

CITY OF MARINE ON ST. CROIX
PLANNING COMMISSION
REGULAR MEETING

Tuesday, April 27, 2020 - 7:30pm
Virtual Meeting

1. Call to Order
2. Wireless Communications Ordinances
 - Review by full Commission
 - Set date for public hearing
3. New and Old Business
4. Approval of minutes:
 - March 30
5. Adjourn

City of Marine on St. Croix

WIRELESS COMMUNICATION ORDINANCE



**Adopted on the __ day of
_____, 2021**

**City of Marine on St. Croix
Tower Ordinance**

TABLE OF CONTENTS

SECTIONS	PAGE
Section 1	Intent and Purpose2
Section 2	Applicability3
Section 3	Definitions3
Section 4	Land Use4
Section 5	Tower Design.....4
Section 6	Tower Setbacks5
Section 7	Co-Location Requirements 5
Section 8	Tower Area Fencing and Landscaping 7
Section 9	Abandoned or Unused Towers 7
Section 10	Signs and Advertising 7
Section 11	Noise7
Section 12	Application Requirements 8
Section 13	Factors Considered in Granting Conditional Use Permits 9
Section 14	Time Limit on Tower Construction 9
Section 15	Effect of the Ordinance on Existing Tower Facilities10
Section 16	Term of Permit10
Section 17	Revocation of Permit10
Section 18	Enforcement11
Section 19	Interpretation.....11
Section 20	Severability11
Section 21	Abrogation and Greater Restrictions.....11
Section 22	Adoption of Ordinance12

**City of Marine on St. Croix
Tower Ordinance**

ORDINANCE NO. _____

CITY OF MARINE ON ST. CROIX, WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE TO ENACT A NEW CHAPTER OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE INSTANCE OF TELECOMMUNICATIONS TOWER FACILITIES IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF SUCH PERMITS.

SECTION 1: INTENT AND PURPOSE

The natural setting and historic context of the City of Marine on St. Croix (“the City”) are among its most valuable assets. The City is located on the **St. Croix** National Scenic Riverway, a unit of the National Park System, established by the **Wild and Scenic Rivers** Act in 1968. It is also home to William O’Brien State Park. Compromising these assets risks undermining the very characteristics responsible for our economic vitality and future potential. Protecting these assets will require that location and design of tower facilities be sensitive to, and in scale and harmony with, the aesthetics and community of the City of Marine on St. Croix. This Ordinance will provide standards for the proper placement and design of tower facilities in order to ensure their compatibility with surrounding aesthetics and development.

The purpose of this Ordinance shall be to establish predictable and balanced regulations that protect the public, health, safety, and general welfare of the city. These regulations are intended to:

- A. Facilitate the provision of telecommunications services and facilities including commercial wireless telecommunication services in the City of Marine on St. Croix;
- B. Minimize adverse visual effects of towers through careful design and siting standards;
- C. Avoid potential damage to adjacent properties from tower or antenna failure and weather-related occurrences through structural standards, careful siting, and setback requirements;
- D. Encourage the use of existing towers and buildings to accommodate commercial wireless telecommunication service antennas in order to minimize the number of towers needed to adequately serve the county.

The Telecommunication Act of 1996 affirms Local Government’s right to control the siting, construction, and modification of cellular and other wireless telecommunication facilities. The permitting process in this Ordinance does not discriminate among providers of functionally equivalent services and does not prohibit the provision of personal wireless services.

Leasing of public buildings, publicly-owned structures, public lands, and/or rights- of-way for the purposes of locating wireless telecommunication services facilities and/or equipment is encouraged. In cases where a facility is proposed on City property, specific locations and compensation to the City may be negotiated in lease agreements between the City and the provider on a case- by-case basis, and shall be subject to all the requirements contained in this Ordinance. Such agreements would not provide

**City of Marine on St. Croix
Tower Ordinance**

exclusive arrangements that could prohibit access by other providers to the negotiated site(s) or limit competition, and encourage the opportunity to “co-locate” (sharing of facilities) with other providers.

SECTION 2: APPLICABILITY

It shall be unlawful for any person to erect, construct, or place any new Tower Facility without first receiving appropriate permits from the City of Marine on St. Croix. Tower Facilities must comply with all local, state and federal regulations. It shall be unlawful to structurally alter, modify, transform, add to, or change in any way, an existing tower structure without first receiving permits from the City of Marine on St. Croix. Addition or modification of antennas and transmission lines on existing towers shall not require a permit.

Amateur Radio – The provisions contained herein shall not govern any privately owned tower, or the installation of any antenna that is under seventy (70) feet in height or operated by a federally licensed amateur radio station operator, or is used exclusively as a receive-only antenna.

All rules and regulations of the FCC and FAA must be met and complied with.

SECTION 3: DEFINITIONS

Antenna: Any structure or device used for the purpose of collecting or radiating electromagnetic waves including but not limited to directional antennas such as panels, microwave dishes, satellite dishes, and omni-directional antennas such as whip antennas.

Co-Location: The placement of wireless telecommunication antenna by two or more service providers on a tower, building or structure.

Guyed Tower: A tower that is supported, in whole or in part, by wires and ground anchors.

Monopole: A type of tower mount that is self supporting through a single shaft usually constructed of wood, metal or concrete.

Search Ring: An area in which a wireless provider is able to locate an antenna of a defined height which will provide the wireless service providers desired coverage.

Tower: Any pole, wire, structure or combination thereof, including support lines, cables, wires, braces and masts intended primarily for the purpose of mounting antenna or to serve as an antenna.

Tower Facility(ies): A tower and its appurtenant devices including, but not limited to antennae, buildings, fences, gates and related equipment.

Total Height: The distance between the ground level at the base of a structure and its tallest vertical extension including any attachment thereon.

SECTION 4: LAND USE

**City of Marine on St. Croix
Tower Ordinance**

All towers, not excluded in Section 2, require the granting of a conditional use permit by the City of Marine on St. Croix Planning Commission after completion of the application requirements of this Ordinance. If a conditional use permit is granted, a general zoning (land use) permit is required for the tower and supporting facilities.

THE FOLLOWING SECTIONS APPLY TO TOWERS THAT ARE NOT EXCLUDED IN SECTION 2:

All rules and regulations of applicable state and federal laws and agencies shall be met and complied with, to include all state and federal RF safety standards.

SECTION 5: TOWER DESIGN

Proposed or modified towers and antennas shall meet the following design requirements:

- A. Towers and their antennas shall be certified by a qualified and licensed professional engineer to conform to applicable state and national structural building standards.
- B. Towers shall be monopoles, self-supporting or guyed towers.

Tower Painting - Towers shall comply with FAA requirements.

Tower Lighting – No tower shall be lighted unless FAA rules require lighting. All towers shall use only red incandescent lights. No strobe lights, red or white, will be allowed.

SECTION 6: TOWER SETBACKS

Towers and all accessory structures or buildings shall conform to the following minimum setback requirements:

- A. Towers shall be setback from all property lines an amount equal to the height of the structure;
- B. Guy wires for towers shall meet the structure setback of the underlying zoning district.

SECTION 7: CO-LOCATION REQUIREMENTS

All commercial wireless telecommunication towers erected, constructed, or located within the City shall comply with the following requirements:

- A. Documentation of the area to be served including a search ring for the antenna location. A narrative describing a search ring for the request, with not less than a two (2) mile radius clearly explaining why the site was selected, what existing structures were available and why they are not suitable as locations or co-locations. RF propagation and coverage maps further showing the proposed service area may also be requested by city

**City of Marine on St. Croix
Tower Ordinance**

staff.

- B. Documentation that the communications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within the search ring of the service area due to one or more of the following reasons:
 - 1. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot reasonably be reinforced, modified, or replaced to accommodate planned equipment at a reasonable cost;
 - 2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer or qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost;
 - 3. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer; or
 - 4. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
- C. Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and at a minimum one other array of antennas for co-location.
- D. An agreement stating that the applicant and tower owner commit to co-location at reasonable market prices within 90 days. Any prohibition of additional users on a tower shall be considered a violation of the permit and this Ordinance.
- E. The agreement shall also include a statement that any unused or abandoned tower shall be removed by the tower owner and/or applicant within 12 months of the tower being vacated. Said agreement shall be signed by the applicant and the property owner and shall be attached to and become a part of the permit.

SECTION 8: TOWER, AREA FENCING AND LANDSCAPING REQUIREMENTS

Tower base, equipment and buildings accessory to a tower shall:

- A. Be architecturally designed to blend in with the surrounding environment and shall meet the height and setback limitations as established within the respective zoning district.

**City of Marine on St. Croix
Tower Ordinance**

- B. Tower base, equipment and buildings shall be fenced in by a 6 foot security fence. Tower base, equipment and buildings shall be screened from view by suitable fencing-slats or vegetation which will be at least 6 feet in height within 4 years of tower construction except where a design of other, non- vegetative screening better reflects and complements the architectural character of the surrounding neighborhood. Screening plan shall also comply with Dev. Code Sec. 4 404.4-5. Screening tower plan shall be approved by the Planning Commission.

The anchor point for the guy wires shall be fenced. The fence shall extend at least 10 feet around the anchor point or guy base to ensure public safety.

SECTION 9: ABANDONED OR UNUSED TOWERS

Abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the City Council. In the event that a tower is not removed within the 12 months of the cessation of operations at a site, the revocation of permit applies under Sec. 18 of this Ordinance, and tower and associated facilities may be removed by the City and the costs of removal assessed against the permittee and tower owner in accordance with that section.

The City may require the owner or operator of any tower to post adequate security toward the costs of removal of any tower and site restoration.

SECTION 10: SIGNS AND ADVERTISING

The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

SECTION 11: NOISE

The noise levels associated with any tower facility shall conform to the Minnesota Pollution Control Agency noise level requirements as listed in MN Rules Chapter 7030.

SECTION 12: APPLICATION REQUIREMENTS

The City of Marine on St. Croix Planning Commission and City Council may contract with an independent technical expert to review applicant materials and/or to determine if additional information is necessary. The tower facility applicant shall pay the cost of such review and/or independent analysis. In addition to the general requirements for conditional use permit applications; all applications for new towers must also include the following:

- a. Site plan(s) drawn to a scale, specifying the location of the tower facility, support structures, transmission buildings and/or other accessory structures & uses, accesses, parking areas, fences, signs, lighting, landscaped areas and all adjacent land uses within 350 feet of the tower facility, including all support structures and security fencing.
- b. Map showing the search radius for the antenna location and the proposed

**City of Marine on St. Croix
Tower Ordinance**

broadcast coverage obtained by the tower facility, including a narrative describing a search radius of not less than two (2) mile for the requested site, clearly explaining why the site was selected, locating all existing tower facilities, and identifying all other structures that may be potential co-location sites.

- c. Screening plan in accordance with Sec. 8 of this Ordinance and Sec. 4.404 of the city Development Code.
- d. Series of photo-simulated pictures of the proposed-to-be-constructed tower in a digital format. The pictures shall include a picture of the tower from nearest road, picture of base of tower only showing the bottom 20 feet, picture of the compound area, and picture of each of the guy points, if a guy tower is proposed. The pictures shall also include photo-simulations of any view-shed points from which the tower will impede.
- e. A signed lease on behalf of a carrier that once the tower is constructed the carrier will be leasing the tower within one (1) year after completion.
- f. A copy of a pre-FAA determination or a document that the proposed tower facility has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or that no compliance with Part 77 is required, and the reasons therefore.
- g. Documentation shall be provided prior to the issuance of a land use permit demonstrating that the approved tower has been designed in compliance with a qualified engineer licensed by the State of Minnesota.

SECTION 13: FACTORS CONSIDERED IN GRANTING CONDITIONAL USE PERMITS

The City of Marine on St. Croix Planning Commission shall consider the following factors in addition to any normally prescribed conditional use factors listed in the City of Marine on St. Croix Zoning Ordinance, in determining whether to issue a conditional use permit. The Commission may evaluate each of these criteria on a site-by-site basis with varying levels of preference in determining how the goals of this Ordinance are best served:

- a. Height of the proposed tower facility.
- b. Capacity of the tower structure for additional antenna equipment to accommodate expansion, or to allow for co-location of other provider's equipment.
- c. Proximity of the tower to residential structures
- d. Nature of uses on adjacent and nearby properties.
- e. Surrounding topography.
- f. Present and surrounding tree coverage and foliage.

**City of Marine on St. Croix
Tower Ordinance**

- g. Design and siting of the tower, with particular reference to design characteristics and location that have the effect of reducing or eliminating visual obtrusiveness.
- h. Proposed ingress and egress.
- i. Availability of suitable existing towers and other structures as discussed in other sections of this ordinance.
- j. Level of adherence to the provisions set forth in Section 1 of this ordinance and the adopted tower policy statement.

SECTION 14: PROHIBITIONS

The following prohibitions apply, unless granted approval at the discretion of the Planning Commission:

- a. No tower shall be over a total of 199 feet in height or within one mile of another tower regardless of municipal boundaries.
- b. A proposal for a new wireless service tower shall not be approved unless it can be shown by the applicant that the telecommunication equipment planned for the proposed tower cannot be accommodated: 1. On an existing tower or structure; or 2. On a tower that has been permitted by the City (even though it may not yet be constructed); or 3. On a tower whose application for a Conditional Use Permit is currently pending before the City.
- c. No tower over 35 feet in height shall be located within 500 feet of any residential dwelling other than the dwelling on the parcel on which the tower is to be located.
- d. No tower over 35 feet in height shall be located closer than one-quarter (1/4) mile to the outside boundary of an existing or proposed municipal or county park, unless discretionarily approved by the City Council.
- e. No tower over 35 feet shall be erected in an area one-half (1/2) mile West of the centerline of State Highway 95 to one (1) mile East of the centerline of State Highway 95 or one-quarter (1/4) mile from any boundary of a State Park or DNR or NPS designated or protected area, unless it can be demonstrated through visual impact demonstration that the tower will be Stealth designed and visually inconspicuous as viewed from the road or area boundary on a year-round basis.
- f. No tower over 35 feet shall be erected within one-quarter (1/4) mile of the Saint Croix River or within one-quarter (1/4) mile of a DNR protected lake or river.
- g. No temporary mobile cell sites are permitted except in the case of equipment failure, equipment testing, or in the case of an emergency situation as authorized by the County Sheriff. Use of temporary mobile cell sites for testing purposes shall be limited to twenty-four (24) hours; use of temporary mobile cell sites for equipment failure or in the case of emergency situations shall be limited to a term of thirty (30) days. These limits can be extended by the Planning Commission.

**City of Marine on St. Croix
Tower Ordinance**

- h. Permanent platforms or structures, exclusive of antennas, other than those necessary for safety purposes or for tower maintenance are prohibited.
- i. No antenna or tower shall have lights, reflectors, flashers, daytime strobes, steady night time red lights or other illuminating devices affixed or attached to it unless required by the FAA or FCC.
- j. No advertising or identification signs shall be placed on towers or antennas.

SECTION 15: TIME LIMIT ON TOWER CONSTRUCTION

Construction of an approved tower including all accessory structures, including footings and foundations, must be completed within one year following the date of the permit, extendable for another year by the City of Marine on St. Croix City Council. All landscaping must be installed within the first growing season immediately following construction.

SECTION 16: EFFECT OF THE ORDINANCE ON EXISTING TOWER FACILITIES

Tower facilities and antennas in all zoning districts and in existence as of the date of this adoption that do not conform to or comply with this ordinance are subject to the following provisions:

- a. Towers may continue in use for the purpose now used and as now existing, but may not be replaced or structurally altered without complying in all respects with the provisions contained herein.
- b. If a nonconforming tower is hereafter damaged or destroyed due to any reason or cause whatsoever, the tower may be repaired and restored to its former use, location, and physical dimensions upon obtaining a land use permit if the cost of repairing the tower to its former use, location, and physical dimensions would be less than fifty (50) percent of the cost to build a new conforming tower.

SECTION 17: TERM OF PERMIT

A conditional use permit will remain in effect so long as the conditions contained within the permit are met.

SECTION 18: REVOCATION OF PERMIT

The grounds for revocation of a conditional use permit shall be based on a finding that:

- a. The permittee has failed to comply with the conditions of approval imposed;
- b. The facility has not been properly maintained, or
- c. The facility is no longer in use providing wireless communication services to Marine residents and businesses and has not been in use for the previous 12 months.

**City of Marine on St. Croix
Tower Ordinance**

In the event of revocation of a permit, the tower and all accessory structures must be removed and the site restored to its original condition within 120 days. Failure to do so will result in the Township completing the removal and site restoration and the Township's cost shall, where the city is not the property owner, be assessed against the property and collected as a real estate tax. Where the city is the owner of the property on which the tower stands, the costs will be assessed against the permittee and tower owner.

c

SECTION 19: ENFORCEMENT

- A. This ordinance is adopted by reference pursuant to the provisions of Minnesota Statutes Section 394. It is declared unlawful for any person to violate any of the terms or conditions of this ordinance. Violation thereof shall be a misdemeanor.
- B. In the event of a violation or a threatened violation of this ordinance, the City of Marine on St. Croix in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, or abate such violations or threatened violations. The City may and is empowered to issue cease and desist orders to halt the progress of any on-going violation. When the work has been stopped by the City for any valid reason whatsoever, it shall not again be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted.
- C. Any person with proper standing, may institute mandamus proceedings in the District Court to compel specific performance by the proper official or officials of any duty required by this ordinance.

SECTION 20: INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

SECTION 21: SEVERABILITY

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

SECTION 22: ABROGATION AND GREATER RESTRICTIONS

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

SECTION 23: ADOPTION OF ORDINANCE

The City of Marine on St. Croix Telecommunication Tower Ordinance is hereby adopted by the City of Marine on St. Croix Planning Commission on the ___ day of _____, 2021.

City of Marine on St. Croix
Tower Ordinance

Chairperson
City of Marine on St. Croix
Board of Commissioners

Attest:

City Official Approved

as to Form:

City Attorney

City of Marine on St. Croix

RIGHT OF WAY AND SMALL CELL ORDINANCE



**Adopted on the __ day of
_____, 2021**

TABLE OF CONTENTS

SECTIONS	PAGE
Section 1.01	Findings, Purpose, and Intent.....3
Section 1.02	Election to Manage the Public Rights-of-way.....3
Section 1.03	Definitions3
Section 1.04	Administration.....8
Section 1.05	Utility Coordination Committee8
Section 1.06	Registration and Right-of-way Occupancy.....8
Section 1.07	Registration Information8
Section 1.08	Reporting Obligations9
Section 1.09	Permit Requirement.....10
Section 1.10	Permit Applications.....10
Section 1.11	Issuance of Permit; Conditions11
Section 1.12	Action on Applications12
Section 1.13	Permit Fees13
Section 1.14	Right-of-way Restoration13
Section 1.15	Joint Applications14
Section 1.16	Supplementary Applications15
Section 1.17	Other Obligations15
Section 1.18	Denial or Revocation of Permit15
Section 1.19	Installation Requirements16
Section 1.20	Inspections16
Section 1.21	Work Done Without a Permit16
Section 1.22	Supplementary Notification.....17
Section 1.23	Revocation of Permits17
Section 1.24	Mapping Data18
Section 1.25	Location and Relocation of Facilities18
Section 1.26	Pre-Excavation Facilities Location19
Section 1.27	Damage to Other Facilities19
Section 1.28	Right-of-way Vacation19
Section 1.29	Indemnification and Liability.....19
Section 1.30	Abandoned and Unusable Facilities19
Section 1.31	Appeal.....20
Section 1.32	Reservation of Regulatory and Police Powers.....20
Section 1.33	Severability.....20
Section 1.34	Adoption of Ordinance.....20

ORDINANCE NO. _____

CITY OF MARINE ON ST. CROIX, WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE TO ENACT A NEW CHAPTER OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS.

Chapter 1: Right-of-way Management

Sec. 1.01. 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.

Accordingly, the city hereby enacts this chapter of the code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minn. R. 7819.0050–7819.9950 and Minn. R., ch. 7560 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.

Sec. 1.02. 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.

Sec. 1.03. Definitions.

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

Abandoned Facility. 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. Any person requesting permission to excavate, obstruct, or otherwise place facilities in a right-of-way.

City. The City of Marine on St. Croix, Minnesota. For purposes of section 1.29, city also means

the City's elected officials, officers, employees, and agents.

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 or utility pole that is owned privately, or by the city or other governmental unit.

Commission. The State of Minnesota Public Utilities Commission.

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

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
- Letter of Credit, in a form acceptable to the city;
- Self-insurance, in a form acceptable to the city;
- 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. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., 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 cost.

Department. The department of planning and/or public works of the city.

Director. The director of the department of planning and/or public works of the city, or her or his designee. **City decide and let KPCG know who and what title this will be.**

Commented [KS1]: Clerk and/or is Jason's title Director of Public Works?

Commented [s2]: Would this be Lynette or Jason?

Formatted: Highlight

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

Emergency. 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. 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 Section 1.13.

Facility or Facilities. Any tangible asset in the right-of-way used to provide Utility or Telecommunications Service.

Five-Year Project Plan. Shows projects adopted by the city for construction within the next five years.

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.

Management Costs. 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 or small wireless facility 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 or small wireless facility 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 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 1.31 of this chapter.

Obstruct. 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, or so as to hinder maintenance of any city asset.

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

Obstruction Permit Fee. Money paid to the city by a permittee to cover the costs as provided in Section 1.13.

Patch or Patching. A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

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 this ordinance.

Permittee. Any person to whom a permit to excavate or obstruct a 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 state, 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 or equipment in the right-of-way.

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

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

Public Right-of-Way or Right-of-Way. The area on, below, or above a public roadway, highway, street, 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.

Right-of-Way Permit. Either the excavation permit, the obstruction permit, the small cell permit or any combination thereof depending on the context, required by this chapter.

Right-of-Way User. (1) A telecommunications right-of-way user as defined by Minn. Stat., § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.

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

Small Wireless Facility. 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 could fit within such an enclosure; and
- (ii) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including

electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Supplementary Application. 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.

Temporary Surface. 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. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

Telecommunications Right-of-way User. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, 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 chapter except to the extent such entity is offering wireless service.

Two Year Project Plan. Shows projects adopted by the city for construction within the next two years.

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

Wireless Facility. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and 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 cable service.

Wireless Support Structure. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

Sec. 1.04 Administration.

The director is the principal city official appointed by the City Manager and/or Council or Commission responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

Sec. 1.05. Utility Coordination Committee.

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

Sec. 1.06. Registration and Right-of-way Occupancy.

Subd. 1. Registration. Each person authorized to occupy or use, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information.

Subd. 2. Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens (including raingardens) 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 Minn. Stat. Ch. 216D, Gopher One Call Law.

Sec. 1.07. Registration Information.

Subd. 1. Information Required. Registration shall be requested on an application form produced by the City. The information provided to the city at the time of registration shall include, but not be limited to:

- (a) Each registrant's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
- (b) 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 at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (c) A certificate of insurance or self-insurance:
 - (1) 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 city;
 - (2) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and

occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

- (3) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (4) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and
 - (5) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
 - (6) The city may require a copy of the actual insurance policies.
 - (7) If the person is a corporation, a copy of the certificate is required to be filed under state law as recorded and certified to by the secretary of state.
 - (8) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission 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 said commission or other state or federal agency.
- (d) Any other information deemed necessary by the City Engineer deemed necessary to adequately protect the health, safety, and welfare of the city.

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

Sec. 1.08. Reporting Obligations.

Subd. 1. Operations. Each registrant shall, at the time of registration and by January 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

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

- (a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
- (b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects.

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

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

Subd. 2. *Additional Next-Year Projects.* Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 1.09. Permit Requirement.

Subd. 1. *Permit Required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so.

- (a) *Excavation Permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (b) *Obstruction Permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- (c) *Small Wireless Facility Permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

Subd. 2. *Permit Extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. *Delay Penalty.* In accordance with Minn. Rule 7819.1000 subp. 3 and notwithstanding subd. 2 of this Section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

Subd. 4. *Permit Display.* Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

Sec. 1.10. Permit Applications.

Application for a permit is made to the city on forms approved by the City Engineer or the City Engineer's designee. 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 chapter.
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities and all other information deemed relevant by the City Engineer.
- (c) 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 or any emergency actions taken by the city;
 - (4) franchise fees or other charges, if applicable.
- (d) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
- (e) 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. 1.11. Issuance of Permit; Conditions.

Subd. 1. Permit Issuance. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

Subd. 2. Conditions. The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

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

- (a) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- (b) No new wireless support structure installed within the right-of-way shall exceed 50 feet 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.
- (c) No wireless facility may extend more than 10 feet above its wireless support structure.
- (d) 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.
- (e) All facilities and support structures shall use design, materials, colors, textures, screening, and landscaping to blend in within the surrounding natural setting and built

environment. All facilities shall be designed to minimize the visual impact and, in the sole discretion of the Town, appear to be compatible with the surroundings.

- (f) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, such equipment shall be consistent with the City's aesthetic standards regarding small wireless facilities and/or wireless equipment as adopted by the City Engineer. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the City Engineer shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit.
- (g) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
- (h) A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit.

Subd. 4. Small Wireless Facility Agreement. In accordance with all state and federal laws and FCC Orders, a small wireless facility shall only be collocated on a small 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 require payment of the following:

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

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.

Sec. 1.12 Action on Small Wireless Facility Permit Applications.

Subd. 1. Deadline for Action. The city shall approve or deny a small wireless facility permit application within 60 days for a collocation on an existing or replaced facility, and 90 days for a new facility after filing of such application or within any timeline established by state law. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

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

- (a) are located within a two-mile radius;
- (b) consist of substantially similar equipment; and

- (c) are to be placed on similar types of wireless support structures.

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

Subd. 3. Tolling of Deadline. The deadline for action on a small wireless facility permit application may be tolled if:

- (a) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
- (b) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.
- (c) The city and a small wireless facility applicant agree in writing to toll the review period.

Sec. 1.13. Permit Fees.

Note: *Minn. Rule 7819.1000 establishes requirements for establishing fees.*

Subd. 1. Excavation Permit Fee. The city shall impose an excavation permit fee in an amount sufficient to recover the following costs:

- (a) the city management costs;
- (b) degradation costs, if applicable.

Subd. 2. Obstruction Permit Fee. The city shall impose an obstruction permit fee in an amount sufficient to recover the city management costs.

Subd 3. Small Wireless Facility Permit Fee. The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

- (a) management costs, and;
- (b) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

Subd. 4. Payment of Permit Fees. No excavation permit, obstruction permit, or small cell permit shall be issued without payment of all required fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

Subd. 5. Non Refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 1.23 are not refundable.

Subd. 6. Application to Franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

Sec. 1.14. Right-of-way Patching and Restoration.

Subd. 1. Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 1.17.

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

- (a) **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.
- (b) **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 Minn. Rule 7819.3000.
- (c) **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

Subd. 3. Standards. The permittee shall perform excavation, backfilling, patching, and landscaping restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule 7819.1100.

Subd. 4. 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. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.17.

Subd. 5. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Sec. 1.15. Joint Applications.

Subd. 1. Joint application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subd. 2. Shared fees. Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

Sec. 1.16. Supplementary Applications.

Subd. 1. *Limitation on Area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

Subd. 2. *Limitation on Dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

Sec. 1.17. Other Obligations.

Subd. 1. *Compliance with Other Laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

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

Subd. 3. *Interference with Right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters 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.

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

Sec. 1.18. Denial or Revocation of Permit.

Subd. 1. Reasons for Denial. The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use and any city asset or facility.

Subd. 2. Procedural Requirements. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

Sec. 1.19. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. R. 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 Minn. R., ch 7560 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 Section 1.23 subd. 2 of this ordinance.

Sec. 1.20. Inspection.

Subd. 1. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300 or other as built documentation as deemed necessary by the city engineer.

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

Subd 3. Authority of Director.

- (a) At the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.
- (b) The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Sec. 1.23.

Sec. 1.21. Work Done Without a Permit.

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

Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

If the 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 any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Subd. 2. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the city code, deposit with the city the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter.

Sec. 1.22. Supplementary Notification.

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

Sec. 1.23. Revocation of Permits.

Subd. 1. 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 permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the right-of-way permit.
- (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens.
- (c) Any material misrepresentation of fact in the application for a right-of-way permit.
- (d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control.
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.20.

Subd. 2. Written Notice of Breach. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be

cause for immediate revocation of the permit.

Subd. 4. Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Sec. 1.24. Mapping Data.

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

Subd. 2. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any city approval necessary for:

- a) payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429, and
- b) city approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The director shall reasonably determine the appropriate method of providing such information to the city. 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 future permits to the offending permittee or its subcontractors.

Sec. 1.25. Location and Relocation of Facilities.

Subd. 1. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, with other applicable standards adopted by the city engineer, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

Subd. 2. 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 facility that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the 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.

Subd. 3. Nuisance. One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The 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.

Subd. 4. Limitation of Space. To protect the health, safety, and welfare of the public, 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.

Sec. 1.26 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 and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

Sec. 1.27. 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.

Sec. 1.28. Right-of-way Vacation.

Reservation of right. If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. R. 7819.3200.

Sec. 1.29. Indemnification and Liability

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

Sec. 1.30. Abandoned and Unusable Facilities.

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

Subd. 2. Removal. Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way within one year if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

Sec. 1.31. Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6; or (5) disputes a determination of the director regarding Section 1.24, subd. 2 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Sec. 1.32 Reservation of Regulatory and Police Powers

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

Sec. 1.33. Severability.

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

Sec 1.34. Adoption of Ordinance

The City of Marine on St. Croix Right-Of-Way and Small Cell Ordinance is hereby adopted by the City of Marine on St. Croix Planning Commission on the ___ day of _____, 2021.

Chairperson
**City of Marine on St. Croix
Board of Commissioners**

Attest:

City Clerk

CITY OF MARINE ON ST. CROIX
PLANNING COMMISSION
MINUTES

Tuesday, March 30, 2021 - 7:30pm
Virtual Meeting via Zoom

Present: Chairman Gerry Mrosla, Commissioners Tim Casey, Jennifer Henry, Anna Hagstrom.

Absent: Ron Brenner, Ed Sanderson, Kristina Smitten.

Citizens present: Mary Whitaker, Wendy Ward, John Goodfellow, Gwen Roden, Eric Larsen, Chrissi Larsen, Suzanne Pollack, Kevin Nyenhuis.

Chairman Mrosla called the meeting to order at 7:31 p.m.

Public Hearing – Eric and Chrissi Larsen: 983 Rosabelle St.

Conditional Use Permit for a bathroom in an accessory structure

Chairman Mrosla opened the public hearing at 7:32 p.m. Commissioner Casey presented the facts and findings for the case, noting that the documents met all the requirements for the commission to recommend approval.

Mrosla opened the forum to public comment.

John Goodfellow asked about tree removal at the site, saying that the city had tree preservation requirements in the code and it appeared that large trees were being cut down. Moreover, the regulations for tree removal are different for single family housing than for planned unit developments. Mrosla said the scope of the commission's work was not to approve the overall building plan or site plan, but focused narrowly on the issue of whether to recommend a conditional use permit to include a bathroom in an accessory building. The city council is the policy making body. Goodfellow said this could be a useful case study and he will bring the issue before the council.

No further public comment.

Mrosla closed the hearing at 7:37 p.m.

Commissioner Henry moved and Casey seconded to recommend approval of the CUP for a bathroom in an accessory structure at 983 Rosabell Street. Roll call vote: Mrosla — Aye; Hagstrom — Aye; Henry — Aye; Casey — Aye. Motion approved unanimously.

New and Old Business

Mrosla noted that the city council and planning commission had a joint workshop March 16 regarding 4G and 5G wireless infrastructure.

Approval of minutes

February 23 Meeting

Casey moved and Henry seconded approval of the minutes of the February 23 meeting. Roll call vote: Mrosla — Aye; Henry — Aye; Casey — Aye; Hagstrom - Abstain. Minutes approved as drafted.

Adjournment

Casey moved and Henry seconded to adjourn at 7:40 pm. Roll call vote: Mrosla — Aye; Henry — Aye; Casey — Aye; Hagstrom — Aye. Motion passed unanimously.

Minutes taken by Suzanne Dammann, Assistant City Clerk.