

**City of South St. Paul
Dakota County, Minnesota**

ORDINANCE NO. 1311

**AN ORDINANCE
ENACTING SOUTH ST. PAUL CITY CODE CHAPTER 54, ARTICLE VI
REGARDING RIGHT OF WAY MANAGEMENT**

The City Council of South St. Paul does ordain:

SECTION 1. ENACTMENT. South St. Paul City Code Chapter 54, Article VI is hereby adopted as follows:

ARTICLE VI – RIGHT OF WAY MANAGEMENT

Sec. 54-400. Findings, Purpose, and Intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. This ordinance imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this ordinance, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this ordinance provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This ordinance shall be interpreted consistently with Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the City and users of the right-of-way. This ordinance shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this ordinance 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 ordinance 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.

Sec. 54-401. Election to Manage the Public Rights-of-Way.

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

Sec. 54-402. Definitions.

The following definitions apply in this ordinance.

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

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

City means the city of South St. Paul.

Construction Performance Bond means any of the following forms of security provided at permittee's option:

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

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

Degradation Cost subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration, as determined by the City at the time the permit is issued, which unless another cost is agreed to by the parties in writing, shall not exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.950.

Delay Penalty is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by city council resolution.

Department means the Engineering Department of the City.

Engineer means the Director of the Engineering Department of the City, or her or his designee.

Emergency means a condition that (1) poses a 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 means any tangible asset used to install, repair, or maintain Facilities in any right-of-way.

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

Excavation Permit means the permit which, pursuant to this ordinance, 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 means money paid to the City by an applicant to cover the costs as provided in section 54-410.

Facility or *Facilities* means any tangible asset in the right-of-way required to provide Utility Service.

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

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

Management Costs means the actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. §§ 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 54-426 of this ordinance.

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

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

Obstruction Permit Fee means money paid to the City by a permittee to cover the costs as provided in section 54-410.

Patch or *Patching* means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

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

Permit has the meaning given “right-of-way permit” in Minn. Stat. § 237.162.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this ordinance.

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

Public Right-of-Way means the area on, below, or above a public roadway, highway, street, alleyway, transitway, cartway, bicycle lane or 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 non-wire telecommunications or broadcast service.

Registrant means any person who (1) has or seeks to have its Equipment or Facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its Facilities or Equipment in the right-of-way.

Restore or *Restoration* means the process by which an excavated right-of-way and surrounding area, including, but not limited to, turf, landscaping, pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Restoration Cost means the amount of money paid to the City by a permittee to achieve the level of restoration according to state rules.

Right-of-Way Permit means either the excavation permit or the obstruction permit, or both, depending on the context, required by this ordinance.

Right-of-Way User means (1) a telecommunications right-of-way user as defined by Minn. Stat. § 237.162, subd. 4; or (2) a person owning or controlling a Service provided by a public utility as defined in Minn. Stat. § 216B.02, subd. 4 and 6; and who has a right under law, franchise, or ordinance to use the public right-of-way.

Service or Utility service means and includes:

- (a) Service provided by a public utility as defined in Minn. Stat. § 216B, subd. 4 and 6;
- (b) Services of a telecommunications right-of-way user, including the transporting of voice or data information;
- (c) Services provided by a cable communications system as defined in Minn. Stat. § 238.02, subd. 3;
- (d) Natural gas or electric energy or telecommunications services provided by a local government unit;
- (e) Services provided by a cooperative electric association organized under Minn. Stat. Chapter 308A; and
- (f) Water, sewer, steam, cooling or heating services.

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

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

Telecommunication right-of-way user means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this ordinance, a cable communication system defined and regulated under Minn. Stat. Ch. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Ch. 308A, are not telecommunications right-of-way users for purposes of this section.

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

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

Sec. 54-403. Franchises/Leases.

In addition to the requirements of this section, the City may require a public utility or cable operator who has or seeks to have facilities located in a public right-of-way to obtain a franchise, and may require other users of the public right-of-way to obtain a lease, if allowed by state law.

Sec. 54-404. Administration.

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

Sec. 54-405. Registration Requirement.

(a) *Registration.* Each public right-of-way user must register with the City. Registration will be deemed complete upon the public right-of-way user submitting to the City a completed registration form furnished by the city and paying the registration fee. A Right-Of-Way User is required to update its registration within sixty (60) days after any change of the information contained in a current registration statement. Registration must be renewed annually.

(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 City.

(c) *Exceptions.* Persons engaged in the following activities are not deemed to use or occupy the right-of-way, and are not governed by this section, but may be governed by other City Code sections:

- (1) Installing mail boxes; or
- (2) Engaging in block parties, parades or other special events or activities that are addressed through another permitting process with the City; or
- (3) Engaging in snow removal activities.

(d) *Gopher One Call.* Nothing in this section relieves a person from complying with the provisions of Minn. Stat. Ch. 216D, Gopher One Call law.

Sec. 54-406. Registration Information.

(a) *Information Required.* The information provided to the City at the time of registration shall include, but not be limited to:

- (1) Each registrant's name, address and email address, if applicable, and telephone facsimile numbers.

- (2) The name, address and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available for consultation 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 verifying the coverage required in section 54-425.
- (4) Other information as the Engineer may require.

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

(c) *Transfer of Ownership or Interest.* Within 30 days after a public right-of-way registrant transfers, sells, or otherwise conveys ownership or interest in facilities to another person, the registered public right-of-way user must notify the City of the date of the conveyance and the name of the transferee. Within 60 days after the conveyance a new registration fee must be paid.

Sec. 54-407. Permit Requirement.

(a) *Permit Required.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City.

- (1) *Excavation Permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right of way by placing facilities described therein, to the extent and for the duration specified therein, including, but not limited to, pet containment systems, irrigation systems, driveway approach, curb.
- (2) *Obstruction Permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment or materials described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(b) *Permit Extensions.* No permit extensions shall be granted, except as provided in subsection (c) below. Any permittee who fails to begin excavation or obstruction of the right-of-way before the expiration of the permit shall apply for a new permit and pay the appropriate fee.

(c) *Delay Penalty.* Any permittee who begins but fails to complete excavation or obstruction before the expiration of the permit shall incur a delay penalty, except as provided herein. No delay penalty shall be imposed for a delay resulting from a cause outside the control of the right-of-way user, such as strikes, unusually severe or prolonged bad weather, acts of God, fire or other casualty.

In those situations, reasonable extensions may be granted. In accordance with Minnesota Rule 7819.1000 subp. 3 the delay penalty shall be set by city council resolution.

(d) *Permit Display*. Permits issued under this ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

Sec. 54-408. Permit Applications.

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

- (a) Registration with the City pursuant to this ordinance;
- (b) The applicant's name, street address, e-mail address, telephone number, and facsimile telephone number;
- (c) The local representative's name, street address, e-mail address, telephone number, facsimile telephone number, and current information regarding how to contact the local representative in an emergency;
- (d) The name, street address and telephone number of the person(s) or entities, other than the applicant, to perform the project work or any portion of it;
- (e) A certificate of insurance or self-insurance verifying the coverage required in this section;
- (f) One copy of scaled drawings, or other drawings meeting requirements established by the Engineer, showing:
 - (1) The location and area of the proposed project and the location of all known existing and proposed facilities owned or operated by the applicant;
 - (2) The proposed location of the facility within the right-of-way and scaled dimensions of the facility from an existing physical topographic feature (such as "back of curb," "edge of bituminous road");
 - (3) All existing physical topographic features (trees, shrubs, culverts, driveways, fences, street signs) and all municipal utilities that lie within ten feet of the proposed facility location;
 - (4) The location of any public streets, alleys, sidewalks, or trails that will be disrupted by the work; and
 - (5) The location of any public streets, alleys, sidewalks, or trails that will be temporarily closed to traffic or obstructed by the work;

(g) A description of methods to be used for restoration of streets or boulevards;

(h) Payment of money due the City for:

(1) Permit fees, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

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

(4) Franchise fees or other charges, if applicable.

(i) Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

(j) City may require posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

Sec. 54-409. Issuance of Permit; Conditions.

(a) *Permit Issuance.* If the applicant has satisfied the requirement of this ordinance, the City shall issue a permit.

(b) *Conditions.* The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare of when necessary to protect the right-of-way and its current use. A permittee must comply with all conditions of the permit.

Sec. 54-410. Permit Fees.

(a) *Establishment.* Permit fees will be established to recover the city management costs and, when applicable, restoration costs. The permit fees are set by city council resolution and are contained in the fee schedule. No permit fee will be required for an obstruction or excavation permit issued to the City, although the city must be allocated its full portion of the city management costs in calculating the permit fees.

(b) *Payment Required.* No permit will be issued unless the applicable permit fee has been paid.

(c) *Work Without a Permit.* Except as otherwise provided in section 54-416, a person who obstructs or excavates in the right-of-way before obtaining a permit must pay double the normal fee for the permit.

(d) *Non Refundable.* Permit fees are not refundable.

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

Sec. 54-411. Right-of-Way Patching and Restoration.

(a) *Timing.* Unless the permittee is granted a new permit or an extension of the initial permit, the work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under subsection 54-412(d).

(b) *Patch and Restoration.* Permittee shall patch its own work. The permittee may choose either to have the City restore the right-of-way, restore the right-of-way itself or pay a degradation fee.

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

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

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

(c) *Standards.* Unless otherwise agreed to by the parties in writing, all restoration must be in accordance with the written standards and materials specified by the city, which must comply with state standards. Subject to state rules, the city may prescribe additional restoration procedures and standards on a case-by-case basis based on the following considerations:

(1) The number, size, depth and duration of the excavation, disruption or damage to the public right-of-way;

(2) The traffic volume carried by the public right-of-way;

(3) The character of the neighborhood surrounding the public right-of-way;

(4) The pre-project condition of the public right-of-way;

- (5) The remaining life expectancy of the public right-of-way due to the project;
- (6) The costs of the restoration method in relation to the prevention of an accelerated depreciation of the public right-of-way that could result due to the project work in the public right-of-way; and
- (7) The likelihood that the particular restoration method would be effective in slowing the depreciation of the public right-of-way that would otherwise occur.

(d) *Duty to Correct Defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the City shall correct all restoration work to the extent necessary, using the method required by the City. Unless otherwise agreed to by the parties in writing, said work shall be completed within five (5) calendar days of the receipt to the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under subsection 54-412(d).

(e) *Failure to Restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. In addition to other remedies at law, future permits may be denied for failing to pay previously billed costs of restoring the right-of-way.

Sec. 54-412. Joint Applications.

(a) *Joint Application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(b) *Shared Fees.* Registrants who apply for permits for the same obstruction or excavation, which the City does not perform, may share in the payment of the obstruction or excavation permit fee. The registrants must indicate on the application as to the portion each will pay.

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

Sec. 54-413. Other Obligations.

(a) *Limitation on Area.* A right-of-way permit is valid only for the area right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

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

(c) *Compliance with Other Laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws. 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.

(d) *Seasonally Prohibited Work or Unreasonable Conditions.* Except in an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(e) *Interference with Right-of-Way.*

- (1) A permittee or registrant must not obstruct a public right-of-way and must not hinder the natural free and clear passage of water through the gutters or other waterways, except as expressly authorized by the permit. Project operations and work must be conducted in a manner to ensure the least obstruction to and interference with present and continued use of the public right-of-way.
- (2) Personal vehicles of those doing work in the public right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations.
- (3) The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(f) Reasonable precautions must be taken as necessary to avoid creating unsafe or unsanitary conditions. Precautions including appropriate signage must be taken to ensure the safety of the general public, employees, invitees and those who require access to abutting property.

(g) The permittee must maintain access to all properties and cross streets during project work, including emergency vehicle access.

(h) The permittee must provide 48-hour written notice, using the standard city form, to abutting property owners before commencement of any project work that may disrupt the use of and access to the abutting property.

(i) The permittee must comply with the state's uniform traffic manual for traffic control at all times during any project work and must protect and identify excavations and work operations with barricade flags in the daylight hours and by warning lights at dusk and night.

(j) When a trail or drive has been cut, the appropriate signs must be kept in place and maintained until restoration is complete.

(k) The permittee must provide proper trench protection as required by federal and state occupational safety regulations to prevent any cave-in, injury to property or persons, or enlargement of the excavation.

(l) Excavations, trenches and jacking pits off the roadway surface area or adjacent to the roadway or curbing must be sheathed and braced. When unattended, all excavations, trenches and jacking pits must be protected to prevent surface drainage from entering the excavation, trench, or jacking pit.

(m) The permittee must coordinate project work and installation of facilities in co-locations involving other public right-of-way users.

(n) The permittee must physically locate property lines abutting the project work. The permittee must replace, with the services of a Minnesota-licensed surveyor, any property corners or monuments disturbed as a result of the project.

(o) The permittee must daily remove all dirt or debris from sidewalks, trails, public and private roadway surfaces, curbs and gutters during project work.

(p) *County or State Rights-of-Way.* A public right-of-way user who is required to obtain a county or state permit for excavation or obstruction in a county or state right-of-way within the city must provide notification of the proposed activity to the Engineer within one week after obtaining the permit but no less than 48 hours before the activity would begin.

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

Sec. 54-414. Denial of Permit.

The City may deny a permit for failure to meet the requirements and conditions of this ordinance, if the City determines that the denial is necessary to protect the health, safety, and welfare, for a previous violation by the permittee of any regulation or provision of the city code, zoning ordinance or state law applicable to the activity for which the license or permit is sought, or when necessary to protect the right-of-way and its current use.

Sec. 54-415. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat. §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with state law and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and/or agreements referenced in subsection 54-419(c).

Sec. 54-416. Inspection.

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

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

(c) *Authority of Engineer.*

- (1) At the time of inspection, the Engineer may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- (2) The Engineer may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or Codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Unless otherwise agreed to by the parties in writing, within ten (10) days after issuance of the order, the permittee shall present proof to the Engineer that the violation has been corrected. If such proof has not been presented within the required time, the Engineer may revoke the permit pursuant to section 54-417.

Sec. 54-417. Work Done Without a Permit.

(a) *Emergency Situations.* Each registrant shall immediately notify the Engineer of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher One Call regarding an emergency situation does not fulfill this requirement. Within two (2)

business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this ordinance for the actions it took in response to the emergency.

(b) *Emergency Work by City.* If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In the event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(c) *Non-Emergency Situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all the requirements of this ordinance.

Sec. 54-418. Revocation of Permits.

(a) *Substantial Breach.* The City reserves the right, as provided herein, to revoke any right-of-way permit, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (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 the 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 section 54-415.

(b) *Notice of Breach.* If the Engineer determines that the basis for revocation exists, the Engineer may initiate revocation of the permit. If the violation is related to non-complying project work, the Engineer must notify the permittee of the actions necessary to remedy the violation and the date by which the correction must be completed, which must be a reasonable period of time. The Engineer may impose additional or revised conditions on the permit to mitigate or remedy the violation. If correction of the non-complying work is not completed within the required time or if another basis for revocation exists, the Engineer must provide written notice to the permittee of the basis for revocation.

(c) *Revocation Costs.* If a permit is revoked, the permittee must reimburse the City for its reasonable costs (including restoration costs) incurred in connection with the revocation.

Sec. 54-419. Installation of Underground Facilities.

The permittee must comply with the following requirements when installing underground facilities:

(a) Underground facilities must, where reasonably possible, be installed outside the paved or improved area, in places with the least potential for future conflict. If unable to install outside the paved or improved area, the installation must be as close to the edge of the roadway surface as possible to allow access to the facilities without unnecessarily disturbing paved areas of the roadway.

(b) Public right-of-way alignment and grade must be maintained.

(c) Fiber facilities must be buried in a proper conduit and at a depth of no less than three feet and no more than four feet; copper facilities below concrete or bituminous paved roadway surfaces must be buried at a depth of no less than three feet and no more than four feet, and all other copper facilities must be buried at a depth of no less than 30 inches and no more than four feet.

(d) Except for gas, all underground facilities that cross streets or hard surfaced driveways must be bored and installed in conduit when requested by the City.

(e) When required, the permittee must excavate an observation hole over a city utility to ensure that a city utility is not damaged.

(f) If the project work involves an open cut, the permittee must install visual tracers 18 inches over buried facilities. If other construction methods are used, alternative location methods may be used upon approval by the City.

(g) During plowing or trenching of facilities, a warning tape must be placed at a depth of 18 inches above copper cables with over 200 pairs and fiber facilities, and a locating wire or conductive shield must be installed above buried telecommunication facilities, except for di-electric cables.

(h) Restoration of areas disturbed by facilities must include returning the right-of-way to the same condition that existed before excavation in accordance with Minnesota Rules, which indicate maximum limits of restoration methods and area requirements that the City can impose. The City and right-of-way user may agree to a lesser requirement. The right-of-way user is responsible for all of its work done in the public right-of-way, whether by employees, agents, or independent contractors. Restoration must include compaction of the materials placed in the excavation of the sub grade and aggregate base, plus pavement replacement, in kind. All work must be performed according to the City's specifications and drawings. Installation of service laterals must be performed in accordance with Minnesota Rules and this section.

(i) All facilities must be located so as to not interfere with existing and potential future traffic signals and signs.

(j) Unless approved by the Engineer, all above ground appurtenances must be located no closer than ten feet from city hydrants, waterline valves, manholes, lift stations, and catch basins; not in front of any city or private sign, monument or amenity for facilities or parks; and no closer than two feet from sidewalks and trails.

(k) Underground facilities must not be installed within five feet of hydrants, waterline valves, lift stations, manholes or catch basins, unless approved by the Engineer.

(l) Underground facilities must not be installed between a hydrant and an auxiliary valve.

(m) The location and installation of telecommunications facilities must comply with the national electric safety code, as incorporated by reference in Minnesota Statutes.

(n) Permittees employing trenchless excavation methods, including horizontal directional drilling, must follow all requirements set forth in Minnesota Statutes and Rules, and must use potholing or open cutting in order to determine the precise location of marked underground utilities before excavating. In addition, permittees employing trenchless excavation methods must not install facilities at a depth greater than four feet below grade, unless specifically approved by the Engineer.

Sec. 54-420. Mapping Data.

(a) *Information Required.* Each registrant and permittee must provide “as built” mapping information in accordance with state rules. If the mapping information is not provided in a format that is compatible with the City’s format, the permittee shall pay a conversion fee to convert the information into a readable format for the City. The mapping information shall provide the following:

- (1) The location of all of its underground and above ground facilities and their appurtenances in the public right-of-way, identified by:
 - a. offsets from property lines, distances from the centerline of the public right-of-way and from curb lines and other reference points as requested by the City; or
 - b. Coordinates derived from the coordinate system being used by the City or any other system agreed upon by the right of way user and the City; and
 - c. Approximate depth of facilities;
- (2) The type, quantity and size of the facilities;
- (3) A dimensional description of aboveground appurtenances;

- (4) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map;
- (5) The information in subsections 54-419(a)(1-4) also for restoration work; and
- (6) The information in subsections 54-419(a)(1-4) also for abandoned facilities that remain in place.

(b) *Submittal Requirements.*

- (1) Within six months after the adoption of this ordinance, all public right-of-way users that own or control facilities within public rights-of-way within the City on that date must submit the detailed mapping including restoration data in accordance with this section for all facilities located within the public rights-of-way. Thereafter, right-of-way users must comply with city code section 54-420(a) to provide “as built” mapping.
- (2) At the request of any public right-of-way user, information required by the City that qualifies as “trade secret” data under Minnesota law will be protected accordingly.

(c) *Service Laterals.* The holder of a permit for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules, must establish the horizontal locations of installed service laterals and, when the Engineer reasonably requires it, the vertical locations of service laterals. Permittees or their subcontractors must submit this information to the Engineer in a form reasonably satisfactory to the Engineer within 30 days after completion of the work. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or the denial of future permits to the offending permittee or its subcontractors.

Sec. 54-421. General Public Right-of-Way Regulations.

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

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

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

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

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

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

Sec. 54-422. Undergrounding.

(a) *Purpose.* The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster (1) safe travel over the right-of-way, (2) non-travel related safety around homes and buildings where overhead feeds are connected and (3) orderly development in the City. Location and relocation, installation and reinstallation of Facilities in the right-of-way must be made in accordance with this section.

(b) *Undergrounding of Facilities.* Unless otherwise agreed in a franchise between the applicable right-of-way user and the City, Facilities in the right-of-way must be located or relocated and maintained underground in accordance with this section and applicable construction standards.

(c) *Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities.* A permanent replacement, relocation or reconstruction of a facility of more than 300 feet must be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding is required whether a replacement, relocation or reconstruction

is initiated by the right-of-way user owning or operating the facilities, or by the City in connection with:

- (1) The present or future use by the City or other local government unit of the right-of-way for a public project,
- (2) The public health or safety, or
- (3) The safety and convenience of travel over the right-of-way.

(d) *Exceptions to Undergrounding.* The following exceptions to the strict application of this section will be allowed upon the conditions stated:

- (1) *Technical/Economic Feasibility; Promotion of Policy.* Above-ground installation, construction, or placement of facilities will be allowed in residential, commercial and industrial areas where the City Council finds that:
 - a. Underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights;
 - b. Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions that adversely affect underground facilities placement; or
 - c. The right-of-way user clearly and convincingly demonstrates that none of the purposes under subsection 54-420(a) would be advanced by underground placement of facilities on the project in question, or the City determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.
- (2) *Temporary Service.* Above-ground installation, construction, or placement of temporary service lines will only be allowed:
 - a. During new construction of any project for a period not to exceed three months;
 - b. During an emergency in order to safeguard lives or property within the city; or
 - c. For a period of not more than seven months when soil conditions make excavation impractical.
- (3) *Developer Responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this section, and before final approval of any plat or development plan, must submit to the Engineer written instruments from the appropriate right-of-way users showing that all necessary arrangements for installation of such facilities have been made.

Sec. 54-423. Right-of-Way Vacation.

(a) *Reservation of Right.* If the City vacates a public right-of-way that contains the facilities of a public right-of-way user and the vacation does not require the relocation of the facilities, the City must reserve, for itself and the public right-of-way user, the right to install, maintain and operate facilities in the vacated public right-of-way and to enter upon the public right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the facilities.

(b) *Relocation of facilities.* If the vacation requires the relocation of the public right-of-way user's facility, and the vacation proceedings are initiated by the public right-of-way user or the City for a public project, the public right-of-way user must pay the relocation costs. If the vacation proceedings are initiated by a person or persons other than the public right-of-way user or the City, the initiating person or persons must pay the relocation costs.

Sec. 54-424. Indemnification and Liability.

(a) *Limitation of Liability.* Issuance of a public right-of-way permit does not impose any liability on the City for (a) injuries to persons, damage to property or loss of service claims by parties other than the permittee or the City, or (b) claims or penalties resulting from the installation, presence, maintenance or operation of facilities by registrants or permittees or activities of registrants or permittees.

(b) *Indemnification.* A registrant or permittee must indemnify and defend the City, its officials, employees and agents to the maximum extent that is allowed under Minnesota Rule 7819.1250.

Sec. 54-425. Abandoned and Unusable Facilities.

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

(b) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way of required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

Sec. 54-426. Insurance.

All certificate(s) of insurance or self-insurance required under this section must provide that:

(a) An insurance policy has been issued to the applicant by an insurance company authorized to do business in the state of Minnesota, or that the applicant has a form of self-insurance acceptable to the Engineer;

(b) The applicant is insured against claims for personal injury, including death, and property damage arising out of the (1) use and occupancy of the public right-of-way by the permittee, its officers, agents, and employees, and (2) placement and use of facilities and equipment in the public right-of-way by the permittee, its officers, agents, and employees, including protection against liability from completed operations, damage of underground facilities and collapse of property;

(c) The City is named as an additional insured for the coverages required under this section;

(d) The City must be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and

(e) The coverages and amounts of coverage are as required by the City.

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

Sec. 54-427. Appeal.

A right-of-way user that: (1) has been denied registration; (2) had been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6; or (5) disputes a determination of the Engineer regarding subsection 54-417 may have the denial, revocation, fee imposition, or decision reviewed, upon written request, pursuant to city code chapter 38. A decision by the independent hearing officer affirming the denial, revocation, or fee imposition will be decided in a timely manner, in writing and supported by written findings establishing reasonableness of the decision.

Sec. 54-428. Vacating Public Lands, Streets and Alleys.

(a) *Procedure.* Upon its own motion, or upon petition of a majority of abutting landowners, with a vote of four of its members, the City Council may vacate any street, alley or public right of way within the City. The vacation must be adopted by ordinance.

(b) *Petitions.* Petitions must give a full statement of facts, contain a plat of the property in question, be verified by at least one petitioner, be accompanied by satisfactory proof of title to the property, and include the filing fee set by the City.

(c) *Notice.* Notice of the hearing will be mailed to abutting property owners one week prior to the hearing. The notice must also be published in the official newspaper for one week prior to the hearing.

(d) *Recommendations.* The City Council may secure recommendations from public officials, commissions, private individuals, and may authorize payment for advisory services regarding the vacation.

(e) *Costs.* Upon granting any vacation, the City Council may require payment of all costs of the proceedings to compensate the City for its costs, and may impose any additional conditions deemed desirable in the public interest.

(f) *Rights preserved.* No vacation prevents the City’s right or the right of any other individual or organization from later coming upon the property to repair or attend to lawfully established public utility installations, or to continue to keep and use lawfully established public utility installations on the property.

(g) *Filing.* After granting any vacation, the City may execute and deliver a quitclaim deed documenting the vacation.

SECTION 2. REPEALER. South St. Paul City Code Chapter 54, Article I, Sec. 54-2 Vacating Streets is hereby repealed.

SECTION 3. REPEALER. South St. Paul City Code Chapter 54, Article I, Sec. 54-6 Use of Public Streets for Utilities is hereby repealed.

SECTION 4. REPEALER. South St. Paul City Code Chapter 54, Article II Undergrounding is hereby repealed.

SECTION 5. REPEALER. South St. Paul City Code Chapter 54, Article III Excavating is hereby repealed.

SECTION 6. SUMMARY PUBLICATION. Pursuant to Minn. Stat. § 412.191, in the case of a lengthy Ordinance, a summary may be published. While a copy of the entire Ordinance is available without cost at the office of the Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire Ordinance:

The new ordinance essentially allows the city to effectively manage the public rights-of-way regarding excavations and obstructions. The City Engineer will review all permit applications, which have specific application submission requirements and fees. The rights of way must be restored after excavations up to the standards contained in state law. In the future, installations shall be underground as much as possible, unless it is cost-prohibitive, as determined by the city. There is a process for inspections, denial of permits, penalties for failing to perform, revoking permits, as well as requirements for providing the city with mapping data so that the city can have accurate records of all utilities in the rights-of-way, processes for vacations of rights-of-way, indemnification and insurance and appeals. The ordinance is intended to provide a comprehensive approach to effectively managing the city’s rights-of-way in accordance with federal, state, administrative and common law.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

ADOPTED THIS 17TH DAY OF OCTOBER, 2016.

CITY CLERK