Director may require the applicant to reimburse the City for such expense before considering a new permit application for approval.

- C. Permit Fees. The City shall establish a right-of-way permit fee in an amount sufficient to recover City costs. The City shall impose the permit fee at the time an application for a right-of-way permit is submitted. An application shall not be reviewed or a permit issued unless the permit fee has been paid. Permit fees paid for a permit that is denied or revoked are not refundable. Unless otherwise agreed to in a franchise agreement, permit fees may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise agreement.

In accordance with Minnesota Rule 7819.1000, Subp. 3, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, or restoration. No delay fee shall be imposed if the delay is due to circumstances beyond the control of the permit holder, including without limitation inclement weather, acts of God, or civil strife.

The permit fee and delay penalty shall be established from time to time by Council resolution.

- D. Issuance of Permit, Conditions and Insurance.

1. Issuance. Upon the Director's determination that the applicant has satisfied the requirements of this Section, the Director shall issue the right-of-way permit subject to the terms and conditions of this Section.
2. Conditions. The Director may impose reasonable conditions upon the issuance of the right-of-way permit and the performance of the permit holder to protect the public health, safety, and welfare or to protect the right-of-way and its current use. In addition, a permit holder shall comply with all local, state and federal laws, rules, and regulations including but not limited to Minnesota Statutes Chapter 216D, Minnesota Rules Chapter 7560 (Gopher One Call Excavation Notice System) and provision of mapping information in accordance with Minnesota Rules 7819.4000 and 7819.4100.
3. Insurance. The Permit Holder shall obtain and maintain, throughout the term of the right-of-way permit and all work performed under the permit, a commercial general liability insurance policy which provides coverage for damage to the property of others or injury to persons. The City shall be named as an additional

insured on said insurance policy. Said policy shall contain a clause which provides language stating that the company that issues the policy shall not change, non-renew, or materially change the policy without first providing the City thirty (30) days prior written notice.

E. Permit Display. Right-of-way permits shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director.

F. Permit Validity and Extensions. A right-of-way permit is valid only for the area of the right-of-way specified in the permit and for the dates specified in the permit. No permit holder may do any work outside of the area specified in the permit or begin its work before the permit start date or continue working after the permit end date. Any permit holder desiring to obstruct, excavate, or perform other work in an area greater than that specified in the permit or desiring to perform work on dates not specified in the permit shall apply for a new or extended right-of-way permit and pay any additional fees required by the City. The permit holder shall obtain the new or extended permit before performing any work not allowed by the original permit.

G. Financial Security. Before a right-of-way permit is issued, the applicant shall deposit cash or submit an irrevocable letter of credit or a corporate bond in favor of the City in an amount determined by the Director to be sufficient to: (a) cover expenses of restoration and permit administration; (b) properly safeguard persons or property exposed to the work or activity; (c) protect the City and its employees from any suit, action or cause of action arising by reason of such work or activity; and (d) cover costs of enforcement. The Director may require additional security in the amount necessary to assure the City that the street and base are restored to a condition comparable to that in existence when the work commenced. The City shall deduct from the financial security all costs actually incurred by the City. Any portion of the financial security not retained by the City shall be returned to the person who submitted the financial security within 60 days of the completion of the work. If the costs exceed the financial security the City may, at any time, require that additional funds be deposited. Regardless of whether additional funds are deposited, if the costs exceed the financial security after the work is complete, the City shall invoice the permit holder for the difference. The invoice shall be paid within 30 days of receipt. The required financial security must be:

1. Satisfactory to the City Attorney in form and substance.
2. Conditioned on the permit holder's faithful compliance with all the terms and conditions of this Section and all rules, regulations and requirements pursuant thereto, including payment of all charges and fees.
3. Conditioned on the permit holder's agreement to indemnify and hold the City, its elected and appointed officials, employees and agents, and its officers harmless against any and all claims, judgments, or other costs arising from the right-of-way permit or for which the City, its elected and appointed officials, employees, and

agents may be made liable by reason of any accident or injury to persons or property through the fault of the applicant or permit holder.

- H. Denial of Permit. The Director may deny a right-of-way permit for failure to meet the requirements and conditions of this Section or if the Director determines that the denial is necessary to protect the health, safety, and welfare of the public or to protect the right-of-way and its current use. Applications for structures upon which telecommunication facilities are intended to be installed shall be denied unless accompanied by engineered plans and specifications detailing the specific facilities to be attached or connected to the structure.

I. Standards for Construction or Installation.

1. General Standards. Excavation, backfilling, patching, restoration, installation or maintenance of fixtures and structures, and all other work performed in the right-of-way must be done in conformance with all applicable Minnesota Statutes and Administrative Rules, including without limitation Rules 7819.5000 and 7819.5100, all requirements of the City Code, and all local laws, rules and regulations. The permit holder shall comply with the following additional standards when performing the work authorized under the right-of-way permit:
  - a. Take such precautions as are necessary to avoid creating unsanitary conditions.
  - b. Conduct the operations and perform the work in a manner that ensures the least obstruction to and interference with traffic.
  - c. Take adequate precautions to ensure the safety of the general public and those who require access to abutting property.
  - d. Notify in writing property owners within 75 feet of the work to be performed at least three days prior to any work being performed. The written notice shall include contact information for the permit holder, the nature of the work being done, possible planned service interruptions, anticipated construction dates including duration of the work, and a map or graphic showing the location of the work relative to the properties.
  - e. Comply with the Minnesota Manual of Uniform Traffic Control Devices at all times during construction or installation.
  - f. Exercise caution at all times for the protection of persons, including employees, and property.
  - g. Protect and identify excavations and work operations with barricade flags and, if required, by a flag person in the daytime and by warning lights at night.



- h. Provide proper trench protection as required by the Occupational Safety and Health Administration in order to prevent cave-ins endangering life.
- i. Protect the root growth of trees and shrubbery.
- j. If possible, provide for space in the installation area for other right-of-way users.
- k. Maintain access to all properties and cross streets as possible during construction and installation and maintain emergency vehicle access at all times.
- l. Maintain alignment and grade unless otherwise authorized by the Director. Changes not approved by the Director will require removal and reconstruction.
- m. During plowing or trenching of facilities, a warning tape must be placed at a depth of twelve (12) inches above copper cables with over two hundred (200) pairs and above fiber facilities.
- n. Below concrete or bituminous paved road surfaces, directional bore facilities must be installed in conduit.
- o. The placing of all facilities must comply with the National Electric Safety Code, as incorporated by reference in Minnesota Statutes section 326B.35.
- p. At the direction of the Director, facilities being installed or relocated shall be placed in a common conduit system or share other common arrangements.
- q. A Minnesota licensed surveyor shall be used to locate property lines, install property pins, and replace any destroyed property pins at corners.
- r. Excavations, trenches, and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability and as directed by the Director.
- s. Excavations, trenches, and jacking pits shall be protected when unattended to prevent entrance of surface drainage.
- t. Excavations, trenches, and jacking pits shall be protected against pedestrian and vehicular traffic when unattended, or at the end of each working day.

- u. All backfilling must be placed in six inch (6") layers at optimum moisture and compacted with the objective of attaining ninety-five percent (95%) of Standard Proctor at depths three feet (3') and greater below the surface, and attain one-hundred percent (100%) of Standard Proctor within the top three feet (3') of the surface. Compaction shall be accomplished with hand, pneumatic, or vibrating compactors as appropriate.
  - v. Backfill material shall be subject to the approval of the Director. The Director may permit backfilling with the material from the excavation provided such material is acceptable to the Director.
  - w. Compacted backfill shall be brought to bottom of the aggregate base of the approved street section.
  - x. Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.
  - y. No lugs damaging to roadway surfaces may be used.
  - z. Dirt or debris must be periodically removed during construction, which may require the use of a mechanical sweeper.
  - aa. Above-ground utility markers may not be installed except as authorized by the Director.
  - bb. Other reasonable standards and requirements of the Director.
2. Standards for Installation of Underground Utilities. The permit holder shall comply with the following standards when installing facilities underground:
- a. Buried fiber facilities shall be at a minimum depth of three (3) feet and a maximum depth of four (4) feet unless an alternate location is approved in advance by the Director. Buried copper facilities below concrete or bituminous paved road surfaces must be placed at a minimum depth of three (3) feet and a maximum depth of four (4) feet. Other buried copper facilities must be placed at a minimum depth of thirty (30) inches and a maximum depth of four (4) feet.
  - b. Crossing of streets and hard surfaced driveways shall be directional bored unless otherwise approved by the Director.
  - c. If construction is open cut, the permit holder must install the visual tracers within twelve (12) inches and over buried facilities. If other construction methods are used, substitute location methods may be considered by the Director.

- d. The permit holder shall register with Gopher State One Call and comply with the requirements of that system.
  - e. Compaction in a trench shall be ninety-five percent (95%) of Standard Proctor at depths three feet (3') and greater below the surface, and attain one-hundred percent (100%) of Standard Proctor within the top three feet (3') of the surface, and copies of test results must be submitted to the Director. Tests will be required at the discretion of the Director. Tests must be conducted by an independent testing firm at locations approved by the Director. The Director may require recompaction and new tests if densities are not met.
  - f. The facilities shall be located so as to avoid traffic signals and signs, which are generally placed a minimum of three (3) feet behind the curb.
  - g. When utilizing trenchless installation methods to cross an area in which a municipal utility is located, and when directed by the Director, the permit holder shall excavate an observation hole over the utility to ensure that the City utility is not damaged.
  - h. All junction boxes or access points shall be located at least ten (10) feet from City hydrants, valves, manholes, lift stations, or catch basins unless an alternate location is approved by the Director.
  - i. Underground facilities shall not be installed between a hydrant and an auxiliary valve.
  - j. Buried telecommunications facilities must have a locating wire or conductive shield, except for di-electric cables.
  - k. Buried fiber facilities must be placed in a conduit unless the permit holder obtains a waiver from the Director.
3. Standards for Installation of Overhead Facilities. The permit holder shall comply with the following standards when installing facilities overhead:
- a. All wires shall be a minimum of eighteen (18) feet above paved surfaces and at a location that does not interfere with traffic signals, overhead signs, or street lights.
  - b. Facilities shall be co-located on structures where possible.
  - c. Placing overhead facilities on both sides of the right-of-way is prohibited unless specifically approved by the Director.

4. Trenchless Excavation. A permit holder employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560, and shall employ potholing or open cutting over existing underground utilities before excavating as determined by the Director. "Potholing" means excavating the area above an underground facility to determine the precise location of the underground facility without damage to it, before excavating within two feet of the marked location of the underground facility.

5. Location of Facilities.

- a. Location. Placement, location, and relocation of facilities must comply with local regulations and other applicable laws, and with Minnesota Rules 7819.3100, 7819.5000, and 7819.5100.
- b. Corridors. The Director may assign specific corridors within the right-of-way, or any particular segment thereof, for each type of facility that is or, pursuant to current technology, the Director expects will someday be located within the right-of-way. All right-of-way permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Facilities shall be placed in a common conduit system or share other common arrangements at the direction of the Director.
- c. Limitation of Space. To protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. The Director shall strive 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 service, the condition of the right-of-way, the time of year with respect to essential services, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects.

- J. Restoration of Right-of-Way. The permit holder shall restore the right-of-way to the satisfaction of the Director.

1. Timing. All work to be done under the right-of-way permit and all required restoration of the right-of-way must be completed within the dates specified in the right-of-way permit.

2. Duty to correct defects. Upon notification from the Director, the permit holder shall correct all defects in restoration as required by the Director. Correction 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 beyond the control of the permit holder, including without limitation inclement weather, acts of God, or civil strife.
3. Failure to restore. If the permit holder 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 City may complete the restoration. The permit holder shall reimburse the City for its reasonable costs incurred in completing the restoration and shall pay any delay penalty and/or degradation fee imposed by the City within thirty (30) days of invoice from the City. If a permit holder fails to pay as required, the City may deny future right-of-way permit applications.

K. Inspection and Authority of Director.

1. Notice of Completion and As-Builts. When the work under any right-of-way permit is completed, the permit holder shall furnish a completion certificate and as-built drawings in accordance with Minnesota Rule 7819.1300 if requested by the Director.
2. Site Inspection. The permit holder shall make the work site available at all times during the execution of and upon completion of the work for inspection by the Director or other City personnel and to all others authorized by law.
3. Authority of Director. The Director may order the immediate cessation of any work or may order the immediate repair or removal of any facility which the Director determines, in the Director's sole discretion, poses a threat to the life, health, safety, or well-being of the public or fails to comply with any federal, state or local law, rule or regulation. The order shall inform the permit holder that failure to correct the violation may result in revocation of the right-of-way permit pursuant to provision N below.

L. Work Done Without a Permit. Except in an emergency situation as provided in this provision, any person who constructs, installs, repairs, removes, or relocates a facility or temporarily or permanently obstructs or excavates, any right-of-way without a right-of-way permit issued by the City shall be guilty of a misdemeanor.

1. Emergency Situations – Right-of-Way User. A right-of-way user shall immediately notify the City of any event concerning its facilities that it considers to be an emergency and may take any actions reasonable and necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency, the right-of-way user shall apply to the City for the necessary right-of-way permit(s), pay the fees associated therewith, and fulfill the rest of the

requirements necessary to bring itself into compliance with this Section for the actions it took in response to the emergency.

2. Emergency Situations – City. If the City becomes aware of an emergency concerning facilities in the right-of-way, the City will make reasonable attempts to contact the owner of each facility affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency. If the emergency was caused by a facility or facilities, the owner thereof shall reimburse the City for its costs in responding to the emergency.
3. Non-Emergency Situations. Except in an emergency, any person who obstructs or excavates a right-of-way without first having obtained a right-of-way permit must subsequently obtain a right-of-way permit. The fee for a subsequently issued right-of-way permit shall be established from time to time by City Council resolution. The permit holder shall also pay all the other fees required by the City Code, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all other requirements of this Section.

M. Damage to Other Facilities.

1. When the City performs work in the right-of-way that requires the alteration or relocation of an existing facility, the Director shall notify the facility owner as soon as is reasonably possible. The facility owner shall reimburse the City for the City's costs incurred in such alteration or relocation within thirty (30) days from the date of billing.
2. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency caused by that owner's facilities.

N. Revocation of Permits.

1. Substantial Breach. The Director may revoke any right-of-way permit if the permit holder substantially breaches any of the terms and conditions of any applicable statute, ordinance, rule or regulation, or any condition of the right-of-way permit. A substantial breach includes, but is not limited to, the following:
  - a. The violation of any material provision of the right-of-way permit or this Section;
  - b. The 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;

- c. Any material misrepresentation of fact in the permit application;
  - d. The failure to complete the work in a timely manner unless a permit extension has been obtained or unless the failure to complete work is due to reasons beyond the permit holder's control; or
  - e. The failure to timely comply with an order of the Director.
- 2. **Written Notice of Breach.** If the Director determines that the permit holder has committed a substantial breach, the Director shall notify the permit holder of the breach in writing and demand that the permit holder remedy the violation. The notice and demand shall inform the permit holder that continued violations may result in revocation of the right-of-way permit. In the notice and demand, the Director may also impose additional or revised conditions on the right-of-way permit to mitigate and remedy the breach.
- 3. **Response to Notice of Breach.** Within two (2) business days of receiving the written notice and demand, the permit holder shall provide the City with its plan to cure the breach. Any failure to respond to the notice, to submit an acceptable plan, or to implement the approved plan shall be grounds for immediate revocation of the right-of-way permit.
- 4. **Reimbursement of City Costs.** Upon revocation of a right-of-way permit, the permit holder shall reimburse the City for its reasonable costs incurred because of the revocation, including but not limited to restoration costs, collection costs, and attorney fees.
- O. **Non-Completion or Abandonment of Work.** Work shall progress expeditiously to completion in accordance with any time limitation specified in the right-of-way permit so as to avoid unnecessary inconvenience to the public. In the event that the permit holder fails to timely complete the work in accordance with the terms of the right-of-way permit or ceases or abandons the work without due cause, in addition to any other remedy provided in this Section, the City may, after six (6) hours' notice in writing to the permit holder of its intention to do so, correct the work, fill the excavation and repair the right-of-way in a manner that it deems necessary to protect the safety and welfare of the public. The City shall make or contract for all temporary and permanent repairs, including but not limited to backfilling, compacting, and resurfacing, and the permit holder shall reimburse the City for all costs incurred for such work. If the permit holder fails to reimburse the City within thirty (30) days of billing, the City may do any or all of the following: (1) reimburse itself from the proceeds from any cash deposit, letter of credit, bond, or other security given by the permit holder; (2) deny the permit holder any future right-of-way permits; and (3) impose a delay penalty.
- P. **Indemnification and Liability.** By applying for and accepting a right-of-way permit the applicant and permit holder agree to indemnify, defend and hold the City and its employees, contractors, agents, representatives, elected and appointed officials, and

consultants harmless from any and all claims, damages, losses, costs and expenses, including attorneys' fees, arising from, based on, or related to the right-of-way permit or the applicant's or permit holder's work within the right-of-way or on the facility all subject to Minnesota Rule 7819.1250.

- Q. Appeal. An applicant that has been denied a right-of-way permit or a right-of-way user that has had a right-of-way permit revoked may appeal the denial or revocation to the City Council. Such appeal shall be taken by filing with the City Clerk within ten (10) days after the denial or revocation, a written statement requesting a hearing before the City Council and setting forth fully the grounds for the appeal. A hearing shall be held within thirty (30) days of receipt of the request. Notice of the hearing shall be given by the City Clerk in writing, setting forth the time and place of hearing. Such notice shall be mailed, postage prepaid, to the applicant or permit holder at his/her/its last known address at least five (5) days prior to the date set for hearing.

#### **Subd. 9.       Registration of Telecommunication Users**

- A. Findings, Purpose and Intent. The City desires high quality wireless telecommunication services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that telecommunication facilities can have on aesthetics and public safety. Due to the many services that must be delivered within its limited area, the City also strives to avoid unnecessary encumbrances within the right-of-way. The purpose of this subdivision 9 is to regulate the installation of telecommunication facilities within the right-of-way in a manner that balances desire for service with aesthetic, public safety, and right-of-way flexibility concerns.

Rights-of-way are appropriate locations for telecommunication facilities that present minimal impacts. The City recognizes that, as wireless technology advances, some areas of the City may be hard to serve with wireless technology due to the lack of siting alternatives in the immediate vicinity.

- B. Registration. In addition to all other requirements in this Section, including but not limited to the requirement to obtain a right-of-way permit and the requirements relating to siting of structures, a telecommunications user who desires to place telecommunication facilities in the right-of-way shall register each facility with the City.
- C. Application for Registration. A written application for registration shall be submitted to the Public Works Department at least two weeks prior to installation of the facility. The application shall be made on a form provided by the City and shall include all required information and attachments. All such applications shall be consistent with the provisions of this Section and good engineering, safety, and maintenance practices shall be followed.
- D. Registration Fee. The City shall establish a registration fee in an amount sufficient to recover City costs. The fee shall be imposed on each registered facility both at the time of application and thereafter annually on January 1 of each year the facility remains



registered. The registration fee is nonrefundable. The registration fee shall be established from time to time by Council resolution. Failure to pay the registration fee shall be grounds for revocation of the registration.

- E. Confirmation of Registration. Upon the Director's determination that the applicant has satisfied the requirements of this Section, the Director shall confirm the registration subject to the terms and conditions of this Section. The Director may impose reasonable conditions upon the registration to protect the health, safety, and welfare or to protect the right-of-way and its current use. In addition, a registrant shall comply with all local, state and federal laws, including but not limited to Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560 (Gopher One Call Excavation Notice System).
- F. Denial of Registration. The Director may deny a registration for failure to meet the requirements and conditions of this Section or if the Director determines that the denial is necessary to protect the health, safety, and welfare of the public or the right-of-way and its current use.
- G. Update of Registration: The registrant shall inform the City of any change in the registration information within fifteen (15) days of the change.
- H. Inspection and Authority of Director.
  - 1. Site Inspection. The registrant shall make the site of each facility available at all times for inspection by the Director or other City personnel and to all others authorized by law.
  - 2. Authority of Director. The Director may order the immediate repair or removal of any facility which the Director determines, in the Director's sole discretion, poses a threat to the life, health, safety, or well-being of the public or fails to comply with any federal, state or local law, rule or regulation. The order shall inform the registrant that failure to correct the violation may result in revocation of the registration pursuant to provision I below.
- I. Revocation of Registration.
  - 1. Substantial Breach. The Director may revoke any registration if the registrant substantially breaches any of the terms and conditions of any applicable statute, ordinance, rule or regulation, or any condition of the registration. A substantial breach includes, but is not limited to, the following:
    - a. The violation of any material provision of the registration or this Section;
    - b. The attempt to evade any material provision of the registration or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

- c. Any material misrepresentation of fact in the registration application; and
  - d. The failure to comply with an order of the Director.
- 2. **Written Notice of Breach.** If the Director determines that the registrant has committed a substantial breach, the Director shall notify the registrant of the breach in writing and demand that the registrant remedy the violation. The notice and demand shall inform the registrant that continued violations may result in revocation of the registration. In the notice and demand, the Director may also impose additional or revised conditions on the registration to mitigate and remedy the breach.
- 3. **Response to Notice of Breach.** Within two (2) business days of receiving the written notice and demand, the registrant shall provide the City with its plan to cure the breach. Any failure to respond to the notice, to submit an acceptable plan, or to implement the approved plan shall be grounds for immediate revocation of the registration.
- 4. **Reimbursement of City Costs.** Upon revocation of a registration, the registrant shall reimburse the City for its reasonable costs incurred because of the revocation, including but not limited to collection costs and attorney fees.

J. Location of Facilities.

- 1. **Ownership.** No telecommunications facility shall be placed on any structure without written permission from the owner of the structure. If the structure is owned by the City, a collocation or lease agreement may be required.
- 2. **New Structures.** New structures may be installed in the right-of-way only subject to Subd. 10 below.
- 3. **Attachments to Existing Structures.** Telecommunication facilities that comply with the following requirements may be attached to existing structures within the right-of-way:
  - a. The extension to the existing structure, including lightning rods and all other attachments, shall not exceed the height of the existing structure by more than ten (10) feet. Once the height of a structure has been increased under the provisions of this paragraph, the height shall not be further increased.
  - b. If the structure must be replaced to structurally accommodate the telecommunication facility, the height of the replacement structure shall not exceed the height of the existing structure and the diameter of the replacement structure shall not exceed the diameter of the existing structure by more than fifty (50) percent. Once the diameter of a

replacement structure has been increased under the provisions of this paragraph, the diameter shall not be further increased.

- c. Excluding electrical meter and mounting hardware, the telecommunication facility shall not have an aggregate volume greater than six (6) cubic feet.
  - d. The telecommunication facility shall not have any individual surface area face greater than three (3) square feet except that an individual face of a cylindrical device shall not exceed ten (10) square feet.
  - e. The telecommunication facility shall not extend outward from the existing structure or arm thereof by more than eighteen (18) inches, except that an antenna one-half (1/2) inch or less in diameter may extend an additional six (6) inches.
  - f. The telecommunication facility shall have limited exposed cabling and mounting hardware. It shall also match the structure it is attached to in color and, as close as practicable, in material and design.
  - g. The telecommunication facility shall not interfere with public safety or with the use of a public safety structure.
  - h. The telecommunication facility shall not interfere other existing telecommunication facilities.
  - i. Telecommunication facilities in the right-of-way shall be removed and relocated at the City's request, after providing thirty days' written notice to the registrant, and at no cost to the City when the Director determines that removal and relocation is necessary to prevent interference with: (1) present or future City use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.
4. Ground-Mounted Equipment. Ground-mounted equipment related to telecommunication facilities may be erected in the right-of-way only when in compliance with the following provisions:
- a. The ground-mounted equipment will not disrupt traffic or pedestrian circulation;
  - b. The ground-mounted equipment will not interfere with vehicle and pedestrian intersection sight lines;
  - c. The ground-mounted equipment will not create a safety hazard;

- d. The location of the ground-mounted equipment minimizes impacts on adjacent property;
  - e. The ground-mounted equipment will not adversely impact the health, safety, or welfare of the community;
  - f. The ground-mounted equipment shall be separated from the nearest ground-mounted equipment installation on the same block face by a minimum of three hundred (300) feet unless the equipment is placed underground, or unless waived by the Director;
  - g. If located adjacent to residential uses, ground-mounted equipment shall be limited to three (3) feet in height above grade and twenty-eight (28) cubic feet in cumulative size;
  - h. If located adjacent to non-residential uses, ground-mounted equipment shall be limited to five (5) feet in height above grade and eighty-one (81) cubic feet in cumulative size;
  - i. The ground-mounted equipment shall have limited exposed cabling and mounting hardware. It shall also match the structure it is attached to in color and, as close as practicable, in material and design; and
  - j. The ground-mounted equipment shall be removed and relocated at the City's request, after providing thirty days' written notice to the registrant, and at no cost to the City when the Director determines that removal and relocation is necessary to prevent interference with: (1) present or future City use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.
5. Exceptions. The location requirements in Subd. 9 J shall not apply to the installation of public safety structures or by written exception granted by the Director. Such written exception shall be in the Director's sole discretion and shall consider surrounding topography and structures, structural capacity of relevant structures, effect on abutting road and utilities, and other relevant factors.

K. Insurance and Indemnification.

- 1. Insurance. Registrant shall obtain and maintain, throughout the term of the registration, a commercial general liability insurance policy which provides coverage for damage to the property of others or injury to persons. The City shall be named as an additional insured on said insurance policy. Said policy shall contain a clause which provides language stating that the company that issues the policy shall not change, non-renew, or materially change the policy without first providing the City thirty (30) days prior written notice.

2. **Indemnification.** By applying for and accepting a registration the applicant and registrant agree to indemnify, defend and hold the City and its employees, contractors, agents, representatives, elected and appointed officials, and consultants harmless from any and all claims, damages, losses, costs and expenses, including attorneys' fees, arising from, based on, or related to the facility, including but not limited to the facility's registration, design, location, installation, maintenance or other matters arising out of or related to the facility within the right-of-way all subject to Minnesota Rule 7819.1250.
- L. **Failure to Register.** Any telecommunications user who fails to register shall be guilty of a misdemeanor. The telecommunications user shall subsequently register. The fee for a subsequent registration shall be established from time to time by City Council resolution. The registrant shall also pay all the other fees required by the City Code, deposit with the City the costs necessary to correct any damage to the right-of-way, and comply with all other requirements of this Section.
- M. **Appeal.** A telecommunication user that has had a registration denied or revoked may appeal the denial or revocation to the City Council. Such appeal shall be taken by filing with the City Clerk within ten (10) days after the denial or revocation, a written statement requesting a hearing before the City Council and setting forth fully the grounds for the appeal. A hearing shall be held within thirty (30) days of receipt of the request. Notice of the hearing shall be given by the City Clerk in writing, setting forth the time and place of hearing. Such notice shall be mailed, postage prepaid, to the applicant or registrant at his/her/its last known address at least five (5) days prior to the date set for hearing.

#### **Subd. 10. Siting of Structures**

- A. **Findings, Purpose and Intent.** In order to accommodate the communication needs of residents and businesses while protecting the public health, safety and general welfare of the community, the City Council finds these regulations are necessary to maximize the use of existing and approved structures in the right-of-way in order to reduce the number of new structures necessary in the right-of-way to serve the community.
- B. **Scope and Application.** In addition to all other requirements in this Section, including but not limited to the requirement to obtain a right-of-way permit and the requirement of a telecommunications user to register each facility, installation or construction of structures shall be subject to the requirements of this Subd. 10.
- C. **New Structures.** The installation or construction in the right-of-way of a new structure shall be allowed only under the following circumstances:
  1. New structures in the right-of-way shall be Permitted Uses subject to this Section, except that new structures in right-of-way abutting : Single Family Residential uses and/ or subdivisions in the following zoning districts (R-E, R-1, R-2, R-3, R-4, R-5 and R-6) and the Central Business District (B-4), shall be by Conditional

Use Permit subject to this Section and City Zoning and Land Use Code Section 51.02.

2. The maximum height of the structure, including all attachments, shall not exceed 50 feet. The height of structures shall be determined by measuring the vertical distance from the structure's point of contact with the ground to the highest point of the tower, including all facilities.
3. Structures shall comply with the following setbacks:
  - a. Structures shall be located at least 10 feet from the curb or if there is no curb from the traveled right-of-way.
  - b. Structures shall be located at least 2 feet from pedestrian trails or sidewalks.
  - c. Structures shall be located at least 2 feet from a residential lot line.
  - d. Structures shall be located at least 2 feet from a commercial or industrial lot line.
  - e. Structures shall be located at least 800 feet in any direction from the nearest existing structure in the right-of-way.
  - f. Structures shall be located at least 2 feet from any existing underground utility.
  - g. Structures shall be located at least 15 feet from any existing sanitary sewer main or watermain.
  - h. Structures shall be located at least 15 feet from any existing sanitary sewer service or water service.
  - i. Structures shall not be located within the site triangle abutting any intersection of two public streets described as follows: Side 1 which begins at the point of intersection of the existing curb line of the street (or pavement edge if no curb) and the intersecting street and extends 30 feet along the edge of the street away from the intersecting street; Side 2 which begins at the point of intersection of the existing curb line of the street (or pavement edge if no curb) and the intersecting street and extends 30 feet along the length of the intersecting street; and Side 3 connecting the end points of the two sides described above.
  - j. Structures located between a street and a residential lot shall not be located in front of the existing primary structure.

- k. Structures shall not be located within five (5) of a private driveway or in a manner that obstructs traffic visibility for motorist using a private drive to access a public street.
  4. Placing overhead facilities on both sides of the right-of-way is prohibited unless specifically approved by the Director.
  5. Structures shall not include any lighting except as specifically required by federal, state, or local laws, rules or regulations or approved by the Delano Municipal Utility Superintendent.
  6. Structures shall not contain any signs or advertising except for applicable warning and equipment information required by the manufacturer or federal, state, or local laws, rules or regulations.
  7. Structures shall be a monopole design having a galvanized steel or aluminum exterior and designed to blend into the surrounding environment to the maximum extent possible including through the use of city approved structure materials, color, texture and screening.
  8. Structure design shall be subject to approval by the Director taking into consideration safety, interference with the right-of-way and aesthetics.
  9. Structures shall not interfere with the right-of-way.
  10. Structures shall not endanger the public health, safety or welfare.
  11. Structures shall demonstrate collapse zone information and wind loads for the city approval.
  12. Structures shall be located at least ten feet away from any flood protection structure or dike, and shall not be located in areas that might interfere with City temporary flood protection efforts.
- D. Exceptions. The siting requirements and setbacks in Subd. 10 C above shall not apply to the installation of public safety structures or by written exception granted by the Director. Such written exception shall be in the Director's sole discretion and shall consider surrounding topography and structures, structural capacity of relevant structures, effect on abutting road and utilities, and other relevant factors.

**Section 2.** Delano Subdivision Code Section 7-8 is amended by deleting the word "Public" from the heading.


**Section 3.** Delano Subdivision Code Section 7-8 is amended by inserting a new provision C to read as follows: Developers shall apply for right-of-way permits as required by City Code Section 301 to install facilities in rights-of-way” and re-lettering existing provision C to D.

**Section 4.** Delano Subdivision Code Section 7-8 newly re-lettered provision D is amended by deleting number 1 in its entirety and renumbering the remaining provisions appropriately from 2 through 6 to 1 through 5 respectively.

**Section 5.** Delano Subdivision Code Section 7-8 newly re-lettered provision D is amended by deleting the word “Public” from in front of the word “utilities” and capitalizing the word “utilities” in newly renumbered provisions 2 and 4.

**Section 6.** City Code Section 105.01 entitled “Violation a Misdemeanor or Petty Misdemeanor” and City Subdivision Code Section 12 entitled “Enforcement” are hereby adopted in their entirety by reference as though repeated verbatim herein.

**THIS AMENDMENT SHALL BE IN FULL FORCE AND EFFECTIVE IMMEDIATELY FOLLOWING ITS PASSAGE AND PUBLICATION**

  
\_\_\_\_\_  
Dale Graunke, Mayor  
\_\_\_\_\_  
Attest: Brian Bloch, Finance Director/Clerk