

**RIGHT-OF-WAY ORDINANCE
FOR THE MANAGEMENT OF THE PUBLIC RIGHT-OF-WAY OF ROADS
UNDER THE COUNTY’S JURISDICTION
County of Mower, Minnesota**

An ordinance to enact a new Chapter of the Mower Code of Ordinances to administer and regulate the public right-of-way in the public interest, and to provide for the issuance and regulation of Right-of-Way Permits.

THE COUNTY BOARD OF MOWER ORDAINS:

Chapter 1

Right-of-Way Management

Sec. 12.2-01. Findings, Purpose, and Intent.

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

Accordingly, the County hereby enacts this new chapter of this code relating to right-of-way permits and administration. This chapter imposes regulation on the placement and maintenance of facilities and equipment currently within its right-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 right-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 right-of-way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the County and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

Sec. 12.2-02. Election to Manage the Public Right-of-Way

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

“Manage the Right- of-Way” means the authority of the County to do any of all of the following:

1. require registration
2. require construction performance bonds and insurance coverage
3. establish installation and construction standards;
4. establish and define location and relocation requirements for equipment and facilities;
5. establish coordination and timing requirements;
6. require right-of-way users to immediately submit to the County all project data reasonably necessary to allow the County to develop a right of way mapping system including GIS system information
7. require right-of-way users to submit, upon request of the County, existing data on the location of user's facilities occupying the public right of way within the County. The data may be submitted in the form maintained by the user in a reasonable time after receipt of the request based on the amount of data requested;
8. establish right-of-way permitting requirements for excavation and obstruction;
9. establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right-of-way repair, excavation or construction; and
10. impose reasonable penalties for unreasonable delays in construction.

Sec. 12.2-03. Definitions.

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

“Abandoned Facility” means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. Facility may be declared abandoned by Right-of-Way user at any time. Any facility remaining unusable or unused in excess of twelve (12) months is deemed abandoned.

"Applicant" means any Person requesting permission to Excavate or Obstruct a Right-of-Way.

“Commission” means the State Public Utilities Commission.

“Congested Right-of-Way” means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, section 216D.04, subdivision 3, over a continuous length in excess of 500 feet.

"Construction 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. Sec 15.73,sub3;
- D. Letter of Credit, in form acceptable to the County;
- E. Self-insurance in form acceptable to the County;
- F. Blanket bond for projects within the county or construction bond for a specified time and in a form acceptable to the County.

"County" means the County of Mower, Minnesota. For purposes of section 1.28 Indemnification and Liability, County means its elected and appointed officials, officers, employees and agents.

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

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

"Degradation Fee" means the estimated fee established at the time of permitting by the County to recover costs associated with the decrease in the useful life of the Right-of-Way caused by the excavation, and which equals the Degradation Costs.

"Delay Penalty" is the penalty imposed as a result of unreasonable delays in Right-of-Way excavation, obstruction, patching, or restoration as established by permit.

"Department" means the Department of Public Works or the Highway Department of the County.

"Department Inspector" means any Person authorized by the director to carry out inspections related to the provisions of this Chapter.

"Director" means the County Highway Engineer of the County, or her or his designee.

"Emergency" means a condition that (1) poses 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 public Right-of-Way.

"Excavation Permit" means the permit which, pursuant to this Chapter, must be obtained before a Person may excavate in a Right-of-Way. An Excavation Permit allows the

holder to Excavate that part of the Right-of-Way described in such permit.

"Excavation Permit Fee" means money paid to the County by an Applicant to cover the costs as provided in Section 1.12.

"Facility or Facilities" means any tangible asset in the Right-of-Way required to provide Utility Service.

"Five-year project plan" shows projects adopted by the County for construction within the next five years.

"High Density Corridor" means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

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

"Local Representative" means a local Person or Persons, or designee of such Person or Persons, authorized by a Registrant to accept legal notice or service and to accept communications and to make decisions for that Registrant regarding all matters within the scope of this Chapter.

"Management Costs" means the actual costs the County incurs in managing its public Rights-of-Way, including such costs, if incurred, as those associated with registering Applicants; issuing, processing, and verifying Right-of-Way Permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user Equipment and Facilities during public Right-of-Way work; determining the adequacy of Right-of-Way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking Right-of-Way Permits. Management costs do not include payment by a Telecommunications Right-of-Way User for the use of the Right-of-Way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the County fees and costs related to appeals taken pursuant to Section 130 of this Chapter.

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

"Obstruction Permit" means the permit which, pursuant to this Chapter, must be obtained before a Person may Obstruct any part of a Right-of-Way, allowing the holder to hinder free and open passage over the specified portion of that Right-of-Way by placing any tangible object therein for the duration specified.

"Obstruction Permit Fee" means money paid to the County by a Permittee to cover the costs as provided in Section 1.12 and required to obtain the permit.

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

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

"Permit" has the meaning given "right-of-way permit" in Minnesota Statutes, section 237.162.

"Permittee" means any Person to whom a permit to Excavate or Obstruct a Right-of-Way has been granted by the County under this Chapter.

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

"Probation" means the status of a person that has not complied with the conditions of this chapter. "Probationary Period" means one year from the date that a Person has been notified in writing that they have been put on Probation.

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

"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.

"Restoration Cost" means the amount of money paid to the County by a Permittee to achieve the level of restoration according to plates 1 to 13 of the Minnesota Public Utilities Commission rules.

"Restore or Restoration" means the process by which an excavated public Right-of-Way and surrounding area including pavement foundation is returned to the same condition (and life expectancy) that existed before excavation.

"Right-of-Way Permit" means either the Excavation Permit or the Obstruction Permit or both, depending on the context, required by this Chapter.

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

"Service" or "Utility Service" includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subs. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minn. Stat. Chapter. 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., Chapter 308A; (6) water, sewer, steam, cooling or heating services; and (7) tile systems, drainage tiles.

"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 Rights-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 Chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec.216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not Telecommunications Right-of-Way Users for purposes of this Chapter.

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

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

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

"Unusable or unused Equipment and Facilities" means equipment and Facilities in the Right-of-Way which have remained unused for one year or for facilities that are not registered or located by Gopher One Call; or for which the Registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the equipment or facilities.

Sec. 12.2-04. Administration.

The Director is the principal County official responsible for the administration of the Rights-of-Way, Right-of-Way Permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

Sec. 12.2-05. Utility Coordination Committee

The County may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the County 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 Director may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the County.

Sec. 12.2-06. Registration and Right-of-Way Occupancy.

Subd. 1. Registration. Each Person who occupies, uses, or seeks to occupy or use, the Right-of-Way or place any Equipment or Facilities in the Right-of-Way, including Persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the County. Registration will consist of providing application information and paying a registration fee. Registration fees shall be set by the County Board and may be amended by them at a public meeting.

Subd. 2. Registration Prior to Work. No Person may construct, install, repair, remove, relocate, or perform any other work on, or use any Facilities or any part thereof in any Right-of-Way without first being registered with the County.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a County ordinance permitting Persons to plant or maintain boulevard plantings or gardens in the area of the Right-of-Way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Chapter.

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

However, nothing herein relieves a Person from complying with the provisions of the Minn. Stat. Chap. 216D, "Gopher One call" Law.

Sec. 12.2-07. Registration Information.

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

(a) Each Registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a Local Representative. The Local Representative or designee shall be available at all times. Current information regarding how to contact the Local Representative in an Emergency shall be provided at the time of registration.

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

(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 Director;

(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 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 County as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage;

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

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

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

(e) If the Person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.

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

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

Sec. 12.2-08. Reporting Obligations.

Subd. 1. Operations. Each Registrant that provides utility service shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground Facilities with the Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavations and Obstructions of Rights-of-Way. The county shall maintain in the file a copy of the county's construction plan for construction projects. The utility facility plans shall be kept up-to-date by the Registrant. The plans shall be on file and available for public inspection.

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");
- (b) How the registrant will accommodate the county plan;
- (c) 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").

It is the registrant's responsibility to keep informed on available plans.

The term "project" in this section shall include both Next-year Projects and Five-year Projects but does not include individual service line hookups and minor maintenance unless they are part of an area wide program.

Subd. 2. Additional Next-year Projects. Notwithstanding the foregoing, the Director will not deny an application for a Right-of-Way Permit for failure to include a project in a plan submitted to the County if the Registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 12.2-09. Permit Requirement.

Subd. 1. Permit Required. Except as otherwise provided in this Code, no Person may Obstruct, or Excavate any Right-of-Way without first registering and having obtained the appropriate *Right-of-Way* Obstruction, or Excavation Permit from the County to do so.

Subd. 2. Permit Extensions. No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the permit unless such Person (i) makes a Supplementary Application for another Right-of-Way Permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. Delay Penalty. In accordance with Minnesota Rule 7819.1000 subp. 3 notwithstanding subd. 2 of this Section, the County shall establish and impose a Delay Penalty for unreasonable delays in Right-of-Way excavation, Obstruction, Patching, or Restoration. The Delay Penalty shall be established from time to time by County Board resolution and shall include any delays or damages charged by the county's construction contractor and may include liquidated damages consistent with the contract.

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

Sec. 12.2-10. Permit Applications.

Application for a permit is made to the Director. Right-of-Way Permit applications shall contain, and will be considered complete only upon compliance with the requirements of, the following provisions:

- (a) Registration with the County pursuant to this Chapter;
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed Facilities.
- (c) Payment of money due the County 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 County because of Applicant's prior excavations or Obstructions of the right-of-way or any Emergency actions taken by the County;
 - (4) franchise fees or other charges, if applicable.
- (d) Payment of disputed amounts due the County by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- (e) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation or obstruction permit to install additional facilities and the County deems the existing construction performance bond inadequate under applicable standards.

Sec. 12.2-11. Issuance of Permit; Conditions.

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

Subd. 2. Conditions. The Director may impose reasonable conditions upon the issuance of the permit and the performance of the Applicant thereunder to protect the health, safety and welfare or, when necessary, to protect the Right-of-Way and its current and future use.

Sec. 12.2-12. Permit Fees.

Subd. 1. Excavation Permit Fee. The county shall establish an Excavation permit fee in an amount sufficient to recover the following costs. Permit fees shall be established by the County Board and may be amended at any public meeting.

(a) the County Management Costs;

(b) Degradation Costs, if applicable.

Subd. 2. Obstruction Permit Fee. The county shall establish the obstruction permit fee and shall be in an amount sufficient to recover the county management costs.

Subd. 3. Payment of Permit Fees. No Excavation Permit or Obstruction Permit shall be issued without payment of Excavation or Obstruction Permit Fees unless the County allows Applicants to pay such fees within thirty (30) days of billing.

Subd. 4. Non refundable. Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 1.22 are not refundable.

Subd. 5. 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. 12.2-13. 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 extraordinary circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Section 1.16.

Subd. 2. Temporary Surfacing, Patch and Restoration. Permittee shall Patch its own work.

(a) County Restoration. If the County restores any part of the Right-of-Way, Permittee shall pay the costs thereof within thirty (30) days of billing. If, the County restores only the surface of the right-of-way and during the thirty-six (36) months following such Restoration, the pavement settles, the Permittee shall pay to the County, within thirty (30) days of billing, all costs related to restoring the Right-of-Way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by the Permittee. These costs shall include administrative, overhead mobilization, material, labor, and equipment.

(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 an amount determined by the Director to be sufficient to cover the cost of Restoration. If, within thirty-six (36) months after completion of the Restoration of the Right-of-Way, the Director determines that the Right-of-Way has been properly Restored, the surety on the Construction Performance Bond shall be released.

(c) Degradation Fee and Patching in Lieu of Restoration to PUC Standards. 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 Temporary Surfacing, Patching and Restoration including backfill, compaction, and landscaping according to the standards and with the materials specified by the Director. The Director shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The Director in exercising this authority shall comply with PUC standards for Right-of-Way Restoration (see PUC Rules 7819.990 to 7819.9950) and require conformance to MnDOT standard specifications and local government specifications and drawing and shall further be guided by the following considerations:

- (a) The number, size, depth and duration of the excavations, disruptions or damage to the Right-of-Way;
- (b) The traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way;
- (c) The pre-excavation condition of the Right-of-Way; the remaining life-expectancy of the Right-of-Way affected by the excavation;
- (d) Whether the relative cost of the method of restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the Right-of-Way; and
- (e) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place.

Subd. 4. Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Director, 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 1.16.

Subd. 4(a). Duty to Correct Defects. The permittee shall correct defects in patching, or restoration

performed by permittee or its agents, permittee upon notification from the County, shall correct all restoration work to the extent necessary, using the method required by the County. Said work shall be completed within five (5) calendar days of the receipt of the notice from the County, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 1.16.

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 Director, or fails to satisfactorily and timely complete all Restoration required by the Director, the Director at its option may do such work. In that event the Permittee shall pay to the County, within thirty (30) days of billing, the cost of Restoring the Right-of-Way. If Permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond.

Sec. 12.2-14. 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 Director does not perform, may share in the payment of the Obstruction or Excavation Permit Fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. With County Construction Projects. Registrants who join in a scheduled Obstruction or excavation coordinated with a County construction project by the Director, whether or not it is a joint application by two or more Registrants or a single application, are not required to pay the Obstruction and Degradation portions of the permit fee, but a permit is still required.

Sec. 12.2-15. 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 done before the permit end date.

Sec. 12.2-16. Other Obligations.

Subd. 1. Compliance With Other Laws. The applicant must notify and obtain a permit from any township or city through which it passes if said township or city so requires. Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the County or other applicable rule, law or regulation. Permittee shall comply with other local codes and with road load restrictions. A Permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. 216D.01-.09 ("Gopher One Call Excavation Notice System"). A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work.

Subd. 2. Prohibited Work. Except in an Emergency, and with the approval of the County, no Right-of-Way Obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. Interference with Right-of-Way. A Permittee shall not so Obstruct a Right-of-Way that the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterways shall be interfered. Private vehicles of those doing work in the Right-of-Way may not be parked within or next to a permit area, unless parked in conformance with county or applicable township and 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. The director shall be the sole judge and determination of unseasonable or unreasonable weather, and force majeure conditions.

Traffic control shall conform to the MMUTCD and its field manual and any written directions of the county engineer.

Sec. 12.2-17. Denial of Permit.

The County may deny a permit for failure to meet the requirements and conditions of this Chapter or if the County determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the Right-of-Way and its current and future use. The county may deny a permit if the utility has failed to comply with previous permit conditions. The county may withhold issuance of a permit until conditions of previous permit are complied with.

Sec. 12.2-18. Installation Requirements.

The excavation, backfilling, Patching and Restoration, and all other work performed in the

Right-of-Way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and shall conform to MnDOT standard specifications and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Sections 237.162 and 237.163.

Sec. 12.2-19. Inspection.

Subd. 1. 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.

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

Subd 3. Authority of County.

(a) At the time of inspection the Director may order the immediate cessation and correction 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 which does not conform to the terms of the permit or other applicable standards, rules, laws, 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. 1.22.

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

Sec. 12.2-20. 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. Within two business days after the occurrence of the Emergency the Registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the Emergency.

If the County becomes aware of an Emergency regarding a Registrant's Facilities, the County will attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the County may take whatever action it deems to the Emergency, the cost of which shall be borne by the Registrant whose Facilities occasioned the Emergency.

Subd. 2. Non-Emergency Situations. Except in an Emergency, any Person who, without first having obtained the necessary permit, Obstructs or Excavates a Right-of-Way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by the County Code, deposit with the County the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this Chapter.

Sec. 12.2-21. Supplementary Notification.

If the Obstruction or Excavation of the Right-of-Way begins later or ends sooner than the date given on the permit, Permittee shall notify the County of the accurate information as soon as this information is known.

Sec. 12.2-22. Revocation of Permits.

Subd. 1. Substantial Breach. The County reserves its right, as provided herein, to revoke any Right-of-Way Permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit including a threat to the safety of workers, or the right-of-way user or the utility users. A substantial breach by Permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the Right-of-Way Permit;
- (b) An evasion or attempt to evade any material provision of the Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the County or its citizens;
- (c) Any material misrepresentation of fact in the application for a Right-of-Way Permit;
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the Permittee's control, or failure to relocate existing facilities as specified in Sec. 1.24; or
- (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. 1.19.
- (f) Failure of the utility to pay any required costs, fees, or charges billed by the county.

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

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

reasonably implement the approved plan, shall automatically revoke the permit and may include placing the Permittee on Probation for one (1) full year.

Subd. 4. Cause for Probation. From time to time, the County may establish a list of conditions of the permit, which if breached will automatically place the Permittee on Probation for one full year, such as, but not limited to, working out of the allotted time period or working on Right-of-Way grossly outside of the permit authorization.

Subd. 5. Automatic Revocation. If a Permittee, while on Probation, commits a breach as outlined above, Permittee's permit will automatically be revoked and Permittee will not be allowed further permits for one full year, except for Emergency repairs.

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

Subd. 7. Revoked Permit. If the county revokes a utility's permit for breach of this ordinance, the utility will not be allowed to obstruct or excavate within the county Right-of-Way until the breach situation is corrected to the satisfaction of the Director and the permit is reissued.

Sec. 12.2-23. Mapping Data.

Subd. 1. Information Required. Each Registrant and Permittee shall provide Mapping information required by the County in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Therefore, in managing the use of its public rights-of-way, a local government unit may establish, develop, and implement a right-of-way mapping system as follows. The purpose of a mapping system is to:

- A. allow flexibility in its use by the local government as an effective management tool;
- B. enhance public safety and user facility safety;
- C. provide for long-term cost savings;
- D. improve public right-of-way design quality; and
- E. allow for better information collection and cooperative usage among local government units, telecommunications companies, and other users of the public right-of-way.

Subd. 1. Application required. When a local government unit requires a permit for excavation in or obstruction of its public right-of-way, a person wishing to undertake a project within the public right-of-way shall submit a right-of-way permit application, which may required the filing of mapping information pursuant to subdivision 2.

Subd. 2. Information. The local government unit may require as part of its permit application the filing of all the following information:

- A. location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:

- (1) offsets from property lines, distances from the centerline of the public right-of-way, and curb lines as determined by the local government unit;
 - (2) coordinates derived from the coordinate system being used by the local government unit; or
 - (3) any other system agreed upon by the right-of-way user and local government unit;
- B. the type and size of the utility facility;
 - C. a description showing aboveground appurtenances;
 - D. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the map, and
 - E. any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, section 216D.04, subdivision 3.

Subd. 3. Changes and corrections. The application must provide that the applicant agrees to submit “as built” drawings, reflecting any changes and variations from the information provided under subdivision 2, items A to E.

Subd. 4. Additional construction information. In addition, the right-of-way user shall submit to the local government unit at the time the project is completed a completion certificate according to part 7819.1300.

Subd. 5. Manner of conveying permit data. A right-of-way user is not required to provide or convey mapping information or data in a format or manner that is different from what is currently utilized and maintained by that user. A permit application fee may include the cost to convert the data furnished by the right-of-way user to a format currently in use by the local unit of government. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process.

Subd. 6. Data on existing facilities. At the request of a local government unit, a right-of-way user shall provide existing data on its existing facilities within the public right-of-way in the form maintained by the user at the time the request was made, if available.

Sec. 12.2-24. Location and Relocation of Facilities.

Subd. 1. Placement, Location, and Relocation. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities and counties. By submitting a request for a permit the person recognizes they must conform to the existing ordinances and codes of other units of government related to underground placement regardless of how the application is written or permit granted.

Subd. 2. Corridors. The County may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, as a best management practice for each type of Facility that is, or, pursuant to current technology, the County expects will someday be, located within the Right-of-Way. All excavation, obstruction, or other permits issued by the County involving the installation or replacement of Facilities shall designate the proper corridor for the

Facilities at issue. A typical cross section of the location for utilities may be on file at the Director's office. This section is not intended to establish "high density corridors". Any Registrant who has Facilities in the Right-of-Way in a position at variance with the corridors established by the County shall, no later than at the time of the next reconstruction or excavation of the area where the Facilities are located, move the Facilities to the assigned position within the Right-of-Way, unless this requirement is waived by the County for good cause shown, upon consideration of such factors as the remaining economic life of the Facilities, public safety, customer Service needs and hardship to the Registrant.

Subd. 3. Nuisance. One year after the passage of this Chapter, any Facilities found in a Right-of-Way that have not been Registered shall be deemed to be a nuisance. The County may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the Facilities and restoring the Right-of-Way to a useable condition and requiring payment to the County for the costs involved.

Subd. 4. Limitation of Space. To protect health, safety, and welfare or when necessary to protect the Right-of-Way and its current use, the County shall have the power to use best management practices to prohibit or limit the placement and location of new or additional Facilities within the Right-of-Way. In making such decisions, the County shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public interest, the public's need for the particular Utility Service, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of existing Facilities in the Right-of-Way, and future County plans for public improvements and development projects which have been determined to be in the public interest.

Subd. 5. Relocation of Facilities. A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the Director for good cause requests such removal and relocation, and shall restore the Right-of-Way consistent with PUC standards, local regulations and MnDOT standard specifications. The Director may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future County use of the Right-of-Way, (ii) a public improvement undertaken by the County, (iii) an economic development project in which the County has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Relocation Notification Procedure: The Director shall notify the utility owner at least six (6) months in advance of the need to relocate existing facilities so the owner can plan the relocation. The Director shall provide a second notification to the owner one (1) month before the owner needs to begin the relocation. The utility owner shall begin relocation of the facilities within one (1) week of the second notification. All utilities shall be relocated within one (1) month. The Director may allow a different schedule if it does not interfere with the County's project. The utility owner shall diligently work to relocate the facilities within the above schedule.

Delay to County Project: The Director shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner does not take action to insure the relocation will

be completed in accordance with the above schedule and the Director feels this delay will have an adverse impact to a county project, then the Director may hire a competent contractor to perform the relocation. In that event, the county may charge the utility owner all costs incurred to relocate the facility.

The county may charge the utility owner for all costs incurred and requested by a contractor working for the county who is delayed because the relocation is not completed in the scheduled timeframe and for all costs incurred by the county due to the delay.

Notwithstanding the foregoing, according to the PUC rules, a Person shall not be required to remove or relocate its Facilities from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the Person. However this does not exempt the utility company from paying for the value of any taking of said property by occupation without compensation.

Sec. 12.2-25. 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 in the area of work shall notify and work closely with the excavation contractor to establish the exact location of its Facilities and the best procedure for excavation to protect the safety of workers and right-of-way users and other utility users. If the utility is not at the approved depth or location, it shall be exposed at the permittee's expense or by the county upon written notice to the permittee. The county may, upon said notice, locate said utility at the permittee's expense.

Sec. 12.2-26. Damage to Other Facilities.

When the County does work in the Right-of-Way and finds it necessary to maintain, support, or move a Registrant's Facilities to protect it, the Director shall notify the Local Representative as early as is reasonably possible. The costs associated therewith will be billed to that Registrant and must be paid within 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 that it or its Facilities damages. When the permittee does damage to county facilities in the Right-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, they shall correct the damage immediately. If they do not, the county may make such repairs as necessary and charge all of the expenses of the repair to the permittee. The permittee shall pay for said repairs within 30 days of billing. Each Registrant shall be responsible for the cost of repairing any damage to the Facilities of another Registrant caused during the County's response to an Emergency occasioned by that Registrant's Facilities.

Sec. 12.2-27. Right-of-Way Vacation.

Reservation of Right. If the County vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rule 7819.1250 and other applicable laws.

Sec. 12.2-28. Indemnification and Liability.

By registering with the County, or by accepting a permit under this Chapter, a Registrant or Permittee agrees to defend and indemnify the county in accordance with the provisions of Minnesota Rule 7819.1250.

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

Sec. 12.2-29. Abandoned or Unusable Facilities.

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

Subd. 2. Removal. Any registrant who has abandoned or unusable facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the county waives this requirement.

Sec. 12.2-30. Appeal.

a) A Right-of-Way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the Board of Adjustment. The Board of Adjustment shall act on a timely written request at its next regularly scheduled meeting. A decision by the Board of Adjustment affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Sec. 12.2-31. Reservation of Regulatory and Police Powers.

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

Sec. 12.2-32. Severability.

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

Sec. 12.2-33. Penalty for Violation.

Penalty for violation of this ordinance is \$500 per occurrence per site per mile per day as long as may be applicable unless a penalty or fine is otherwise specifically designated in this ordinance.

Sec. 12.2-34 Effective Date

This ordinance shall take effect immediately upon passage and publication.

Adopted 6th day of June, 2000.

Date: June 6, 2000

Ordinance #3-00

ORDINANCE

On motion of Commissioner Cummings, seconded by Commissioner Miller, the following ordinance was unanimously passed and adopted by the Mower County Board of Commissioners at a meeting held June 6, 2000 at the Courthouse, Austin, Minnesota.

WHEREAS, To provide for health, safety and welfare of its citizens, and to ensure the integrity of its roads and streets and the appropriate use of the right-of-ways, the County strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances;

WHEREAS, The Mower County Board held a public hearing on June 6, 2000 and provided proper legal notice;

NOW, THEREFORE BE IT ORDAINED, that the Mower County Commissioners hereby amend the Mower County Code and create Chapter 12.2, Right of Way of the County Code to include the following sections:

- Sec. 12.2-01. Findings, Purpose, and Intent
- Sec. 12.2-02. Election to Manage the Public Right-of-Way
- Sec. 12.2-03. Definitions
- Sec. 12.2-04. Administration
- Sec. 12.2-05. Utility Coordination Committee
- Sec. 12.2-06. Registration and Right-of-Way Occupancy
- Sec. 12.2-07. Registration Information
- Sec. 12.2-08. Reporting Obligations
- Sec. 12.2-09. Permit Requirement
- Sec. 12.2-10. Permit Applications
- Sec. 12.2-11. Issuance of Permit; Conditions
- Sec. 12.2-12. Permit Fees
- Sec. 12.2-13. Right-of-Way Patching and Restoration
- Sec. 12.2-14. Joint Applications
- Sec. 12.2-15. Supplementary Applications
- Sec. 12.2-16. Other Obligations
- Sec. 12.2-17. Denial of Permit
- Sec. 12.2-18. Installation Requirements
- Sec. 12.2-19. Inspection
- Sec. 12.2-20. Work done Without a Permit
- Sec. 12.2-21. Supplementary Notification
- Sec. 12.2-22. Revocation of Permits
- Sec. 12.2-23. Mapping Data
- Sec. 12.2-24. Location and Relocation of Facilities
- Sec. 12.2-25. Pre-excavation Facilities Location
- Sec. 12.2-26. Damage to Other Facilities
- Sec. 12.2-27. Right-of-Way Vacation
- Sec. 12.2-28. Indemnification and Liability
- Sec. 12.2-29. Abandoned and Unusable Facilities

Sec. 12.2-30. Appeal
Sec. 12.2-31. Reservation of Regulatory and Police Powers
Sec. 12.2-32. Severability
Sec. 12.2-33. Penalty for Violation
Sec. 12.2-34. Effective Date

The preceding is only a summary of the Right-of-Way Ordinance. A printed copy of the ordinance in its entirety is available for inspection by any person during regular office hours at the office of the County Auditor.

Adopted 6th day of June, 2000.