

CHAPTER 94 STREETS AND SIDEWALKS

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GENERAL PROVISIONS

§ 94.01 OBSTRUCTIONS IN PUBLIC WAYS

(A) *Obstructions prohibited.* No person, except under a proper building permit issued by the Clerk-Administrator, shall obstruct or encumber any sidewalk, street, avenue, alley, lane or other public thoroughfare in the city with any stone, brick, sand or lumber of any kind, building material of any kind or with any goods, wares or merchandise of any kind or any property, article or thing, except under the conditions hereinafter provided, nor maintain on any such public thoroughfare any hitching post, hitching rail or hitching device of any kind whatever.

(B) *Removal of obstruction and expense.* When any obstruction or encumbrance of any kind shall be put, placed or left on any street, sidewalk, alley, lane or public thoroughfare in the city contrary to the provisions of this chapter, the Clerk-Administrator or any police officer shall notify the person who put, placed or left such obstruction or encumbrance on the street, sidewalk or other public thoroughfare and the owner of the abutting property, if they are not the same person, to immediately remove the same. If the person fails or refuses to remove the obstruction or encumbrance within a reasonable time, such obstruction or encumbrance may be removed by city employees upon the order of the Clerk-Administrator, and they shall make an itemized account of the expenses, if any, incurred in or by reason of the removal and shall verify the account and file it with the Clerk-Administrator, and the expense shall be paid out of the General Fund, which expense may be recovered from the owner of such materials by sending an invoice and upon Council order by a civil suit.

§ 94.02 INSTALLATION OF STREET LIGHTING

(A) *Street light installation in new subdivisions.* All persons or corporations developing or subdividing lands within the city shall provide adequate street lighting in the subdivisions. The street lights shall include poles meeting city standards.

(B) *Submission of plan.* All such developers shall submit a plan of street lighting which shall meet city standards.

(C) *Financing street lighting.* The developer shall be responsible for the cost of lighting required by this section. He or she may either pay for it directly as part of his or her development costs or he or she may petition the City Council to include such cost as an improvement under and pursuant to M.S. Chapter 429, as it may be amended from time to time, and request the cost thereof to be assessed against benefitted property. The Council reserves the right to determine whether financing under M.S. Chapter 429, as it may be amended from time to time, is feasible.

§ 94.03 TELEPHONE POLES AND WIRES; PLACEMENT

(A) *Permit required.* No person, persons, company or corporation shall erect any poles for telephones or string wires or operate or maintain lines of telephones upon any street or alley or in any part or portion of the city until the person, persons, company or corporation shall have presented an application in writing to the Council, designating therein the streets and alleys where they desire to place the lines, specifying therein the size, length and character of poles to be used and the manner of setting same and kind of wire to be used for the approval of the Council and shall have procured a permit from the Council to erect the poles, place wires and construct the lines.

(B) *Specifications.* All poles used for telephone purposes shall be extended 24 feet above the grade and shall not be less than ten inches in diameter at base and shall be set firmly in the ground to the depth of five feet; all poles set within the platted portion of the city shall be placed parallel with the street or alley on which they are located; all poles and wires shall be erected and placed under the supervision of the Council; and the poles shall be painted as designated by the Council. All streets, alleys and sidewalks that shall be disturbed or damaged in the constructing, maintaining or repairing of any line of telephone shall be promptly replaced and repaired by the person, company or corporation constructing the line or lines.

(C) *Fee authorized.* Any person, persons, company or corporation who shall comply with the requirements of this section shall, after payment of the required fee as duly set by the Council from time to time and receiving a permit from the Council, be authorized and allowed to construct within the corporate limits of the city telephone lines in accordance with this section and to do any and all general telephone business in the city.

§ 94.04 SIDEWALK CAFÉ'S

(A) License required.

(1) Any person authorized to operate a restaurant, on designated premises within the City of Cambridge may apply to the City for a license to conduct a portion of the restaurant's authorized business in a sidewalk café on a part of the public way immediately adjoining the designated premises. Application shall be made on forms provided by the City. A restaurant operator, if also licensed under Chapter 114 Alcoholic Beverages of the Cambridge City Code for the on-sale of alcoholic beverages may also request an amendment to the license to allow this sidewalk cafe to be a part of the licensed premises.

(2) A scaled diagram will be required to be submitted with information as requested on the application, including but not limited to, the dimensions of the sidewalk café area, existing fixtures or other obstacles, dimension from sidewalk café to curb, position of tables, chairs, plant boxes, and anything else to be placed on the sidewalk, and the width of the sidewalk remaining for pedestrian use. A minimum of thirty-six (36) 40 inches clearance from all obstacles for pedestrians is required. A sixty (60) inch by sixty (60) inch passing space must be provided every two-hundred (200) feet unless the entire sidewalk is sixty (60) inches wide. In the case of establishments holding beer, wine or liquor licenses and wishing to serve alcohol in the sidewalk café, this diagram shall be considered a description of the extended premises for purposes of the request to amend the beer, wine or liquor license.

(B) Restrictions

(1) Each sidewalk café license shall specify the area in which the café may be operated. No café sale or service shall be permitted in any portion of the street designated for vehicular travel.

(2) No license shall authorize any permanent installation on the public way.

(3) Sidewalk café accessories (tables, chairs, and any other obstacles) may remain outside for 24 hours as long as they are maintained and they are a minimum of thirty-six (36) inches clearance from all obstacles for pedestrians.

(4) Sidewalk café's may only be open April 1 through October 15 of any year to provide for snow removal.

(5) Trash and debris shall be removed from the sidewalk café area each day, as well as any stains on the sidewalk or street.

(6) No signage or advertising is permitted in the sidewalk café area.

(7) No license shall authorize a sidewalk café at any location prohibited by state law, or this section, except as herein provided.

(8) Except as specifically provided herein, the ownership, operation and maintenance of a sidewalk café shall be subject to all applicable laws, ordinances and regulations.

(C) Indemnification and Insurance. Before a license is issued pursuant to this section, the applicant shall:

(1) Execute and deliver to the City Administrator, on a form prescribed by the City, an agreement in which the applicant agrees to indemnify, defend and hold the City harmless from any personal injury or property damage resulting from, or in any way related to, operation of the sidewalk café.

(2) File with the City Administrator, evidence of insurance protecting the applicant against liability imposed by law arising out of the ownership, maintenance or operation of such sidewalk café with limits in amounts consistent with the municipal tort liability limits set forth in Minn. Stat. Chapter 466, as amended from time to time. The City shall be named as an additional named insured in the policy providing the insurance. The policy shall further provide that it may not be canceled except upon 10 days' written notice filed with the City Clerk. No license issued pursuant to this section shall be valid at any time the insurance required herein is not maintained and evidence of its continuance filed with the City Clerk.

(D) Suspension and Revocation.

(1) Any license authorized by this section may be revoked at any time by the City. The license may also be suspended by the City for a period as the City shall determine.

(2) Upon conviction of the licensee, or the licensee's agent, or employee for the violation of any City ordinance or state law in connection with the ownership, maintenance, or operation of a sidewalk café, the license shall automatically become suspended. The suspension shall continue until the Council has acted.

(E) Separability. Every provision of this section shall be separable from every other provision, to the extent that if any provision shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other provision.

SNOW, ICE, DIRT AND RUBBISH REMOVAL FROM SIDEWALKS; REPAIR OF SIDEWALKS

§ 94.15 DEFINITIONS

For the purpose of this subchapter, the term ***Current Service*** means one or more of the following: snow, ice or rubbish removal from sidewalks and weed elimination from streets, grass plots adjacent to sidewalks or from private property and repair of sidewalks.

§ 94.16 REPAIR OF SIDEWALKS

(A) The owner of any property within the corporate limits of the city abutting a public sidewalk shall keep the sidewalk in repair and safe for pedestrians. Repairs shall be made in accordance with standard specifications approved by the Council and on file in the office of the Clerk-Administrator.

(B) The Public Works Director or his or her designated representative may make such inspections as are necessary to determine that public sidewalks are kept in repair and safe for pedestrians. If he or she finds that any sidewalk abutting on private property is unsafe and in need of repairs, he or she shall cause a notice to be served, by registered mail or by personal service, upon the record owner of the property and the occupant, if the owner does not reside within the corporate limits of the city or cannot be found therein, ordering such owner to have the sidewalk repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so, that the expense thereof must be paid by the owner, and that if unpaid it will be made a special assessment against the property concerned.

(C) If the sidewalk is not repaired within 30 days after receipt of the notice, the Public Works Director or his or her designated representative shall report the facts to the Council and the Council shall by resolution order the Public Works Director or his or her designated representative, his or her agents or employees, to repair the sidewalk and make it safe for pedestrians or order the work done by contract in accordance with law. The Public Works Director or his or her designated representative shall keep a record of the total cost of the repair attributable to each lot or parcel of property and report such information to the Clerk-Administrator.

§ 94.17 PERSONAL LIABILITY

The owner of property on which or adjacent to which a current service has been performed shall be personally liable for the cost of such service. As soon as the service has been completed and the cost determined, the Clerk-Administrator shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the Clerk-Administrator.

§ 94.18 ASSESSMENT

On or before September 1 of each year, the Clerk-Administrator shall list the total unpaid charges for each type of current service against each separate lot or parcel to which they are attributable under this subchapter. The Council may then spread the charges against property benefited as a special assessment under M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

§ 94.19 SPECIAL RULE FOR SIDEWALKS IN THE DOWNTOWN AREA

(A) For purposes of this section, "Downtown Area" means all properties lying within an area with the following boundaries, including sidewalks on both sides of the boundary streets:

- (1) North boundary: 2nd Avenue NW and NE between N. Buchanan Street and N. Birch Street;
- (2) East boundary: N. Buchanan and S. Buchanan between 2nd Avenue NE and 3rd Avenue SE;

(3) West boundary: N. Birch Street and S. Birch Street between 2nd Avenue NW and 3rd Avenue SW;

(4) South boundary: 3rd Avenue SW and 3rd Avenue SE between S. Birch Street and S. Buchanan Street.

(B) Owners and occupants of property adjacent to a sidewalk in the Downtown Area shall remove snow and ice from such sidewalks in accordance with all of the following requirements:

(1) Snow and ice formed or deposited on the sidewalk prior to 9:30 a.m. on Mondays through Saturdays shall be removed by 10:00 a.m. of the same day.

(2) Snow and ice forming or being deposited on the sidewalk shall be removed at least every four hours between the following hours:

(a) Monday through Friday:

1. From 8:00 a.m. or the time of opening of the business (whichever is earlier).
2. Until 6:00 p.m. or the time of closing of the business (whichever is later).

(b) Saturday:

1. From 8:00 a.m. or the time of opening of the business (whichever is earlier).
2. Until 12:00 noon or the time of closing of the business (whichever is later).

(3) Snow and ice shall be removed before it has accumulated to a depth of one inch between the following hours:

(a) Monday through Friday:

1. From 8:00 a.m. or the time of opening of the business (whichever is earlier).
2. Until 6:00 p.m. or the time of closing of the business (whichever is later).

(b) Saturday:

1. From 8:00 a.m. or the time of opening of the business (whichever is earlier).
2. Until 12:00 noon or the time of closing of the business (whichever is later).

(4) In all other cases, snow and ice shall be removed in accordance with (B)(1).

(C) No person shall throw, put or push or cause to be thrown, put or pushed any snow or ice taken from any private premises or building, or from the side of any street, lane or alley, into the roadway of any public street, lane or alley. It shall be the duty of the owners or occupants of any private premises or building from which such snow or ice is removed, immediately to remove such snow or ice from the roadway of such street, lane or alley.

(D) The city may from time to time remove snow or ice from sidewalks and roadways. However, neither the removal of snow or ice by the city nor the failure of the city to remove snow or ice shall relieve any person from his or her obligations under this section.

(E) Snow and ice left on sidewalks or streets in violation of this section may be removed by the city and charged or assessed against landowners in accordance with this section.

(1) City personnel will give notice to the owner or occupant that snow and ice must be cleared by a given deadline, which shall be no less than one hour after giving notice. Notice shall be given as follows:

(a) By delivering oral or written notice to the occupant; or

(b) By giving notice by telephone to any owner or occupant who has requested that such notice be given by telephone to a specified number given to the Director of Public Works; or

(c) If city employees are not immediately successful in giving notice under (a) or (b), by posting a written notice in a conspicuous location on the property.

(2) If snow and ice is not removed by the time specified in the notice described above, the city may remove such snow and ice using either city or contract forces and maintain accounts of costs and expenses incurred. The owner of the property adjacent to a sidewalk from which snow and ice is removed or, in the case of snow and ice placed in violation of division (C), the owner of the property from which the snow and ice was taken, shall be billed for such costs, payment of which shall be due within 30 days of the date of invoice. Unpaid charges will be levied as a special assessment against the owner's property.

SIDEWALK IMPROVEMENT DISTRICT

§ 94.30 DEFINITION

For the purpose of this subchapter, *Sidewalk* shall mean that part of the public street designed and improved for the use of pedestrians.

§ 94.31 SIDEWALK IMPROVEMENT DISTRICT ESTABLISHED

(A) Under and pursuant to M.S. § 435.44, as it may be amended from time to time, there is established one Sidewalk Improvement District in the city, which District consists of the public streets hereinafter named, together with the property abutting on such streets and the area hereinafter defined. There shall be constructed, reconstructed and maintained adequate sidewalks in such areas and locations by the city.

(B) This District and these areas and locations are described as follows:

(1) The sidewalk located on the west side of Main Street and Old North Main Street commencing at the intersection of Sixth Avenue NW and Old North Main Street, extending south to the intersection of Sixth Avenue SW and South Main Street;

(2) The sidewalk on the east side of North Main Street, commencing at the intersection of Fifth Avenue NE and North Main Street, extending south to the intersection of Second Avenue NE and North Main Street;

(3) The sidewalk located on the north side of First Avenue W, also known as Trunk Highway 95, commencing at the intersection of Main Street and First Avenue W, extending to the west to the intersection of North Fern Street and First Avenue W or Trunk Highway 95;
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(4) The sidewalk located on the south side of First Avenue West, or Trunk Highway 95, commencing at the intersection of South Main Street and First Avenue West, extending to the west to the intersection of South Fern Street and Trunk Highway 95 or First Avenue West;

(5) The sidewalk located on the north side of Sixth Avenue NW, commencing at the intersection of Old North Main Street and Sixth Avenue NW, extending west to the intersection of Sixth Avenue NW and North Cypress Street;

(6) The sidewalk located on the east side of North Cypress Street, commencing at the intersection of Sixth Avenue NW and North Cypress Street, extending to the north to the intersection of Eighth Avenue NW and North Cypress;

(7) The sidewalk located on the west side of North Cypress Street, commencing at the intersection of First Avenue West or Trunk Highway 95 and North Cypress, extending to the north to the intersection of North Cypress and Eighth Avenue NW;

(8) The sidewalk located on the west side of South Dellwood Street, commencing at the intersection of South Dellwood Street and First Avenue West, or Trunk Highway 95, extending south to the intersection of South Dellwood and Eleventh Avenue SW;

(9) The sidewalk located on the north side of Trunk Highway 293 which is a continuation of Eleventh Avenue SW, commencing at the intersection of Eleventh Avenue SW and South Dellwood, extending west and running around and through the campus of the Cambridge Regional Human Service Center to the intersection of East Rum River Drive and Trunk Highway 293;

(10) The sidewalk located on the east side of South Fern Street, commencing at the intersection of South Fern Street and Trunk Highway 293, extending to the south to the intersection of Ninth Avenue SW and South Fern Street;

(11) The sidewalk on the north side of Ninth Avenue SW, commencing at the intersection of Ninth Avenue SW and South Fern Street, extending to the east to the intersection of South Dellwood Street and Ninth Avenue SW;

(12) The sidewalk located on the east side of South Dellwood Street, commencing at the intersection of Eleventh Avenue SW and South Dellwood Street, extending to the south to the intersection of 18th Avenue SW and South Dellwood Street.

§ 94.32 TYPE OF CONSTRUCTION; ENGINEERING

All sidewalks constructed or reconstructed within the city shall be done in accordance with the specifications promulgated by the City Council and on file with the City Clerk-Administrator and under the direction of the City Engineer. No sidewalks shall be constructed or reconstructed without notification to the City Building Inspector and without first obtaining the proper engineering data from the City Engineer.

§ 94.33 OPTIONAL AREAS

All areas of the city not within the areas heretofore described as the Sidewalk Improvement District are optional areas of the city. Any sidewalks in optional areas may be removed by the City Council with written notice to the abutting property owners, and once removed, there shall be no obligation to maintain any public walkway. If any owner in an optional area wishes to construct a new sidewalk or repair an existing sidewalk, then such sidewalks in such optional areas shall be constructed, reconstructed and maintained in accordance with the same specification as sidewalks in the Sidewalk Improvement District. The city is authorized to repair defective sidewalks or replace the same under this subchapter or any existing ordinance or law, to charge abutting property owners personally for such work or to assess the same against his or her property and to add the cost of such work, or to assess the same against his or her property, and to add the cost of such work to such abutting owner's real estate taxes in any one year or years.

§ 94.34 ASSESSMENT FOR SIDEWALK IMPROVEMENTS AND/OR MAINTENANCE

(A) Assessment for sidewalk improvements and/or maintenance in the Sidewalk Improvement District shall be from the city's general revenue or pursuant to the assessment procedures of M.S. § 435.44, as it may be amended from time to time, as the City Council shall determine. If there is an assessment for sidewalk improvements or maintenance within the Sidewalk District herein established, these costs may be apportioned and assessed to all parcels or tracts of land located in the established district on a uniform basis as to each classification of real estate, notwithstanding whether the sidewalk is abutting the property. An indirect district benefit is found to be received by all parcels or tracts of land located in the assessment district without regard to location of sidewalks as it is deemed that all parcels or tracts of land within the assessment district benefit equally.

(B) The City Council may assess costs of all district sidewalk improvements and/or maintenance to a maximum of five years on equal and annual installments, plus interest on the unpaid balance at such interest rate is determined by the City Council.

§ 94.35 ICE AND SNOW A NUISANCE

(A) All snow and ice remaining upon public sidewalks not in the Sidewalk Improvement District is declared to constitute a public nuisance and shall be abated by the owner or tenant of the abutting private property within 48 hours after the snow or ice has fallen or accumulated.

(B) The city may cause to be removed from all public sidewalks beginning 72 hours after snow or ice has fallen or accumulated after notice has been given to the property owner and/or tenant. The City shall keep a record of the cost of the removal and may assess the cost of removal to the property owner.

(C) The City Clerk-Administrator shall upon direction of the Council, and on receipt of the information provided for in division (B) of this section, extend the cost of such removal of snow or ice as a special assessment against the lots or parcels of ground abutting on sidewalks which were cleared and such special assessments shall at the time of certifying taxes to the County Auditor be certified for collection as other special assessments are certified and collected.

(D) The City Clerk-Administrator shall in the alternative, upon direction of the Council, bring suit in a court of competent jurisdiction to recover from the persons owning land adjacent to which sidewalks were cleared as provided above, the costs of the clearing and the costs and disbursements of a civil action therefore.

(E) The City Clerk-Administrator shall present to the Council at the first meeting after snow or ice has been cleared from sidewalks as provided in this section the report of the properties which have been cleared, the costs thereof and shall request the Council to determine by resolution the manner of collection to be used as provided herein.

PUBLIC RIGHT-OF-WAY

§ 94.50 FINDINGS, PURPOSE AND ELECTION

(A) The city holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. To provide for the health, safety and wellbeing of its citizens and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. 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.

(B) 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 the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this section provides for the recovery of the city's costs associated with managing its rights-of-way.

(C) 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 2017 Session Laws, Chapter 94 amending the Act and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended.

This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

(D) Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant to Minn. Stat. 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

§ 94.51 DEFINITIONS

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Abandoned Facility. *A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user or deemed abandoned by this chapter.*

Applicant. Any person requesting permission to COLLOCATE OR PLACE A Facility in a right-of-way or to excavate or obstruct a right-of-way.

City. The City of Cambridge, Minnesota. For purposes of § 94.80, **city** also means the City of Cambridge's elected officials, officers, employees, and agents.

City Management Costs. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with utility fees; 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 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 of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 14.30 of this chapter.

Construction Performance Bond. Any of the following forms of security provided at the permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Surety bond or security of a form listed or approved under M.S. § 15.73, Subd. 3, as it may be amended from time to time in a form acceptable to the city;
- (4) Letter of credit, in a form acceptable to the city; or

- (5) Self-insurance, in a form acceptable to the city.

Collocate or Collocation. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by the city. (Note: A Co-location agreement may be required.)

Degradation. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way resulting in the need to reconstruct the right-of-way earlier than would be required if the excavation did not occur.

Degradation Cost. The cost to achieve a level of restoration as determined by the city at the time the excavation permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in proposed Minnesota Public Utilities Commission rules parts 7819.9900 to 7819.9950.

Degradation Fee. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation and which equals the degradation costs.

Department Inspector. Any person authorized by the Director to carry out inspections related to the provisions of this chapter.

Director. The Public Works-Utilities Director or her or his designee.

Delay Penalty. The penalty imposed as a result of unreasonable delays in right-of-way construction.

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 of facilities in order to restore service to a customer.

Equipment. Any tangible asset used to install, repair or maintain facilities in any right-of-way.

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

Excavation Permit. The permit which, pursuant to this 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.

Excavation Permit Fee. Money paid to the city by an applicant to cover the costs as provided in § 94.57.

Excavation Permittee. Any person to whom a permit to excavate a right-of-way has been granted by the city under this chapter.

Facility or Facilities. Any tangible asset in the right-of-way required to provide utility service, including, but not limited to, any type of cables, utility poles, wireless facilities, small wireless facilities, micro wireless facilities, wireless support structures, and wireline backhaul facilities.

Local Representative. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

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.

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

Patch or Patching. A method of pavement replacement that is temporary in nature. A **patch** consists of the compaction of the subbase and aggregate base and the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A **Patch** is considered full restoration only when the pavement is included in the city's five-year project plan.

Pavement. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permit. Has the meaning given "right-of-way permit" in Minnesota Statutes § 237.162.

Permittee. Any person to whom a permit to excavate or obstruct a right-of-way, or to collocate or place a small wireless facility or wireless support structure in the right-of-way, has been granted by the city under this chapter.

Person. An individual or entity subject to the laws and rules of this states, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Registrant. Any person who:

- (1) Has or seeks to have its equipment or facilities located in any right-of-way; or
- (2) In any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities in the right-of-way.

Restore or Restoration. The process by which a right-of-way is returned to the same condition and life expectancy that existed before excavation.

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

Right-Of-Way or Public Right-of-Way. The area on, below or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A **Right-Of-Way** does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

Right-Of-Way Permit. A permit to perform work in a public right-of-way, whether to collocate or place facilities in the right-of-way or to excavate or obstruct the right-of-way, including, but not limited to, the excavation permit and small wireless facility permit required by this chapter.

Right-of-Way User. (1) A “telecommunications right-of-way user” as defined by Minnesota Statutes section 237.162; 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.

Service or Utility Service. This term includes but is not limited to:

- (1) Those services provided by a public utility as defined in M.S. § 216B.02, Subds. 4 and 6, as it may be amended from time to time;
- (2) Telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy or power services;
- (3) The services provided by a corporation organized for the purposes set forth in M.S. § 300.03, as it may be amended from time to time;
- (4) The services provided by a district heating or cooling system;
- (5) Services of a cable communications systems as defined in M.S. Chapter 238, as it may be amended from time to time; and
- (6) Services of a telecommunication right-of-way user, including transporting of voice or data information; and
- (7) services provided by a cooperative electric association organized under M.S. Ch. 308A.

Small Wireless Facility.

- (1) A wireless facility that meets both of the following qualifications:
 - (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and

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

(2) A micro wireless facility.

Small Wireless Facility Permit. The permit which, pursuant to this chapter, must be obtained before a person or entity may place a small wireless facility or wireless support structure in a right-of-way. A small wireless facility permit allows the holder to install or erect a wireless support structure, or to collocate or place a small wireless facility on a right-of-way structure, or both, as described in such permit.

Small Wireless Facility Permit Fee. Money paid to the city by an applicant for a small wireless facility permit to cover the costs as provided in this subchapter.

Supplementary Application. An application made to excavate more of the right-of-way, or to place more or different facilities in the right-of-way, than allowed in, or to extend, a permit that had already been issued.

Telecommunication Rights-Of-Way User.

(1) 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 services, or transporting telecommunication or other voice or data information.

(2) For purposes of this chapter, a cable communication system defined and regulated under M.S. Chapter 238, as it may be amended from time to time; telecommunication activities related to providing natural gas or electric energy services; a public utility as defined in M.S. § 216B.02, as it may be amended from time to time, a city, a municipal gas or power agency organized under M.S. Chapter 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under M.S. Chapter 308A, as it may be amended from time to time, are not **Telecommunications Right-Of-Way Users** for purposes of this chapter, except to the extent these entities are offering wireless services.

Unusable Facilities. Facilities in the right-of-way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next 12 months or a potential purchaser or user of the facilities.

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

Wireless Facility.

(1) 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.

(2) Wireless facility does not include:

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

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

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

Wireline Backhaul Facility. A facility used to transport communications data by wire from a wireless facility to a communications network.

§ 94.52 ADMINISTRATION.

The Director is the principal city 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. (Ord. 365, passed 7-19-99)

§ 94.53 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY

(A) *Registration.* Each person who occupies, uses or seeks to occupy or use the right-of-way or place any equipment or facilities in the right-of-way, including persons with installation and

maintenance responsibilities by lease, sublease or assignment, must register with the Director. Registration will consist of providing application information and paying a registration fee.

(B) *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 Director.

(C) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the M.S. Chapter 216D, as it may be amended from time to time, "One Call" Law.

§ 94.54 REGISTRATION INFORMATION

(A) *Information required.* The information provided to the Director at the time of registration shall include but not be limited to:

(1) Each registrant's name, gopher one-call registration certificate number, if excavating; address and e-mail address, if applicable; and telephone and facsimile numbers.

(2) 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.

(3) A certificate of insurance or self-insurance:

(a) 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 Director;

(b) 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 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 wireless support structures and other telecommunication facilities, damage of underground facilities and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

(d) Requiring that the Director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(4) The city may require a copy of the actual insurance policies.

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

(6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from such Commission or other state or federal agency.

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

§ 94.55 EXCAVATION PERMIT REQUIREMENT

(A) *Excavation Permit required.*

(1) Except as otherwise provided in this code, no person may excavate any right-of-way without first having obtained an excavation permit from the Director to do so.

(2) 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) *Excavation Permit extensions.* No person may excavate the right-of-way beyond the date or dates specified in the permit unless the person:

(1) Makes a supplementary application for another excavation permit before the expiration of the initial permit; and

(2) A new excavation permit or permit extension is granted.

(C) *Delay penalty.* Notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, patching or restoration. The delay penalty shall be established from time to time by City Council resolution.

(D) *Excavation Permit display.* Excavation 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 Director.

§ 94.56 EXCAVATION PERMIT APPLICATIONS

(A) Application for an excavation permit is made to the Director.

(B) Excavation permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Registration with the Director pursuant to this chapter;

(2) Submission of a completed excavation permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities;

(3) Payment of money due the city for:

(a) Excavation permit fees, estimated restoration costs and other management costs;

(b) Prior excavations;

(c) Any undisputed loss, damage or expense suffered by the city because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the city;

(d) Franchise or user fees, if applicable.

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

(5) When an excavation permit is requested for purposes of installing additional facilities and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required.

§ 94.57 EXCAVATION PERMIT FEES

(A) *Excavation permit fee.* The excavation permit fee shall be established by a resolution of the City Council in an amount sufficient to recover the following costs:

- (1) The city management costs;
- (2) Degradation costs, if applicable.

(B) **Fees and Costs Limitations.** Fees and costs collected from a telecommunications right-of-way user or owner of a cable communications system awarded a franchise under M.S. Chapter 238 will be:

- (1) based on the actual costs incurred by the city;
- (2) based on an allocation among all users of the public right-of-way, including the city, which shall reflect the proportionate costs imposed on the city by each of the various types of uses of the public rights-of-way;
- (3) imposed on a competitively neutral basis; and
- (4) imposed in a manner so that aboveground uses of public rights-of-way do not bear costs incurred by the city to regulate underground uses of public rights-of-way.

The fees and costs will not be collected to recover costs caused by another entity's activity in the right-of-way.

(C) *Payment of permit fees.* No excavation permit shall be issued without payment of excavation permit fees. The city may allow applicant to pay such fees within 30 days of billing.

(D) *Nonrefundable.* Permit fees that were paid for a permit that the Director has revoked for a breach as stated in § 94.68 are not refundable.

§ 94.58 RIGHT-OF-WAY PATCHING AND RESTORATION

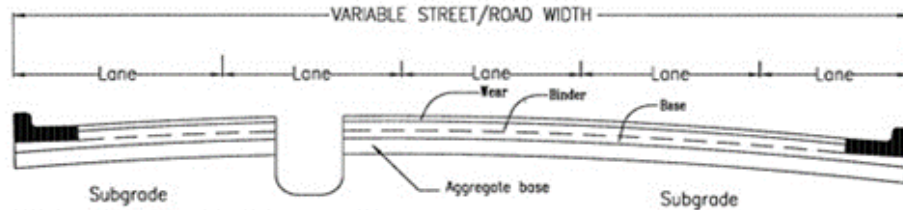
(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the excavation permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the excavation permittee or when work was prohibited as unseasonal or unreasonable under § 94.62.

(B) *Patch and restoration.* The excavation permittee shall patch his or her own work as required by Minnesota Rules 7819.9900 to 7819.33, Plates 1-13 as may be amended from time to time. The city may choose either to have the excavation permittee restore the right-of-way or to restore the right-of-way itself.

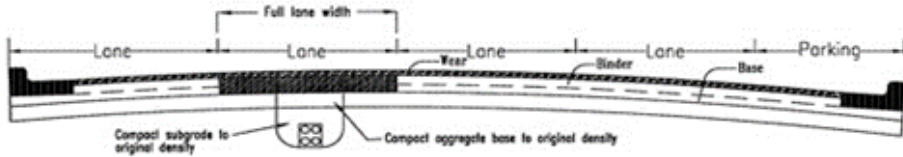
UTILITY TRENCH RESTORATION
TYPICAL PAVEMENT 0 TO 5 YEARS OLD

Date: 3-5-99

PLATE 1
No Scale



Note: Lane widths and number of lanes are variable



Note 1: Bituminous Pavement

- Full lane replacement of base and binder to the nearest construction joint or transverse crack
- Full street width mill & overlay of wearing course

Note 2: Concrete Pavement

- Full panel replacement for concrete pavement

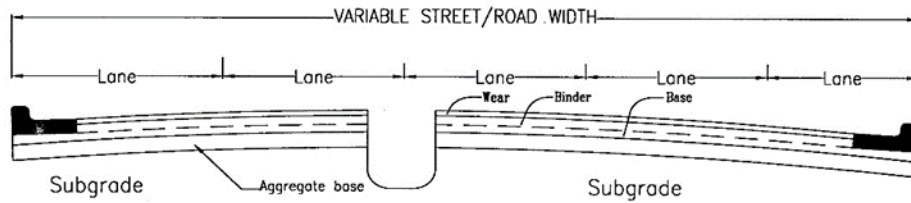
Note 3: All Other Types of Surfaces and Pavements

- Replacement with in-kind materials

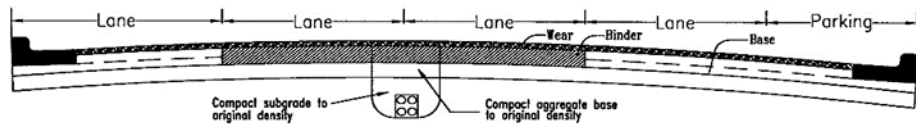
UTILITY TRENCH RESTORATION
TYPICAL PAVEMENT 0 to 5 YEARS OLD

Date: 3-5-99

PLATE 2
No Scale



Note: Lane widths and number of lanes are variable



Note 1: Bituminous Pavement

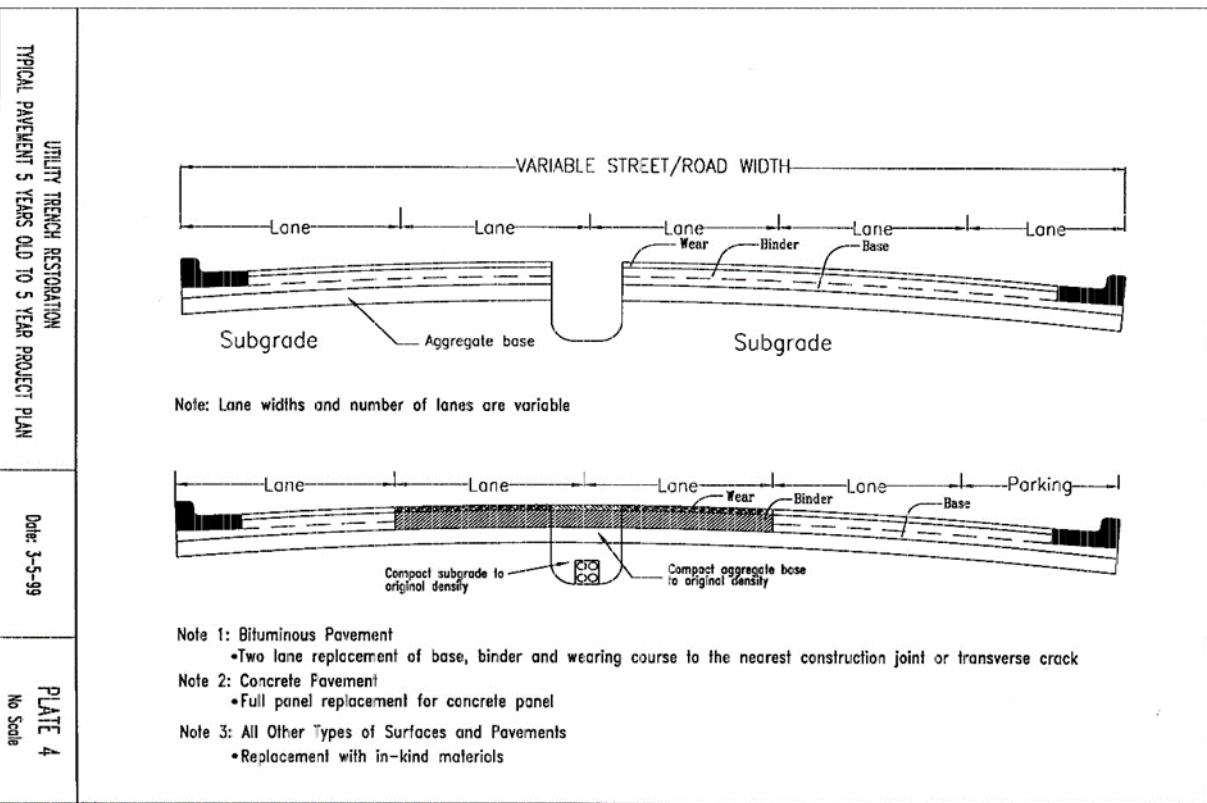
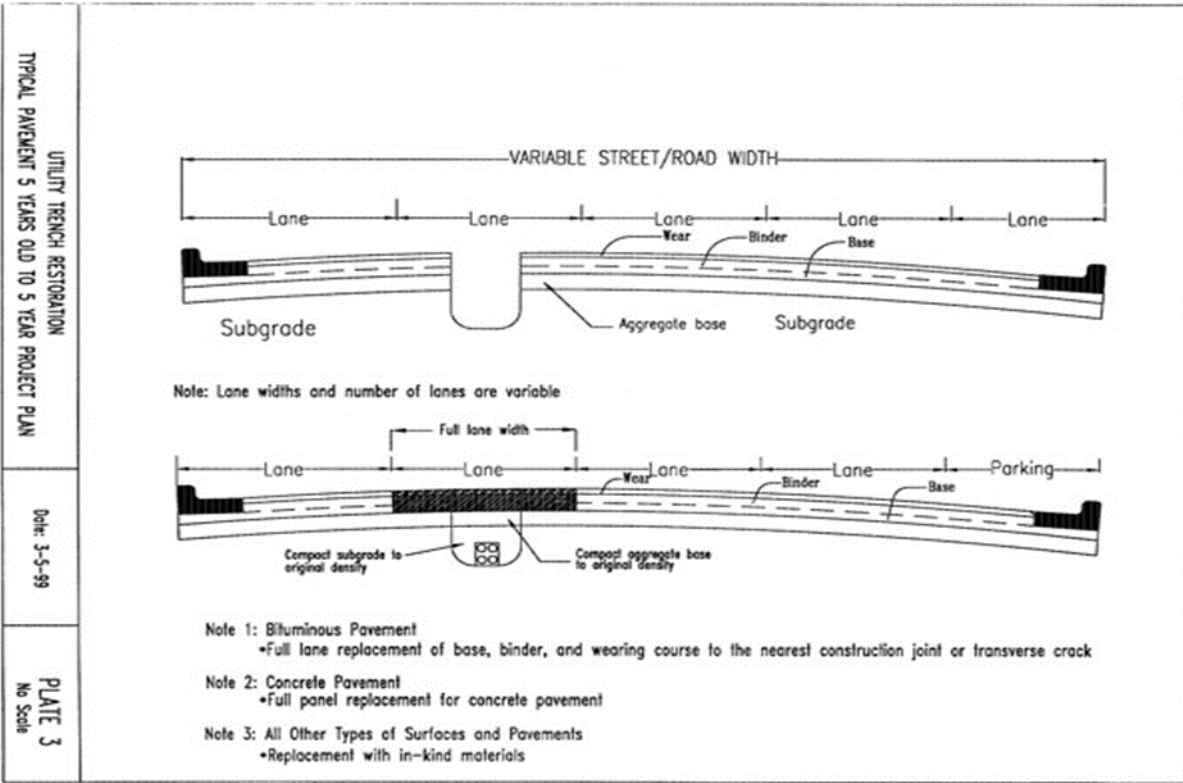
- Two lane replacement of base and binder to the nearest construction joint or transverse crack
- Full street width mill & overlay of wearing course

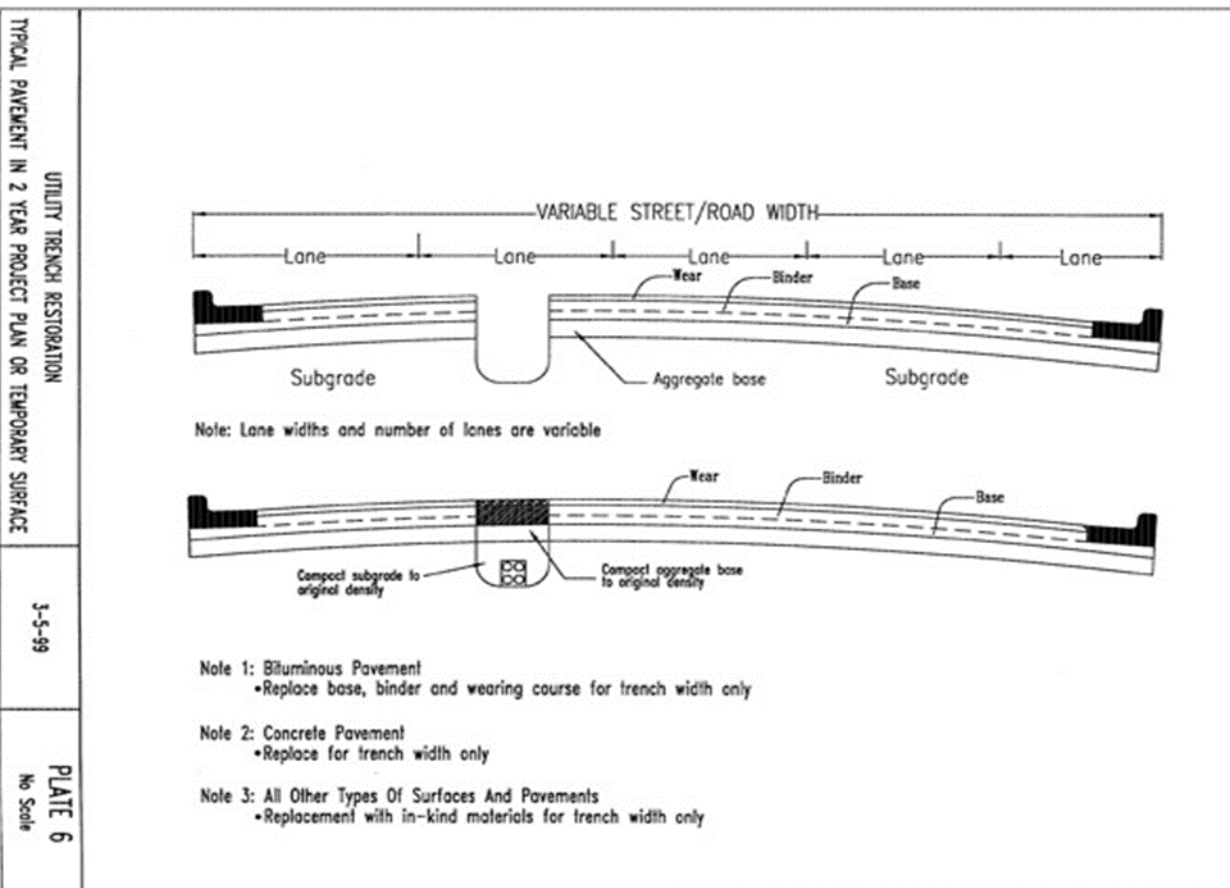
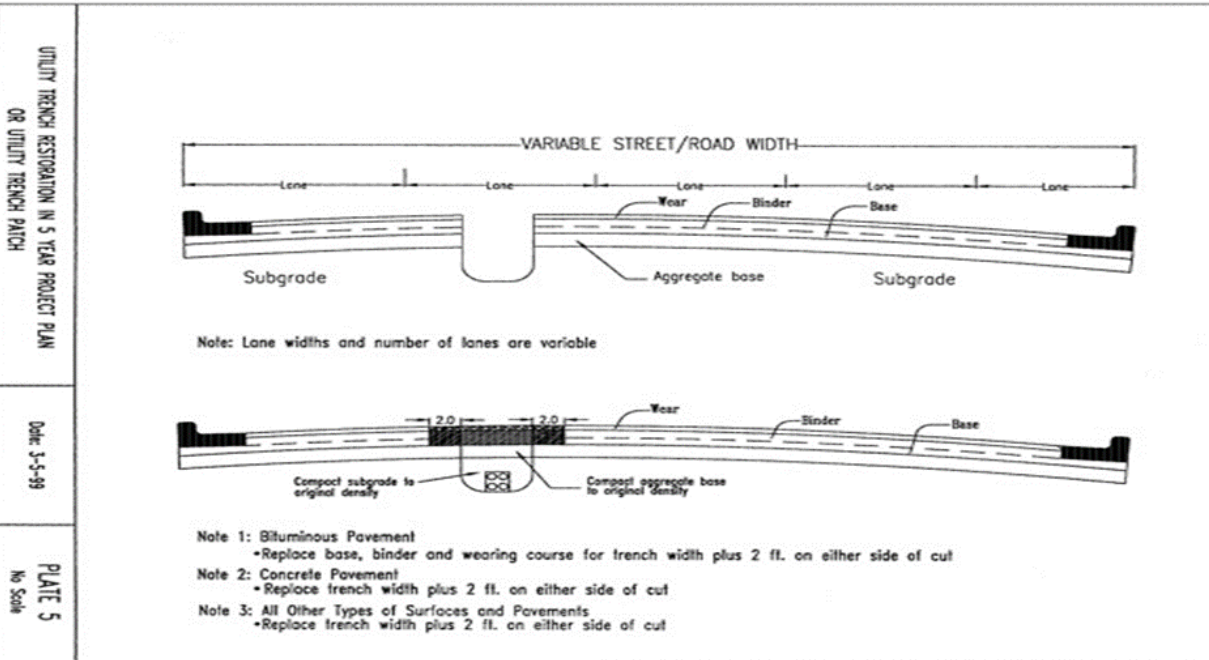
Note 2: Concrete Pavement

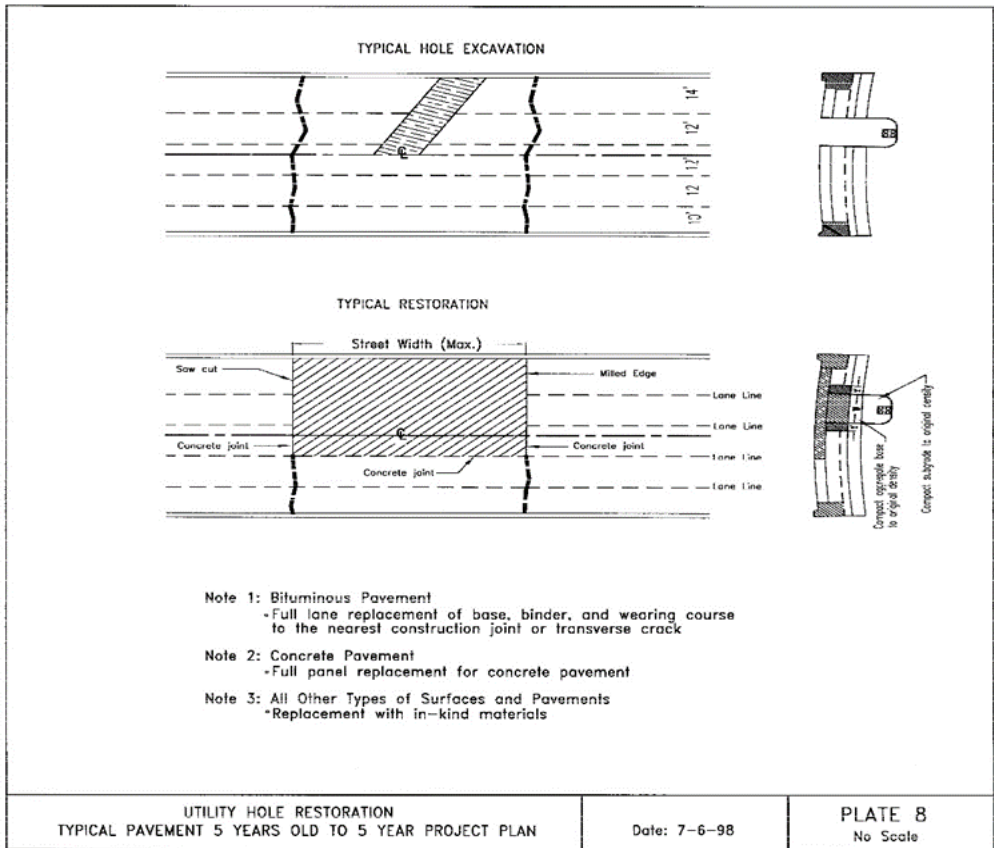
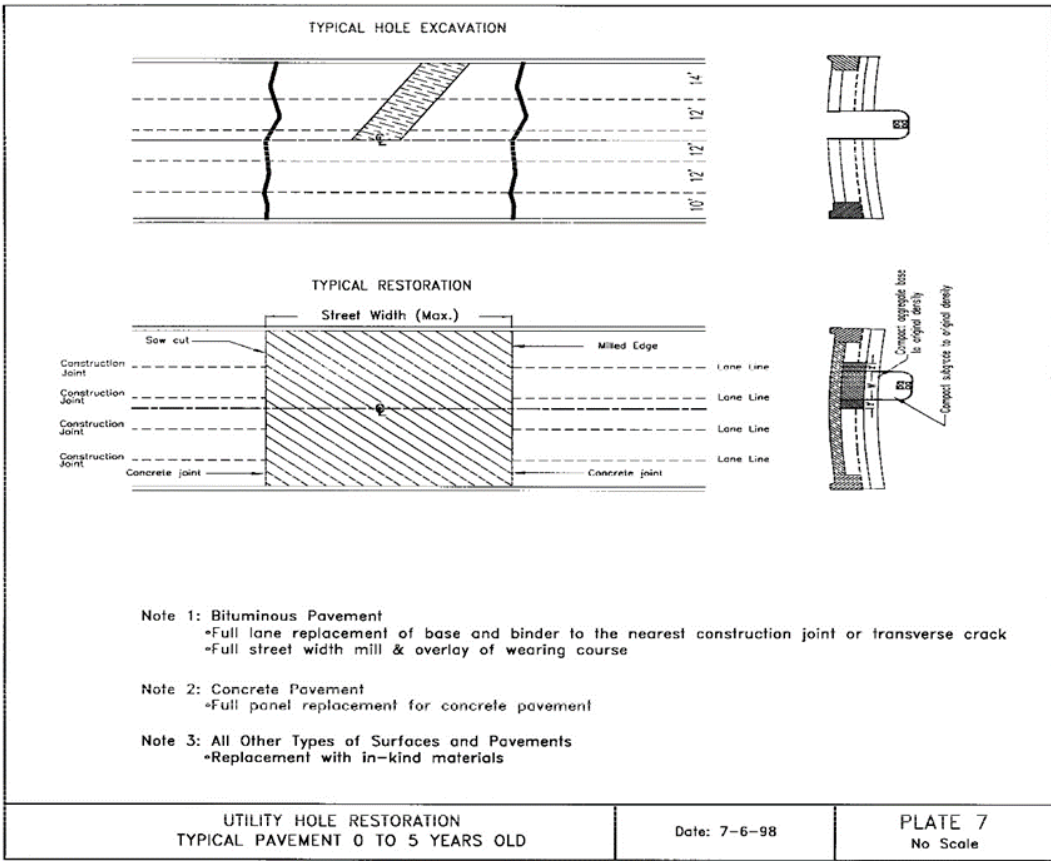
- Full panel replacement for concrete pavement

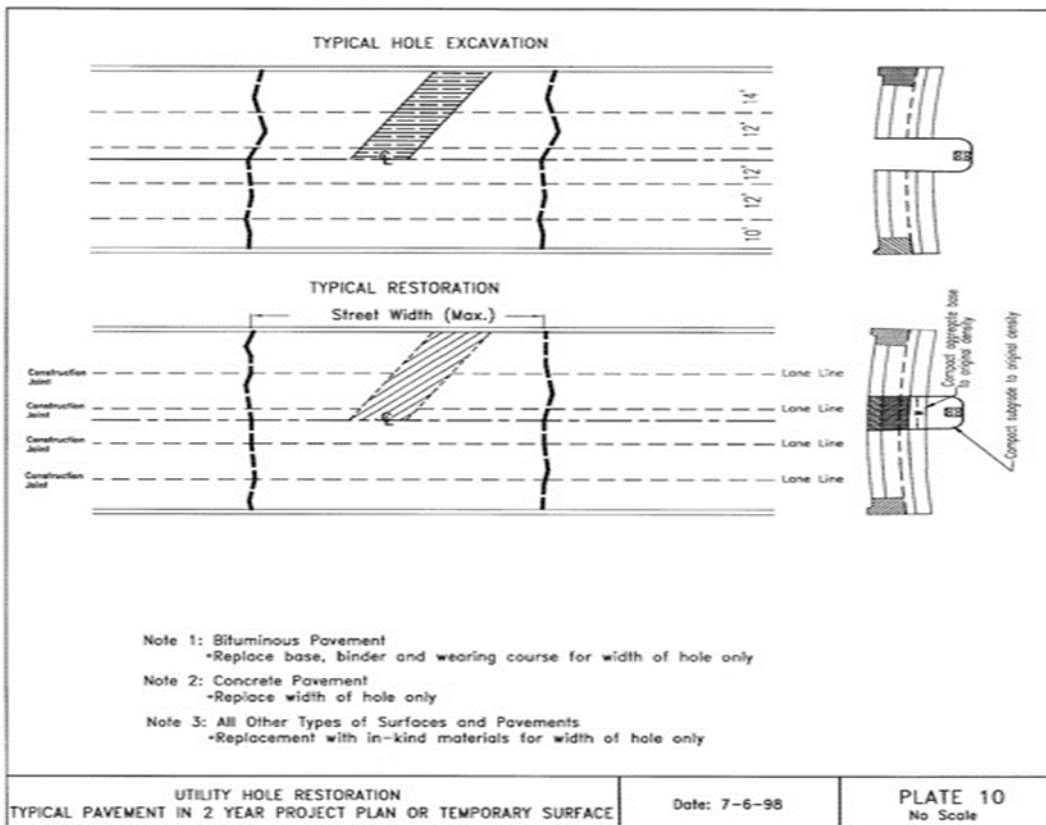
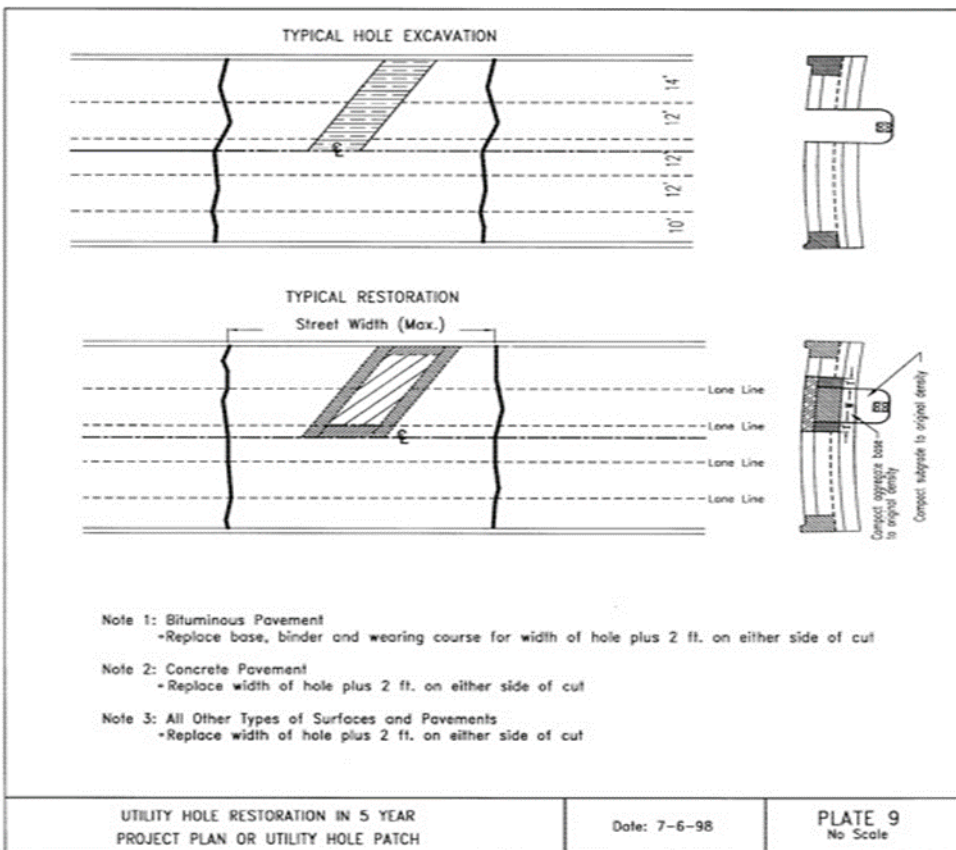
Note 3: All Other Types of Surfaces and Pavements

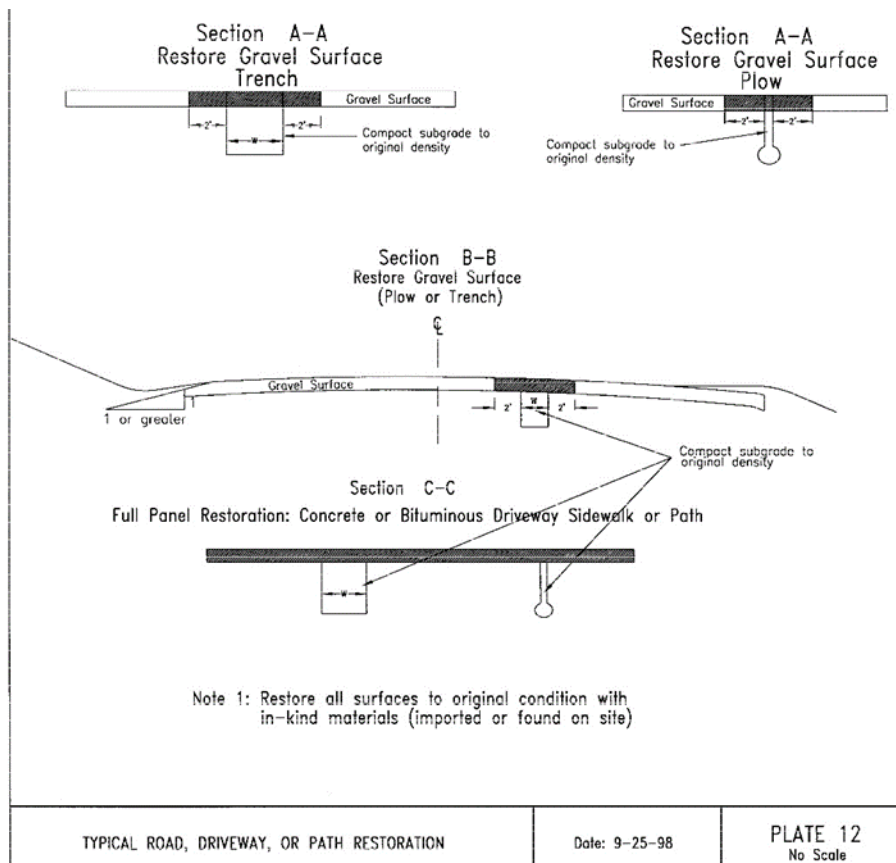
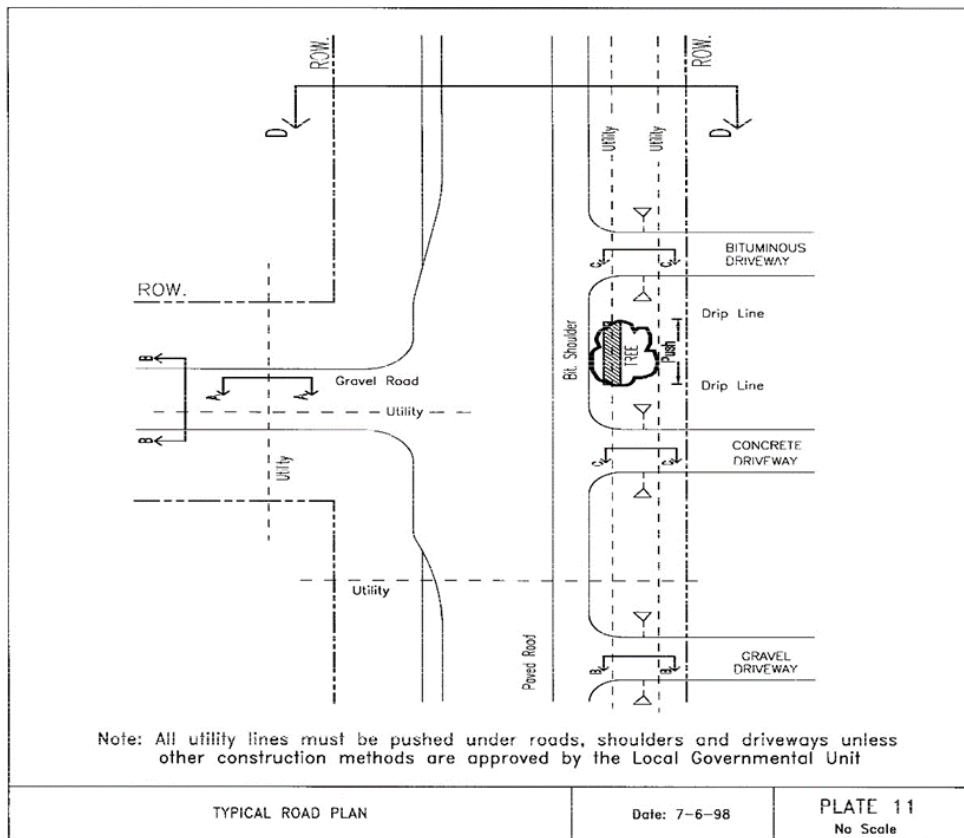
- Replacement with in-kind materials

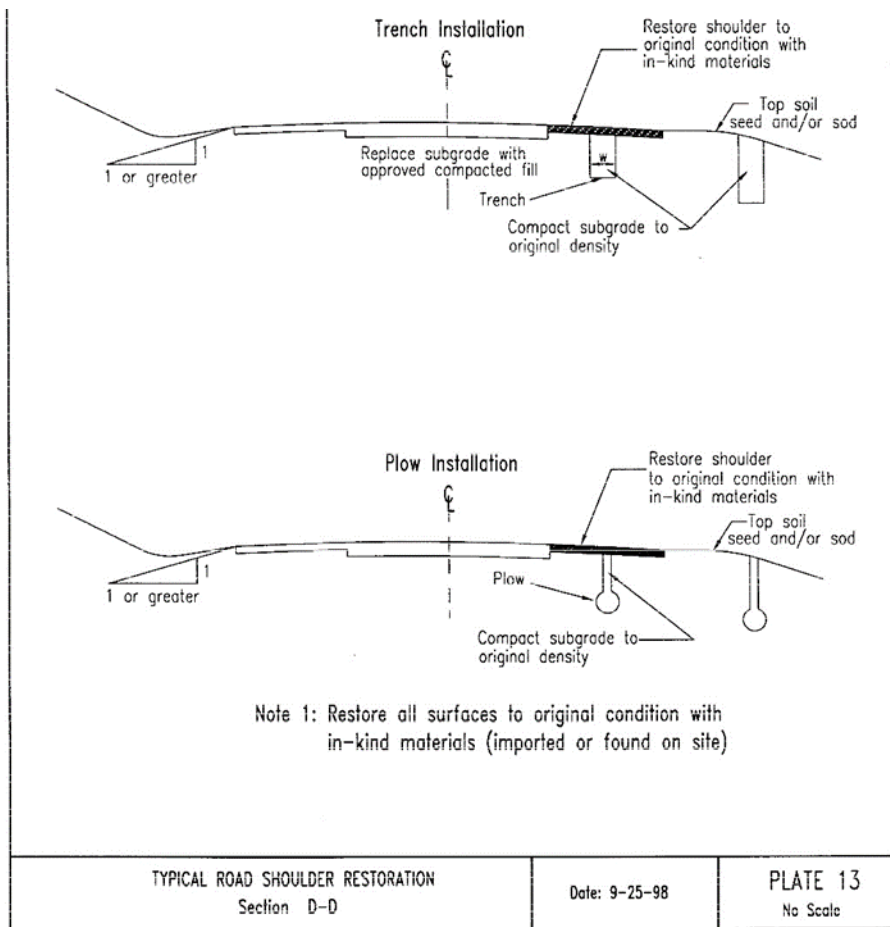












(1) *City restoration.* If the city restores the right-of-way, the excavation permittee shall pay to the city, in advance, a cash deposit equaling 150% of the estimated restoration cost. Following the completion of the restoration, any funds in excess of the actual restoration cost and the degradation fee shall be returned to the excavation permit holder. If during the 12 months following the restoration the pavement settles due to the excavation permittee's improper backfilling, the excavation permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Excavation permittee restoration.* If the excavation 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 Director to be sufficient to cover the cost of restoration. If, within 12 months after completion of the restoration of the right-of-way, the Director determines that the right-of-way has been properly restored, the surety on the construction performance bond shall be released.

(C) *Standards.* The excavation permittee shall perform patching and restoration according to the standards and with the materials specified by the Director. The Director 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. The Director in exercising this authority shall comply with

Minnesota Public Utilities Commission standards for right-of-way restoration and shall further be guided by the following 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 affected by the excavation;
- (4) Whether the relative cost of the method of restoration to the excavation permittee 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 of the right-of-way that would otherwise take place.

(D) *Guarantees.* By choosing to restore the right-of-way itself, the excavation permittee guarantees its work and shall maintain it for 12 months following its completion. During this 12 month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. The work shall be completed within five calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of extraordinary circumstances beyond the control of the excavation permittee or days when work is prohibited as unseasonal or unreasonable under § 94.62.

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

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

§ 94.59 JOINT APPLICATIONS

(A) *Joint application.* Registrants may jointly apply for permits to excavate the right-of-way at the same place and time.

(B) *With city projects.* Registrants who join in a scheduled excavation performed by the Director, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the degradation portions of the permit fee.

(C) *Shared fees.* Registrants who apply for permits for the same excavation, which the Director does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

§ 94.60 SUPPLEMENTARY APPLICATIONS

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

(1) Make application for a permit extension and pay any additional fees required thereby; and

(2) Be granted a new excavation permit or permit extension.

(B) *Limitation on dates.* An excavation permit is valid only for the dates specified in the permit. No excavation 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 excavation 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 done before the permit end date.

§ 94.61 SMALL WIRELESS FACILITY PERMIT REQUIREMENT

(A) *Small Wireless Facility Permit Required.*

(1) Except as otherwise provided in this code, no person may collocate or place a new wireless support structure or small wireless facility in a public right-of-way without first having obtained a small wireless facility permit from the Director to do so.

(2) A small wireless facility permit is required, and the small wireless facility permit fee must be paid, by any registrant to:

(a) place a new wireless support structure in that part of the public right-of-way described in such permit, and/or

(b) collocate or attach a small wireless facility to that wireless support structure described in such permit.

(3) A small wireless facility permit and permit fee is not required for:

- (a) routine maintenance of a small wireless facility;
- (b) replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or
- (c) installation, placement, maintenance, operation, or placement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

The telecommunications right-of-way user must notify the city of these activities at least seven days before the activities are scheduled to occur if the work will obstruct a public right-of-way.

(B) *Term of Small Wireless Facility Permit.* The term of a small wireless facility permit is equal to the length of time that the small wireless facility or wireless support structure is in use, unless the permit is revoked under this chapter.

(C) *Permitted Use and Conditions.* The placement of small wireless facilities and wireless support structures to accommodate small wireless facilities are a permitted use in a public right-of-way, except that:

(1) a conditional land use permit is required to install a new wireless support structure for the siting of a small wireless facility in a right-of-way in a district or area zoned for single-family residential use or within a historic district established by federal law, state law, or city ordinance as of the date of application for a small wireless facility permit;

(2) no new wireless facility shall extend more than ten feet above its wireless support structure; and

(3) no new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city 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 in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

Notwithstanding paragraph (C)(3), a wireless support structures that replaces an existing wireless support structure that is higher than 50 feet above ground level may be placed at the height of the existing wireless support structure, unless the city agrees to greater height, subject to zoning requirements.

§ 94.62 SMALL WIRELESS FACILITY PERMIT APPLICATIONS

(A) *Application requirements.* An application for a small wireless facility permit shall be made to the Director and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Registration with the Director pursuant to this chapter;

(2) Submission of a completed permit application form, including all required attachments and maps or scaled drawings showing the location and area of the proposed collocation or placement of the wireless support structure or small wireless facility and showing the location of all known existing and proposed wireless support structures and small wireless facilities owned or maintained by the applicant;

(3) Payment of money due the city for:

(a) Small wireless facility permit fees, estimated restoration costs, city management costs, or other costs, if applicable;

(b) Any undisputed loss, damage or expense suffered by the city because of the applicant's prior work in the rights-of-way or any emergency actions taken by the city;

(c) Prior permit fees and any fees or costs for prior obstructions, excavations, facility placement, or collocations, if applicable; and

(d) Franchise or user fees, if applicable.

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

(B) *Information Previously Provided.* Applicants for small wireless facility permits need not provide information that was previously provided to the city in a different application for a small wireless facility permit if the applicant provides a reference number for, or sufficient information to identify, the applicant's former application or permit.

(C) *Small wireless facility permit application timeline.*

(1) The city will issue or deny a small wireless facility permit within 90 days after the date a permit application is filed if the application includes attaching a small wireless facility to, or installing or erecting, a new utility pole or new wireless support structure, or within 60 days if the application only includes attaching small wireless facilities to preexisting utility poles or wireless support structures. The small wireless facility permit, and any associated building permit, is automatically issued if the city does not issue or deny the small wireless facility permit within the applicable review period, unless exceptional circumstances exist that justify extending the review period and the city has provided advanced notice in writing to the applicant of those circumstances and the need to extend the review period until the date specified in the notice. The city and applicant can mutually agree, in writing, at any time, to toll or extend the applicable review period.

(2) The city will provide a written notice of incompleteness to an applicant within ten days of receiving an incomplete small wireless facility permit application. The notice will delineate all missing documents or information that were publicly required as of the date of the application and reasonably relate to the city's determination whether the proposed equipment or facility falls within the definition of small wireless facility and whether the proposed deployment satisfied all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon an applicant's submittal of additional documents or information in response to a notice of incompleteness, the city will notify the applicant in writing within ten days of any information requested in the initial notice that is still missing. For any incomplete submissions after the first, the review period will be tolled from when the city provides notice until re-submission of the additional documents or information by the applicant.

(D) *Consolidated small wireless facility permit application.* An applicant may file a consolidated permit application to collocate up to 15 small wireless facilities, or a greater number if agreed to by the city, provided that all small wireless facilities in the application:

- (1) are located within a two-mile radius;
- (2) consist of substantially similar equipment; and
- (3) are to be placed on similar types of wireless support structures.

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

§ 94.63 SMALL WIRELESS FACILITY PERMIT APPROVAL

(A) Conditions for approval of small wireless facility permits. As established or adopted by the Director or city, approval of a small wireless facility permit may be conditioned on compliance with:

- (1) all applicable local, state, and federal laws, including Federal Communications Commission Regulations;
- (2) generally applicable and reasonable health, safety, and welfare regulations consistent with the city's public right-of-way management;
- (3) reasonable accommodations and requirements for decorative wireless support structures or signs;
- (4) any reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way; and
- (5) where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

(B) *Decorative and aesthetic requirements.* Where an applicant proposes collocation or placement of a small wireless facility on a decorative wireless support structure, sign or other structure, the city may impose reasonable, objective requirements to accommodate the particular design, appearance or intended purpose of such structure, including, but not limited to, the following requirements:

(1) the small wireless facility must have, to the greatest extent reasonably possible, limited exposed cabling and mounting hardware; and

(2) the small wireless facility must match the wireless support structure, sign, or other structure, to the greatest extent reasonably possible, in color, material, and design.

(C) *Small wireless facility permit approval limitation.* An approval of a small wireless facility permit under this chapter authorizes the installation, placement, maintenance, or operation of a small wireless facility to provide wireless service on the wireless support structure identified in the application and does not confer authorization to:

(1) provide any service other than a wireless service, or

(2) install, place, maintain, or operate a wireline backhaul facility in the public right-of-way.

(D) A wireless service provider may collocate small wireless facilities on wireless support structures owned or controlled by the city and located within the public roads or rights-of-way without being required to apply for or enter into any individual license, franchise, or other agreement with the city or any other entity, except for the small wireless facility permit required by this chapter or the standard small wireless facility collocation agreement under M.S. § 237.163, subdivision 3a, paragraph (f), if the city elects to utilize such an agreement.

§94.64 SMALL WIRELESS FACILITY PERMIT FEES

(A) *Small wireless facility permit fee.* The small wireless facility permit fee shall be established by a resolution of the City Council in an amount sufficient to recover a reasonable approximation of the objectively reasonable and nondiscriminatory city management costs and city engineering, make-ready, and construction costs associated with collocation and placement of small wireless facilities and wireless support structure.

(B) *Additional costs.* Any costs for an initial survey or preparatory work associated with collocation or placement of a small wireless facility or wireless support structure must be paid by the cost causer or applicant.

(C) *Payment of permit fees.* No small wireless facility permit shall be issued without full payment of the small wireless permit fees.

(D) *Nonrefundable.* Permit fees that were paid for a permit that the Director has revoked for a breach as stated in § 94.72 are not refundable.

94.65 SMALL WIRELESS FACILITY COLLOCATION AGREEMENTS

A small wireless facility shall only be collocated on a wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may set forth terms and conditions in addition to and not covered by state or local laws and may require payment of an annual “rental fee” for each small wireless facility, in addition to the other fees and charges in this Chapter. The annual rental fee may consist of the following fee:

- (1) Up to \$150 per year for rent to collocate on the city structure.
- (2) \$25 per year for maintenance associated with the collocation;
- (3) A monthly fee for electrical service as follows:
 - (a) \$73 per radio node less than or equal to 100 maximum watts;
 - (b) \$182 per radio node over 100 maximum watts; or
 - (c) The actual costs of electricity, if the actual cost exceeds the foregoing.

Notwithstanding the foregoing fees, the total annual rental fee for each small wireless facility will not exceed a reasonable approximation of the objectively reasonable and nondiscriminatory city management costs. 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 city and applicant.

§ 94.66 ISSUANCE OF RIGHT-OF-WAY PERMIT; CONDITIONS

(A) *Right-of-way permit issuance.* If the applicant has satisfied the requirements of this chapter, the Director shall issue a right-of-way permit.

(B) *Conditions.* The Director may impose reasonable conditions upon the issuance of the right-of-way permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

§ 94.67 OTHER OBLIGATIONS

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including M.S. §§ 216D.01 through 216D.09 (“One Call Excavation Notice System”) for excavation work, as they may be amended from time to time. 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.

(B) *Prohibited work.* Except in an emergency, and with the approval of the Director, no right-of-way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(C) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

§ 94.68 DENIAL OF PERMIT

(A) *Denial of permit.* The Director may deny any right-of-way permit for failure to meet the requirements and conditions of this chapter, or if the Director determines that the denial is necessary to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. Any denial or revocation of a right-of-way permit will be made in writing and will document the basis for the denial or revocation. The city will notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a right-of-way permit.

(B) *Opportunity to cure small wireless facility permit application.* If a small wireless facility permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the city and resubmit its application. The telecommunications right-of-way user will be required to pay another small wireless facility permit fee, unless it resubmits the application within 30 days of receiving notice of the denial. The city will approve or deny the revised application within 30 days after the revised application is submitted.

§ 94.69 INSTALLATION REQUIREMENTS

The excavation, backfilling, patching and restoration and all other work performed in the right-of-way shall be done in conformance with city engineering standards.

§ 94.70 INSPECTION

(A) *Notice of completion.* When the work under any right-of-way permit hereunder is completed, the permittee shall notify the Director.

(B) *Site inspection.* The permittee shall make the work-site available to the Director and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of Director.*

(1) At the time of inspection, the Director may order the immediate cessation of any work which poses a threat to the life, health, safety or wellbeing of the public.

(2) The Director may issue an order to the permittee for any work that does not conform to the terms of the right-of-way permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days 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 § 94.68.

§ 94.71 WORK DONE WITHOUT A PERMIT

(A) *Emergency situations.*

(1) Each registrant shall immediately notify the Director of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two 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.

(2) If the Director becomes aware of an emergency regarding a registrant's facilities, the Director will attempt to contact the local representative of each registrant affected or potentially affected by the emergency. In any event, the Director 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.

(B) *Nonemergency situations.* Except in an emergency, any person who, without first having obtained the necessary right-of-way permit, excavates, obstructs, places a wireless support structure, collocates or installs a small wireless facility, or performs any work requiring a permit in a right-of-way must subsequently obtain a permit(s) and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the Legislative Code, deposit with the Director the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

§ 94.72 SUPPLEMENTARY NOTIFICATION

If the excavation of or any work performed in the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Director of the accurate information as soon as this information is known.

§ 94.73 REVOCATION OF PERMITS

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

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) 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
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 94.65.

(B) *Written notice of breach.* If the Director 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 Director 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 Director, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the Director with a plan, acceptable to the Director, that will cure the breach. The permittee's failure to so contact the Director, the permittee's failure to submit an acceptable plan or the permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit.

(D) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

§ 94.74 MAPPING DATA

(A) *Information required.* Each registrant shall provide mapping information required by the Director in accordance with Minnesota Public Utilities Commission Rules 7819.4100.

(B) *Trade secret information.* At the request of any registrant, any information requested by the Director, which qualifies as a "trade-secret" under M.S. § 13.37(b), as it may be amended from time to time, shall be treated as trade secret information as detailed therein.

§ 94.75 LOCATION OF FACILITIES

(A) *Undergrounding.* Construction of new facilities and replacement or reconstruction of existing facilities shall be underground, contained within buildings or other structures, or collocated or installed in conformance with applicable codes, unless excused by the City Council in extraordinary circumstances. This subdivision shall not apply to facilities that are explicitly exempted by an existing franchise or by M.S. § 216B.36, as it may be amended from time to time, from such provisions requiring underground construction.

(B) *Corridors.*

(1) The Director may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the Director expects will someday be located within the right-of-way. All excavation, obstruction or other permits issued by the Director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

(2) Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the Director 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 Director 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.

(C) *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 city may exercise any remedies or rights it has at law or in equity, including but not limited to abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

(D) *Limitation of space.* To protect health, safety and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way and future city plans for public improvements and development projects which have been determined to be in the public interest.

§ 94.76 RELOCATION OF FACILITIES

(A) A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the Director for good cause requests such removal and relocation and shall restore the right-of-way to the same

condition it was in prior to the removal or relocation. The Director may make such request to prevent interference by the company's equipment or facilities with:

- (1) A present or future city use of the right-of-way;
- (2) A public improvement undertaken by the city;
- (3) An economic development project in which the city has an interest or investment;
- (4) When the public health, safety and welfare require it; or
- (5) When necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

(B) Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a nongovernmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

§ 94.77 PRE-EXCAVATION FACILITY AND FACILITIES LOCATION

In addition to complying with the requirements of M.S. §§ 216D.01 through 216D.09 ("One Call Excavation Notice System"), as they may be amended from time to time 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 approximate vertical placement of all the facilities. Any registrant whose facilities is less than 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.

§ 94.78 DAMAGE TO OTHER FACILITIES

When the Director does work in the right-of-way and finds it necessary to maintain, support or move a registrant's facilities to protect it, the Director 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 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

§ 94.79 RIGHT-OF-WAY VACATION

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

(B) *Relocation of facilities.* If the vacation requires the relocation of the registrant's or the permittee's facilities, and:

(1) If the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or

(2) If the vacation proceedings are initiated by the city, the registrant or permittee must pay the relocation costs, unless otherwise agreed to by the city and the registrant or permittee; or

(3) If the vacation proceedings are initiated by a person or persons other than the registrant or permittee, the other person or persons must pay the relocation costs.

§ 94.80 INDEMNIFICATION AND LIABILITY

By registering with the Director, or by accepting a right-of-way permit under this chapter, a registrant or permittee agrees as follows.

(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:

(1) For injuries to persons, damage to property or loss of service claims by parties other than the registrant or the city; or

(2) For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of facilities by registrants or activities of registrants.

(B) *Indemnification.*

(1) As a condition for the use of a permit issued by the city authorizing a permittee to collocate or place facilities in the right-of-way, or to obstruct or excavate on or within a right-of-way for the installation, maintenance or repair of permittee's facilities in a right-of-way, the permittee shall defend, indemnify and hold harmless the city from all liability or claims of liability for bodily injury or death to persons or property damage in which the claims:

(a) Allege negligent or otherwise wrongful acts or omissions of the permittee or its employees, agents or independent contractors in installing, maintaining or repairing the permittee's facilities; or

(b) Are based on the city's negligence or otherwise wrongful act or omission in issuing such permit or in failing to properly or adequately inspect or enforce compliance with the terms, conditions or purposes of the permit or permits granted to the permittee. The registrant or permittee shall indemnify, keep and hold the city free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection or operation of the registrant's or permittee's facilities located in the right-of-way.

(2) Except to the extent authorized in subsection (b) regarding the issuance of permits or inspection or enforcement thereof, or unless otherwise provided in an applicable franchise agreement, the city shall not be indemnified for losses or claims occasioned by the negligent or otherwise wrongful act or omission by the city.

(C) *Defense.*

(1) If a suit is brought against the city under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the city in the suit if written notice of the suit is promptly given to the registrant or permittee within a period in which the registrant or permittee is not prejudiced by the lack or delay of notice.

(2) If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the city. Consent will not be unreasonably withheld.

(3) This part is not, as to third parties, a waiver of any defense, immunity or damage limitation otherwise available to the city.

(4) In defending an action on behalf of the city, the registrant or permittee is entitled to assert in an action every defense, immunity or damage limitation that the city could assert in its own behalf.

§ 94.81 ABANDONED AND UNUSABLE FACILITIES

(A) *Discontinued operations.* A registrant who has determined to discontinue its operations in the city must either:

(1) Provide information satisfactory to the Director that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant; or

(2) Submit to the Director a proposal and instruments for transferring ownership of its facilities to the city. If a registrant proceeds under this clause, the city may, at its option:

(a) Purchase the facilities;

(b) Require the registrant, at its own expense, to remove it; or

(c) 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.

(B) *Abandoned facilities.* Facilities of a registrant who fails to comply with division (A) of this section, and which for two years remains unused shall be deemed to be abandoned. Abandoned facilities are 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:

- (1) Abating the nuisance;
- (2) Taking possession of the facilities and restoring it to a useable condition; or
- (3) Requiring removal of the facilities by the registrant or the registrant's successor in interest.

(C) *Removal.* Any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the Director.

§ 94.82 APPEAL

(A) A right-of-way user that:

- (1) Has been denied registration;
- (2) Has been denied a permit;
- (3) Has had a permit revoked; or
- (4) Believes that the fees imposed are invalid, may have the denial, revocation or fee imposition reviewed, upon written request, by the City Council.

(B) The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 94.83 RESERVATION OF REGULATORY AND POLICE POWERS

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