

# CARVER COUNTY

## Chapter 93

Management of the Public Right-of-Way

Ordinance No.: 91-2019

of the Code of Ordinances

of the County of Carver

**MANAGEMENT OF THE PUBLIC RIGHT-OF-WAY  
ORDINANCE NO.: 91-2019**

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# Management of the Public Right-of-Way Ordinance No.: 91-2019

## County of Carver, Minnesota

An ordinance to enact a new Chapter  
of the Carver County Code of Ordinances  
to administer and regulate the  
public rights-of-way in the public interest, and to provide for the  
issuance and regulation of right-of-way permits

**THE BOARD OF COMMISSIONERS OF THE COUNTY OF CARVER, MINNESOTA,  
DOES HEREBY ORDAIN AND ADOPT:**

Ordinance Number 92-2019 of Chapter 93 of the Carver County Code of Ordinances establishing regulations and standards for the management of the public rights-of-way pursuant to Minnesota Statute Chapters 160 and 163, Minnesota Statutes Sections 237.163 and 394.22, and Minnesota Rules Chapter 7819.

## Chapter 93

### Public Rights-of-Way Management

#### Sec. 93.01. Findings, Purpose and Intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its highways and the appropriate use of the public rights-of-way, the County strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the County hereby enacts this new Chapter of this code relating to right-of-way permits and administration. This Chapter 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. This Chapter is intended to complement the regulatory roles of federal and state agencies. Under this Chapter, persons excavating and obstructing the public rights-of-way will bear 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 County and users of the rights-of-way. This Chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 to 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. This Chapter shall not be interpreted to limit the regulatory and police

powers of the County to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

### **Sec. 93.02. Election to Manage the Public Rights-of-Way.**

Pursuant to the authority granted to the County under state and federal statutory, administrative and common law, the County hereby elects pursuant Minnesota Statute Section 237.163 Subd. 2(b), to manage the public rights-of-way under its jurisdiction.

### **Sec. 93.03. Definitions.**

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

“**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.

“**Access**” means any physical connection to public or private property over right-of-way for residential, agricultural, commercial, or municipal highway purposes.

“**Access Permit**” means the permit which must be obtained from the County before any person may make a physical connection to a County road or highway.

“**Applicant**” means any person requesting permission to excavate or obstruct a right-of-way.

“**Chapter**” means Chapter 93 of the Carver County Code of Ordinances.

“**Collocate**” or “**Collocation**” means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the County or other governmental unit.

“**Commission**” means the Minnesota Public Utilities Commission.

“**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.

“**Construction**” means the general permit requirements established by the Director for performance, materials and workmanship in accordance with applicable design standards, consistent with the Transportation Plan, for the permitted work or facility to preserve public health, safety and welfare and right-of-way aesthetics and flexibility.

“**Construction Performance Bond**” means any of the following forms of security provided at permittee’s option, in an amount that shall cover costs to reasonably restore the right-of-way to

the condition that existed before the excavation and costs that the County estimates will be incurred if the right-of-way user fails to perform under the bond:

- (a) Individual project bond;
- (b) Cash deposit;
- (c) Security of a form listed or approved under Minnesota Statute Section 15.73, Subd. 3;
- (d) Letter of Credit, in a form acceptable to the County;
- (e) Self-insurance, in a form acceptable to the County;
- (f) A blanket bond for projects within the County, or other form of construction bond, for a time specified and in a form acceptable to the County.

The amount of the bond does not include the indirect costs of litigation and attorney fees.

**“County”** means the County of Carver, Minnesota. For purposes of section 93.29, Indemnification and Liability, “County” means its elected officials, officers, employees and agents.

**“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 or disturbance did not occur.

**“Degradation Cost”** subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration, as determined by the County at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

**“Degradation Fee”** means the estimated fee established at the time of permitting by the County to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

**“Delay Penalty”** is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

**“Department”** means the Carver County Division of Public Works.

**“Department Inspector”** means any person authorized by the County to carry out inspections related to the provisions of this Chapter.

**“Director”** means the director of the Department or her or his designee.

**“Emergency”** means a condition that (1) poses a danger to life or public health or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

**“Equipment”** means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

**“Excavate”** means to dig into or in any way remove or physically disturb or penetrate any part of

a public 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. The Director will prescribe the appropriate permit forms to be filed for the work type proposed to be undertaken by the Registrant.

**“Excavation Permit Fee”** means money paid to the County by an applicant to cover the costs as provided in section 93.13.

**“Facility”** or **“Facilities”** means any tangible asset in the right-of-way required to provide Utility Service which includes, without limitation, any pipes, conduit, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, fixtures and appurtenances and other like equipment used in connection with transmitting, receiving, distributing, offering and providing broadband, utility and other services, and including small wireless facilities.

**“Five-year Project Plan”** shows projects adopted by the County for construction within the next five years.

**“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.

**“Hole”** means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

**“Incremental Cost”** means the additional cost only of upsizing additional materials (conduit, vaults, location tape, building materials) with no additional costs allowed for the labor (incremental engineering, incremental design, placement and assembly of incremental conduit, placement of incremental vaults, interconnection, testing, and documentation). Incremental cost does not include roadway or sidewalk restoration or paving beyond that which is specifically required for the placement of additional vaults within paved or concrete surfaces outside of the original project scope.

**“Landscaping”** means vegetative plantings, gardens, in-ground sprinkler systems, small field drains, and related features.

**“Landscaping Permit”** means a permit issued by the County authorizing the permittee to landscape or make landscaping improvements within the County right-of-way as specifically described in the permit.

**“Local Representative”** means a local person or persons, or designee of such person or persons, authorized by a registrant to accept legal notice or service; accept communications; and make decisions for that registrant regarding all matters within the scope of this Chapter.

**“Management Costs”** means the actual costs the County incurs in managing its public rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration

projects; maintaining, supporting, protecting, or moving user facilities during public 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; unreasonable fees including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the County; 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 County fees and costs related to appeals taken pursuant to section 93.31 of this Chapter.

**“Manage the Public Right-of-Way”** means the authority to do activities, including but not limited to, any or all of the following activities:

- (a) Require registration;
- (b) Require construction performance bonds and insurance coverage;
- (c) Establish installation and construction standards;
- (d) Establish and define location and relocation requirements for equipment and facilities;
- (e) Establish coordination and timing requirements;
- (f) Require telecommunications right-of-way users to submit, henceforth required by the County, project data reasonably necessary to allow the County to develop a right-of-way mapping system including GIS system information;
- (g) Require telecommunication right-of-way users to submit, upon request of the County, existing data on the location of the user’s facilities occupying the public right-of-way within the County. The data may be submitted in the form maintained by the user in a reasonable time after receipt of the request based on the amount of data requested;
- (h) Establish right-of-way permitting requirements for excavation and obstruction;
- (i) Establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right-of-way repair, excavation, or construction; and
- (j) Impose reasonable penalties for unreasonable delays in construction.

**“Mapping Information”** means the information required in section 93.24, Subd. 1.

**“Micro wireless facility”** means 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.

**“Obstruct”** means to place any tangible object in a public right-of-way so as to hinder free and open passage over that or any part of the right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

**“Obstruction Permit”** means the permit which, pursuant to this Chapter, must be obtained before a person may obstruct any part of a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing any tangible object thereon for the duration specified therein. The Director will prescribe the appropriate permit forms to be filed for the work type proposed to be undertaken by the Registrant. Obstructions include, but are not limited to activities including special events, utility service day to day operations, maintenance activities, tree trimming, and other miscellaneous activity in the public right-of-way.

**“Obstruction Permit Fee”** means money paid to the County by a permittee to cover the costs as provided in section 93.13 and required to obtain the permit.

**“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 County’s five-year project plan.

**“Pavement”** means 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”** has the meaning given in “right-of-way permit” in Minnesota Statutes Section 237.162, and includes, but is not limited to, the various permits defined in this Chapter:

- (a) Utility Permit
- (b) Obstruction Permit
- (c) Moving Transportation Permit
- (d) Access Permit, Including Residential or Field and Street or Commercial
- (e) Excavation or Grading Permit
- (f) Special Event Permit
- (g) Landscaping Permits

**“Permittee”** means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the County under this Chapter.

**“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, including, but not limited to:

- (a) A business or commercial enterprise, however organized;
- (b) A social charitable organization; and
- (c) Any type or combination of political subdivision of a state or local government.

**“Probation”** means the status of a person that has not complied with the conditions of this Chapter.

**“Probationary Period”** means one year from the date that a person has been notified in writing that they have been put on probation.

**“Public Right-of-Way”** means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the County has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the County. A public right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service. The lands described by an easement, deed, dedication, title, law or occupation of a road, highway, street, cartway, bicycle lane, or sidewalk are included as public right-of-way.

**“Registrant”** means any person who (1) has or seeks to have its equipment or facilities located within any public right-of-way; or (2) in any way, occupies or uses, or seeks to occupy or use, the public right-of-way or place its facilities or equipment in the public right-of-way.

**“Registration Fee”** means money paid to the County by a registrant for obtaining and reviewing registrant information.

**“Restoration Cost”** means the amount of money paid to the County by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission Rules.

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

**“Right-of-Way Permit”** means a permit to perform work in a public right-of-way as required by this Chapter.

**“Right-of-Way Permit Fees”** means money paid to the County by an applicant to cover the costs provided in section 93.13 associated with the issuance of any public right-of-way permit.

**“Right-of-Way User”** means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, Section 237.162, Subd. 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, or (3) any person or entity to whom a permit to use the public right-of-way has been issued by the County.

**“Service”** or **“Utility Service”** includes (1) those services provided by a public utility as defined in Minnesota Statute Section 216B.02, Subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statute Chapter. 238; (4) natural gas or electric energy or telecommunications services provided by the County; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; (6) water, and sewer, including service laterals, steam, cooling or heating services; and (7) privately-owned utility services, including drain tiles.

**“Service Lateral”** means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer’s premises.

**“Small Wireless Facility”** means a

- (a) 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 provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including 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; or

(b) A micro wireless facility.

**“Supplementary Application”** means an application made to excavate or obstruct more of the public right-of-way than allowed in, or to extend, a permit that had already been issued.

**“Telecommunication Right-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 providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under Minnesota Statute Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statute Section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statute Chapters. 453 and 453A, or a cooperative electric association organized under Minnesota Statute Chapter 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

**“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 County’s two-year plan, in which case it is considered full restoration.

**“Trench”** means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

**“Two Year Project Plan”** shows projects adopted by the County for construction within the next two years.

**“Utility Permit”** means a permit issued by Carver County authorizing the permittee to place a service or utility service, including a small wireless facility, in the right-of-way as specifically described in the permit.

**“Utility Pole”** means a pole that is used in whole or part to facilitate telecommunications or electric service.

**“Wireless Facility”** means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

- (a) Equipment associated with wireless service;
- (b) A radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and
- (c) A small wireless facility, but not including:
  - (i) Wireless support structures; or
  - (ii) Wireless backhaul facilities; or
  - (iii) Coaxial or fiber-optic cables (i) between utility poles or wireless support

structures, or (ii) that are not otherwise immediately adjacent to and directly associated with a specific antenna.

“**Wireless Service**” means 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 cable service under United States Code, title 47, Section 522, Clause (6).

“**Wireless Support Structure**” means 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 the County.

“**Wireline Backhaul Facility**” means a facility used to transport communications data by wire from a wireless facility to a communications network.

#### **Sec. 93.04. Administration.**

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

#### **Sec. 93.05. Utility Coordination Committee.**

The County may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants who wish to assist the County in obtaining information and, by making recommendations regarding use of the right-of-way, in improving the process of performing construction work therein. The County may determine the size of such committee and shall appoint members from a list of registrants who have expressed a desire to assist the County.

#### **Sec. 93.06. Registration and Right-of-Way Occupancy.**

**Subd. 1. Registration.** Each person who occupies or 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 County. Registration will consist of providing application information and paying a registration fee.

**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 County.

**Subd. 3. Exceptions.** Nothing herein shall be construed to repeal or amend the provisions of a County 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 or satisfy any other requirements for planting or maintaining such

boulevard plantings or gardens under this Chapter. However, plantings must not violate applicable clear zone requirements nor obstruct visibility on the roadway, nor affect the drainage of the roadway watershed, nor cause erosion in the right of way, and the County may remove such plantings, if necessary for maintenance, safety, or construction purposes, with no compensation due the property owner.

Irrigation systems shall be allowed in the right of way without a permit and installers shall be exempt from registration, provided the irrigation systems are managed properly and do not cause erosion in the right of way. There shall be no compensation for removal necessary for any permitted utility project. No compensation shall be paid for any irrigation system if removal is required or if it is damaged by any County or municipal activity or by any permitted utility activity.

Resident owned sewer and water service lines to a city main and resident owned drain tile lines shall not be required to register, unless requested by the County, but shall be required to obtain permits for excavation and obstruction.

Nothing herein relieves a person from complying with the provisions of the Minnesota Statute Chapter 216D, "Gopher State One Call" Law.

Government agencies and non-profit organizations are exempt from registration, but are required to obtain the appropriate right-of-way permit.

### **Sec. 93.07. Registration Information.**

**Subd. 1. Information Required.** The information provided to the County at the time of registration shall be on the form approved by the County or this Chapter, and shall include, but not be limited to:

(a) Each registrant's name, Gopher State 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:

(i) 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 County;

(ii) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the;

(1) Use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and

(2) 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; and

- (3) Naming the County 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; and
- (4) Requiring that the County be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and
- (5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the County in amounts sufficient to protect the County and the public and to carry out the purposes and policies of this Chapter.

(d) The County may require a copy of the actual insurance policies.

(e) If the person is a corporation, a copy of the certificate is required to be filed under Minnesota Statute Section 302A.105 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.

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

## **Sec. 93.08. Reporting Obligations.**

**Subd. 1. *Operations.*** Each registrant who provides utility service shall, at the time of registration and by March 1 of each year, file a construction and major maintenance plan for underground facilities with the County. Such plan shall be submitted using a format designated by the County and shall contain the information determined by the County to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The utility facility plans shall be kept up-to-date by the registrant. Facility plans which a utility identifies to the County as being "trade secret information" will be treated as general nonpublic data in accordance with Minnesota Statute Section 13.37.

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 but

does not include individual service line hookups and minor maintenance unless they are part of an area wide program.

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

Thereafter, by May 1, each registrant may change any project in its list of Next-Year Projects, and must notify the County 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 County will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the County if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

### **Sec. 93.09. Permit Requirement.**

**Subd. 1. *Permit Required.*** Except as otherwise provided in this Chapter, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the County 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 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.

A small wireless facility shall require an Excavation or Obstruction Permit by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right of way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

**Subd. 2. *Permit Extensions.*** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person 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.

**Subd. 3. *Delay Penalty.*** In accordance with Minnesota Rule 7819.1000 Subp. 3, and notwithstanding Subd. 2 of this section, the County shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall not be imposed if the delay in project completion is due to circumstances beyond the

control of the applicant, including without limitation inclement weather, acts of God, or civil strife. The delay penalty shall be established from time to time by County Board resolution.

**Subd. 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 County.

### **Sec. 93.10. Permit Applications.**

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

- (a) Registration with the County pursuant to this Chapter;
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities of the permittee in the project area.
- (c) Payment of money due the County for:
  - (1) Permit fees, estimated restoration costs and other management costs;
  - (2) Prior right-of-way or obstructions or excavation permits;
  - (3) Any undisputed loss, damage, or expense suffered by the County because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the County;
  - (4) Franchise fees or other charges, if applicable.
- (d) Payment of disputed amounts due the County by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- (e) Posting of an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the County deems the existing construction performance bond inadequate under applicable standards.

### **Sec. 93.11. Issuance of Permit; Conditions.**

**Subd. 1. *Permit Issuance.*** If the applicant has satisfied the requirements of this Chapter, then the County shall issue a permit.

**Subd. 2. *Conditions.*** The County 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 and future use.

The County may require, at its discretion, that an applicant install additional facilities at the County's incremental cost, for use by the County and its partners. Costs associated with roadway or sidewalk restoration or paving required for the placement of additionally requested vaults within paved or concrete surfaces outside of the original project scope are not part of incremental costs and are to be provided separately to the County at reasonable cost at the same time incremental costs are provided. The director and the applicant shall collaboratively develop infrastructure specifications, additional incremental cost estimates and documentation necessary to transfer right, title and interest of any additional facilities to the County.

**Subd. 3. *Small Wireless Facility Conditions.*** In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

- (a) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- (b) No new wireless support structure installed within the right-of-way shall exceed 50 feet above ground level without the County's written authorization, provided that the County may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet above ground level with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- (c) No wireless facility may extend more than 10 feet above an existing wireless support structure.
- (d) Where an applicant proposes to install a new wireless support structure in the right-of-way, the County may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
- (e) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the County may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
  - (i) Due to the public health, safety and welfare concerns associated with the design and function of County owned traffic control facilities, including but not limited to signal/semaphore poles and structures, such facilities shall not be defined or permitted as a Wireless Support Structure.
- (f) Where an applicant proposes to replace a wireless support structure, the County may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

**Subd. 4. *Small Wireless Facility Agreement and Fees.*** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the County, or any other County asset in the right-of-way, after the applicant has executed a small wireless facility collocation agreement with the County. The standard collocation agreement may require payment of the following fees or charges:

- (a) Up to \$150 per year for rent occupy space on the wireless support structure owned or controlled by the County;
- (b) Up to \$25 per year for maintenance associated with the space occupied on the wireless

support structure.

(c) A monthly fee for electricity used to operate the small wireless facility, if not purchased directly from a utility, at the rate of:

- (i) \$73 per radio node less than or equal to 100 maximum watts;
- (ii) \$182 per radio node over 100 maximum watts; or
- (iii) The actual costs of electricity, if the actual cost exceed the amount in (i) or (ii).

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the County and applicant.

### **Sec. 93.12. Action on Small Wireless Facility Permit Applications.**

**Subd. 1. *Deadline for Action.*** The County shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the County fails to approve or deny the application within the review periods established in this section, unless the applicant and the County have mutually agreed in writing to extend the 90 day deadline.

**Subd. 2. *Consolidated Applications.*** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

- (a) Are located within a two-mile radius;
- (b) Consist of substantially similar equipment; and
- (c) Are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the County may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

**Subd. 3. *Tolling of Deadline.*** The 90-day deadline for action on a small wireless facility permit application may be tolled if: The County receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the County may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

- (a) The applicant fails to submit all required documents or information and the County provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the County shall have ten days to notify the applicant in writing of any still-missing information.
- (b) The County and a small wireless facility applicant agree in writing to toll the review period.

### **Sec. 93.13. Permit Fees.**

**Subd. 1. *Excavation Permit Fee.*** The County shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

(a) The County's actual management costs; and

(b) Degradation costs, if applicable; County engineering, make-ready, and construction costs associated with collocation of small wireless facilities

**Subd. 2. *Conditions.*** The County may impose conditions on the issuance of the permit and the performance of the applicant thereunder to protect the public's health, safety, and welfare or when necessary to protect the right-of-way and its current use including the recovery of any unusual management costs not recovered through the standard permit fee, including, the cost of assigning a police officer to provide traffic management or the cost of assigning a field observer.

**Subd. 3. *Obstruction Permit Fee.*** The County shall establish the obstruction permit fee and shall be in an amount sufficient to recover the County management costs and County engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

**Subd. 4. *Payment of Permit Fees.*** No right-of-way permit shall be issued without payment of right-of-way permit fees unless the County allows the applicant to pay such fees within thirty (30) days of billing. Government agencies and non-profit organizations are exempt from right-of-way permit fees, but are required to obtain the appropriate right-of-way permit.

**Subd. 5. *Non Refundable.*** Permit fees that were paid for a permit that the County has revoked for a breach as stated in section 93.23 are not refundable.

**Subd. 6. *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.

## **Sec. 93.14. 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 unseasonal or unreasonable under section 93.17.

**Subd. 2. *Temporary Surfacing, Patch and Restoration.*** Permittee shall patch its own work. The County may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(a) ***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 an amount determined by the County to be sufficient to cover the cost of restoration. If, within twenty-four (24) months following the completion of the restoration of the right-of-way, the County determines the right-of-way has been properly restored, the surety on the Construction Performance Bond shall be released.

(b) ***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 County, and shall comply with Minnesota Rule 7819.1100.

**Subd. 4. *Guarantees.*** The permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. The obligation is limited to one year for plantings and turf establishment. During this 24-month period, it shall, upon notification from the County, correct all restoration work to the extent necessary, using the method required by the County. Said work shall be completed within five (5) business days of the receipt of the notice from the County, 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 section 93.17.

**Subd. 5. *Duty to Correct Defects.*** The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the County shall correct all restoration work to the extent necessary, using the method required by the County. Said work shall be completed within five (5) calendar days of the receipt of the notice from the County, 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 section 93.17.

**Subd. 6. *Failure to Restore.*** If the permittee fails to restore the right-of-way in the manner and to the condition required by the County, or fails to satisfactorily and timely complete all restoration required by the County, the County at its option may do such work. In that event the permittee shall pay to the County, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond.

### **Sec. 93.15. Joint Applications.**

**Subd. 1. *Joint application.*** Registrants may be required to jointly apply for permits to access, excavate/ grade, place a utility service, landscape, 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, excavation or right-of-way action which the County does not perform, may share in the payment of the obstruction, excavation, or right-of-way 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 County projects.*** Registrants, who join in a scheduled obstruction, excavation, or right-of-way action performed by the County, 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.

### **Sec. 93.16. 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 (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension. The County may orally waive the requirement for a permit extension or the payment of an additional fee. The County shall maintain a written record of any waivers granted.

**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. The County may orally waive the requirement for a permit extension or the payment of an additional fee. The County shall maintain a written record of any waivers granted.

### **Sec. 93.17. 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 County or other appropriate jurisdiction or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (“Gopher State One Call Excavation Notice System”) and Minnesota Rules Chapter 7560. 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.

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

**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, culverts, ditches, tiles, 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 County, township or city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices (“MMUTCD”) and its field manual and any written directions of the County.

**Subd. 4. *Trenchless Excavation.*** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

### **Sec. 93.18. Denial of Permit.**

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

The County may deny a permit if the applicant has failed to comply with conditions of a previous permit issued by the County. The County may withhold issuance of a permit until conditions of previous are complied with.

### **Sec. 93.19. 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 shall conform to MN/DOT standard specifications and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the County in the applicable permits and/or agreements referenced in section 93.24 Subd. 2 of this ordinance.

**Subd. 1. Procedural Requirements.** The revocation or denial of a permit must be made in writing and must document the basis for the denial. The County must notify the applicant or right-of-way user in writing within three (3) business day of the decision to revoke or deny a permit. If an application is denied, the right-of-way user may address the reasons to for the denial identified by the County and resubmit the application. If the application is resubmitted within thirty (30) days of receipt of the notice of the denial, no additional application fee shall be imposed. The County must approve or deny the resubmitted application within thirty (30) days after submission.

### **Sec. 93.20. Inspection.**

**Subd. 1. Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate to the County showing the completion date for the work performed, identifying the installer and designer of record, and certifying the work was completed according to the County's requirements. The completion certificate shall be in accordance with Minnesota Rule 7819.1300.

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

#### **Subd 3. Authority of Director.**

(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 Director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes so long as the nonconformance constitutes a "substantial breach" as set forth in Minnesota Statute Section

237.163, Subd. 4(c)(1)- (5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within a reasonable time after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Sec. 93.22. If such proof has not been presented within the required time, the County may revoke the permit pursuant to Sec. 123.

(c) The cost of any action required by the Director shall be paid by the permittee.

### **Sec. 93.21. Work Done Without a Permit.**

**Subd. 1. *Emergency Situations.*** Each registrant shall immediately notify the County of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. 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 Chapter for the actions it took in response to the emergency.

If the County becomes aware of an emergency regarding a registrant's facilities, the County will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the County may take whatever 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 a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the County code, deposit with the County the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Chapter.

### **Sec. 93.22. 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 County of the accurate information as soon as this information is known.

### **Sec. 93.23. Revocation of Permits.**

**Subd. 1. *Substantial Breach.*** The County reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit, including a threat to the safety of workers, or the right-of-way user or utility users. 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 County or its citizens;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control, or failure to relocate existing facilities as specified in section 93.25; or
- (d) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 93.20;
- (e) Failure of the utility to pay the required costs, fees, or charges billed by the County; or
- (f) Failure to provide traffic control that conforms to the provisions of the Minnesota Manual on Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual. .

**Subd. 2. *Written Notice of Breach.*** If the County determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the County shall make a written demand upon the permittee to remedy such 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 County, at its 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, permittee shall provide the County with a plan, acceptable to the County that will cure the breach. Permittee's failure to so contact the County, or permittee's failure to timely 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 County, or 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. No plan will be unreasonably rejected.

**Subd. 4. *Cause for Probation.*** From time to time, the County may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one (1) 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 (1) full year, except for emergency repairs.

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

**Subd. 7. *Revoked Permit.*** If the County revokes a utility's permit for breach of this Chapter, the utility will not be allowed to install any utility or to obstruct or excavate within the County right-of-

way until the breach situation is corrected to the satisfaction of the County and the permit is reissued.

### **Sec. 93.24. Mapping Data.**

**Subd. 1. *Information Required.*** Each registrant and permittee shall provide mapping information required by the Director in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the Director accurate maps and drawings certifying the “as-built” location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the County’s electronic mapping system, when practical or as a condition imposed by the Director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder’s registration.

**Subd. 2. *Service Laterals.*** All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any Director approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) Director approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The Director shall reasonably determine the appropriate method of providing such information to the Director. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

### **Sec. 93.25. Location and Relocation of Facilities.**

**Subd. 1. *Placement, Location, and Relocation.*** 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. *Corridors.*** The County may assign a 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 County expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the County involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the County shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the County for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

**Subd. 3. Nuisance.** One year 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 County may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

**Subd. 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 County 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 County shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's 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 County plans for public improvements and development projects which have been determined to be in the public interest.

**Subd. 4. Relocation of Existing Facilities.** A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the local government unit, in connection with: (1) a present or future local government use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

A right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.

### **Sec. 93.26. Location of Facilities During Design Process.**

In addition to complying with the requirements of Minnesota Statute Chapter 216D, 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.

### **Sec. 93.27. Damage to Other Facilities.**

When the County does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the County 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 damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the County's response to an emergency occasioned by that registrant's facilities.

The provisions of Minnesota Statute Chapter 216D, as amended, shall apply to all situations involving damages to facilities during excavation operations.

## **Sec. 93.28. Right-of-Way Vacation.**

*Reservation of right.* If the County vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200 and other applicable laws

## **Sec. 93.29. Indemnification and Liability**

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

*Indemnification.* To the fullest extent permitted by law, a registrant or permittee shall defend, indemnify, keep and hold the County, its officials, employees, and agents, free and harmless from any and all costs, specifically including attorney fees and other costs of defense, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a public right-of-way permit.

The foregoing does not indemnify the County for its own negligence or other wrongful act or omission except for claims arising out of or alleging the County's negligence in issuing the permit or failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit.

All permits are granted subject to ownership rights the County may have in the property involved and to the extent that state, federal, local laws, rules and regulations allow, and said permit is subject to all such laws and rules.

*Limitation of Liability.* By registering with the County, or by accepting a permit under this Chapter, a registrant or permittee agrees to defend and indemnify the County for any liability for (1) bodily injury or death persons, for property damage, or loss of service claims by parties other than registrant or the County, or (2) claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.

This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permittee, or the County, and the registrant or permittee, in defending any action on behalf of the County, shall be entitled to assert in any action every defense or immunity that the County could assert in its own behalf. In defending the County, any registrant or permittee shall obtain the consent of the County Board before any settlement shall be enforced.

## **Sec. 93.30. Abandoned and Unused Facilities.**

*Subd .1. Discontinued Operations.* A registrant who has determined to discontinue all or a portion of its operations in the County must provide information satisfactory to the County that the registrant's obligations for its facilities in the right-of-way under Chapter 7819 and this Chapter have been lawfully assumed by another registrant.

**Subd. 2. Removal.** Any registrant who has abandoned facilities in any right-of-way shall remove them 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 County.

**Sec. 93.31. Appeal.**

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minnesota Statutes Sections 237.163, Subd. 6; or (5) disputes a determination of the County regarding sections 93.11, 93.13, 93.18, or 93.23 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, to the County Board. The County Board shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the County Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

**Sec. 93.32. Reservation of Regulatory and Police Powers.**

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

**Sec. 93.33. Severability.**

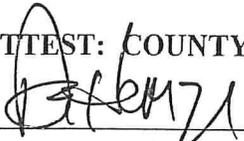
If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the County from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

**Sec. 93.34. Effective Date.**

This ordinance shall be effective upon passage and publication by the Carver County Board of Commissioners.

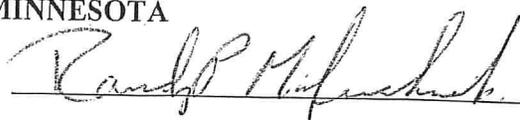
Original adopted by the Board of Commissioners on October 27, 2014. (Published in the Chaska Herald on October 2, 2014. Amended by the Carver County Board of Commissioners on February 5, 2019.

ATTEST: COUNTY OF CARVER, STATE OF MINNESOTA

  
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Print Name: Duane Jensen  
Clerk to Board

Date: 2/11/19

  
\_\_\_\_\_

Print Name: Randy P. Maluchuk  
Chair of Carver County Board of Commissioners

Date: 2/11/2019