ORDINANCE AMENDING MANKATO CITY CODE CHAPTER 6

WHEREAS, city staff have conducted a thorough review of Chapter 6 relating to streets and sidewalks generally and have identified several sections with recommendations for amendments and clean-up to the current Ordinance; and

WHEREAS, Standards for Wireless Telecommunications Facilities was added to Section 6.06, Right-of-Way Management; and

WHEREAS, Chapter 6 of the Mankato City Code has been amended to incorporate these recommendations.

NOW THEREFORE BE IT ORDAINED by the City Council for the City of Mankato that the following sections/subdivisions in Mankato City Code, Chapter 6, be and hereby are amended as follows:

Sec. 6.03. - Ice and Snow on Public Sidewalks.

Subd. 2. Abatement. If the owner or occupant of the property abutting any public sidewalk upon which snow or ice has accumulated, fails to abate the nuisance thereby created within twenty-four (24) hours, the City may cause to be served upon the owner of the property upon which such nuisance exists, by registered or certified mail, or by personal service, a notice ordering such owner to remove the nuisance within ~~two (2) days~~ one (1) day after the date of the notice, and stating that in the event the owner does not comply with such order, the necessary work may be performed or caused to be performed by the City at the expense of the owner, and that if the owner does not pay for such expense, the cost of the work will be assessed against the property benefited. The notice shall also be posted on the property for a period of ~~two (2) days~~ one (1) day after which period the City may perform any necessary work.

Subd. 3. City Removal. If the owner or occupant of the property abutting any public sidewalk upon which snow or ice has accumulated fails to abate the nuisance thereby created within ~~two (2) days~~ one (1) day of the date of the notice and posting of the property, the City Manager or their designated agent may cause the removal of such snow or ice. The agent causing such removal shall maintain a record showing the cost of such removal attributable to each separate lot and parcel and shall deliver such information to the City Manager or designee. The accumulated snow and ice shall be removed and treated to a standard approved by the City Manager that mitigates the hazard created by the accumulation.

Subd. 6. Placing Snow or Ice on Public Street or City Property. It is unlawful for any person, not acting under contract with the City, to remove snow or ice from private property and place, in such quantity or manner as to cause a hazard to travel, such snow or ice upon a public ~~street~~, right-of-way without proper arrangements for the immediate removal thereof. It is unlawful for any person, not acting under contract with the City, to place or deposit any snow or ice upon City ~~property~~ right-of-way.

(Ord. of 2-28-77; Ord. of 2-23-2009)

Sec. 6.04. - Regulation of Plants in Parks and Upon Streets.

Subd. 5. Tree Protection. It is unlawful for any person, not acting under authorization from the City, to break, injure, mutilate, kill or destroy any tree or shrub on any street, park or other property owned by the City, or permit any fire or the heat thereof to injure any portion of any such tree or shrub. It is unlawful for any person, not acting under authorization from the City, owning, using or having control of gas or any other substance deleterious to the continued life of any tree ~~of~~ or shrub, to allow such gas or substance to come in contact with the soil surrounding any tree or shrub on any street, park or other property owned by the City. No person, not acting under authorization from the City shall attach or permit to remain attached to any tree or shrub on any street, park or other property owned by the City, or to any guard or stake placed for the protection of such tree or shrub, any rope, wire, chain, sign or other device.

Sec. 6.05. - Construction of Roadway, Sidewalk and Curb.

Subd. 1. Procedure.

C. Establishment of Sidewalk and Trail System. The sidewalks and trail plan ~~system map~~ found within Mankato's Complete Streets Plan ~~and list~~ dated ~~June 24, 1996~~, April 24, 2015, or the most current version, a copy of which is on file with the City ~~Clerk~~ of Mankato, is hereby incorporated herein and made a part hereof. Said plan ~~map and list~~ shall be as much a part of this chapter as if the matters and information set forth by said plan ~~map and list~~ were all fully described herein.

D. Establishment of Bicycle and Trail System. The bicycle and trails plan found within Mankato's Complete Streets Plan dated April 24, 2015, or the most current version, a copy of which is on file with the City of Mankato, is hereby incorporated herein and made a part hereof. Said plan shall be as must a part of this Chapter as if the matters and information set forth by said plan were all fully described herein.

All sidewalks, ~~and~~ trails and bicycle routes throughout the City shall be installed and maintained in accordance with ~~the sidewalk and trail system map and list~~ Mankato's Complete Streets Plan. The Planning Commission shall include sidewalk, ~~and~~ trail and bicycle route recommendations consistent with ~~the sidewalk and trail system map and list~~ Mankato's Complete Streets Plan as part of the subdivision plat approval process.

All street improvement projects shall include an assessment for sidewalks and trails at the standard assessment rate and in conformance with the assessment policy.

(Ord. of 6-24-96)

Subd. 2. Permit Required. It is unlawful to construct or repair any roadway surface, sidewalk or curb and gutter upon any public property without first obtaining a written permit ~~therefore from the Building Inspector~~, provided that no such permit is required for any such improvement ordered by the City Council. The permit shall not relieve the holder from any damages caused by the holder to the person or property of others.

Subd. 5. Inspection. The ~~Building Inspector~~ city designee shall inspect any such improvements as deemed necessary or advisable. Any work on any such improvement not

performed according to the applicable specifications and standards ~~may be halted by the inspector~~, of the American Disabilities Act (ADA), ~~and~~ shall be removed and corrected at the expense of the permit holder. This subdivision shall not be construed so as to place a continuing burden upon the City to inspect or supervise such work.

(Ord. of 2-28-77)

Sec. 6.06. - Right-of-Way Management.

Subd. 1. Findings and Purpose. The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested substantial dollars in public funds to build and maintain the rights-of-way. The City also recognizes that by placing other utility equipment in the right-of-way for the purpose of delivering services to the citizens of the City also is a public use of this property for the public good. Although such services are necessary or convenient for the citizens, other persons or entities receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases a necessary and proper use of right-of-way, the City must regulate and manage such uses.

To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets, utilities and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

This section imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this section, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this section provides for recovery of the City's costs associated with managing its rights-of-way.

Subd. 2. Definition. The following words, terms and phrases, as used herein, have the following meanings:

A. City Cost. The actual cost incurred by the City for public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; mapping of "as built" locations of facilities located in rights-of-way; and revoking right-of-way permits and performing all other tasks required by this section, including other costs the City may incur in managing the provisions of this section.

B. Degradation. The accelerated reduction of service life ~~depreciation~~ of the right-of-way caused by excavation 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.

C. Degradation Cost. Money paid to the City to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation.

D. Emergency. 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 in order to restore service to a customer.

E. Equipment. Any tangible thing or asset used to install, repair or maintain facilities in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.

F. Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

G. Obstruction. An obstacle, blockage, or an object that impedes or prevents passage, progress, or to navigate around an object within the right-of-way, or otherwise negatively impacting the general public's engagement of the right-of-way.

~~G~~H. Permit. A permit issued pursuant to this section.

~~H~~I. Permit Holder. Any person to whom a permit to excavate or place equipment or facilities in a right-of-way has been granted by the City under this section.

~~I~~J. Registrant. Any person who has or seeks to have its facilities or equipment located in any right-of-way.

~~J~~K. Restore or Restoration. The process by which the right-of-way and surrounding area, including pavement and foundation, is returned to the condition that meets or exceeds the right-of-way condition ~~existed~~ before the commencement of the work.

~~K~~L. Restoration Cost. Money paid to the City by a permittee to cover the cost of restoration.

~~L~~M. Right-of-Way. The surface and space above and below a public roadway, highway, street, alley, cartway, bicycle lane, ~~and~~ public sidewalk or other areas intended for public use in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility ~~e~~easements owned by the City for City utility purposes.

~~M~~N. Service or Utility Service. Includes but is not limited to 1) those services provided by a public utility as defined in Minnesota Statute 21613.02, Subdivisions 4 and 6; 2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services; 3) the services provided by a corporation organized for the purposes set forth in Minnesota Statute 300.03; 4) the services provided by a district heating or cooling system; and 5) cable communications systems as defined in Minnesota Statute Chapter 238.

~~N~~O. Telecommunication Rights-of-Way User. A person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public 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 section, a cable communication system

defined and regulated under Minnesota Statute Chapter 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.

P. Small Wireless Facility. A wireless facility that has an antenna and 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 all other wireless equipment associated with the small wireless facility excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, ground equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume.

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

Subd. 3. Fees. Permit fees shall be assessed for work governed by this code in accordance with a resolution of the City Council.

Subd. 4. Registration.

A. Annual Registration Required. No person shall construct, install, repair, remove, relocate, obstruct or perform any work within any right-of-way without first being registered pursuant to this subsection. Such registration shall be made on an application form provided by the City and shall be accompanied by the registration fee provided by Council resolution. A service or utility service operating under a franchise with the City shall register pursuant to this subsection but need not provide the registration information required by subsection B of this subsection if such information has been submitted pursuant to the franchise agreement. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from payment of a registration fee.

B. Registration Information. The registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:

1. Registrant's name, address, telephone number, facsimile number and Gopher One-Call registration certificate number if required by State law.

2. Name, address, telephone number, and facsimile number of the person responsible for fulfilling the obligations of the registrant.

3. A Certificate of Insurance from a company licensed to do business in the State of Minnesota providing coverage in the following amounts.

   (a) GENERAL LIABILITY: Public Liability, including premises, products and complete operations.

   Bodily Injury Liability: $1,000,000 each person $3,000,000 each occurrence.

Property Damage Liability: $3,000,000 each occurrence.

Bodily Injury and Property and Damage Combined: $3,000,000 single limit.

(b) COMPREHENSIVE: Automobile Liability Insurance, including owned, non-owned and hired vehicles.

Bodily Injury Liability: $1,000,000 each person $3,000,000 each occurrence.

Property Damage Liability: $3,000,000 each occurrence.

In lieu of 1) & 2) Bodily Injury and Property Damage Combined: $3,000,000 single limit.

Such certificate shall verify 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 equipment or 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 equipment and collapse of property. Such certificate shall also indicate the registrant's insurance is the primary coverage, shall name 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. Such certificate shall require that the City be notified 30 days prior to cancellation or nonrenewal of the policy.

4. 24 hour emergency number.

5. An acknowledgment by the registrant of the indemnification pursuant to Subdivision 19(B) of this code.

6. Such other information the City may require.

C. Exceptions. The following are not subject to the requirements of this subsection.

~~(~~1.~~)~~ Persons planting or maintaining boulevard plantings or gardens.

~~(2) Persons erecting fences, installing driveways, sidewalks, curb and gutter, or parking lots.~~

~~(~~32.~~)~~ Persons engaged in snow removal activities.

~~(4) Federal, State, County, and City agencies.~~

~~(~~53.~~)~~ Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this subsection.

~~C~~D. **Term.** Registrations issued pursuant to this section shall expire on December 1 of each calendar year.

Subd. 5. Permit Required, Bond; Exceptions. No person shall obstruct, excavate, dig, tunnel, trench, or install any facilities, equipment or improvements above, on, or beneath the

surface of any right-of-way in the City or any property owned by the City without first obtaining a permit pursuant to this subsection.

A. Application~~;~~ Fee. An application for a ~~P~~permit shall be made on forms provided by the City and shall be accompanied by the fees ~~set forth~~ as established by Council resolution ~~which are established to reimburse the City for City costs~~. If the work is to be performed by an agent, contractor or subcontractor on behalf of a registrant, such application shall be signed by the registrant. The application shall also be accompanied by the following:

~~(~~1.~~)~~ Scaled drawings showing the location of all facilities and improvements proposed by the applicant.

~~(~~2.~~)~~ A description of the methods that will be used for installation.

~~(~~3.~~)~~ A proposed schedule for all work.

~~(~~4.~~)~~ The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work.

~~(~~5.~~)~~ The location of any public streets, sidewalks~~,~~ ~~or~~ alleys or public utilities that will be disrupted by the work.

~~(~~6.~~)~~ A description of methods for restoring any public improvements disrupted by the work.

7. Permits will not be issued until all requirements of this section have been received including original signature, proof of insurance, and surety bond.

~~(~~78.~~)~~ Any other information reasonably required by the City Engineer.

B. Security. For companies not operating under a franchise with the City, a surety bond, letter of credit or cash deposit in the amount determined by the City Engineer or City Manager but not less than $5,000, shall be required from each applicant. A surety bond shall be from a corporate surety authorized to do business in the State. Security required pursuant to this subsection B shall be conditioned that the holder will perform the work in accordance with this section and applicable regulations, will pay to the City any costs incurred by the City in performing work pursuant to this section; and will indemnify and save the City and its officers, agents and employees harmless against any and all claims, judgment or other costs arising from any excavation and other work covered by the permit or for which the City, Council or any City officer may be liable by reason of any accident or injury to persons or property through the fault of the permit bolder, either in improperly guarding the excavation or for any other injury resulting from the negligence of the permit holder. The bond, letter of credit or cash deposit shall be released by the City upon completion of the work and compliance with all conditions imposed by the permit. For permits allowing excavations within public streets, and right-of-way, such bond, letter of credit or cash deposit shall be held for a period of 36 months to guaranty the adequacy of all restoration work.

C. Permit ~~Issuance;~~ Conditions. The City Engineer~~,~~ ~~or~~ City Manager, or designee shall grant a permit upon finding the work will comply with applicable sections of this code. The permit shall be kept on the site of the work while it is in progress, in the custody of the individual in charge of the work. The permit shall be exhibited upon request made

by any City official or police officer. The City Engineer, ~~or~~ City Manager, or designee may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public. No permit shall be issued to anyone who has failed to register in accordance with Subdivision 4 of this code.

D. Exceptions. No permit shall be required for the following:

~~(~~1.~~)~~ Landscaping work permitted by the City pursuant to site improvement agreements.

~~(2) Driveways, sidewalks, curb and gutter and other facilities permitted by the City pursuant to site improvement agreements.~~

~~(~~32.~~)~~ Snow removal activities.

Subd. 6. Diligence in Performing Work. Work shall progress in an expeditious manner as reasonably permitted by weather conditions until completion in order to avoid unnecessary inconvenience to ~~traffic~~ the public. In the event that the work is not performed in accordance with applicable regulations pertaining to excavations and utility connections, or the work is not done in an expeditious manner, or shall cease or be abandoned without due cause, the City may, after 48 hour notice to the permit holder, perform any emergency work as necessary, or otherwise make the work area safe to the general public ~~correct the work and fill the excavation or repair the street~~. The entire cost of such work shall be paid by the permit holder upon demand made by the City. The financial guarantees made per Subdivision 5(B) of this code may be used by the City to reimburse itself for the City's incurred costs including its private engineering consulting fees and attorney fees to complete the work under this section.

Subd. 7. Standards During Construction or Installation. The permit holder shall comply with the following standards when engaging in the work:

A. Take such precautions as are necessary to avoid creating unsanitary conditions. Observe and comply with all laws, rules and regulations of the State and City.

B. Conduct the operations and perform the work in a manner as to ensure the least obstruction and interference to traffic.

C. Take adequate precautions to ensure the safety of the general public and those who require access to abutting property.

D. If required by the City Engineer, or designee, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to such adjoining properties.

E. In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford it restricted use of the area and comply with MN MUTCD traffic safety signing requirements.

F. Exercise precaution at all times for the protection of persons, including employees and property.

G. Protect and identify excavations and work operations with barricade flags, and if required, by flagmen in the daytime, and by warning lights at night.

H. Provide proper trench protection as required by O.S.H.A. when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation.

I. Protect the root growth of trees and shrubbery.

J. Installation of pipe (utility conductors) under Portland Cement Concrete, asphalt concrete, or other high-type bituminous pavements shall be done by jacking, auguring or tunneling as directed by the Engineer unless otherwise authorized. HDPE sleeving shall be an acceptable casing or sleeving material for telecommunications installations.

K. When removing pavement of Portland Cement Concrete, asphalt concrete or high-type built-up bituminous surfacing, the pavement shall be removed on each side of the trench or excavation a distance of ~~nine inches~~ one (1) foot beyond the trench width and length, or to adjacent joint line as directed by a city representative in order to provide a shoulder and solid foundation for the surface restoration.

L. ~~To obtain a straight edge and neat-appearing opening in pavement surfaces, the following procedure is required:~~ All right-of-way surface cuts shall have a straight edge or neat appearing opening that may require a full depth saw cut or otherwise approved method directed by the city representative.

~~(1) Portland Cement Concrete Pavement - The surface shall be saw-cut to 1/2 the thickness of the concrete, and the concrete broken out by sledge or pneumatic hammer chisel.~~

~~(2) Asphalt Concrete - The surface shall be cut full depth by pneumatic hammer chisel.~~

M. Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be ~~sheathed~~ shored and braced depending upon location and soil stability, and as directed by the City.

N. Excavations, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage.

O. All backfilling must be placed in six inch layers at optimum moisture and compacted with the objective of attaining 100% ~~of AASHO~~ proctor density. Compaction shall be accomplished with ~~hand,~~ pneumatic or vibrating compactors as appropriate.

P. Backfill material shall be ~~Class 5,~~ select grading material or material specified by ~~or better at the judgment of~~ the City Engineer. Backfilling with the material from the excavation may be permitted provided such material is granular in nature and acceptable to the City Engineer.

Q. Compacted backfill shall be brought to subgrade elevation and shaped to match pre-existing profile of the road ~~street grade and crowned at the center not more than one inch~~. Backfill procedures shall provide for no settlements. Settlements which occur within a three-year warranty period shall be repaired in a timely manner. Permit holder shall be notified by the City within 15 calendar days to have necessary repairs performed from the nuisance condition. If permit holder cannot abate the repairs within

the specified time period, an approved Plan for Compliance must be filed with the City. If remedial action is not taken, the City will abate the nuisance and charge all costs incurred therein against the applicant in accordance to Section 9.77 Nuisance Abatement. ~~The City may authorize another contractor to make the repair if it is not done in a timely manner. Reimbursement will be made to the City for all repair costs.~~

R. Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.

S. ~~No lugs damaging to roadway surfaces may be used.~~ Upon completion, an inspection of the job site shall be made and the applicant shall be responsible for any damages caused by equipment within the general area of work.

T. Dirt or debris must be periodically removed during construction, and upon completion of the project within 24-hours.

U. Other reasonable standards and requirements of the City Engineer, or designee.

Subd. 8. Standards for Wireless Telecommunications Facilities.

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

Public rights-of-way are appropriate locations for wireless telecommunication facilities that present minimal impacts (i.e., small pole attachments that do not require new poles, do not require pole extensions, and do not have associated ground mounted equipment). Wireless telecommunication facilities that require greater heights than can be afforded by existing poles in the public right-of-way and that require ground mounted equipment are more appropriately sited outside the public right-of-way.

B. Wireless telecommunication facilities as pole attachments. Wireless that comply with the following requirements may be attached to existing public utility structures within the right-of-way after issuance of a pole attachment permit.

1. The wireless telecommunication facility shall not extend above the top of the existing public utility structure and the height of the existing public utility structure shall not be increased to accommodate the wireless telecommunication facility

2. If the public utility structure must be replaced to structurally accommodate the wireless telecommunication facility, the replacement public utility structure height shall not exceed the existing public utility structure height and the replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50%.

3. The wireless telecommunication facility shall not be larger than six cubic feet in volume and shall have no individual surface larger than four square feet.

4. The wireless telecommunication facility shall not extend outward from the existing pole or tower or arm thereof by more than two and one-half feet, except that an antenna one-half inch in diameter or less may extend an additional six inches.

5. The wireless telecommunication facility shall include no ground mounted equipment within the planned widened rights-of-way.

6. The wireless telecommunication facility shall not interfere with public safety communications.

7. Wireless telecommunication facilities in the right-of-way shall be removed and relocated at City request in accordance to the requirements of §6.06.17 (a) of this code.

8. The wireless telecommunication facility shall not block light emanating from the public utility structure and shall not otherwise interfere with the original use of the public utility structure.

C. Wireless telecommunication facilities as pole extensions or with ground mounted equipment. Wireless that require increased public utility structure height or that have ground mounted equipment may be erected in the public right-of-way only when in compliance with the following provisions and after issuance of a pole attachment permit or excavation permit.

1. The applicant shall demonstrate to the satisfaction of the City Manager or designee that the wireless telecommunication facility cannot be placed in a code complying location outside the right-of-way within one-quarter mile of the proposed location.

2. The replacement public utility structure, including lightning rods and all other attachments, shall not exceed the height of the existing public utility structure by more than 15 feet. Once the height of a public utility structure has been increased under the provisions of this section, the height shall not be further increased.

3. The replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50%.

4. The wireless telecommunication facility shall not extend outward from the public utility structure by more than two feet.

5. If feasible and desirable, as determined by the City Manager or designee, the replacement public utility structure shall match the original and surrounding public utility structures in materials and color.

6. The wireless telecommunication facility shall not interfere with public safety communications.

7. A pole attachment or excavation permit for a wireless telecommunication facility that has ground mounted equipment will be issued only if the issuing authority finds the following:

   (a) The ground mounted equipment will not disrupt traffic or pedestrian circulation;

   (b) The ground mounted equipment will not create a safety hazard;

   (c) The location of the ground mounted equipment minimizes impacts on adjacent property; and

   (d) The ground mounted equipment will not adversely impact the health, safety or welfare of the community.

8. Ground mounted equipment associated with the wireless telecommunication facility shall meet the following performance standards:

   (a) Be set back a minimum of ten feet from the back of curb;

   (b) Be separated from a sidewalk by a minimum of three feet;

   (c) Be set back a minimum of 50 feet from the nearest intersecting right-of-way line;

   (d) Be separated from the nearest ground mounted wireless telecommunication equipment installation on the same block face by a minimum of 330 feet unless the equipment is placed underground;

   (e) If located adjacent to residential uses, ground mounted equipment shall be limited to three feet in height above grade and 27 cubic feet in cumulative size;

   (f) If located adjacent to nonresidential uses, ground mounted equipment shall be limited to five feet in height above grade and 81 cubic feet in cumulative size;

   (g) Vegetative or other screening compatible with the surrounding area shall be provided around the ground mounted equipment if deemed necessary by the City Manager or designee.

9. Wireless telecommunication facilities in the right-of-way shall be removed and relocated at City request in accordance to requirements of § 6.06.17 (a) of this code.

D. New poles. The erection in the right-of-way of a new pole to support wireless telecommunication facilities is not allowed, except as a replacement of an existing public utility structure subject to the requirements of this section.

E. Charges. In addition to the permit fees, the City reserves the right to charge telecommunication providers for their use of the public right-of-way to the extent that

such charges are allowed under state law. Telecommunication providers shall be responsible for payment of property taxes attributable to their equipment in the public right-of-way.

Subd. ~~8~~9. Repair and Restoration.

A. Schedule. The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit~~.~~. The applicant must submit a repair schedule to the City due to ~~increased by as many days as work could not be done because of~~ extraordinary circumstances beyond the control of the permit holder~~, when work was prohibited as unseasonal or unreasonable or when extended by the City Engineer~~. In addition to repairing its own work, the permit holder must restore the general area of the work, and the surrounding areas, including any and all sidewalks, curb and gutter, catch basins, manholes, valves, paving and foundations, etc. ~~the paving and its foundations,~~ to the condition that existed before the commencement of the work but only to the extent the permit holder disturbed such surrounding areas.

B. General Standards. The permit holder shall perform repairs and restoration according to the standards and with the materials specified by City Engineer. The City Engineer 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. In exercising this authority, the City Engineer shall be guided by the following standards and considerations:

(1) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.

(2) The traffic volume carried by the right-of-way, the character of the neighborhood surrounding the right-of-way;

(3) The pre-excavation condition of the right-of-way, the remaining life-expectancy of the right-of-way infrastructure affected by the excavation;

(4) Whether the relative cost of the method of restoration to the permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and

(5) The likelihood that the particular method of restoration would be effective in slowing the ~~depreciation~~ life of the service of the right-of-way and infrastructure that would otherwise take place.

~~C. City Restoration. The permit holder may request that the City restore the right-of-way. If the City agrees to perform the work, the permit holder shall pay the City for repairs made at the established restoration costs. Notwithstanding this section, the City shall have no obligation to honor the permittee's restoration request.~~

~~D~~C. Guarantees. The permit holder shall guarantee its work and shall maintain it for 36 months following its completion. During this thirty-six month period it shall, upon notification from the City Engineer, promptly correct all restoration work to the extent necessary, using the method required by the Engineer.

Subd. ~~9~~10. Permit Limitations. Permits issued pursuant to this section are valid only for the area of the right-of-way specified in the application and the permit and only for the dates so specified. No work shall be extended beyond the permitted area or dates without a new permit being procured therefore, provided the City Engineer may extend the completion date of the work in accordance with Subdivision 8(A) of this code.

Subd. ~~10~~11. Denial of Permit. The City Engineer may deny a permit due to the following:

A. Failure to register pursuant to Subdivision 4 of this code.

B. A proposed excavation within a street or sidewalk surface that has been constructed or reconstructed within the preceding five years unless the City Engineer or City Manager determines that no other locations are feasible or when necessitated by an emergency.

C. The applicant is subject to revocation of a prior permit issued pursuant to this section.

D. The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival or any other similar event.

E. The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way as provided in Subdivision 15(C) of this code.

F. Businesses or residences in the vicinity will be unreasonably disrupted by the work.

G. The proposed schedule conflicts with scheduled total or partial reconstruction of the right-of-way.

H. The applicant fails to comply with the requirements of this section or other sections of this code.

Subd. ~~11~~12. Emergency Work. A registrant may proceed to take whatever actions are necessary to respond to an 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 section for the actions it took in response to the emergency.

If the City Engineer becomes aware of an emergency, the Engineer shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City Engineer may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities or equipment occasioned the emergency.

Subd. ~~12~~13. Revocation of Permits. The City Engineer, ~~or~~ City Manager, or designee may revoke any permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, this code, rule or regulation, or any condition of the permit which substantial breach shall continue uncured for 10 calendar days after the issuance of a written order of the City Engineer. A substantial breach of a permit holder shall include, but shall not be limited to, the following:

A. The violation of any material provision of the permit;

B. An evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

C. Any material misrepresentation of fact in the application for a permit;

D. The failure to maintain the required bonds and insurance;

E. The failure to complete the work in a timely manner; or

F. The failure to correct a condition indicated on an order issued by the Engineer.

Subd. 13. Appeal.

A. Filing of Appeal. Any person aggrieved by, i) The denial of a permit application, ii) the denial of a registration, iii) or the revocation of a permit ~~or, iv) the application of the fee schedule imposed by Subdivision 3 of this code~~ may appeal per Chapter 19, Administrative Hearing Procedures. ~~to the Council by filing a written notice of appeal with the City Clerk~~. Said notice must be filed within 20 days of the action causing the appeal.

B. ~~Notice of Hearing. The Council shall hear the appeal not later than 30 days after the date the appeal is filed. Notice of the date, time, place, and purpose of the hearing shall be mailed to the appellant not less than 10 days before the date of the hearing.~~

~~C. Hearing and Decision. The Council shall, at such hearing, hear and consider any evidence offered by the appellant, the City Engineer, and anyone else wishing to be heard. After hearing the oral and written views of all interested persons, the Council shall make its decision at the same meeting or at a specified future meeting.~~

Subd. ~~14~~15. Mapping. Within ~~120~~ 60 days following completion of any work pursuant to a permit, the registrant shall provide the City Engineer accurate maps and drawings certifying the "as-built" location of all facilities and equipment installed, owned and maintained by the registrant. Such maps and drawings shall indicate both the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the City's electronic mapping system. Failure to provide maps and drawings in accordance with this subsection shall be grounds for revoking the permit holder's registration.

Subd. ~~15~~16. Location of Facilities and Equipment.

A. Undergrounding by Telecommunications Right-of-Way Users. Any new construction and the installation of new equipment and replacement of old equipment of telecommunication right-of-way users shall be underground or contained within buildings or other structures in conformity with applicable codes. Provided, telecommunications right-of-way users may attach equipment and facilities to existing poles and structures maintained by a service or utility service.

B. Corridors. The City Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment that is or, pursuant to current technology, the City Engineer expects will someday be located within the right-of-way. All permits issued by the City Engineer involving the installation or replacement of equipment shall designate the proper corridor for the equipment at issue.

C. Limitation of Space. To protect health and safety, the City Engineer shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the City Engineer 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 equipment 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.

Subd. ~~16~~17. Relocation.

A. Relocation for City Purposes. A registrant shall promptly but in no event more than 120 days of the City's request, permanently remove and relocate at no charge to the City, any facilities or equipment if and when made necessary by a change in the grade, alignment or width of any right-of-way, by the construction, maintenance or operation of any City facilities or to protect the public health, safety and welfare. The registrant shall restore any rights-of-way to the condition it was in prior to removal and relocation.

B. Undergrounding of Relocated Telecommunications Facilities. A telecommunications right-of-way user shall relocate all above ground facilities and equipment to underground locations at its own cost and expense at the City's request when, i) the City requires the relocation of all telecommunications facilities and equipment to underground locations or ii) structures or poles to which the registrant's facilities or equipment is attached are abandoned or removed by the owner of such structures or poles.

Subd. ~~17~~18. Right-of-Way Vacation.

A. Reservation of Right. If the City vacates a right-of-way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant facilities and equipment, the City shall reserve, to and for itself and all registrants having facilities and equipment in the vacated right-of-way, the right to install, maintain and operate any facilities and equipment in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.

B. Relocation of Equipment. If the vacation requires the relocation of registrant facilities and equipment; and (a) if the vacation proceedings are initiated by the registrant, the registrant must pay the relocation costs, or (b) if the vacation proceedings are initiated by the City, the registrant must pay the relocation costs unless otherwise agreed to by the City and the registrant; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, such other person or persons must pay the relocation costs.

Subd. ~~18~~19. Abandoned and Unusable Equipment.

A. Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:

1. Provide information satisfactory to the City Engineer that the registrant's obligations for its equipment in the right-of-way under this section have been lawfully assumed by another registrant; or

2. Submit to the City Engineer an action plan for the removal or abandonment of equipment and facilities. The City Engineer shall require removal of such facilities and equipment if the City Engineer determines such removal is necessary to protect the public health, safety and welfare. The City Engineer may require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and equipment.

B. Abandoned Facilities Equipment. Facilities and equipment of a registrant located on the surface of or above a right-of-way or on City property which, for two years, remains unused shall be deemed to be abandoned. Such abandoned equipment is 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, i) abating the nuisance, or ii) requiring removal of the equipment or facilities by the registrant, or the registrant's successor in interest.

C. Removal of Underground Equipment. Any registrant who has unusable and abandoned underground facilities or equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, to the extent such facilities or equipment is uncovered by such excavation unless this requirement is waived by the City Engineer or City Manager.

Subd. ~~19~~20. Indemnification and Liability.

A. Limitation of Liability. By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability (a) for injures to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

B. Indemnification. By registering with the City, a registrant agrees, or by accepting a permit under this section, a permit holder is required, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind including the City's reasonable attorney fees and costs arising out of the construction, presence, installation, maintenance, repair or operation of its equipment, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its equipment, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf, including but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise

available to the registrant or to the City and the registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

Subd. ~~20~~21. Franchise Holders. If there is a conflict in language between the franchise of a person holding a franchise agreement with the City and this section, the terms of the franchise shall prevail.

(Ord. of 2-28-77; Ord. of 3-9-81; Ord. of 2-22-99)

Sec. 6.07. - Vacation of Streets.

The vacation of any public alley, street or ground shall be in accordance with the provisions of the City Charter. Each petition for vacation of a public alley, street or ground shall be accompanied by a nonrefundable application fee ~~of one hundred twenty dollars ($120) payable to the City Treasurer~~ as established by resolution of the City Council. No petition shall be accepted unless accompanied by the application fee. In the event the City is the petitioner for the vacation, no application fee shall be required.

(Ord. of 2-28-77; Ord. of 2-8-82)

Sec. 6.08. - Fires, Signs and Obstructions in ~~Streets~~ the Public Right-of-Way.

Subd. 1. Obstructions. It is unlawful for any person to erect or place any barricade, fence or obstruction upon any public ~~street~~ right-of-way without having first obtained a ~~written~~ permit for such erection or placement from the City Manager or designee. Any such erection or placement shall be performed only in compliance with the conditions upon which such permit was issued.

Subd. 2. Fires. It is unlawful for any person to build or maintain any fire upon any public ~~street~~ right-of-way.

Subd. 3. Signs and Appurtenances. Except as otherwise provided in the City Code, it is unlawful for any person to place or maintain any sign or appurtenance in or upon any public ~~street~~ right-of-way.

(Ord. of 2-28-77)

Sec. 6.11. - Parades.

Subd. 1. Definition. The term "parade" means any movement or procession consisting of animals, persons or vehicles, or combination thereof, except a funeral procession, upon any public alley, sidewalk or street, which moves as a body and impedes or affects the unobstructed flow of traffic or does not comply with any traffic control or regulation.

Subd. 2. Permit Required. It is unlawful for any person to conduct or participate in any parade upon any public alley, sidewalk or street unless and until a permit to conduct such parade has been obtained from the City Manager or designee.

Subd. 3. Application. An application for a ~~parade~~ permit shall be made, at least ~~fourteen (14) days~~ six (6) weeks prior to the date of the proposed parade, to the City Manager or designee, and shall be accompanied by an application fee in an amount established by resolution of the City Council. The application shall set forth the name of the parade sponsor, the parade route, the estimated time of commencement and termination, and a description of the participating units, and shall be executed by the applicant or an agent or representative thereof.

(Ord. of 10-13-2003)

Subd. 4. Procedure and Granting. The City Manager or designee shall refer any such application to ~~the Director of Public Safety for investigation~~ a review committee. If, upon completion of such ~~investigation~~ review, the ~~Director of Public Safety~~ committee finds that the proposed parade will not cause a hazard to persons or property, that the proposed parade will not cause unreasonable inconvenience to the public, and that adequate arrangements for direction and control of traffic have been made, the ~~Director of Public Safety~~ committee shall endorse acceptance upon the application and return the application to the City Manager or designee who shall then issue the ~~parade~~ permit. If the ~~Director of Public Safety~~ committee finds that the proposed parade will cause a hazard to persons or property, that the proposed parade will cause unreasonable inconvenience to the public, or that adequate arrangements for direction and control of traffic have not been made, the ~~Director of Public Safety~~ committee shall enter upon the application any such finding and shall return the application to the City Manager or designee. A ~~who shall not issue the parade~~ permit ~~unless and~~ shall not be issued until the objections of the ~~Director of Public Safety~~ committee are ~~removed~~ resolved by the applicant.

(Ord. of 2-28-77)

~~**Subd. 5. Denial and Appeal.** If the City Manager denies the parade permit application, the applicant can appeal the denial to a committee comprised of the Mayor, the President of the City Council, and a representative from the Multi Modal Transportation Committee. The appeal must be filed with the Mayor no later than one full business day following the receipt of the denial of the permit by the City Manager. The committee shall meet to consider the denial within three (3) business days of the filing of the appeal and shall render its decision within 24 hours of its meeting. The decision of the committee shall be final and binding upon the City and the applicant. The committee shall make a reasonable effort to render a decision prior to the scheduled time of the parade.~~

(Ord. of 8-28-95; Ord. of 10-12-2009)

Sec. 6.13. – ~~Curbcuts~~ Vehicular Access.

It is unlawful for any person to build, erect or maintain any ~~curbcut~~ vehicular access or other structure in, over, or upon any public street or sidewalk without first obtaining a permit for such building, erection, construction or maintenance from the City Council or City Manager. Application for such a permit shall be made to the City Manager or ~~the City Manager's~~ designee,

who shall, upon receipt of such application, conduct such investigation as deemed necessary by the City Manager or ~~his~~ designee, and where appropriate, submit to the Council a report of such investigation. The Council may grant or deny the permit, or grant such permit subject to such conditions as the Council may deem appropriate. The City Manager or ~~his~~ designee, without reference of the application to the City Council, may grant a permit for: (a) a ~~curbcut~~ vehicular access to allow driveway construction for a single residential lot upon which a single family dwelling is or will be located where such lot has access only to a public street and where the proposed ~~curbcut~~ vehicular access is in conformity with the planned ~~curbcut~~ vehicular access as detailed on the plat of the subdivision in which the lot is located, or (b) a ~~curbcut~~ to widen or reconstruct an existing ~~curbcut~~ vehicular access which widening or reconstruction meets City ~~curbcut~~ vehicular access standards.

(Ord. of 2-28-77; Ord. of 1-26-81; Ord. of 10-12-2009; Ord. of 8-27-2012)

Sec. 6.15. - Private Use of Poles.

Subd. 1. Permit Required. It is unlawful for any person, except a City employee acting within the course and scope of employment, to affix or attach to or suspend from any pole, tree, post or other plant or structure in the right-of-way of any public street or alley, any advertisement, banner, bill, flag, poster or sign of any nature without having first obtained a written permit therefore from the City.

Subd. 2. Application. Application for the permit required herein shall be made on forms provided by the City and shall state:

A. The name and address of the applicant;

B. Whether the applicant is a nonprofit club, corporation or organization;

C. The location of the proposed display of the items;

D. The number of items proposed to be displayed;

E. The text, if any, of all items proposed to be displayed;

F. The size and material of the items;

G. The proposed method of attachment;

H. An agreement indemnifying the City from all claims and demands which may arise as a result of such attachment or display;

I. The name and address of the insurer providing the insurance coverage required herein; and

J. The proposed period of display.

The application shall be submitted to the City ~~Clerk~~, for consideration ~~of the City Council,~~ by the City Manager or designee who shall act on such application within ten (10) days of its receipt ~~by the City Clerk~~. The application shall be deemed denied if not acted upon within such ten (10) day period.

(Ord. of 2-28-83, 1)

Subd. 3. Application Fee. Each application for a permit required by the provisions of this section shall be accompanied by an application fee in the amount ~~of five dollars ($5.00)~~ as established by resolution of the City Council, which fee shall be retained by the City whether or not a permit is issued. ~~There shall be no permit fee for any permit issued pursuant to this section.~~

Subd. 4. Condition of Permit. Each permit issued pursuant to this section shall be issued upon the following conditions:

A. Term. Each permit issued pursuant to this section shall be valid for the period, not to exceed six (6) months, set forth on the permit.

B. Indemnity. The permit shall indemnify and save harmless the City from any and all claims and demands which may arise as the result of the activities of the permitted pursuant to the permit.

C. Cost of Attachment. Each item displayed shall be affixed or attached and removed solely at the expense of the permitted.

D. Maintenance. The permittee shall maintain each item displayed in a clean, neat and orderly manner, and shall remove any item which may become torn or frayed.

E. Height. Each item displayed shall be affixed or attached at a height of not less than ten (10) feet above the ground adjacent to the object to which the item is affixed.

F. Removal. The permittee shall remove each item displayed prior to the expiration of the permit, or, in the event the item gives notice of an event, within forty-eight (48) hours of the completion of the event.

G. Obstruction. The permittee shall not display any item in such a manner as to interfere with traffic or to obstruct the view of any traffic control device.

H. Insurance. The permittee shall, at all times during the duration of the permit, maintain public liability insurance, naming the City as an additional insured party, in the amount of at least one hundred thousand dollars ($100,000) for any one (1) claimant and three hundred thousand dollars ($300,000) for any number of claimants arising out of a single occurrence with respect to the activities of the permittee pursuant to the permit, which insurance policy shall provide that the policy may not be canceled by any party, except upon at least ten (10) days' prior written notice to the City ~~Clerk~~. This insurance requirement may be waived by the City Manager where the permit will only authorize the placement of lightweight flexible posters or signs attached to a pole in such a manner that no edges protrude from the pole.

I. Purpose. The permit required by this section shall be granted only for civic charitable or nonprofit organizational purposes.

~~**Subd. 5. Appeal.** Any person denied a permit hereunder may make written appeal of such denial to the City Council. Any applicant seeking a review shall file a written notice of appeal with the City Clerk. The City Council will then review the determination of the City Manager to see whether or not the denial was correct and either affirm, reserve or modify the City Manager's action.~~

(Ord. of 2-28-83, 3; Ord. of 8-8-77)

Sec. 6.16. - Buildings, Structures or Encroachments in Right-of-Way.

Subd. 1. License Required. It is unlawful for any person, as owner, lessee, occupant or other person in control of any real property within the City, to install, place, build, erect, maintain, occupy or use upon any such property any building, structure or physical encroachment which, in whole or in part, is installed, placed, built, erected, maintained, occupied or used on any portion of the right-of-way of any public street or alley, whether such right-of-way exists by reason of statutory or common law dedication or easement, without first having obtained a written license therefore pursuant to the provisions of this section.

Subd. 2. Application. Application for the license required by the provisions of this section ~~6.16~~ shall be made on a form provided by the City and shall state:

A. The name and address of the applicant;

B. The interest of the applicant in the real property upon which the building, structure or encroachment to be licensed is or is proposed to be located;

C. The names and addresses of all record fee owners of such real property if not the applicant;

D. The names and addresses of all parties other than the applicant and the record fee owners having any interest in such property;

E. The legal description and street address of such property;

F. A description of the size and character of the building, structure or encroachment to be licensed;

G. A legal description of the area of the right-of-way upon which such building, structure or encroachment is or is proposed to be located;

H. A statement that the applicant shall and agrees to indemnify the City from all claims and demands which may arise as a result of the installation, placement, building, erection, maintenance, occupation or use of such building, structure or encroachment upon such right-of-way;

I. The name and address of the insurer providing the insurance coverage required herein;

J. A description of the facts requiring the issuance of the license for which application is made; and

K. A statement that the applicant understands and agrees that, if the license for which application is made is granted, the license shall be revocable, and that the applicant shall not acquire any vested rights thereunder.

The application shall be submitted to the City ~~Clerk~~, for the consideration of the City Council.

(Ord. of 2-28-83, 1)

Subd. 3. Application Fee. Each application for a license required by the provisions of this section ~~6.16~~ shall be accompanied by an application fee in an amount established by

resolution of the City Council, which fee shall be retained by the City whether or not a license is issued.

(Ord. of 2-28-83, 2; Ord. 10-13-2003)

Subd. 4. License Agreement. Each license issued pursuant to the provisions of this section ~~6.16~~ shall be embodied in a written license agreement between the City and the applicant and all record owners of such real property, which license agreement shall include the following:

A. Purpose. A statement of the purpose for which the licensee may occupy or use the right-of-way;

B. Term. A statement of the term of the license, to be determined by the City Council;

C. Limitation of Encroachment. A statement that the licensee shall not further encroach upon any right-of-way, except pursuant to a license issued by the City pursuant to the provisions of this section ~~6.16~~;

D. Indemnification. A statement that the license shall indemnify and save harmless the City from any and all claims and demands which may arise as a result of the installation, placement, building, erection, maintenance, occupation or use of such building, structure or encroachment upon such right-of-way;

E. Maintenance. A statement that the occupation or use licensed shall be maintained by the licensee in a clean, neat, orderly and safe manner;

F. Insurance. A statement that the licensee shall, at all times during the duration of the license, maintain public liability insurance, naming the City as an additional insured party, in the amounts of at least the maximum amounts of tort liability of the City pursuant to statute, with respect to the occupation and use of such right-of-way by the licensee, which insurance shall be evidenced by a policy providing, in part, that such insurance shall not be canceled or terminated by any party, except upon ten (10) days' prior written notice to the City ~~Clerk~~; and

G. No Vested Right Created. A statement that the issuance of the license shall not constitute or be construed as creating or establishing any vested right of the licensee or in to such right-of-way, and that the license shall be revocable by the City Council.

Subd. 5. Agreement to be Recorded. Each license agreement required by the provisions of subdivision 4 above shall either be recorded in the office of the appropriate County Recorder or filed with the appropriate Registrar of Titles, so as to place all successors and assigns of the licensee on notice of the provisions of such agreement.

Subd. 6. Standard of Issuance. No license shall be granted pursuant to the provisions of this section ~~6.16~~ unless and until the City Council shall determine that granting of the application will not endanger the public or interfere with the use of the public of the road or alley located within such right-of-way.

Subd. 7. Investigation. The City Council may, prior to the issuance of any license pursuant to this section ~~6.16~~, refer such application to any department or advisory committee

for the purpose of obtaining the recommendation of such department or committee with respect to such application.

(Ord. of 6-25-79)

~~Sec. 6.161. - Non Break-Away Mailbox Support Structures.~~

~~**Subd. 1. License Required.** It is unlawful for any person as owner, lessee, occupant or other person in control of any real property within the City to install, place, build, erect, maintain or use upon any such property a non break-away mailbox support structure, which is, in whole or in part located upon the right-of-way of any public street or alley, without first having obtained a written license pursuant to the provisions of Section 6.161.~~

~~**Subd. 2. Application.** Application for the license required by the provisions of this section shall be made on a form provided by the City and shall state:~~

~~A. The name and address of the applicant;~~

~~B. The street address of such property;~~

~~C. A statement that the applicant shall and agrees to indemnify the City from all claims and demands which may arise as a result of a non break-away mailbox support structure being upon such right-of way; and~~

~~D. A sketch or proposed layout of the proposed structure.~~

~~The application shall be submitted to the City clerk for review by the Building Inspector, who shall issue a license if the requirements of this section are met.~~

~~**Subd. 3. Application Fee.** Each application for a license required by the provisions of this Section 6.161 shall be accompanied by an application fee in an amount established by resolution of the City Council, which fee shall be retained by the City whether or not the license is issued.~~

~~**Subd. 4. Issuance of License.** No license shall be issued by the Building Inspector unless and until the following conditions are met:~~

~~A. Non break-away mailbox support structures may only be constructed on streets which are classified as residential;~~

~~B. The front of the non break-away mailbox support structure must be constructed a minimum of two (2) feet behind the face of the curb with the mailbox extending no more than forty-two (42) inches above the roadway in front of the curb;~~

~~C. The line of sight for the traveling public must not be impaired by the support structure;~~

~~D. Such other conditions as may be adopted by the City; and~~

~~E. The license will remain in effect until the support structure is removed from the right-of-way and shall be transferable to subsequent property owners.~~

~~**Subd. 5. Existing Structures.** Existing structures must be licensed by March 1, 1990. After March 1, 1990, unlicensed structures in violation of this section must be removed or brought into compliance.~~

~~**Subd. 6. New Construction.** Applicants must indicate on building permit applications the intent to construct a non break-away mailbox support structure and must be granted a license for the construction pursuant to the provisions of this section 6.161.~~

~~(Ord. of 12-18-89)~~

This Ordinance shall, in accordance with the provisions of Section 2.14 and 5.06 of the Mankato City Charter, become effective thirty (30) days after publication of notice of its adoption.

Adopted this _____ day of _____, 2018

_____
Eric T. Anderson
Mayor

Attest: _____
Renae Kopischke, CMC
Executive Assistant