

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 7 OF THE CITY CODE
CONCERNING RIGHTS OF WAY**

THE COUNCIL OF SARTELL ORDAINS:

Title 7, Chapter 2 of the Sartell City Code of Ordinances (hereafter “this Code”) is hereby repealed in its entirety, and is replaced by the following new Chapter 2 (hereafter “this Chapter”), to read as follows:

**Title 7, Chapter 2
Right-of-Way
Ordinance**

SECTION

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7-2-1 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 new chapter of this 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 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 city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. By enactment of this Chapter, the City Council hereby exercises its lawful police power and common law authority, and all statutory authority which is available to it, including, but not limited to, the powers conferred on it under Minn. Stat. § 237.162 and §237.163, while preserving all power and authority to further require franchises from rights-of-way users under Minn. Stat. §216B.36, §222.37, §300.03, and §412.11 and other provisions of law.

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.

The Minnesota Legislature has recognized that it is in the public's interest that the use and regulation of rights-of-way be carried on in a fair, efficient, competitively neutral and substantially uniform manner while recognizing such regulation must reflect distinct engineering, construction, operation, maintenance, and public and worker safety requirements and standards applicable to various users of rights of way. Further, the legislature has determined that because increasing numbers of persons may seek usage of rights-of-way, municipalities such as the City must be and have been authorized to regulate use of rights-of-way. Consistent with this mandate, the City has endeavored to model its right-of-way regulations consistent with those of models enacted or under consideration by municipalities throughout the state. Further, the City has endeavored to create competitively neutral rights-of-way standards and regulations of general applicability

7-2-2 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.

7-2-3 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. A facility is not abandoned unless declared so by the right-of-way user.

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

“Camouflage” means using shape, color, and texture to cause an object to appear to become part of something else. Camouflage does not mean invisible but rather appearing as part of the landscape or another structure. Includes wireless telecommunication facilities disguised to appear as another structure such flagpole, light pole, sign, tree, or utility pole

“City” means the city of Sartell, Minnesota. For purposes of section 7-2-28, “city” means its elected officials, officers, employees and agents.

“Collection” means the sharing of a structures by wireless service providers and other right-of-way users on a single support structure or otherwise sharing a common location.

“Commission” means the State Public Utilities Commission.

“Concealed” means fully hidden from view. Refers to a wireless telecommunication facility that is not evident and is hidden or integrated into a structure such as a pole, building, wall, or roof.

“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, subd. 3;
- D. Letter of Credit, in a form acceptable to the city;
- E. Self-insurance, in a form acceptable to the city;
- F. A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

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

“Degradation Cost” subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, 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 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” means the department of public works of the city.

“Department Inspector” means any person authorized by the city to carry out inspections related to the provisions of this chapter.

“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.

“Director” means the director of the department of public works of the city, or her or his designee.

“Disruptive fee” is the penalty imposed as a result of the adverse impact on the residents of the city and others who are required to alter travel routes and times resulting from right-of-way obstructions.

“Distributed antenna system (das)” is a network of spatially or geographically separated antenna nodes that are connected to a common source through a transport or communication medium in order to provide wireless communication service in a specific locality or building. A das can be deployed indoors (idas) to provide network or cellular connectivity throughout a building or outdoors (odas) in areas where regular wireless coverage does not reach.

“Das hub” is an ancillary equipment usually contained in a shelter or other enclosure which does not have any wireless transmission or receive equipment contained therein but is utilized in the deployment and operation of wireless das receive/transmit infrastructure that is located elsewhere.

“Emergency” means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

“Engineer “ is but is not limited to a radio, electrical, structural, or mechanical engineer, licensed by the State of Minnesota

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

“Equipment enclosure” is an structure, shelter, cabinet, box, or vault designed for and used to house and protect the electronic equipment necessary and/or desirable for processing wireless telecommunication signals and data, including any provisions for mechanical cooling equipment, air conditions, ventilation, and/or auxiliary electric generators.

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

“Excavation permit” means the permit which, pursuant to this 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 city by an applicant to cover the costs as provided in Section 7-2-12.

“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 city for construction within the next five years.

“Ground-mounted equipment” is equipment used in the operation of a wireless facility that is located on the ground and protrudes above the surface elevation of the ground.

“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.

“ Height, pole” is the distance measured to the highest point of the antenna or tower from the mean ground level measured at the base of a freestanding facility or the projected base as determined by extending the antenna or tower base down vertically to the ground. For building mounted antennas, height is measured to the highest point of the equipment enclosure from the top of the cornice of a flat roof, from the top line of a mansard roof, from a point on the roof directly above the highest wall of a shed roof, from the

uppermost point on a round or other arch-type roof, or from the highest gable on a pitched or hip roof In when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.

“Inventory of small cell/das sites” refers to an accurate and current inventory of all small cell/das sites approved by permittee pursuant to a lease agreement, including sites that become inactive for any reason.

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

“Lessee or Tenant” is the party who rents land or property from a lessor. The lessee is also known as the "tenant", and must uphold specific obligations as defined in the lease agreement and by law.

“Lessor or Landlord” is the owner of an asset that is leased under an agreement to the lessee. The lessee (tenant) makes one-time or periodic payments to the lessor in return for the use of the asset. The lease agreement is binding on both the lessor and the lessee, and spells out the rights and obligations of both parties.

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

“Inventory of small cell/das sites” refers to an accurate and current inventory of all small cell/das sites approved by permittee pursuant to a lease agreement, including sites that become inactive for any reason.

“Management Costs” means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 7-2-30 of this chapter.

“Maintenance” means to repair unscheduled and scheduled deficiencies in telecommunications equipment or performing routine actions which keep the equipment in working order (known as scheduled maintenance) or prevent trouble from arising (preventive maintenance).

“Micro wireless facility” means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

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

“Obstruction Permit” means the permit which, pursuant to this 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” means money paid to the city by a permittee to cover the costs as provided in Section 7-2-12.

“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 city’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.

“Performance security” means a performance bond, a restoration bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in both a timely and quality manner.

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

“Permit Holder” a person or entity who holds a permit issued pursuant to this Ordinance for a Telecommunications Facility.

“Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city 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.

“Point of Demarcation” is the point of where the Transmission Media of Small Cell Equipment terminates and interconnects with broadband backhaul transmission facilities, whether provided by landline or wireless communications infrastructure.

“Public utility structure” is a structure that is owned by a governmental agency or utility company and which may be/can be used to support illumination devices or lines and other equipment carrying electricity or communications.

“Radio propagation study” is the propagation of radio waves is described through the modeling of the different physical mechanisms (free-space attenuation, atmospheric attenuation, vegetation and hydrometer attenuation, attenuation by diffraction, building penetration loss, etc). This modeling is necessary for the conception of telecommunications systems and, once they have been designed, for their actual field deployment. Propagation models are implemented in engineering tools for the prediction different parameters useful for the field deployment of systems, for the study of the radio coverage (selection of the emission sites, frequency allocation, powers evaluation, antenna gains, polarization) and for the definition of the interferences occurring between distant transmitters

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

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

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

“Public Right-of-Way” means 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 nonwire telecommunications or broadcast service.~~

“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, 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. 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; and (6) water, and sewer, including service laterals, steam, cooling or heating services.

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

“Small cell site” is a low-power radio access facility, together with associated antennas, mounting and mechanical equipment, which provides and extends wireless communications systems’ service coverage and increases network capacity.

“Small wireless cell facility permit” is a permit and/or application to place a new wireless support structure or collocate small wireless facilities on wireless support structures in the public right-of-way.

“Small wireless facility” is a(1) a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and(ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or (2) a micro wireless facility.

“Stealth design” is means a method of camouflaging any tower, antenna, wireless facilities, or other ancillary supporting communications facility, including, but not limited to, supporting electrical, optical, or mechanical, or other equipment, which enhances compatibility with adjacent land uses and which is visually and aurally unobtrusive. Stealth design may include a repurposed structure. Stealth design includes any method of camouflaging wireless facilities adopted by the City.

“Street Light” is defined as a raised source of light usually mounted on a pole and constituting one of a series spaced at intervals along a public street or highway used to illuminate a public area, usually urban. Also referred to as a streetlamp.

“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.

“Temporary Surface” means the compaction of subbase and aggregate base and

replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

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

“Telecommunication right-of-way user” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. ~~For purposes of this 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.~~

“Transmission media” is all of the permittee's radios, antennas, transmitters, wires, fiber optic cables, and other wireless transmission devices that are part of the small cell/das equipment.

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

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

“Upgrade or capital improvement” is the construction, installation, or assembly of new telecommunications equipment or the alteration, expansion, or extension of an existing equipment to accommodate a change of function or unmet programmatic needs, or to incorporate new technology.

“Utility Pole” is a structure that is: (1) owned or operated by: (a) a public utility; (b) a communications service provider; (c) a municipality; (d) an electric membership corporation; or (e) a rural electric cooperative; and (2) designed and used to: (a) carry lines, cables, or wires for telephone, cable television, or electricity; or (b) provide lighting.

“Wireless facility” (as defined by SF 1456, Article 9, 157.13 Subd. 13) means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

- (1) equipment associated with wireless service;

- (2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and
 - (3) a small wireless facility.
- (b) "Wireless facility" does not include:
- (1) wireless support structures;
 - (2) wireline backhaul facilities; or
 - (3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures, 157.24 or (ii) that are not otherwise immediately adjacent to or directly associated with a specific

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

"Wireline backhaul facility" is a facility used to transport communications data by wire from a wireless facility to a communications network.

7-2-4 Administration

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

7-2-5 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.

7-2-6 Registration and Right-of-Way Occupancy

Subd. 1. *Registration.* Each person who occupies or uses, 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 on an annual basis. Registration will consist of providing application information and paying a registration fee.

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 being currently 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 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. Chap. 216D, Gopher One Call Law.

7-2-7 Registration Information

Subd. 1. *Information Required.* 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 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 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.
- (d) The city may require a copy of the actual insurance policies.
- (e) If the person is a corporation, a copy of the certificate is 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.

(g) An as built map of utilities owned by the registrant, if any, within the Public Right of Way in the city.

(h) A construction and major maintenance plan as outlined in 7-2-8.

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.

7-2-8 Reporting Obligations

Subd. 1. *Operations.* Each registrant shall, at the time of registration, 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.

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.

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.

7-2-9 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 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.

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 Minnesota 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 the city council.

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.

7-2-10 Permit Applications

Application for a permit is made to the city. 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.
- (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% 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.

7-2-11 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.

7-2-12 Permit Fees

Subd. 1. *Excavation Permit Fee.* The city shall establish 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 establish the obstruction permit fee and shall be in an amount sufficient to recover the city 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. The city may allow applicant to pay such fees within thirty (30) days of billing.

Subd. 4. *Non Refundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 7-2-22 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.

7-2-13 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 circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 7-2-16.

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 Minnesota 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 restoration according to the standards and with the materials specified by the city and shall comply with Minnesota 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 7-2-16.

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 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.

7-2-14 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 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.

7-2-15 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 submitted before the permit end date.

7-2-16 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 Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 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 Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

7-2-17 Denial of Permit

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 or when necessary to protect the right-of-way and its current use.

7-2-18 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 other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 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 7-2-23 of this ordinance.

7-2-19 Inspection

Subd. 1. *Notice of Completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.

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 7-2-22.

7-2-20 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~~ **an** 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.

7-2-21 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 city of the accurate information as soon as this information is known.

7-2-22 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; 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. 7-2-19.

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 a time period established within a written notification of breach received from the city, 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.

7-2-23 Mapping Data

Subd. 1. *Information Required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Subd. 2. *Service Laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 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 December 31, 2005, shall be a condition of any city approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) city approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 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 for future permits to the offending permittee or its subcontractors.

7-2-24 Location and Relocation of Facilities

Subd. 1. 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.

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 facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

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 health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing

facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

7-2-25 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 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.

7-2-26 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.

7-2-27 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 Minnesota Rules 7819.3200.

7-2-28 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 Minnesota Rule 7819.1250.

7-2-29 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 if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

7-2-30 Small Wireless Facilities

Subd. 1. *Purpose and Findings.* The City desires high-quality wireless services to accommodate the needs of residents and businesses. At the same time, the City strives to

minimize the negative impacts that small wireless facilities can create. These negative impacts include, but are not limited to, interference with right-of-way user sight lines, impacts to right-of-way user circulation, incompatible aesthetics with the surrounding area, fall zone risk, clear zone risk, creating navigation obstacles, interference with future travel way expansion plans, interference with the delivery of other utility services, interference with stormwater management facilities, and increased noise pollution. To minimize these negative impacts, any person desiring to place a new wireless support structure in the right-of-way or collocate small wireless facilities on existing privately-owned wireless support structures in the right-of-way shall first obtain a small wireless facility permit from the City. Any person desiring to collocate small wireless facilities on existing wireless support structures owned or controlled by the City shall first enter into a standard small wireless facility collocation agreement. The purpose of these requirements is to comply with Minnesota Statutes Sections 23 7 .162 and 23 7 .163 while at the same time protecting the public health, safety, and welfare. The City will consider impacts to the public health, safety and welfare when reviewing a small wireless permit application and a request to enter into a small wireless facility collocation agreement. The public health, safety and welfare can be best accommodated by locating small wireless facilities in the following order, which affords the greatest protection of the public:

(a)Locate outside of the right-of-way.

(b)Locate in the right-of-way on or adjacent to Principal Arterial, Other Arterial, Major Collector, or Minor Collector roads, as classified by the Sartell Comprehensive Plan.

(c)Collocate on existing wireless support structures within the right-of-way.

(d) Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure of the same height.

(e)Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure whose height is less than or equal to 50 feet.

(f)Locate on a new wireless support structure within the right-of-way whose height is similar to nearby structures.

(g)Locate on a new wireless support structure within the right-of-way whose height is less than or the City will also consider factors such as aesthetic compatibility of the small wireless facility with surrounding structures, ability to eliminate, underground, or screen ground-mounted equipment, dangers within the small wireless facility fall zone, distance of the small wireless facility from roads, sidewalks, trails and bicycle lanes, and future roadway, pedestrian, bicycle, water, wastewater, and stormwater improvement plans for the site before issuing small wireless facility permit or entering into a standard small wireless facility collocation agreement.

Subd. 2. *Small Wireless Facility Permit.* No person may place a new wireless support structure within the right-of-way or collocate a small wireless facility on an existing privately-owned wireless support structure in the right-of-way without first obtaining a small wireless facility permit from the City.

(a). Permit Application and Fee. A written application for a small wireless facility permit shall be submitted to the Director on a form provided by the City. The applicant shall pay an application fee in the amount set forth in the Fee Resolution adopted by the City

Council, as the same may be amended from time to time. The application will be processed in accordance with the requirements of Minnesota Statutes § 237.163, subd. 3c (b) and (c).

Subd. 3. Consolidated Permit Application. An applicant may file a consolidated permit application to collocate up to fifteen (15) small wireless facilities provided that the 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.

Subd. 3. Permission from Owner. If the applicant seeks to collocate a small wireless facility on an existing wireless support structure, the applicant shall, at the time of application, provide the City with proof that it has obtained the necessary authority from the owner of the wireless support structure to collocate the small wireless facility on the structure.

Subd. 4. Issuance of Permit and Conditions. Upon the Director's determination that the applicant has satisfied the requirements of this Section, the Director shall issue the small wireless facility permit. The Director may condition permit approval on compliance with the following:

- (a) generally applicable and reasonable health, safety, and welfare regulations consistent with the City's authority to manage its public right-of-way;
- (b) reasonable accommodations for decorative wireless support structures or signs; and
- (c) any reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in the right-of-way. In rendering a decision on a consolidated permit application, the Director may approve a permit for some small wireless facilities and deny a permit for others, but may not use denial of one or more permits as a basis to deny all the small wireless facilities in the consolidated application.

Subd. 5. Permit Denial. The Director may deny a small wireless facility permit if he or she reasonably determines that the applicant has not satisfied the requirements of this Section or that approval of the permit would be contrary to generally applicable and reasonable health, safety, and welfare regulations. The City shall notify the applicant in writing within three (3) business days of its decision to deny the permit. Upon denial, the applicant may cure the deficiencies identified by the City and resubmit its application. If the applicant resubmits the application within thirty (30) days of receiving written notice of the denial, no additional filing or processing fee shall be required. The City shall approve or deny the revised application within thirty (30) days after the revised application is submitted.

Subd. 6. Term. The term of a small wireless facility permit shall be equal to the length of time that the small wireless facility is in use, unless earlier revoked under this Section.

Subd. 7. Obstruction or Excavation. A small wireless facility permit holder whose approved work in the right-of-way involves obstruction or excavation of the right-of-way shall also obtain a right-of-way permit from the City.

Subd. 8. Requirements for New Wireless Support Structures. New wireless support structures that comply with the following requirements may be placed in the right-of-way after the issuance of a small wireless facility permit:

(a) A new wireless support structure shall be similar in height as the street light poles in the vicinity, but shall not exceed fifty (50) feet, above ground level, subject to the requirements of the City Code and shall be separated from other wireless support structures by a minimum of six hundred (600) feet.

(b) Notwithstanding subsection

(i), a new wireless support structure that replaces an existing wireless support structure that is higher than 50 feet above ground level may be placed at the height of the existing wireless support structure, subject to the requirements of the City Code.

(c) The diameter of a new wireless support structure that replaces an existing wireless support structure shall not exceed the diameter of the existing wireless support structure by more than fifty percent (50%).

(d) Wireless facilities constructed in the right-of-way after December 10, 2018 shall not extend more than ten (10) feet above an existing wireless support structure in place as of December 10, 2018.

Subd. 9. Requirements for Small Wireless Facilities. A small wireless facility that complies with the following requirements may be located on a new wireless support structure within the right-of-way or collocated on an existing privately-owned wireless support structure within the right-of-way after issuance of a small wireless facility permit:

(a) The small wireless facility shall have limited exposed cabling and mounting hardware. It shall also match the wireless support structure it is attached to in color and, as close as practicable, in material and design.

(b) The small wireless facility shall not interfere with public safety wireless telecommunications.

(c) Small wireless facilities in the right-of-way shall be removed and relocated at the City's request and at no cost to the City when the Director determines that removal and relocation is necessary to prevent interference with:

(i) present or future City use of the right-of-way for a public project;

(ii) the public health, safety, or welfare; or

(iii) the safety and convenience of travel over the right-of-way.

(d) A small wireless facility attached to an existing wireless support structure shall not block light emanating from the wireless support structure and shall not otherwise interfere with the original use of the wireless support structure.

(e) Ground-mounted equipment associated with the small wireless facility is prohibited unless the applicant can show that ground-mounted equipment is necessary for operation of the small wireless facility. If ground-mounted equipment is necessary, it shall comply with the provisions of City Code and shall also meet the following standards:

(i) Ground-mounted equipment shall be placed below grade unless not technically feasible;

- (ii) Ground-mounted equipment shall not disrupt traffic or pedestrian circulation and shall not interfere with vehicle and pedestrian intersection sight lines;
- (iii) Ground-mounted equipment shall not create a safety hazard;
- (iv) If placed above grade, ground-mounted equipment shall be separated from the nearest ground-mounted equipment on the same block face by a minimum of 330 feet unless the equipment is placed underground, or unless waived by the Director; and
- (v) If placed above grade, ground-mounted equipment shall be limited to three (3) feet in height and twenty-eight (28) cubic feet in cumulative size.

Subd. 10. Exemptions. No small wireless facility permit is required to conduct the following activities in the right-of-way:

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

If any of the above activities will obstruct the right-of-way, the small wireless facility permit holder shall provide notification to the City at least ten (10) days in advance of such activity.

Subd. 11. Collocation on City-Owned Wireless Support Structure. No person may collocate a small wireless facility on an existing wireless support structure owned or controlled by the City without first entering into a Standard Small Wireless Facility Collocation Agreement with the City.

Subd. 12. New Structures. The erection in the public right-of-way of a new public utility structure to support wireless facilities other than small wireless facilities is prohibited, except where the Director determines there is a need for additional roadway lighting, emergency warning siren, or other infrastructure that must be supported by a public utility structure. Any new structure erected to support wireless facilities other than small wireless facilities allowed by the City under this paragraph and any associated or attached equipment must comply with the requirements of this Section.

Subd. 13. Other Wireless Facilities: A telecommunications right-of-way user who desires to place a new public utility structure or wireless facilities other than small wireless facilities in the right-of-way shall enter into a license agreement with the City for use of space that sets forth such terms and conditions as the City deems appropriate and shall obtain any necessary right-of-way permit.

7-2-31 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 7-2-23 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.

7-2-32 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 city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

This ordinance shall be effective immediately upon its passage and publication.

ADOPTED THIS _____ DAY OF _____, 2019 BY THE CITY COUNCIL OF THE CITY OF SARTELL.

MAYOR

ATTEST

CITY ADMINISTRATOR

SEAL

SUMMARY ORDINANCE NO.

**AN ORDINANCE AMENDING TITLE 7 OF THE CITY CODE
CONCERNING RIGHTS OF WAY**

1. The City Council has adopted a lengthy ordinance administering and regulating the public rights-of-way in the public interest and providing for issuance and regulation of right-of-way permits. The purpose of this summary is to inform the public of the intent and effect of the ordinance and to publish only a summary of the amended portion of the ordinance with the full ordinance being on file in the office of the City Clerk during regular office hours. A summary of the Ordinance follows:

7-2-1. Findings, Purpose, and Intent: Clarifies the reason and the need for the city to more effectively manage the public rights-of-way.

7-2-3 Definitions: Certain words in the ordinance are defined here.

7-2-30. Small Wireless Facilities: Describes the process and permitting requirements for the placement of small wireless facilities within the rights-of-way.

2. The City Council has determined that publication of the title and summary of the rights-of way management ordinance as set forth in this summary will clearly inform the public of the intention and effect of the ordinance. The Council also directs that only the title and this summary be published. A copy of the entire text of the ordinance is available for inspection by any person at the office of the City Clerk any Monday through Friday between the hours of 7:00 a.m. and 4:30 p.m.

Adopted by the City Council of Sartell on this _____ day of _____, 2019.

MAYOR

ATTEST:

City Administrator

SEAL