

**COUNTY OF STEARNS  
STATE OF MINNESOTA**

**STEARNS COUNTY RIGHT-OF-WAY ORDINANCE  
FOR THE MANAGEMENT OF PUBLIC RIGHTS-OF-WAY**

**Ordinance Number 478**

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## **Right-of-Way Management**

### **Section 1.01. Purpose and Authority.**

**Subd. 1 Purpose.** To provide for the health, safety and welfare of Stearns County citizens, and to ensure the integrity of its roads and streets and the appropriate use of the rights-of-way, the County strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Accordingly, the Stearns County Board of Commissioners hereby enacts this ordinance relating to right-of-way permits and administration. This ordinance 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 ordinance, persons excavating and obstructing the right-of-way will bear financial responsibility for their work and activities. Finally, this ordinance provides for recovery of out-of-pocket and projected costs from persons using the public right-of-way.

**Subd. 2. Authority.** This ordinance shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn.Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the County and users of the rights-of-way. This ordinance shall also be interpreted consistently with Minnesota Rules, including §§ 7819.0050 - 7819.9950. To the extent any provision of this ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This ordinance shall not be interpreted to limit the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

### **Section 1.02. Election to Manage the Public Right-Of-Way.**

**Subd. 1. Election by County.** Pursuant to the authority granted to the County under state and federal statutory authority, administrative and common law, the County hereby elects pursuant Minn. Stat. 237.163 subd.2(b), to manage rights-of-way under its jurisdiction.

**Subd. 2. Management of Rights-of-Way.** Management of the rights-of-way includes, but is not limited to, all of the following regulatory activities:

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 submit to the County 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 and other activities within the right-of-way;
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 penalties for unreasonable delays in construction, violations of the provisions of this ordinance and permit conditions.

### **Section 1.03. Definitions.**

***Subd. 1. Terms and Phrases Defined.*** The following definitions apply in this ordinance. References hereafter to "sections" are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

1. "*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.
2. "*Applicant*" means any Person requesting permission to install any utility or to excavate or obstruct a right-of-way.
3. "*Commission*" means the Minnesota Public Utilities Commission.
4. "*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 Minn.Stat. § 216D.04, subdivision 3, over a continuous length in excess of 250 feet.
5. "*Construction Performance Bond*" means any of the following forms of security provided at County's option:
  - a. Individual project bond;
  - b. Cash deposit;

- c. Security (Collateral) of a form listed or approved under Minn.Stat. § 15.73, subd. 3;
- d. Letter of Credit, in a form acceptable to the County;
- e. Self-insurance in a 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.

Any form of security issued hereunder must not be from a bank or other lending or financial institution listed on the Federal Deposit Insurance Corporation (FDIC) failed bank list and such bank, lending or other financial institution a minimum of a three (3) star safe and sound rating.

- 6. "*County*" means the County of Stearns, Minnesota. For purposes of section 1.29 Indemnification and Liability, County means its elected and appointed officials, officers, employees and agents.
- 7. "*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.
- 8. "*Degradation Cost(s)*" 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 set forth in Minnesota Rules parts 7819.9900 to 7819.9950.
- 9. "*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.
- 10. "*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.
- 11. "*Department*" means the Stearns County Highway Department.
- 12. "*Department Inspector*" means any person authorized by the County Engineer to carry out inspections related to the provisions of this Ordinance.
- 13. "*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.
- 14. "*Engineer*" means the Stearns County Highway Engineer or his/her designee.

15. "*Equipment*" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.
16. "*Excavate*" means to dig into, bore in any direction within, or in any way otherwise remove or physically disturb or penetrate any part of a public right-of-way.
17. "*Facility or Facilities*" means any tangible asset in the right-of-way required to provide utility service.
18. "*Five-year project plan*" shows projects proposed by the County for construction within the next five years.
19. "*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.
20. "*Hole*" means an excavation in the pavement, with the excavation having a length less than the width of the pavement.
21. "*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 ordinance.
22. "*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; Minn.Stat. §§ 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 131 of this ordinance.
23. "*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.
24. "*Patch or Patching*" means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the sub-base and aggregate base, and (2) the replacement, in kind, of the existing pavement. Removal of pavement shall be for the

full shoulder or lane width, and the patch or patching shall be for the full shoulder or lane width. A patch is considered full restoration only if approved in writing by the Engineer.

25. "*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.
26. "*Permit*" has the meaning given "right-of-way permit" in Minn.Stat., § 237.162.
27. "Permittee" means any person to whom a permit to install a utility or to excavate or obstruct a right-of-way has been granted by the County under this ordinance.
28. "*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.
29. "*Probation*" means the status of a person that has not complied with the conditions of this ordinance.
30. "*Probationary Period*" means one year from the date that a person has been notified in writing that they have been put on probation.
31. "*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 rights-of-way.
32. "*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.
33. "*Restoration Cost*" means the amount of money paid to the County by a Permittee to achieve the level of restoration according to applicable Minnesota Public Utilities Commission rules.
34. "*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.
35. "*Right-of-Way Permit*" means a permit issued for installation of utilities, excavation, or obstruction of the right-of-way as required by this ordinance.

36. "*Right-of-Way User*" means (1) a telecommunications right-of-way user as defined by Minn.Stat., § 237.162, Subd. 4; or (2) a person owning or controlling a 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; or (3) hazardous liquid or natural gas pipeline facilities.
37. "*Service*" or "*Utility Service*" includes (1) those services provided by a public utility as defined in Minn.Stat. § 216B.02, subd. 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) an independent energy producer or similar such entity.
38. "*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.
39. "*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 ordinance, a cable communication system defined and regulated under Minn.Stat., Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn.Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn.Stat., Chapters 453 and 453A, or a cooperative electric association organized under Minn.Stat., Chapter 308A, are not telecommunications right-of-way users.
40. "*Temporary Memorial Marker*" means physical objects placed by private parties within a road or highway right-of-way, as approved by the Stearns County Highway Department, to mark the site of a fatal crash for a period not to exceed six months.
41. "*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.
42. "*Trench*" means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
43. "*Two Year Project Plan*" shows projects proposed by the County for construction within the next two years.
44. "*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.

#### **Section 1.04. Administration.**

***Subd. 1. Responsibility for Administration; Delegation.*** The Engineer is the principal County official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances and policies related thereto. The Engineer may delegate any or all of the duties hereunder. The Engineer shall also provide interpretations of this ordinance and applicable County policies and may seek the advice and opinion of the County Attorney in doing so. The Engineer shall also be responsible for developing all applications, forms or other written materials necessary for administration of this ordinance.

#### **Section 1.05. Utility Coordination Committee.**

***Subd. 1. Creation; Authority of Engineer.*** The Engineer may, as determined to be necessary by the Engineer, 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 committee shall include a representative from the Stearns County Auditor/ Treasurer/ Land Management Division. The Engineer 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. The Engineer may determine the scope and duration of the committee.

***Subd. 2. Appointment of Members by County Board.*** The County Board may at any time also make additional appointments to such a committee by motion or resolution.

#### **Section 1.06. 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, after considering the Engineer's recommendation, be set by the County Board and may be amended by the Board in accordance with law. The Board may, in its sole discretion, set the registration fee at zero.

***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.*** The following exceptions apply:



(A) **Plantings.** Nothing herein shall be construed to repeal or amend the rights of persons to plant or maintain boulevard plantings or gardens in the area between the right-of-way line and the street curb, provided that no crops shall be planted in the boulevard area. 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 ordinance. However, plantings must not include trees or otherwise violate applicable clear zone requirements, nor obstruct visibility on the roadway. Gardens and plantings are placed in any County right-of-way at the owner's sole risk. The County may remove such plantings, if necessary for maintenance, safety, or construction purposes, with no compensation due the property owner, regardless of how long such gardens or plantings have existed within the County right-of-way.

(B) **Irrigation and Drainage.** Irrigation and drainage systems shall be allowed in the right-of-way only with a permit and upon payment of proper fees. However, even with a permit, irrigation and drainage systems are placed in any County right-of-way at the owner's sole risk. There shall be no compensation for removal necessary for any permitted utility project. No compensation shall be paid for any irrigation system if removal is required or if it is damaged by any County or municipal activity or by any permitted utility activity regardless of how long such irrigation and drainage systems have existed within the County right-of-way. Resident owned sewer and water service lines to a city main and resident owned drain tile lines shall be required to obtain permits for excavation, obstruction, boring or under-cutting within the right-of-way.

(C) **Temporary Memorial Markers.** Temporary Memorial Markers may be placed along county highways for an appropriate period not to exceed six months. Temporary Memorial Markers may be removed in any of the following circumstances: (1) they existed in the right-of-way in excess of an approved period; (2) they do not meet the physical or visual safety criteria within the clear zone as determined by the Engineer; (3) if they negatively impact the free flow of traffic as determined by the Engineer; (4) they are located outside of the clear zone, but are determined by the Engineer to constitute a hazard if struck by either on or off-road vehicles; or (5) they are determined by the Engineer to interfere with routine maintenance operations. Any Temporary Memorial Markers removed from the right-of-way will be stored for a minimum of thirty days by the Stearns County Highway Department, for possible reclamation, prior to final disposal.

(D) **Other Law Applies.** Nothing herein relieves a person from complying with the provisions of Minn.Stat., Chapter 216D, the "Gopher State One Call" law.

#### **Section 1.07. Registration Information.**

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

1. Each Registrant's name, Gopher One-Call registration certificate number, address and email address if applicable, and telephone and facsimile numbers.
2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration. If a Registrant has multiple representatives, with specifically assigned service areas, then Registrant shall provide a map clearly delineating the service areas and displaying the contact information for each representative assigned to such service area. It is the Registrant's ongoing obligation to keep all contact information current.
3. A certificate of insurance or self-insurance in accordance with the following conditions:
  - a. Verifying that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the Engineer;
  - b. Verifying that the Registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (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;
  - c. 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;
  - d. Requiring that the Engineer be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
  - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Engineer in amounts sufficient to protect the County and the public and to carry out the purposes and policies of this chapter.
4. The County may require a copy of the actual insurance policies.
5. If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. § 300.06 as recorded and certified to by the Secretary of State.
6. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other 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 Engineer information as to changes within fifteen (15) day following the date on which the Registrant has knowledge of any change.

#### **Section 1.08. 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 Engineer. Such plan shall be submitted using a format designated by the Engineer and shall contain the information determined by the Engineer 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.

***Subd. 2. Plan Content Requirements.*** The plan shall include, but not be limited to, the following information:

1. 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");
2. How the Registrant will accommodate the County plan;
3. 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. 3. Additional Next-year Projects.*** Notwithstanding the foregoing, the Engineer 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.

#### **Section 1.09. Permit Requirement.**

***Subd.1. Permit Required.*** Except as otherwise provided in this Ordinance, no person may obstruct, or excavate any right-of-way without first registering and having obtained the appropriate right-of-way 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 subd. 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.

### **Section 1.09.01 Permits Required by State and Federal Agencies**

All work performed within the Stearns County Right of Way is subject to and shall be covered by the applicable permits as follows but not necessarily limited to: National Pollutant Discharge Elimination System Construction General Permit (NPDES CGP), and shall also meet the minimum requirements set forth in the Municipal Separate Storm Sewer System (MS4) permit. Only those parts of the CGP that are considered erosion and sediment controls or waste controls are regulated by this Right of Way Ordinance. Appendix C is hereby appended to and made a part of the requirements of this Ordinance. Appendix C defines specific requirements related to Construction Site Stormwater Runoff Control (Minimum Control Measure 4) and Post-Construction Stormwater Management (MCM 5) of the Stearns County MS4 SWPPP which is available at Stearns County Public Works located at 455 28<sup>th</sup> Ave. South, Waite Park, MN, 56387, or online at <http://www.co.stearns.mn.us/Environment/WaterResources/StormWaterPollutionPrevention>.

### **Section 1.10. Permit Applications.**

**Subd. 1. Permit Applications; How Made.** Application for a permit is made to the Engineer. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of, the following provisions:

1. Registration with the County pursuant to this ordinance;
2. 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.
3. A copy of the Permittee's National Pollution Discharge Elimination Systems (NPDES) permit when one is required by law for the work to be performed in the right-of-way.

4. A copy the Storm Water Pollution Prevention Plan (SWPPP) if one is required by law, or as otherwise required by the Engineer.
5. A copy of any 'Erosion Control' or 'Restoration' plan required by law, or otherwise required by the Engineer.
6. A copy of a fully executed 'Environmental Regulatory Defense and Indemnification Agreement', in a form approved by the County Attorney, on any project for which an NPDES permit is required.
7. Payment of money due the County for:
  - a. permit fees, estimated restoration costs and other management costs;
  - b. prior obstructions or excavations;
  - c. 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;
  - d. franchise fees or other charges, if applicable.
8. Payment of disputed amounts due and owing to the County by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing, as determined by the Engineer.
9. 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.

#### **Section 1.11. Issuance of Permit; Conditions.**

***Subd. 1. Permit Issuance.*** If the applicant has satisfied the requirements of this ordinance, the County shall issue a permit.

***Subd. 2. Conditions.*** The Engineer 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.

#### **Section 1.12. Permit Fees.**

***Subd. 1. Right-of-Way Permit Fee.*** The County Board, after considering the recommendation of the Engineer, shall establish a right-of-way permit fee schedule imposing fees that are adequate to recover the following costs:

1. County Management Costs;
2. Degradation Costs, if applicable;
3. Mapping and Survey Costs;
4. Obstruction Costs.

Permit fees shall be established by the County Board and may be amended at any public meeting as provided by law.

***Subd. 2. Payment of Permit Fees.*** No right-of-way permit shall be issued without payment of any and all applicable permit fees unless the County allows applicants to pay such fees within thirty (30) days of billing.

***Subd. 3. Non refundable.*** Permit fees that were paid for a permit that the Engineer has revoked for a breach as stated in Section 1.22 are not refundable. Permit fees paid for work that is subsequently cancelled are not refundable.

***Subd. 4. 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.

### **Section 1.13. 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 determined by the Engineer to be prohibited as unseasonable or unreasonable by supplementary application pursuant to Section 1.15 below.

***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 twenty-four (24) 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 a permit, post a Construction Performance Bond in an amount determined by the Engineer to be sufficient to cover the cost of restoration. If, within twenty-four (24) months after

completion of the restoration of the right-of-way, the Engineer 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 Public Utility Commission Standards.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee at the County's discretion. 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 Engineer. The Engineer 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 Engineer 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:

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

**Subd. 4. Guarantees.** The Permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During this twenty-four (24) month period it shall, upon notification from the Engineer, correct all restoration work to the extent necessary, using the method required by the Engineer. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Engineer, 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, as determined through supplementary application pursuant to Section 1.16 below.

**Subd. 5. 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 as determined through supplementary application pursuant to Section 1.15 below.

***Subd. 6. Failure to Restore or Maintain.*** If the Permittee fails to restore the right-of-way in the manner and to the condition required by the Engineer, or fails to satisfactorily and timely complete all restoration or maintenance required by the Engineer, the County at its option may do the work. In such event the Permittee shall be responsible for all costs of restoration. If Permittee fails to pay as required, the County may exercise its rights, among others, under the Construction Performance Bond.

#### **Section 1.14. 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 utility installation or obstruction or excavation, which the Engineer does not perform, may share in the payment of the 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 utility installation or obstruction or excavation coordinated with a County construction project by the Engineer, 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.

#### **Section 1.15. 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, (1) make application for a permit extension and pay any additional fees required thereby, and (2) 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. Permits for nonemergency work shall be submitted at least 72 hours prior to the planned start of work.



## **Section 1.16. 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 to 216D.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 Engineer, 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 so as to interfere with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterways and drainage facilities. 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 or city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit. Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual and any directions of the County Engineer.

## **Section 1.17. Denial of Permit.**

**Subd. 1. Grounds for Denial.** The County may deny a permit for failure to meet the requirements and conditions of this ordinance or if the County determines that the denial is necessary to protect the public 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 additional permits until all conditions of any previously issued permit are resolved to the satisfaction of the Engineer.

## **Section 1.18. Installation Requirements.**

**Subd. 1. 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 Minn.Stat. §§ 237.162 and 237.163 or other applicable law.

## **Section 1.19. 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 Engineer.** The County Engineer, or his/her designee, shall have all authority provided by law for inspections including, but not limited to, the following:

1. At the time of inspection the Engineer 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.
2. The Engineer may issue an order to the Permittee to correct 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 Engineer that the violation has been corrected. If such proof has not been presented within the required time, the Engineer may revoke the permit pursuant to Section 1.22 below.
3. The cost of any action required by the County shall be paid by the Permittee.

#### **Section 1.20. Work Done Without a Permit.**

**Subd. 1. Emergency Situations.** Each Registrant shall immediately notify the Engineer of any event regarding its facilities that it considers to be an emergency. The Registrant may proceed to take whatever actions are necessary to respond to the emergency. 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 necessary to correct 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, pay double the normal fee for said permit, pay double all the other fees required by this ordinance, and 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 ordinance.

#### **Section 1.21. Supplementary Notification.**

**Subd. 1. Notification Requirement.** 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.

## **Section 1.22. 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:

1. The violation of any material provision of the right-of-way permit;
2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the County or its citizens;
3. Any material misrepresentation of fact in the application for a right-of-way permit;
4. The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the Permittee's control, or failure to relocate existing facilities as specified in Section 1.24; or
5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 1.19.
6. Failure of the utility to pay any required costs, fees, or charges billed by the County.
7. Failure to provide traffic control that conforms to the provisions of the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual.

**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 install any utility or to obstruct or excavate within the county right-of-way until the breach situation is corrected to the satisfaction of the Engineer and the permit is reissued.

### **Section 1.23. Mapping Data.**

***Subd. 1. Purpose.*** Each Registrant and Permittee shall provide mapping information required by the County in accordance with Minnesota Rules 7819.4000 and 7819.4100. 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. The purpose of a mapping system is to:

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

***Subd. 2. Application Required.*** Any person wishing to undertake a project within the public right-of-way shall submit a right-of-way permit application, which may require the filing of mapping information pursuant to subdivision 3 below of this section.

***Subd. 3. Required Mapping Information.*** The local government unit may require as part of its permit application the filing of all the following information:

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

- a. offsets from property lines, distances from the centerline of the public right-of-way, and curb lines as determined by the local government unit;
- b. coordinates derived from the coordinate system being used by the local government unit; or
- c. any other system agreed upon by the right-of-way user and local government unit;

2. the type and size of the utility facility;

3. a description showing above ground appurtenances;

4. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the map, and

5. any facilities to be abandoned, if applicable, in conformance with Minn.Stat. § 216D.04, subd. 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 one (1) through five (5).

***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 Minnesota Rule 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.

#### **Section 1.24. 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. Utility poles and guy anchors, and any other equipment, shall conform to NCHRP 350 standards for crashworthiness or must be located outside of applicable clear zones. Any installation that does not conform to Minnesota Department of Transportation clear zone standards must be approved by the Engineer and the facility owner shall indemnify and hold harmless the County.

***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 right-of-way 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 Engineer'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.*** Any utility that is found to have been installed after the passage of this ordinance, and without a permit, in a County right-of-way 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 Engineer 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 Engineer 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.

***Subd. 6. Relocation Notification Procedure.*** The Engineer 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 Engineer 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 Engineer 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. In the event that emergency work by the County or by a municipality in the County right-of-way requires relocation of a utility, the notification requirements above are waived. The County and utility shall coordinate efforts to minimize delay.

***Subd. 7. Delay to County Project.***

(A) The Engineer 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 Engineer feels this delay will have an adverse impact to a county project, then the Engineer 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.

(B) 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 nongovernmental 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.

**Section 1.25. Pre-excavation Facilities Location.**

***Subd. 1. Requirements.*** In addition to complying with the requirements of Minn.Stat. §§ 216D.01 to 216D.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each Registrant who has facilities or equipment in the area to be excavated shall mark the horizontal placement of all said facilities. Vertical locations shall be marked to the degree of accuracy that they are known. 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.

**Section 1.26. Damage to Other Facilities.**

***Subd. 1. Damage; Repair; Obligation for Costs.*** 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 Engineer 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. The County will not be liable for damages to a registrant's facilities that have not been adequately marked and subsequently become obscured by tall grass or drifted or plowed snow, and are damaged while the County performs routine maintenance operations such as mowing or snow removal in the right of way.

#### **Section 1.27. Closure of Right-of-Way for Recreational Events.**

***Subd. 1. Closure for Recreational Events Prohibited Without Permit.*** No Person, including any political subdivision of the State of Minnesota, may obstruct or close any portion of a county right-of-way for any recreational purpose without first obtaining a permit from the Department. Recreational purposes include, but are not limited to, street dances, festivals, parades, and bicycle or foot races. Stearns County reserves the right to deny any closure permit when, in the County's sole discretion, it determines that the public health, safety and welfare will be harmed or undermined by allowing a requested closure or partial closure.

***Subd. 2. Permit Process; Engineer May Impose Conditions.*** As per section 1.04 above, the Engineer shall develop application and any other form(s) to administer the permitting process under this section. No registration under Section 1.06 above is required for recreation events as herein defined. The Engineer may impose reasonable conditions on any permit issued including, but not limited to, the following:

1. Determine and/or limit the area of right-of-way to be closed.
2. Determine or limit the duration of any right-of-way closure or partial closure.
3. Determine and require the level of law enforcement, emergency, safety or medical service which must be available in conjunction with any approved closure.
4. Require a Permittee to post security (e.g. cash escrow, letter of credit, bond, etc.) which may be forfeited if any permit condition or provision of this ordinance is violated.



The Engineer shall also determine the level of additional financial security or insurance required under this section.

The Engineer may impose such additional permit conditions as may be required under the circumstances to preserve and protect the public health, safety and welfare.

***Subd. 3. Appeal of Permit Denial.*** Appeal is available to any Applicant under this section as provided in Section 1.31 below.

#### **Section 1.28. Right-Of-Way Vacation by County.**

***Subd. 1. 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. If the County is requested by any party to vacate its right-of-way, the County may require the requesting party to pay the fair market value of any right-of-way so vacated. The fair market value shall be calculated as present value of the right-of-way, i.e. the cost the county would incur were it to pay to obtain the right-of-way as of the date of vacation.

#### **Section 1.29. Indemnification and Liability.**

***Subd. 1. Defense and Indemnification.*** 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.

***Subd. 2. Reservation of Right; Application of Laws.*** 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.

***Subd. 3. Liability and Responsibility for Environmental Violations.*** Permittee is obligated to comply with all federal, state and county environmental laws, regulations, rules and ordinances. By registering with the County, or by accepting a permit hereunder, Permittee agrees to defend and indemnify the County against any notices of violation, administrative orders, lawsuits or other actions commenced by any federal or state regulatory agency against the County for work perform by Permittee in any County right-of-way.

#### **Section 1.30. 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 them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the County waives this requirement.

### **Section 1.31. Appeal.**

***Subd. 1. Appeal Process.*** A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that any fees imposed are invalid; (5) believes that any permit condition is invalid; or (6) seeks to contest any determination, decision or interpretation of this ordinance made by the Engineer may have the denial, revocation, fee imposition, permit condition or determination, decision or interpretation reviewed, upon written request, by the County Board. The County Board shall act on a timely written request at its next regularly scheduled meeting. A decision by the County Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision. Judicial review of such decision may be obtained in such manner as provided by law.

### **Section 1.32. Reservation of Regulatory Authority and Police Powers.**

***Subd. 1. Reservation of Authority and Police Power.*** 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.

### **Section 1.33. Severability.**

***Subd. 1. Balance of Ordinance Preserved.*** 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.

### **Section 1.34. Penalties for Violation; Remedies Cumulative.**

***Subd. 1. Civil Administrative Penalty.*** Violation of this ordinance shall result in the assessment of a civil penalty of \$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.

***Subd. 2. Enforcement by Civil Action.*** The County Attorney may initiate civil actions to prevent, abate, remediate, restrain or enjoin any violations, or threatened violations, of any requirement of this Ordinance.

***Subd. 3. Misdemeanor Penalties.*** Each separate violation of this Ordinance shall constitute a misdemeanor punishable by the maximum penalty for misdemeanor offenses established by Minnesota law.

**Subd. 4. Remedies Cumulative.** All remedies available under this Ordinance are cumulative and, in the sole discretion of Stearns County, may be exercised separately or in conjunction with one and other.

**Section 1.35 Policies as Appendices to Ordinance.**

**Subd. 1. Policy Enforceable; Procedure to Incorporate.** Any County policies concerning County rights-of-way may be appended and incorporated into this ordinance as written and thereby become an effective and enforceable part of this ordinance. All policies so appended and incorporated must be adopted in accordance with Minn.Stat. § 375.51 concerning the enactment, amendment and publication of ordinances.

**Section 1.36 Effective Date.**

**Subd. 1. Effective Date.** This ordinance is effective upon its passage and publication according to law.

Duly adopted by the Stearns County Board of Commissioners this 9th day of June, 2015.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chair, Stearns County Board of Commissioners

ATTEST:

Date: \_\_\_\_\_

\_\_\_\_\_  
Stearns County Auditor-Treasurer

***Department of Highways***  
PO Box 246 • St Cloud, MN 56302  
(320) 255-6180 • FAX (320) 255-6186

**JODI TEICH, P.E.**  
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**MATT ZINNIEL**  
*Maintenance Superintendent*

**POLICY ON  
INSTALLATION, REPLACEMENT, AND MAINTENANCE  
OF  
MAILBOX SUPPORTS**

Adopted by Stearns County Board of Commissioners March 5, 2002, updated Jan 1, 2020.

It is the goal of Stearns County to provide public rights of way for the traveling public that are safe, efficient, and are free of unnecessary hazards, while providing minimum inconvenience to property owners. Minnesota law declares certain mailbox installations to be a public nuisance, a road hazard, and a danger to the health and safety of the traveling public (Minnesota Rules Chapter 8818), and authorizes a road authority to remove and replace such a support (Statute 169.072).

In addition to these requirements, when there is an accumulation of snow, the location of mailboxes close to the highway makes the plowing operations of the County difficult and renders the boxes susceptible to damage. Items attached below the mailbox interfere with the plow's wing blade. It is the County's policy to use special care and consideration when plowing snow in the vicinity of mailbox supports. Despite this care and consideration, some mailboxes will be damaged or destroyed during the snow removal season. In the vast majority of cases it is the weight of the snow coming off the plow or wing blade, which destroys a mailbox. On occasion, however, wings will hit and damage them, especially when oncoming traffic makes it impossible for the plow operator to swerve around the support.

We believe most of the mailbox damage that occurs during a typical winter would be eliminated if postal patrons would install a mailbox support that swings away when hit by snow or snowplow equipment. Attached is a steel post mailbox support diagram, which has been approved for use in Stearns County. This mailbox configuration has been crash tested and is acceptable in terms of nationally tested safety criteria. The use of this approved mailbox support provides a much safer environment for all motorists. It also makes the job of snow removal much easier and reduces cost and irritation to the mail patron when boxes are destroyed due to flying snow.

This policy is intended to provide safer roadsides for the motoring public and minimize damage to mailboxes during snow plowing operations, while providing consistent, convenient access to mailboxes and newspaper delivery. Specific elements of the policy are as follows:

**I. Configuration Requirements of Mailbox Supports**

All mailbox supports shall be swing-away style, constructed and installed in conformance with the attached detailed drawings and specifications.

## II. Call Before You Dig

48 hours prior to installation of any new mailbox support, contact the Gopher State One Call for utility locates (pamphlet attached).

## III. Replacement of Mailbox Supports under County Highway Improvement Program

Stearns County will provide and install at the County's expense, conforming mailbox supports within the limits of all Stearns County highway reconstruction and highway resurfacing projects. The County is able to provide this service only on reconstruction/resurfacing projects since they are an eligible state aid expense and are therefore reimbursable.

## IV. Replacement of Unlawful Mailbox Supports and Installations

Any mailbox support deemed unlawful by the Stearns County Highway Department, as defined by Minnesota Rules Chapter 8818 (attached), shall be replaced. Once a support is deemed unlawful, the owner will be notified in writing that the owner shall replace within 60 days. The County will provide and install an approved swing-away style support for a fee of \$150. An unlawful support remaining after the expiration of the 60 day time period will be removed and replaced by the County for a fee of \$150.

## V. Replacement of Damaged Mailbox Supports by Stearns County or 3<sup>rd</sup> Parties

The Highway Department will, at its own expense, replace an approved swing-away style mailbox support if struck by County equipment during snowplowing operations or other maintenance activities provided the support was properly installed according to U.S. Postal and Stearns County Highway Department standards. The County will not replace or provide a mailbox damaged by snow from a plow. The mailbox will only be replaced if the box was struck by equipment.

The County will replace a mailbox support damaged by a third party for a fee of \$150. The County will not pursue insurance claims on behalf of residents.

## VI. Mailbox Support Requirements part of Access Permits

The Stearns County Highway Department will require that all mailbox supports associated with the issuance of an access permit be constructed in accordance with the Department's detailed drawings and specifications for swing-away style supports. The County will install an approved swing-away style support for a fee of \$150 in addition to the \$100 access permit fee.

## VII. Miscellaneous Attachments to Mailbox Supports

Newspaper delivery boxes, advertisement delivery boxes, nameplates, address plates, etc., shall not be installed underneath the mailbox, whether attached to the mailbox support or on a separate post. The area underneath the mailbox shall remain free of obstructions in order to allow the unhindered passage of the snowplow wing blade. Obstacles interfering with the wing blade force the plow to swerve, often into the oncoming lane, creating an unsafe situation for motorists and plow operators. The approved

drawings allow for the attachment of delivery boxes to the side of the mailbox. Otherwise, a separate approved support, located no closer than 30 inches, shall be installed at the sole cost of the property owner.

Owners of approved swing-away style mailbox supports with items attached or on separate supports in a nonconforming manner will be notified in writing to correct deficiencies within 60 days. Items not corrected within 60 days will be removed by the County at the owner's expense up to \$150.00.

#### VIII. Ownership of Mailbox Supports

Mailboxes and mailbox supports are the property of the mail route patron. Replacement or installation of mailbox supports by the County does not signify any change of ownership. The support remains the property of the owner and it is the owner's responsibility to maintain to conformance standards.

#### IX. Interruption of Mail Delivery

When the County must remove and replace a mailbox support, it shall be done in such a manner as to cause minimal interruption of mail delivery.

#### X. Spacing of Mailbox Supports

In accordance with Minnesota Rules Chapter 8818, mailbox supports shall be spaced no closer than 30 inches.

## **Appendix B to Ordinance 478**

### **COUNTY MEMORIAL MARKER GUIDELINES**

#### **Background**

Crashes on highways are traumatic events for all those involved. Crashes that result in loss of life are even more tragic, and they impact many lives including the family and friends of the victim. Stearns County understands the pain caused by these events and recognizes that some people's grieving could include the placement of memorials near the site.

Stearns County will be understanding and compassionate since this is a sensitive issue and will encourage other ways to memorialize the person(s) rather than a marker along the highway since the main concern is safety. These markers can be a physical and/or visual hazard to other motorists, and no one wants these memorials to be the cause of another crash at the same location.

Typically, hazards associated with this type of marker may include non-breakaway physical objects within the clear zone; visual distractions that can cause erratic driving behavior both day and night; vehicles parked adjacent to the traveled way and in areas of narrow shoulders; pedestrians on or near the roadway, children exiting or entering vehicles from the roadway side of parked vehicles, physical obstructions that could cause problems with snowmobiles, dirt bikes, ATVs, as well as maintenance activities such as mowing and snowplowing. Any physical post driven into the ground is a hazard above ground and may also be an additional hazard if it strikes an underground utility such as a power cable.

#### **Minnesota Statute References**

Minnesota Statute 160.27 Subd. 5 states, "Except for the actions of the road authorities, their agents, employees, contractors and utilities in carrying out their duties imposed by law or contract . . . it shall be unlawful to : (5) dig any holes in the highway . . . ; (9) place or maintain an advertisement within the limits of any highway; (10) paint, print, place, or affix any advertisement or any object within the limits of the highway."

Minnesota Statute 169.34(a) states, " No person shall stop, stand, or park a vehicle . . . ; (14) at any place where official signs prohibit stopping." All interstate freeways and other designated freeways in Minnesota are signed for Emergency Stopping Only, which is displayed on R16-X4 signs at all entrances.

#### **Definitions**

Memorial markers are physical objects that are placed along highway right of way, marking the site of a fatal crash.

#### **Memorial Marker Guideline**

Stearns County guidelines regarding placement of memorial markers are as follows:

Temporary memorial markers may be placed along county highways and remain for an appropriate time, not to exceed six (6) months. Memorial markers will be removed if:

- They do not meet safety criteria within the clear zone (physical or visual),
- They negatively impact the free flow of traffic,

- They are located outside the clear zone but constitute a hazard if hit by either on- or off-roadway vehicles,
- They interfere with routine maintenance operations

Removed memorial markers shall be stored for retrieval at the local county highway shop for a minimum of 30 days prior to disposal.

**Effective Date**

September 13, 2005

**Contacts:**

Questions should be directed to Stearns County Public Works at 320-255-6180 or [highway@co.stearns.mn.us](mailto:highway@co.stearns.mn.us).



## **Appendix C – Construction Site Stormwater Runoff Control and Post-Construction Stormwater Management Requirements**

### **Construction Site Stormwater Runoff Control (MS4 SWPPP MCM 4)**

Projects within County Road rights of way and within the Urbanized Areas with a land disturbance of greater than or equal to one acre, shall be required to follow the requirements found in the Construction General Permit (CGP). Only those parts of the CGP that are considered erosion and sediment controls or waste controls are regulated by this Right of Way Ordinance. Those parts are identified by the eight sections listed in Part C below:

- A. Develop site plans that must be submitted to Stearns County for review and approval prior to the start of construction activity.
- B. Site plans must be kept up-to-date by the owners and operators of construction activity with regard to stormwater runoff controls.
- C. The site plans must incorporate the following erosion and sediment controls and waste controls:
  - 1.) BMPs to minimize erosion
  - 2.) BMPs to minimize the discharge of sediment and other pollutants
  - 3.) BMPs for dewatering activities
  - 4.) Site inspections and records of rainfall events
  - 5.) BMP maintenance
  - 6.) Management of solid and hazardous wastes on each project site
  - 7.) Final stabilization upon the completion of construction activity, including the use of perennial vegetative cover on all exposed soils or other equivalent means
  - 8.) Criteria for the use of temporary sediment basins.

Further details of each of the above can be found in the CGP and are included at the end of this Appendix.

- D. Failure to comply with the Site Plan BMPs will result in actions being taken in accordance with Section 1.34 of this Right of Way Ordinance.

### **Post-Construction Stormwater Management (MS4 SWPPP MCM 5)**

Projects within County Road rights of way and within the Urbanized Areas with a land disturbance of greater than or equal to one acre shall be required to:

- A. Submit site plans with post-construction stormwater management BMPs to Stearns County for review and approval, prior to start of construction activity.
- B. Post-Construction Stormwater Standards

The following volume control standards shall be met as described below for all construction activities where one acre of land disturbance occurs, including land disturbing activities that are less than one acre but part of a larger common plan of development.

All new development projects shall retain, on site (i.e. infiltration or other volume reduction practices) and not discharge off-site, a runoff volume equal to 1 inch times the area of the proposed increase of impervious surfaces.

All redevelopment projects shall retain, onsite (i.e. infiltration or other volume reduction practices) and not discharge off-site a runoff volume equal to ¼ inch from all redeveloped impervious surfaces. Newly added impervious surfaces must meet the new development standard of 1 inch.

Green Infrastructure techniques and practices (e.g., infiltration, evapotranspiration, reuse/harvesting, conservation design, urban forestry, green roofs, etc.), shall be given preference as design options consistent with zoning, subdivision and PUD requirements.

Infiltration techniques are restricted in areas in areas with predominately Hydrologic Soil Group D (clay) soils, within 1,000 feet up-gradient or 100 feet down-gradient of active Karst features, within a Drinking Water Supply Management Area (DWSMA), and where soil infiltration rates are more than 8.3 inches per hour.

For linear projects, a reasonable attempt must be made to obtain right of way during the project planning process for volume control practices. Documentation of attempts to obtain the right of way will be required. Exceptions may be allowed as provided for in Part III.D.5.a(3)(b).

Wetlands/ponds are considered to be an impervious surface. While subject to rate control requirements, rainfall on wetlands/ponds is not subject to volume control standards.

The following rate control standards shall be met as described below:

a. Discharge rates shall be derived using the standard methods of the Natural Resources Conservation Service TR-55 or TR-20 as defined in the current Hydrology Guide for Minnesota.

b. In cases where the downstream conveyance system is a clearly defined manmade system of limited capacity, the allowable discharge will be limited to the prorated share of the property to the overall service area. Typically, this type of system will require the 100-year post-development rate of discharge to be equal or less than the 5-year pre-development rate of discharge, but it may be considerably less with no correlation to a given rainfall event frequency.

c. In cases where the downstream conveyance system is a natural system, features shall be incorporated into the stormwater management plan to meet the following

requirements: 100-year post-development rate of discharge to be equal to or less than the 10-year pre-development rate of discharge.

d. For receiving systems where rates are of limited concern, the rate of discharge after development/redevelopment must be equal to or less than the existing rate of discharge for the following rainfall events: 2-yr., 10-yr., and 100-yr.

#### Post Construction Maintenance and Inspections of Structural Stormwater BMPs

Any structural stormwater BMP not owned or operated by Stearns County shall meet the following requirements:

a. A permanent public easement shall be provided to the County for access for inspection and/or maintenance purposes. Costs incurred by the County for any maintenance of private systems will be billed and/or assessed to the owner.

b. The owner shall enter into a recorded agreement with the County. The agreement shall include as an attachment an inspection and maintenance plan. The terms and conditions of the Maintenance Agreement shall be binding upon, and shall insure to the benefit of the parties and their respective successors and assigns.

c. The permanent public easement and Maintenance Agreement shall be recorded with the County Recorder Office. A copy of the recorded documents shall be provided to the County within six months of the project's completion.

d. The inspection and maintenance plan shall be developed, approved, and included as an attachment with the Maintenance Agreement. At a minimum, maintenance plans must include the following information: Responsible person(s) for completing inspections and conducting maintenance; Frequency of inspections and maintenance; and Inspection checklist and type of maintenance anticipated.

e. If site configurations or structural stormwater BMPs change, decreasing BMP effectiveness, new or improved structural BMPs must be designed and implemented to meet the requirements of the MS4 permit. New and/or improved BMP plans must be submitted to the County Engineer for review and approval.

All requirements of the MS4 permit not specifically mentioned above shall be adhered to.