

**FRIDLEY CITY CODE**  
**CHAPTER 407. RIGHTS-OF-WAY MANAGEMENT**  
(Reference Ordinance No. 945, 1116 and 1139)

**407.01. FINDINGS AND PURPOSE**

1. To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the public rights-of-way, the City strives to keep its public rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the public rights-of-way, a primary cause for the early and excessive deterioration of its public rights-of-way is frequent excavation by persons whose equipment or facilities are located therein.

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

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

As a result of all these intrusions in the public right-of-way, it is appropriate for the City to establish a system of documenting what is placed in the public rights-of-way within its municipal boundaries to inform its citizens and the other public entities of the equipment or facilities that have been placed in the right-of-way that is held in trust for them.

2. In response to the foregoing facts, the City hereby enacts this Chapter of the City Code relating to right-of-way permits and administration, together with making necessary revisions to other Code provisions. This Chapter imposes reasonable regulations on the placement and maintenance of facilities and equipment currently within the City's public 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 Chapter, persons disturbing and obstructing the public rights-of-way will bear the financial responsibility for their work. Finally, this Chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086 (the “Act”) and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistently with Minnesota Rules Part 7819.0050 – 7819.9950 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended.

3. In addition to the foregoing recovery of costs and regulation of use, the City Council determines that there is an existing and legitimate state and local public policy, which authorizes the City to require payments as reimbursement or return to the public for the use value of the public rights-of-way from those who obtain revenue or profits from such use. This reimbursement is provided for and defined in this ordinance as the “user fee.” This fee does not apply to the repair, replacement or reconstruction of an existing facility. Telecommunication facilities are exempt from a user fee by state statute.

A. Public Interest and Welfare.

The City Council finds that it is in the public interest to provide for the payment of a user fee by all persons who use and occupy the right-of-way for operating their businesses. This provides equity by requiring all users of the public right-of-way to pay compensation apportioned equally among them all for the value and benefit of using such public right-of-way. To ensure such fair treatment, this Chapter exempts franchise holders which pay franchise fees to the City on the date of adoption of this Chapter from the payment of a user fee.

B. Not a Rate.

The City Council finds and determines that the user fee authorized by this Chapter is not and is not intended to be a rate as that term is defined in Minn. Stat. § 216B.02, Subd. 5. Such user fee is not a fee for a service that is provided to the customer of a person using the public right-of-way, but is rather a fee paid for the right of that person to operate in the public right-of-way, and to maintain the equipment in the public right-of-way in the City of Fridley.

## **407.02. DEFINITIONS**

The following definitions apply in this Chapter of this Code. Reference hereafter to “sections” are unless otherwise specified references to sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

1. “Abandoned facility” means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

2. “Applicant” means any Person requesting permission to excavate or obstruct a right-of-way.
3. “City” means the City of Fridley, Minnesota. For purposes of section 407.27, City means its elected officials, officers, employees and agents.
4. “Commission” means the state Public Utilities Commission.
5. “Congested right-of-way” means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, Section 216D.04, Subdivision 3, over a continuous length in excess of 500 feet.
6. “Construction Performance Bond” means any of the following forms of security provided at permittees option:
  7. Individual project bond
    - A. Cash deposit
    - B. Security of a form listed or approved under Minn. Stat. Sec. 15.73, sub. 3
    - C. Letter of Credit, in a form acceptable to the City
    - D. Self-insurance, in a form acceptable to the city
    - E. 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.
8. “Degradation” means a decrease in the useful life of the Right-of-Way caused by excavation in or disturbance of the Right-of-Way, resulting in the need to reconstruct such Right-of-Way earlier than would be required if the excavation did not occur.
9. “Degradation Cost” means 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 proposed PUC rules parts 7819.9900 to 7819.9950.
10. “Degradation Fee” means 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 Costs.
11. “Department” means the Department of Public Works of the City.
12. “Department inspector” means any Person authorized by the City to carry out inspections related to the provisions of this Chapter.

13. “Director” means the Director of the Department of Public Works of the City, or the Director’s designee.
14. “Delay Penalty” is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as establish by permit.
15. “Emergency” means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of Facilities in order to restore service to a customer.
16. “Equipment” means any tangible asset used to install, repair, or maintain Facilities in any Right-of-Way.
17. “Excavate or excavation” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way. “Excavation Permit” means the permit which, pursuant to this Chapter, must be obtained before a Person may excavate in a Right-of-Way. An Excavation Permit allows the holder to excavate that part of the Right-of-Way described in such permit.
18. “Excavation Permit Fee” means money paid to the City by an Applicant to cover the costs as provided in Chapter 11 of this Code.
19. “Facility or Facilities” means any tangible asset in the Right-of-Way required to provide Utility Service.
20. “Five-year project plan” shows projects adopted by the city\_for construction within the next five years.
21. “High density corridor” means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.
22. “Hole” means an excavation in the pavement, with the excavation having a length less than the width of the pavement.
23. “Local Representative” means a local person or persons, or designee of such Person or Persons, authorized by a Registrant to accept Service and to make decisions for that Registrant regarding all matters within the scope of this Chapter.

24. "Management Costs" means 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 permit applications and 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 permits. Management costs do not include payment by a Telecommunications Right-of-way User for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to Section 407.29 of this chapter.
25. "Obstruct" means 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 for a period in excess of 8 consecutive hours.
26. "Obstruction Permit" means the permit which, pursuant to this Chapter, must be obtained before a Person may obstruct a Right-of-Way, allowing the holder to hinder free and open passage over the specified portion of that Right-of-Way for a period over 8 hours by placing Equipment described therein on the Right-of-Way for the duration specified therein.
27. "Obstruction Permit Fee" means money paid to the City by a Permittee to cover the costs as provided in Chapter 11 of this Code.
28. "Patch or Patching" means a method of pavement replacement that is temporary in nature. A Patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A Patch is considered full Restoration only when the pavement is included in the City's five year project plan.
29. "Pavement" means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with asphalt, concrete, aggregate or gravel.
30. "Permittee" means any Person to whom a permit to Excavate or Obstruct a Right-of-Way has been granted by the City under this Chapter.
31. "Person" means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate or political.
32. "Probation" means the status of a Person that has not complied with the conditions of this Chapter.

33. "Probationary Period" means one year from the date that a Person has been notified in writing that they have been put on Probation.
34. "Repair" means the temporary construction work necessary to make the Right-of-Way useable for travel.
35. "Registrant" means any Person who (1) has or seeks to have its Equipment or Facilities located in any Right-of-Way, or (2) in any way occupies or uses, or seeks to occupy or use, the Right-of-Way or place its Facilities in the Right-of-Way.
36. "Registration fee" means money paid to the city by a Registrant to cover the cost associated with registration.
37. "Restore or Restoration" means the process by which an excavated Right-of-Way and surrounding area, including pavement and foundation is returned to the same condition and life expectancy that existed before excavation.
38. "Restoration Cost" means the amount of money paid to the City by a Permittee to achieve the level of restoration according to plates 1 to 13 to PUC rules
39. "Right-of-Way or Public Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A Right-of-Way does not include the airwaves above a Right-of-Way with regard to cellular or other nonwire telecommunications or broadcast service.
40. "Right-of-Way Permit" means either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this Chapter.
41. "Right-of-way user" means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
42. "Service" or "Utility Service" includes but is not limited to (1) those services provided by a public utility as defined in Minn. Stat. § 216B.02, subds. 4 and 6; (2) services at a telecommunicators right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. Chap. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and (6) water, sewer, steam, cooling or heating services.
43. "Supplementary Application" means an application made to Excavate or Obstruct more of the Right-of-Way permitted or to extend a permit that had already been issued.

44. "Telecommunication Rights-of-Way User" means a Person owning or controlling a Facility in the Right-of-Way, or seeking to own or control a Facility in the Right-of-Way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under Minn. Stat. Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Section 216B.02 a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not Telecommunications Right-of-Way Users for purposes of this Chapter.
45. "Temporary surface" means 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.
46. "Trench" means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
47. "Two year project plan" shows projects adopted by the City for construction within the next two years.
48. "Unusable or Unused Equipment and Facilities" means Equipment and Facilities in the Right-of-Way which have remained unused for one year and/or for facilities that are not registered or located by Gopher One Call or for which the Registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the Equipment or Facilities.
49. "User Fee" is the sum of money, payable to the City, by a person using or occupying the Right-of-Way; provided, however, that the City may at its option provide, at any time by ordinance or by amendment thereto, for a greater or different fee applicable to all such persons in an amount and by a method of determination as may be further provided in such ordinance or amendment thereto.

### **407.03. ADMINISTRATION**

#### **1. Responsibility.**

The City Manager 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 Manager may delegate any or all of the duties hereunder.

## 2. Franchise: Franchise Supremacy.

The City may, in addition to the requirements of this Chapter, require any person which has or seeks to have equipment located in any Right-of-Way to obtain a franchise to the full extent permitted by law now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this Chapter whether granted prior or subsequent to enactment of this Chapter, shall control and supercede the conflicting terms of this Chapter. All other terms of this Chapter shall be fully applicable to all Persons whether franchised or not.

### **407.04. REGISTRATION AND RIGHT-OF-WAY OCCUPANCY**

#### 1. Registration.

Each person who occupies, uses, or seeks to occupy or use, the public Right-of-Way or place any Equipment or Facilities in the Right-of-Way, including Persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the City. Registration will consist of providing application information and paying a registration fee.

#### 2. Registration Prior to Work.

No Person may construct, install, repair, remove, relocate, or perform any other work on, or use any Equipment or Facility or any part thereof in any Right-of-Way without first being registered with the City.

#### 3. Exceptions.

Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting Persons to plant or maintain boulevard plantings or gardens in the area of the Right-of-Way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any permits for planting or maintaining such boulevard plantings or gardens under this Chapter. However, nothing herein relieves a Person from complying with the provisions of the Minn. Stat. Chapter. 216D, "One call" Law.

### **407.05. REGISTRATION INFORMATION**

#### 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 acceptable by the city:
- (1) Verify 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 (i) use and occupancy of the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, and (ii) placement and use of Facilities in the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
  - (3) Naming the 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 Chapter.
- D. The City may require a copy of the actual insurance policies.
- E. If the Person is a corporation, a copy of the certificate required to be filed under Minn. Stat. § 300.06 as recorded and certified to by the Secretary of State.
- F. A copy of the Person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the Person is lawfully required to have such certificate from said Commission or other state or federal agency.
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.

### 3. Grant of Right; Payment of User Fee.

Any person required to register under Section 407.04, which furnishes utility services or which occupies, uses, or places its equipment in the public right-of-way, is hereby granted a right to do so if and only so long as it (1) timely pays the user fee as provided herein, and (2) complies with all other requirements of law. This legal entitlement shall not include use of the right-of-way for purposes not in furtherance of furnishing utility services for which additional authorization is required by this Code or other state or federal law, unless the person pays the user fee for such non-utility service use.

The user fee reflects the value of the right-of-way needed for new facilities and is based on the average market value of the land, adjusting for the cost of acquisition and non-exclusive use. The dimensions of the occupied land shall incorporate the Gopher One Call criteria of 2-foot clearance on all sides. Such fee shall be paid to the City in substantially equal (quarterly, semi-annual, annual) installments, subject to adjustment and correction at the conclusion of the calendar year. Such fee shall be paid for all and any part of a calendar year, prorated on a daily basis, during any time period in which the said person uses or occupies the right-of-way to furnish utility serviced, or places, maintains or uses its wires, mains, pipes, or any other facilities or equipment in the right-of-way.

This section does not apply to a person which uses and occupies the right-of-way for operating its business when there is a pre-existing franchise agreement between that person and the city and the payment of a franchise fees, nor does it apply to the repair, replacement or reconstruction of an existing facility.

The grant of such right is expressly conditioned on, and is subject to, continuing compliance with all provisions of law, including this Chapter.

## **407.06. REPORTING OBLIGATIONS**

### 1. Operations.

Each Registrant proposing to work in the city shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground Facilities with the 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.

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

- A. The locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this section, a “Next-year Project”); and

- B. 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”).

The term “project” in this section shall include both Next-year Projects and Five-year Projects.

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

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.

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.

3. Applicants obtaining Anoka County Highway or Minnesota Department of Transportation excavation permits for facilities in their rights-of-way within the corporate limits of the City must provide a copy to the City and submit a copy of the plans with mapping data for recording purposes per Section 407.21.

#### **407.07. PERMIT REQUIREMENT**

1. Permit Required.

Except as otherwise provided in this Code, no Person may Obstruct or Excavate any Right-of-Way without first having registered and obtained the appropriate Right-of-Way Permit from the City to do so.

- A. Excavation Permit.

An Excavation Permit is required to excavate that part of the Right-of-Way described in such permit and to hinder free and open passage over the specified portion of the Right-of-Way by placing equipment or facilities described therein, to the extent and for the duration specified therein.

Multiple excavations limited to 600 feet are considered one project and require an excavation permit.

Each permit application will require the mapping data per Section 407.21.

B. Obstruction Permit.

An Obstruction Permit is required to hinder free and open passage over a specified portion of Right-of-Way for periods in excess of 8 consecutive hours by placing Equipment described therein on the Right-of-Way, to the extent and for the duration specified therein.

An Obstruction Permit is not required if a Person already possesses a valid Excavation Permit for the same project. Failure to obtain an obstruction permit prior to the obstruction will require an after-the-fact obstruction permit plus payment of a delay penalty. Permit Waiver

In the event of a major catastrophe or emergency declared by the City requiring the restoration of services that are within the right-of-way, the requirement for permits and permit fees may be waived by the City at its discretion.

After restoration of the service has been completed, an updated mapping plan per Section 407.21 must be submitted to the City within 60 days.

2. Permit Extensions.

No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the permit unless such Person (i) makes a Supplementary Application for another Right-of-Way Permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

3. Delay Penalty.

Notwithstanding subd. 2 of this section, the City shall establish and impose a Delay Penalty for unreasonable delays not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable in Right-of-Way Excavation, Obstruction, Patching, or Restoration. The Delay Penalty shall be established from time to time by City Council resolution and shall include any delay or damages charged by the City's construction contractor and may include liquidated damages consistent with the contract.

4. Permit Display.

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

**407.08. 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.

1. Registration with the City pursuant to this Chapter;
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.
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 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 or user fees, if applicable.
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.
5. When an Excavation Permit is requested for purposes of installing additional Facilities, and the posting of a Construction Performance Bond for the additional Facilities is insufficient, the posting of an additional or larger Construction Performance Bond for the additional Facilities may be required.

**407.09. ISSUANCE OF PERMIT; CONDITIONS**

1. Permit Issuance.

If the Applicant has satisfied the requirements of this Chapter, the City shall issue a permit.

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.

**407.10 PERMIT FEES**

## 1. Excavation Permit Fee.

The Excavation Permit Fee shall be established by the City in an amount sufficient to recover the following costs:

- A. City Management Costs;
- B. Mapping Costs;
- C. Degradation Costs, if applicable.

## 2. Obstruction Permit Fee.

The Obstruction Permit Fee shall be in an amount sufficient to recover the City Management Costs associated with recording and inspecting the right-of-way obstruction.

## 3. Payment of Permit Fees.

- A. No Excavation Permit or Obstruction Permit shall be issued without payment of Excavation or Obstruction Permit Fees. The City may allow Applicant to pay such fees within thirty (30) days of billing.
- B. The mapping portion of the excavation fees is waived if the mapping data provided to the City is in GIS compatible and City format.

## 4. Non refundable.

Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 407.20 are not refundable.

## 5. Application to franchises.

Unless otherwise specified 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.

## 6. Waiver of Fees.

Payment of fees, as identified in this Chapter, with the exception of restoration costs, for water and/or sanitary sewer connections to property in the city are waived. However Registration and the Right-of-way Permit application must be submitted and approved by the city prior to commencement of any work.

**407.11. RIGHT-OF-WAY PATCHING AND RESTORATION**

## 1. Timing.

The work to be done under the Excavation Permit, and the Patching or Restoration of the Right-of-Way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the Permittee or when work was prohibited as unseasonal or unreasonable under Section 407.14.

## 2. Patch and Restoration.

Permittee shall Patch its own work. The City may choose either to have the Permittee restore the Right-of-Way or to Restore the pavement itself.

## A. City Restoration.

If the City restores the pavement, Permittee shall pay the costs thereof within thirty (30) days of billing. If, during the twenty-four (24) months following such Restoration, the pavement settles due to Permittee's improper backfilling, the Permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.

## B. Permittee Restoration.

If the Permittee Restores the Right-of-Way itself, the City may require at the time of application for an Excavation Permit the posting of a Construction Performance Bond in an amount determined by the City to be sufficient to cover the cost of Restoration in accordance with the provisions of Minnesota Rules 7819.3000. If, within twenty-four (24) months after completion of the Restoration of the Right-of-Way, the City determines that the Right-of-Way has been properly Restored, the surety on the Construction Performance Bond shall be released.

## 3. Standards.

The Permittee shall perform Excavation Patching and/or Restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis.

Methods of restoration may include, but are not limited to, patching, replacement of the right-of-way base, and milling and overlay of the entire area of the right-of-way affected by the work.

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 unseasonal or unreasonable under Section 407.14.

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 restorations required by the city, the city as an 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.

4. Guarantees.

By choosing to Restore the Right-of-Way itself, the Permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During this 24-month period it shall, upon notification from the City, 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 unseasonal or unreasonable under Section 407.14.

5. Obligation.

Construction triggers an obligation of the right-of-way user that the right-of-way restoration be completed according to the conditions set forth in this Chapter. The right-of-way user also assumes responsibility for “as built” drawings and for repairing facilities or structures, including right-of-way that was damaged during facility installation. The obligation is limited to one year for plantings and turf establishment.

6. 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.

7. Degradation Cost in Lieu of Restoration.

In lieu of Right-of-Way Restoration, a Right-of-Way user may elect to pay a Degradation Fee with the approval of the City. However, the Right-of-Way User shall remain responsible for Patching and the Degradation Fee shall not include the cost to accomplish these responsibilities.

**407.12. JOINT APPLICATIONS**

## 1. Joint Application.

Registrants may jointly apply for permits to Excavate or Obstruct the Right-of-Way at the same place and time.

## 2. 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 Obstruction and Degradation portions of the permit fee.

An excavation permit application however must be completed. In these circumstances, the excavation fee will be waived.

Mapping data must be provided per Section 407.21.

## 3. 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. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

**407.13. SUPPLEMENTARY APPLICATIONS**

## 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 obstruct or do any work outside the area specified in the permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the permit must be Obstructed or Excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

## 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 approved before the initial permit end date.

**407.14. OTHER OBLIGATIONS**

## 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 Minn. Stat. §§ 216D.01-.09 (“One Call Excavation Notice System”). A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work.

## 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.

## 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.

**407.15. DENIAL OF PERMIT**

The City may deny a permit for failure to meet the requirements and conditions of this Chapter 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-Way and its current use.

## 1. Mandatory Denial.

Except in an emergency, no right-of-way permit will be granted.

- A. To any person required to be registered who has not done so;
- B. To any person required to file an annual report but has failed to do so;
- C. For any next-year project not listed in the construction and major maintenance plan required under this chapter;

- D. For any project which requires the excavation of any portion of a right-of-way which was constructed or reconstructed within the preceding five (5) years;
- E. To any person who has failed within the past two (2) years to comply, or is presently not in full compliance, with the requirements of this Chapter;
- F. To any person who has outstanding debt owed to the City; and
- G. To any person as to whom there exists grounds for the revocation of a permit.

## 2. Permissive Denial.

The City may deny a permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, would cause a conflict or interfere with an exhibition, celebration, festival, or any other event, or when necessary to protect the right-of-way and its users. The City may consider one or more of the following factors:

- A. the extent to which right-of-way space where the permit is sought is available;
- B. the competing demands for the particular space in the right-of-way;
- C. the availability of other locations in the right-of-way or in other rights-of-way for the equipment or facilities of the permit applicant;
- D. the applicability of ordinance or other regulations of the right-of-way that affect location of equipment or facilities in the right-of-way;
- E. the degree of compliance of the applicant with the terms and conditions of its franchise, this Chapter, and other applicable ordinances and regulations;
- F. the degree of disruption to surrounding neighborhoods and businesses that will result from the use of that part of the right-of-way;
- G. the condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; and
- H. the balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.

### 3. Discretionary Issuance.

Notwithstanding the provisions of this Section subd. 1, the City may issue a permit in any case where the permit is necessary (a) to prevent substantial economic hardship to a customer of the permit applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow a new economic development project, or otherwise required by law; and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when said applicant was required to submit its list of Next-year Projects.

### 4. Permits for Additional Next-year Projects.

Notwithstanding the provisions of this Section subd. 1 above, the City may issue a permit to a registrant who was allowed under Section 407.07 Subd. 2, to submit an additional Next-year Project, such permit to be subject to all conditions and requirements of law, including such conditions as may be imposed under Section 407.09.

## **407.16. INSTALLATION REQUIREMENTS**

The excavation, backfilling, patching, repair, and restoration, and all other work performed in the Right-of-Way shall be done in conformance with Engineering Standards adopted by the PUC or other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Secs. 237.162 and 237.163.

## **407.17. INSPECTION**

### 1. Notice of Completion.

When the work under any permit hereunder is completed, the permittee shall furnish a Completion Certificate in accordance with Minnesota Rule 7819.1300.

Unless waived by the city, a person designated by the right-of-way user as a responsible employee shall sign a completion certificate showing the completion date for the work performed, identifying the installer and designer of record, and certifying that work was completed according to the requirements of the city.

If necessary due to approved changes for the work as projected when the permit was applied for, the permittee shall submit "as built" drawings or maps within six months of completing the work, showing any deviations from the plan that are greater than plus or minus two feet.

The city shall respond within 30 days of receipt of the completion certificate. Failure to approve or disapprove the permittee's performance within 30 days is deemed to be approval by the city.

## 2. Site Inspection.

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.

## 3. Authority of City.

A. At the time of inspection the City 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 Section 407.20.

## **407.18. WORK DONE WITHOUT A PERMIT**

### 1. Emergency Situations.

Each Registrant shall immediately notify the City 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 business days after the occurrence of the Emergency the Registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the Emergency.

If the City becomes aware of an emergency regarding a Registrant's Equipment or 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.

### 2. Non-Emergency Situations.

Except in an Emergency, any Person who, without first having obtained the necessary permit, Obstructs or Excavates a Right-of-Way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by the Legislative 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 Chapter.

**407.19. SUPPLEMENTARY NOTIFICATION**

If the Obstruction or Excavation of the Right-of-Way begins later or ends sooner than the date given on the permit, Permittee shall notify the City of the accurate information as soon as this information is known.

**407.20. REVOCATION OF PERMITS****1. Substantial Breach.**

The City reserves its right, as provided herein, to revoke any Right-of-Way Permit, without a fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit including a threat to the safety of workers or the right-of-way user or the utility\_users. A substantial breach by Permittee shall include, but shall not be limited to, the following:

The violation of any material provision of the Right-of-Way Permit;

- A. 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;
- B. Any material misrepresentation of fact in the application for a Right-of-Way Permit;
- C. 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
- D. Failure to relocate existing facilities as specified in Sec. 407.23; or
- E. Failure of the utility to pay any required costs, fees, or charges billed by the City or
- F. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an Order issued pursuant to this chapter.

**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 to place additional or revised conditions on the permit to mitigate and remedy the breach.

### 3. Response to Notice of Breach.

Within twenty-four (24) hours of receiving notification of the breach, Permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. Permittee's failure to so contact the City, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee's failure to so contact the City, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall automatically place the Permittee on Probation for one (1) full year.

### 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.

### 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.

### 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.

## **407.21. MAPPING DATA**

### 1. Information Required.

Each Registrant shall provide Mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100 to include the following information:

- A. location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:
  - 1) offsets from property lines, distances from the centerline of the public right-of-way, and curb lines as determined by the city; or
  - 2) coordinates derived from the coordinate system being used by the city; or

- 3) any other system agreed upon by the right-of-way user and city;
  - B. the type and size of the utility;
  - C. a description showing above-ground appurtenances;
  - D. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the map; and
  - E. any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes § 216D.04, Subd. 3.
  - F. The permittee shall submit “as built” drawings reflecting any subsequent changes and variations from the information provided under 407.08, Subd. 6.
  - G. The right-of-way user is not required to provide or convey mapping information or data in a format or manner that is different from that which it currently utilizes and maintains. The right-of-way user shall, however, include the cost to convert the data furnished by the right-of-way user to a format currently in use by the city as part of the permit application fee. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process is completed and shall be immediately due to the city upon the ascertainment of the cost and notice of the fee to the applicant. Any permit for which such fee has not been paid within 30 days of notice from the city may upon written notice be revoked. The city shall not issue any other permits to the registrant related to any city right-of-way until such fee is paid.
  - H. Mapping data shall be provided with the specificity requested by the City for inclusion in the mapping system used by the city.
  - I. For mapping data provided to the City of Fridley in GIS compatible and City format, the mapping portion of the excavation fee is waived.
2. Submittal Requirement.
    - A. Within six (6) months after the acquisition, installation, or construction of additional equipment or any relocation, abandonment, or disuse of existing equipment, each registrant shall submit the Mapping Data required herein.
    - B. Within two (2) years after the date of passage of this Chapter, all existing right-of-way users shall submit detailed plans as may be reasonable and practical for all facilities and equipment installed, used or abandoned within the public right-of-way.
    - C. Notwithstanding the foregoing, Mapping Data shall be submitted by all Registrants for all equipment which is to be installed or constructed after the date of passage of this Chapter at the time any permits are sought under these ordinances.

D. Six (6) months after the passage of this Chapter, a new Registrant, or a Registrant which has not submitted a plan as required above, shall submit complete and accurate Mapping Data for all its equipment at the time any permits are sought under these ordinances.

3. Telecommunication Equipment.

Information on existing facilities and equipment of telecommunications right-of-way users need only be supplied in the form maintained by the telecommunications right-of-way user.

4. Trade Secret Information.

At the request of any Registrant, any information requested by the City, which qualifies as a “trade-secret” under Minn. Stat. § 13.37(b) shall be treated as trade secret information as detailed therein.

#### **407.22. LOCATION OF FACILITIES**

1. Undergrounding.

New construction and the installation of new facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes when directed by the City Council.

2. Corridors.

The City may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of Facility that is or, pursuant to current technology, the 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 Excavation of 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.

3. Nuisance.

Two years after the passage of this Chapter, 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 Equipment or Facilities and restoring the right-of-way to a usable condition.

#### 4. Limitation of Space.

To protect public 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.

#### **407.23. RELOCATION OF FACILITIES**

A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the City for good cause requests such removal and relocation, and shall restore the Right-of-Way consistent with Minnesota Rules part 7819.0050 – 7819.9950. The City may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future City use of the Right-of-Way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

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

#### **407.24. PRE-EXCAVATION FACILITY AND FACILITIES LOCATION**

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

**407.25. DAMAGE TO OTHER FACILITIES**

When the City does work in the Right-of-Way and finds it necessary to maintain, support, or move a persons 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 person and must be paid within thirty (30) days from the date of billing. Each person shall be responsible for the cost of repairing any Facilities in the Right-of-Way which it or its Facilities damages. Each person shall be responsible for the cost of repairing any damage to the Facilities of another persons caused during the City's response to an Emergency occasioned by that persons Facilities.

**407.26. RIGHT-OF-WAY VACATION****1. Reservation of Right.**

If the City vacates a Right-of-Way which contains the Facilities of a Registrant, and if the vacation does not require the relocation of Registrant's or Permittee's Facilities, the registrant's rights in the vacated right-of-way are governed by Minnesota Rule 17819.3200 and the City shall reserve, to and for itself and all Registrants having Facilities in the vacated Right-of-Way, the right to install, maintain and operate any Facilities in the vacated Right-of-Way and to enter upon such Right-of-Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

**2. Relocation of Facilities.**

If the vacation requires the relocation of Registrant's or Permittee's Facilities; and (i) if the vacation proceedings are initiated by the Registrant or Permittee, the Registrant or Permittee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the City, the Registrant or Permittee must pay the relocation costs unless otherwise agreed to by the City and the Registrant or Permittee; or (iii) if the vacation proceedings are initiated by a Person or Persons other than the Registrant or Permittee, such other Person or Persons must pay the relocation costs.

**407.27. INDEMNIFICATION AND LIABILITY****1. Authority, Generally.**

As a condition for issuing a permit for work on a public right-of-way, the City may require the permittee to indemnify the City against liability claims. The City may require indemnification when a permit authorizes a permittee to obstruct or excavate on or within a public right-of-way to install, maintain, or repair the permittee's facilities.

## 2. Claims Indemnified

City may require the permittee to defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons, or for property damage, in which the claim:

- A. alleges a negligent or otherwise wrongful act or omission of the permittee or its employee, agent, or independent contractor in installing, maintaining, or repairing the permittee's facilities; and alleges that the City is liable, without alleging any independent negligent, or otherwise wrongful act or omission on the part of the City; or
- B. is based on the City negligent or otherwise wrongful act or omission in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of the permit granted to the permittee.

## 3. Claims not Indemnified

A permittee is not required to indemnify the City for losses or claims occasioned by the negligent or otherwise wrongful act or omission of the City except:

- A. to the extent authorized in subpart 2 regarding the issuance of a permit or the inspection or enforcement of compliance with the permit; or
- B. when otherwise provided in an applicable franchise agreement.

## 4. Remedy is Additional; Subrogation

A defense or indemnification of the City by a permittee is deemed not to be a waiver of any defense or immunity otherwise available to the City.

A permittee, in defending any action on behalf of the City is entitled to assert every defense or immunity that the City could assert in its own behalf.

## **407.28. ABANDONED AND UNUSABLE FACILITIES**

### 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 Chapter have been lawfully assumed by another Registrant and locate and provide to the City a map which clearly identifies the facility and also maintains it as a real property record.

## 2. Abandoned Facilities.

Facilities of a Registrant who fails to comply with subd. 1 of this Section, and which, for two (2) years, remains unused or one year after the passage of this Chapter, any Facilities found in a Right-of-Way that have not been Registered with the city shall be deemed to be abandoned. Abandoned Facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has as law or in equity, including, but not limited to, (i) abating the nuisance, (ii) taking possession of the Facilities and restoring the Right-of-Way to a useable condition, or (iii) requiring removal of the Facilities by the Registrant, or the Registrant's successor in interest.

## 3. Removal.

Any Registrant who has unused, unusable and 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 or other remedy agreed to.

### **407.29. APPEAL**

A Right-of-Way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are invalid, may have 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.

### **407.30. RESERVATION OF REGULATORY AND POLICE POWERS**

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

### **407.31. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Chapter or any portions of this Chapter is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without

cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this Chapter precludes the City from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.

#### **407.32. FEES**

Any fees imposed under this chapter shall be reviewed and adopted at least annually at the same time and in the same manner as other fees established by the City.

At any time, in its discretion, the City expressly reserves the right to review the fees imposed in this Chapter and, upon notice and public hearing, modify them if it is satisfied that such action is necessary to reflect the cost of regulating and supervising the activities governed by this chapter.