

ORDINANCE 2017-007

Chapter 3 – Licenses and Regulations

Section 360 - Rights-of-Way

(revised [09/25/17](#))

360.01 Findings, Purpose and Intent.

Subd. 1 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.

Subd. 2 Accordingly, the City hereby enacts this section relating to right-of-way permits and administration. 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 [as authorized by law or the City](#). 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 public rights-of-way.

Subd. 3 This section shall be interpreted consistently with [state telecommunications and right of way statutes, in particular](#) 1997 Session Laws, Chapter 123, [and 2017 Session Laws, Chapter 94, Article 9](#), substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086, the "Act," as amended from time to time, and the other laws governing applicable rights of the City and users of the right-of-way. This section shall also be interpreted consistent with Minnesota Rules Parts 7819.0050 through 7819.9950, [as amended from time to time](#), where possible. To the extent any provision of this section cannot be interpreted consistently with the Minnesota [Statutes or Rules](#), that interpretation most consistent with the Act and other applicable statutory and case law is intended. 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.

360.02 Election to Manage the Public 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 M.S. § 237.163 (2)(b), as amended from time to time, to manage rights-of-way within its jurisdiction.

360.03 Definitions.

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

- 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.
- City. The City of Arden Hills, Minnesota. For purposes of Subsection [360.28](#), City means its elected Officials, officers, employees and agents.

• Collocate or collocation. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

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- Commission. The State Public Utilities Commission.
- 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 M.S. § 216D.04 (3), as amended from time to time, over a continuous length in excess of 500 feet.
- 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 M.S. § 15.73 (3), as amended from time to time;
 - Letter of credit, in a form acceptable to the City;
 - Self-insurance, in a form acceptable to the City; or
 - A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.
- 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 or disturbance did not occur.
- Degradation Cost subject to Minnesota Rules 7819.1100. The cost to achieve a level of restoration as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.
- Degradation Fee. The estimated fee established at the time of permitting by the City 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 cost.
- Inspector. Any person authorized by the City to carry out inspections related to the provisions of this section.
- Delay Penalty. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching or restoration as established by permit.

- Emergency. A condition that:
 - Poses a danger to life or health, or of a significant loss of property; or
 - 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 or in any way remove or physically disturb or penetrate any part of a right-of-way.
 - Excavation Permit. The permit which, pursuant to this section, must be obtained before a person may excavate in a right-of-way. An "Excavation Permit" allows the holder to excavate that part of the right-of-way described in such permit.
 - Excavation Permit Fee. Money paid to the City by an applicant to cover the costs as provided in Subsection [360.12](#).
 - Facility or Facilities. Any tangible asset in the right-of-way required to provide utility service.
 - Five-Year Project Plan. Shows projects adopted by the City for construction within the next five years.
 - High Density Corridor. A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.
 - Hole. An excavation in the pavement, with the excavation having a length less than the width of the pavement.
 - Local Representative. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this section.
 - Management Costs. The actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing and verifying right-of-way [or small wireless facility](#) permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting or moving user 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 [or small wireless facility](#) permits. "Management Costs" do not include payment by a telecommunications right-of-way user for the use of the right-of-way, [unreasonable fees of a third-party contractor used by a local government unit as part of managing its public rights-of-way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for a local government unit;](#) the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; M.S. §§ 237.162 or

237.163, as amended from time to time, or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to Subsection [360.29](#).

• Micro wireless facility. A small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

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• Obstruct. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

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• Obstruction Permit. The permit which, pursuant to this section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

• Obstruction Permit Fee. Money paid to the City by a permittee to cover the costs as provided in Subsection [360.11](#).

• Patch or Patching. A method of pavement replacement that is temporary in nature. A "Patch" consists of:

• The compaction of the subbase and aggregate base; and

• The replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A "Patch" is considered full restoration only when the pavement is included in the City's five year project plan.

• 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. The meaning given "right-of-way permit" in M.S. § 237.162, as amended from time to time.

• Permittee. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this section.

• 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.

• Probation. The status of a person that has not complied with the conditions of this section.

• 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:

• Has or seeks to have its equipment or facilities located in any right-of-way; or

• 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.

- Restore or Restoration. The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

- Restoration Cost. The amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

- Right-of-Way Permit. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this section.

- Right-of-Way, Public. An area dedicated to public use, in which the public has a dedicated interest, for travel purposes and public utility infrastructure. In addition to the roadway, a right-of-way may include, but is not limited to, curbs, sidewalks, boulevards, lighting, and drainage accommodations.

- Right-of-Way, improved. The portion of the public right-of-way that contains roads and/or sidewalks for public use.

- Right-of-Way, unimproved. The portion of the public right-of-way that is not being actively used for roadway and/or sidewalks, also referred to as the boulevard.

- Right-of-Way User.

- A telecommunications right-of-way user as defined by M.S. § 237.162 (4), as amended from time to time; 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.

- Those services provided by a public utility as defined in M.S. § 216B.02 (4) and (6), as amended from time to time;

- Services of a telecommunications right-of-way user, including transporting of voice or data information;

- Services of a cable communications systems as defined in M.S. Ch. 238, as amended from time to time;

- Natural gas or electric energy or telecommunications services provided by the City;

- Services provided by a cooperative electric association organized under M.S. Ch. 308A, as amended from time to time; and

- Water, sewer, steam, cooling or heating services.

- Small wireless facility. (1) a wireless facility that meets both of the following qualifications:

(i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and

(ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or

(2) a micro wireless facility.

• 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.

• Temporary Surface. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the City's two-year plan, in which case it is considered full restoration.

• Trench. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

• Telecommunication Right-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 providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this section, a cable communication system defined and regulated under M.S. Ch. 238, as amended from time to time, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in M.S. § 216B.02, as amended from time to time, a municipality, a municipal gas or power agency organized under M.S. Chs. 453 and 453A, as amended from time to time, or a cooperative electric association organized under M.S. Ch. 308A, as amended from time to time are not telecommunications right-of-way users for purposes of this section, except to the extent these entities are offering wireless services.

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• Two-Year Project Plan. Shows projects adopted by the City for construction within the next two years.

• Utility pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.

• Wireless facility. (a) Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

(1) equipment associated with wireless service;

(2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and

(3) a small wireless facility.

(b) "Wireless facility" does not include:

(1) wireless support structures;

(2) wireline backhaul facilities; or

(3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

• Wireless service. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including a cable service under United States Code, title 47, section 522, clause (6).

• Wireless support structure. A new or existing structure in a public right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by a local government unit.

• Wireline backhaul facility. A facility used to transport communications data by wire from a wireless facility to a communications network.

360.04 Administration.

The City Administrator is the principal City Official responsible for the administration of the rights-of-way, right-of-way permits and the ordinances related thereto. The City Administrator may delegate any or all of the duties hereunder.

360.05 Registration and Right-of-Way Occupancy.

Subd. 1 Registration. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the City and obtain any required permits. Registration will consist of providing application information and paying a registration fee. All fees or charges will be as set by state law or city fee ordinance.

Subd. 2 Registration Prior to Work. No person may construct, install, repair, remove, relocate or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the City and obtain any required permits.

Subd. 3 Exceptions. Persons maintaining the unimproved portion of the right of way between their property and the edge of the pavement of a roadway shall not be deemed to use or occupy the right-of-way. Such persons shall conform to the provision in Section 360.30. Nothing herein relieves a person from complying with the provisions of the M.S. Ch. 216D, Gopher One Call Law, as amended from time to time.

360.06 Registration Information.

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Subd. 1 Information Required. The information provided to the City at the time of registration shall include, but not be limited to:

A. Each registrant's name, Gopher One Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be 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:

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 City;

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:

a. Use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees; and

b. Placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

3. Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

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

5. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this section.

6. The City may require a copy of the actual insurance policies.

7. If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as amended from time to time, as recorded and certified to by the Secretary of State.

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

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

360.07 Reporting Obligations.

Subd. 1 Operations.

A. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for facilities with the City. Such plan shall be submitted using a format designated by the City and shall contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

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

1. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
2. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").
3. The term "project" in this section shall include both next-year projects and five-year projects.

C. By January 1 of each year the City will have available for inspection in the City's office a composite list of all projects of which the City has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

D. Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the City and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

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

360.08 Permit Requirement.

Subd. 1 Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or place any facilities or structures within the right-of-way, without first having obtained the appropriate right-of-way permit from the City to do so.

A. Excavation permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

B. Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on, under or over the right-of-way, to the extent and for the duration specified therein.

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C. Wireless permit. A wireless permit is required by a registrant to site a new wireless facility, wireless backhaul line, wireless support structure, small wireless facility, or to collocate a small wireless facility in a public right of way managed by the City.

Subd. 2 Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:

A. Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

B. A new permit or permit extension is granted.

Subd. 3 Delay Penalty. In accordance with Minnesota Rule 7819.1000 Subpart 3 and notwithstanding Subd. D of this subsection, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established by Ordinance adopted by the Council.

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

360.09 Permit Applications.

Application for a permit is made to the City. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

Subd. 1 Registration with the City pursuant to this section;

Subd. 2 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.

Subd. 3 Payment of money due the City for:

A. Permit fees, estimated restoration costs and other management costs;

B. Prior obstructions or excavations;

C. Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;

D. Franchise fees or other charges, if applicable.

Subd. 4 Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

Subd. 5 Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

360.10 Issuance of Permit; Conditions.

Subd. 1 Permit Issuance. If the applicant has satisfied the requirements of this section and other applicable Code provisions and state and federal laws, the City shall issue a permit unless it determines that denial is necessary to protect the health, safety and welfare or to protect the right-of-way and its current use.

Subd. 2 Conditions. The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

360.11 Permit Fees.

Subd. 1 Excavation Permit Fee. The City shall establish, by Ordinance adopted by the Council, an excavation permit fee in an amount sufficient to recover the following costs:

- A. The City management costs;
- B. Degradation costs, if applicable.

Subd. 2 Obstruction Permit Fee. The City shall establish, by Ordinance adopted by the Council, the obstruction permit fee and shall be in an amount sufficient to recover the City management costs.

Subd. 2a Small Wireless Facility, Support Structure, Collocation Fees. The City shall establish, by Ordinance adopted by the Council and consistent with state law, Wireless permit fees in an amount sufficient to recover the City management costs, or in the absence of a fee set by Ordinance, the fees as authorized and established by law, and specifically by M.S. 237.163, as amended from time to time.

Subd. 3 Payment of Permit Fees. No excavation, obstruction permit or wireless permit shall be issued without payment of permit fees. The City may allow the applicant to pay such fees within thirty (30) days of billing.

Subd. 4 Non Refundable. Permit fees that were paid for a permit that the City has revoked for a breach as stated in Subsection 360.21 are not refundable.

Subd. 5 Application to Franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

360.12 Right-of-Way Patching and Restoration.

Subd. 1 Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Subsection 360.15.

Subd. 2 Patch and Restoration. The permittee shall patch its own work. The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

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A. City restoration. If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with correcting the defective work.

B. Permittee restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

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

Subd. 3 Standards. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100.

Subd. 4 Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee, upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Subsection 360.15.

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Subd. 5 Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

360.13 Joint Applications.

Subd. 1 Joint Application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subd. 2 Shared fees. Registrants who apply for permits for the same obstruction or excavation, which the City does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3 With City Projects. Registrants who join in a scheduled obstruction or excavation performed by the City, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

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360.14 Supplementary Applications.

Subd. 1 Limitation on Area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

- A. Make application for a permit extension and pay any additional fees required thereby; and
- B. Be granted a new permit or permit extension.

Subd. 2 Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

360.15 Other Obligations.

Subd. 1 Compliance With Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including M.S. §§ 216D.01 through 216D.09, as amended from time to time, (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work. A permittee seeking the placement of a new wireless support structure for the siting of a small wireless facility in a right-of-way as authorized by law, may also be required to obtain a conditional use permit under this Code if the siting is proposed in a district zoned for single-family residential use or within a historic district so designated at the time of application.

Subd. 2 Prohibited Work. Except in an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3 Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. 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 City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

360.16 Denial of Permit.

The City may deny a permit for failure to meet the requirements and conditions of state or federal law, this section or other provisions of City Code, or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-

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way and its current use. The City shall notify the telecommunications right-of-way user in writing within three business days of the decision to deny and the basis for the denial. The applicant may cure the deficiencies identified by the City and resubmit its application. If the applicant resubmits the application within 30 days of receiving written notice of the denial, it shall not be charged an additional filing or processing fee. The City shall approve or deny the revised application within 30 days after the revised application is submitted.

360.17 Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the M.S. §§ 237.162 and 237.163, as amended from time to time.

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360.18 Inspection.

Subd. 1 Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.

Subd. 2 Site Inspection. The permittee shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd. 3 Cessation/Corrective Orders.

A. At the time of inspection the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

B. The City may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to Subsection [360.21](#).

360.19 Work Done Without a Permit.

Subd. 1 Emergency Situations.

A. Each registrant shall immediately notify the director of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) 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 section for the actions it took in response to the emergency.

B. If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to

respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Subd. 2 Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates or places any facility or structure in 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 City code, deposit with the City the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this section.

360.20 Supplementary Notification.

If the project obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known.

360.21 Revocation of Permits.

Subd. 1 Substantial Breach. The City reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- A. The violation of any material provision of the right-of-way permit;
- B. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City 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
- E. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to 360.18.

Subd. 2 Written Notice of Breach. If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3 Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, the permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. The permittee's failure to so contact the City, failure to timely submit an acceptable plan, or failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the City, failure

to submit an acceptable plan, or failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

Subd. 4 Cause for probation. From time to time, the City may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

Subd. 5 Automatic Revocation. If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs. Notice of the revocation shall be mailed to the permittee within three business days of the decision.

Subd. 6 Reimbursement of City Costs. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

360.22 Mapping Data.

Each registrant and permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100.

360.23 Location and Relocation of Facilities.

Subd. 1 Placement, location and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

Subd. 2 The City may assign specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City 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 City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

Subd. 3 One year after the passage of this section, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

Subd. 4 Limitation of Space. To protect health, safety and welfare or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's

needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

360.24 Pre-excavation Facilities Location.

In addition to complying with the requirements of M.S. §§ 216D.01 through 216D.09, as amended from time to time, ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

360.25 Damage to Other facilities.

When the City does work in the right-of-way and finds it necessary to maintain, support or move a registrant's facilities to protect it, the City shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

360.26 Right-of-Way Vacation.

If the City vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

360.27 Indemnification and Liability.

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

360.28 Abandoned and Unusable Facilities.

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

Subd. 2 Removal. Any registrant who has abandoned 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 this requirement is waived by the City.

360.29 Appeal.

A right-of-way user that:

Subd. 1 Has been denied registration;

Subd. 2 Has been denied a permit;

Subd. 3 Has had permit revoked; or

Subd. 4 Believes that the fees imposed are invalid, may have the denial, revocation or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

360.30 Maintenance of the Right-of-Way.

Subd. 1 Purpose. The right-of-way is public or private land dedicated for public use for the purposes of pedestrian and vehicular movement, snow storage, road reconstruction projects, drainage, and utilities. The area dedicated for public use generally includes both improved (paved) and unimproved (landscaped) portions of land. Property owners adjacent to the right-of-way are responsible for maintaining the unimproved portion of the right-of-way. The City of Arden Hills has adopted this Section to ensure the integrity of its streets, to ensure appropriate use of the right-of-way, and to regulate the private use and maintenance of the unimproved portion of the right-of-way between an adjacent property and the edge of the pavement of a roadway, also called a "boulevard".

Subd. 2 Scope.

A. The following activities shall be deemed maintenance of the right-of-way, and shall be allowed without a permit, provided the activities are conducted within the boulevard, between a person's property and the edge of the improved portion of the right-of-way, and the maintenance activities do not impede the City's use of the right-of-way:

1. Planting and maintaining perennial and/or annual flowers, shrubberies, gardens, and rain gardens;
2. Installing and maintaining private driveways, sidewalks, curb and gutter, or parking lots, which are allowed with an approved permit from the City;
3. Installing and maintaining mail boxes in conformance with Federal Post Office Regulations;
4. Installing and maintaining irrigation systems or below-ground pet containment systems;
5. Engaging in snow removal activities; or
6. Undertaking activities on behalf of federal, state, county, or city agencies.

B. The following activities shall not be deemed maintenance of the right-of-way, and shall be prohibited within the boulevard, between a person's property and the edge of the improved portion of the right-of-way:

1. Placement of above-ground fences;
2. Placement of retaining walls without a permit;
3. Placement of large boulders within fifteen (15) feet of the edge of the pavement; or
4. Placement of other major landscaping improvements or obstructions, as determined by the City, within fifteen (15) feet of the edge of the pavement.

Subd. 3 Responsibility of Private Owners. It shall be the responsibility of the adjacent property owner to:

A. Maintain the boulevard between their property and the improved portion of the right-of-way. Improvements made within the right-of-way by a property owner are done so at the property owner's own risk, and may be removed by the City at the owner's expense. The City is not responsible for damage to landscaping or other right-of-way improvements resulting from any activity related to the City's use of the right-of-way.

B. Allow only those plant materials that do not have characteristics detrimental to the public welfare, such as susceptibility to disease and wind damage, or a tendency to interfere with utilities, public easements, or rights-of-way.

C. Trim, prune, maintain, and/or remove as necessary, any tree in the boulevard between their property and the improved portion of the right-of-way. Trees shall be pruned to sufficient height to allow free passage of pedestrians and vehicular traffic: nine (9) feet over sidewalks and sixteen (16) feet over streets. Trees not properly maintained, or found to be structurally unsound, may be deemed a public nuisance by the City Forester, and abated in accordance with [Section 602](#) of the City Code.

D. Remove any tree in the boulevard between their property and the improved portion of the right-of-way found to be diseased or dying by the City Forester, in accordance with [Section 710](#) of the City Code. The adjacent property owner is responsible for the cost of removing trees located in the right-of-way.

E. Maintain driveway approaches in a safe condition that does not cause a maintenance problem, and in a manner that does not interfere with or obstruct the drainage carried by the adjoining street or the use of the adjoining street for travel, as determined by the City. If a driveway approach is not maintained in this manner, the City may require the property owner to alter the driveway approach in order to meet the requirements of this Section. If the property owner fails to alter the driveway as directed by the City, it will constitute a public nuisance under Chapter [602.01](#) and may be abated under Chapter [602.05](#) or [602.06](#).

360.31 Rights of the City.

The City maintains the right to plant, prune, maintain, remove, or perform any other arboricultural practices as deemed necessary by the City on all public property and in the right-of-way.

360.32 Placement of Trees in the Right-of-Way.

Subd. 1 Purpose. The planting of trees in areas of the City dedicated for public streets, which are sometimes referred to in this Section as boulevard trees, is a matter of public interest. It is the purpose of this Section to provide a procedure for planting boulevard trees under certain circumstances and subject to certain regulations as provided by this Section.

Subd. 2 Permitted Varieties. Only the following types of trees shall be permitted under the provisions of this Section: Hackberry; Norway, Sugar or Red Maple; Linden; and other species as approved by the City. Under no circumstances shall cottonwood trees, non-disease resistant elm trees, or any species of ash tree be planted in the City.

Subd. 3 Space. At the time of planting, trees which will exceed forty (40) feet at the height of maturity shall be spaced at least twenty-five (25) feet apart.

Subd. 4 Prohibited Locations. Trees shall not be planted in the following manner:

- A. Within fifteen (15) feet of the improved portion of the right-of-way;
- B. Within ten (10) feet of any fire hydrant, utility pole or other fixture;
- C. Under or within ten (10) level feet of any overhead wire or over or within ten (10) lateral feet of an underground utility;
- D. In such a way that it will now or in the future materially impede the clear vision area.