



SCOTT COUNTY

Ordinance Number 22 Management of the Public Right-of-Way

Information Packet Includes:

- **Right of Way Ordinance**
- **Permit Fee Schedule**
- **Forms and Applications**
 - **Registration Information and Form**
 - **Application for Utility Permit**
 - **Application for Excavating/Grading**
 - **Application for Obstruction Permit**
 - **Application for Landscaping**
 - **Application for Street or Commercial Access Permit**
 - **Application for Residential or Field Access Permit**

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Commissioners on May 6, 2003
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The Board of Commissioners of Scott County, Minnesota, does hereby ordain and adopt this Ordinance establishing regulations and standards for the management of the County rights-of-way pursuant to Minn. Stat. Chapters 160 and 163, § 237.163 and Minnesota Rules Chapter 7819.

Right-of-Way Management

Sec. 101 Purpose and Scope

To provide for the health, safety and welfare of its 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 the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the County 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. Finally, this Ordinance provides for recovery of out-of-pocket and projected costs from persons using the public right-of-way.

Sec. 102 Statutory Authority to Manage the Public Right-of-Way

This Ordinance is created to manage and regulate the public use of the County's right-of-way along county roads pursuant to the authority granted to the County under state and federal statutory, administrative and common law. The County hereby elects to manage right-of-way under its jurisdiction. All right-of-way users, including the County, are subject to the provisions in this Ordinance. The County is exempt from the obligation of paying for permits or other fees imposed by this Ordinance. This Ordinance shall be interpreted consistent with 1997 Session Laws, Chap. 123, substantially codified in Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, 238.086 (the "Act"), as amended by 2017 Session Laws, Chapter 94, Minn. Stat. Chap. 216D and the other laws governing applicable rights of the County and users of the right-of-way. This Ordinance shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this Ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This Ordinance shall not be interpreted to limit the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

"Manage the Right- of-Way" means the authority of the County to do any or all of the following (Minn. Stat. § 237.162, subd. 8, (1998)):

- a. require registration;

- b. require construction performance bonds and insurance coverage;
- c. establish installation and construction standards;
- d. establish and define location and relocation requirements for equipment and facilities;
- e. establish coordination and timing requirements;
- f. require right-of-way users to submit, henceforth required by the County, project data reasonably necessary to allow the County to develop a right-of-way mapping system including GIS system information;
- g. 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;
- h. establish right-of-way permitting requirements for access, excavating/grading, utility services, landscaping and obstruction;
- i. establish removal requirements for abandoned equipment or facilities, if required, in conjunction with other right-of-way repair, excavation or construction; and
- j. impose reasonable penalties for unreasonable delays in construction.

Sec. 103 Definitions

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.

103.1 Abandoned Facility means a facility no longer in service or is 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.

103.2 Access means the physical connection to public or private property over right-of-way for residential, agricultural, commercial or municipal street purposes.

103.3 Access Permit means the permit which must be obtained from the County before a person may make a physical connection to a County road or highway.

- 103.4 Access Permit Fee** means money paid to the County by a permittee to cover the costs as provided in Sec. 113 and required to obtain the permit.
- 103.5 Applicant** means any person requesting permission to access, excavate/grade, place a utility service, landscape or obstruct a right-of-way.
- 103.6 Commission** means the State Public Utilities Commission.
- 103.7 Commercial Access** means access requested for commercial, retail or industrial purposes, public, or institutional facilities.
- 103.8 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, subd. 3, over a continuous length in excess of 500 feet.
- 103.9 Construction Performance Bond** means any of the following forms of security provided at permittee's option:
- a. individual project bond;
 - b. cash deposit;
 - c. security of a form listed or approved under Minn. Stat. Sec 15.73, sub3;
 - d. letter of credit, in 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.
- 103.10 County** means the County of Scott, Minnesota. For purposes of Sec. 129 Indemnification and Liability, County means its elected and appointed officials, officers, employees and agents.
- 103.11 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.
- 103.12 Department** means the Scott County Highway Department.

- 103.13 Department Inspector** means any person authorized by the director to carry out inspections related to the provisions of this Ordinance.
- 103.14 Director** means the Scott County Engineer, or her or his designee.
- 103.15 Emergency** means a condition that (1) immediately endangers the life or safety of persons, (2) will cause an immediate threat of significant loss or injury to property; or (3) requires immediate repair or replacement in order to restore service to customers.
- 103.16 Equipment** means any tangible asset used to install, repair, or maintain facilities in any right-of-way.
- 103.17 Excavate/Grade** means to dig into or in any way remove or physically disturb or penetrate any part of a public right-of-way.
- 103.18 Excavation/Grading Permit** means a permit issued by Scott County authorizing the permittee to excavate in County right-of-way as specifically described in the permit.
- 103.19 Excavation/Grading Permit Fee** means money paid to the County by an applicant to cover the costs as provided in Sec. 113 and required to obtain a permit.
- 103.20 Facility or Facilities** means any tangible asset, including equipment, in the right-of-way which is required to provide utility service.
- 103.21 Five-year Project Plan** shows road projects adopted by the County for construction within the next five years.
- 103.22 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.
- 103.23 Hole** means an excavation in the pavement, with the excavation having a length less than the width of the pavement.
- 103.24 Landscaping** means vegetative plantings, gardens, in-ground sprinkler systems and related features.
- 103.25 Landscaping Permit** means a permit issued by Scott County authorizing the permittee to landscape in County right-of-way as specifically described in the permit.

- 103.26 Landscaping Permit Fee** means money paid to the County by an applicant to cover the costs as provided in Sec. 113 and required to obtain a permit.
- 103.27 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.
- 103.28 Management Costs** means the actual costs the County incurs in managing its public rights-of-way, including, but not limited to 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 Sec. 131 of this Ordinance.
- 103.29 Mapping Information** shall mean the information required in Sec. 124, Subd. 3 of this Ordinance.
- 103.30 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.
- 103.31 Obstruction Permit** means the permit which, pursuant to this Ordinance, must be obtained before a person may obstruct any part of a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing any tangible object therein for the duration specified. An obstruction permit is not required if a public right-of-way user already possesses a valid excavation permit for the same project that includes an obstruction.
- 103.32 Obstruction Permit Fee** means money paid to the County by a permittee to cover the costs as provided in Sec. 113 and required to obtain the permit.
- 103.33 Patch or Patching** means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the County's five-year project plan.

- 103.34 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.
- 103.35 Permit** means a permit to impact or perform work in a public right-of-way, including permits for access, obstruction, excavation, grading, landscaping, and service or utility service.
- 103.36 Permittee** means any person to whom a permit to access, excavate/grade, place a utility service, landscape or obstruct a right-of-way has been granted by the County under this Ordinance.
- 103.37 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.
- 103.38 Public Right-of-Way** means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, public sidewalk or area in which the County has an interest, including other dedicated rights-of-way for transportation purposes and utility easements of the County. A public right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service. The lands described by an easement, deed, dedication, title, law or occupation of a road, highway, street, cartway, bicycle lane, or sidewalk are included as right-of-way.
- 103.39 Registrant** means any person who (1) has or seeks to have its 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 in the right-of-way.
- 103.40 Residential/Agricultural Access** means access requested for individual, residential or agricultural purposes.
- 103.41 Restoration Cost** means the amount of money paid to the County by a permittee to achieve the level of restoration according to plates 1 to 13 of the Minnesota Public Utilities Commission rules.
- 103.42 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 or similar condition that existed before excavation.
- 103.43 Right-of-Way Permit** has the same meaning as “Permit,” defined above.

- 103.44 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) any person or entity to whom a permit to use the right-of-way has been issued by the County.
- 103.45 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 providing wireless service or transporting of voice or data information; (3) services of a cable communications system as defined in Minn. Stat. Chap. 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. Chap. 308A; (6) water, sewer, steam, cooling or heating services; and (7) privately-owned utility services, including drain tiles.
- 103.46 Service or Utility Service Permit** means a permit issued by Scott County authorizing the permittee to place a service or utility service in County right-of-way as specifically described in the permit.
- 103.47 Service or Utility Service Permit Fee** means money paid to the County by an applicant to cover the costs as provided in Sec. 113 and required to obtain a permit.
- 103.48 Street Access** means access requested for municipal street purposes.
- 103.49 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 has already been issued.
- 103.50 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 providing wireless service or transporting telecommunication or other voice or data information. For purposes of this Ordinance, 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. § 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.

- 103.51 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.
- 103.52 Trench** means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
- 103.53 Two Year Project Plan** shows road projects adopted by the County for construction within the next two years.

Sec. 104 Administration

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

Sec. 105 Registration and Right-of-Way Occupancy

- 105.1 Registration.** Each person who occupies, uses, or seeks to occupy or use, the public right-of-way or place any equipment or facilities in the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the County. Registration will consist of providing application information and paying a registration fee. Registration fees shall be set by the County Board at a public meeting and may be amended by them at a public meeting.
- 105.2 Registration Prior to Work.** No person may construct, install, repair, remove, relocate, or perform any other work, including landscaping, on, or use any facilities or any part thereof in any right-of-way without first being registered with the County.

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

Sec. 106 Registration Information

- 106.1 Information Required.** The information provided to the director at the time of registration shall be on the form approved by the County or this Ordinance and shall include, but not be limited to:

- a. Each registrant's name, Gopher State One-Call registration certificate number, address, e-mail address if applicable, and telephone and facsimile numbers.
- b. The name, address, e-mail address if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be accessible for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

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

Sec. 107 Annual Reporting Obligations

107.1 Operations. Each registrant that provides utility service shall, at the time of registration and by March 1 of each year, file a construction and major maintenance plan for known underground facilities with the director. Such plan shall be submitted using a format designated by the director and shall contain the information determined by the director to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The utility facility plans shall be kept up-to-date by the registrant. Facility plans which a utility identifies in writing to the County as being "trade secret information" will be treated as general nonpublic data in accordance with Minn. Stat. § 13.37.

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

- a. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "Next-Year Project");
- b. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years (5) following the next calendar year (in this section, a "five-year project").

It is the registrant's responsibility to keep informed on available construction and major maintenance plans filed by other registrants.

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.

107.2 Additional Next-year Projects. Notwithstanding the foregoing, the director shall not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the County if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 108 Permit Requirement

108.1 Permit Required. Except as otherwise provided in this code, no person may access, landscape, place a service utility, excavate/grade or obstruct any right-of-way without first registering and having obtained the appropriate right-of-way permit from the County to do so.

108.2 Permit Extensions. No person may access, landscape, place a service utility, excavate/grade or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (1) makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and (2) a new permit or permit extension is granted.

108.3 Routine Maintenance Activities. The director may approve a permit plan which, among other conditions, allows for maintenance activities without separate notice and separate compensation.

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

Sec. 109 Permit Applications

Application for a permit is made to the director on the form provided by the County. Right-of-way permit applications shall contain and will be considered complete, only upon compliance with the requirements of the following provisions:

- a. Registration with the County pursuant to this Ordinance;
- 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 of the permittee in the project area.
- c. Payment of money due the County for:
 - (1) permit fees, estimated restoration costs and other management costs;

- (2) prior unpaid right-of-way or obstruction permit fees;
 - (3) any undisputed loss, damage, or expense suffered by the County because of applicant's prior excavations or obstructions of the right-of-way or any emergency actions taken by the County;
 - (4) other charges, if applicable.
- d. Payment of disputed amounts due the County by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

Sec. 110 Insurance Required

110.1 Before any permit shall be issued allowing work in the public right-of-way, the applicant or registrant shall provide a certificate of insurance or self insurance:

- (1) Verifying that an insurance policy has been issued to the applicant/registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the director;
- (2) Verifying that the applicant/registrant is insured against claims for bodily injury, including death, as well as claims for property damage arising out of the (1) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees; and (2) 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 contracts, independent contractors, products and completed operations, explosions, damage of underground facilities and collapse of property;
- (3) Naming the County, its officers, employees and agents, 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 coverage;
- (4) Requiring that the director be notified thirty (30) days in advance of cancellation of the policy, non-renewal or material adverse modification of a coverage term;
- (5) Indicating commercial general liability coverage, business automobile liability coverage, workers compensation and umbrella coverage established by the director in amounts sufficient to protect the County and the public and to carry out the purposes and policies of this Ordinance.

- 110.2** The County may require a copy of the actual insurance policies.
- 110.3** 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 shall be filed with the County.
- 110.4** 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.

Sec. 111 Construction Performance Bonds

- 111.1 Requirement.** At the director's discretion, a construction performance bond may be required from either the applicant or registrant for any work in the public right-of-way which requires a permit pursuant to this Ordinance.
- 111.2 Amount of Bond.** The director shall determine the construction performance bond amount based on estimated costs to restore the right-of-way if the applicant/registrant is non-compliant with conditions of Sec. 114 right-of-way patching and restoration.

Sec. 112 Issuance of Permit; Conditions

- 112.1 Permit Issuance.** If the applicant has satisfied the requirements of this Ordinance, the County shall issue a permit.
- 112.2 Conditions.** The director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current and future use.

Sec. 113 Permit Fees

- 113.1 Right-of-Way Permit Fee.** The County shall establish right-of-way permit fees in an amount sufficient to recover the following costs.
- a. The County right-of-way management costs;
 - b. Degradation costs, if applicable; and
 - c. Other costs and fees allowed by statute.

Permit fees shall be established by the County Board and may be amended at

any public meeting.

- 113.2 Conditions.** The Director may impose conditions upon the issuance of permits and the performance of the applicant thereunder to protect the public's health, safety and welfare, or when necessary, to protect the public right-of-way and its current use, including but not limited to the recovery of any unusual management costs not recovered through the standard permit fee, including but not limited to the cost of assigning a police officer to provide traffic management or the cost of assigning a field observer.
- 113.3 Payment of Permit Fees.** A right-of-way or obstruction permit shall not be issued without payment of right-of-way or obstruction permit fees unless the County allows applicants to pay such fees within thirty (30) days of billing.
- 113.4 Non refundable.** Permit fees that were paid for a permit that the director has revoked for a breach as described in Sec. 123 are not refundable.

Sec. 114 Right-of-Way Patching and Restoration

- 114.1 Timing.** The work to be done under the right-of-way permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Sec. 116.
- 114.2 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, the 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 of permittee, 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 right-of-way permit, post a construction performance bond in an amount determined by the director 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 director determines that the right-of-way has been properly restored, the surety on the construction performance bond shall be released.

- 114.3 Standards.** To the maximum extent possible, restoration must return the right-of-way to the same condition that existed before excavation as determined by the County Engineer. Subject to this standard, plates 1 to 13 shown in Minn. Rules pts. 7819.9900 to 7819.9950, indicate the maximum limits of restoration methods and area requirements the County may impose when a right-of-way user excavates in the public right-of-way. The Director and the right-of-way user may agree to a lesser requirement. All levels of restoration include compaction of the materials placed in the excavation of the subgrade and aggregate base, plus pavement replacement in kind. If required by the Director, all work must be performed according to the County's standards and specifications and drawing.
- 114.4 Guarantees.** The permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. The obligation is limited to one (1) year for plantings and turf establishment. During this 24-month period the permittee shall, upon notification from the director, correct all restoration work to the extent necessary, using the method required by the director. Said work shall be completed within five (5) working days after receipt of the notice from the director, taking into consideration days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Sec. 117.
- 114.4(a). 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 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) working days of the receipt of the notice from the County, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Sec. 117.
- 114.5 Failure to Restore.** If the permittee fails to restore the public right-of-way in the manner and to the condition required by the director, or fails to satisfactorily and timely complete all restoration required by the director, the director shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee at least five (5) working days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event the permittee fails to cure or fails to respond to the notice, the County may, at its option, perform the necessary work and the permittee shall pay to the County, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the County may exercise its rights under the construction performance bond. Nothing in this section shall prevent the County from determining that an emergency situation arises and to take prompt action to protect the health and safety of the public.

Sec. 115 Joint Applications

- 115.1 Joint Application.** Registrants may be required to jointly apply for permits to access, excavate/grade, place a utility service, landscape or obstruct the right-of-way at the same place and time.
- 115.2 Shared Fees.** Registrants who apply for permits for the same obstruction or right-of-way permit action, which the director does not perform, may share in the payment of the obstruction or right-of-way permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- 115.3 With County Construction Projects.** Registrants who join in a scheduled obstruction or right-of-way permit action coordinated with a County construction project by the director, whether or not it is a joint application by two or more registrants or a single application, are not required to pay any fees, but a permit is still required.

Sec. 116 Supplementary Applications

- 116.1 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. The Director may orally waive the requirement for a permit extension or the payment of an additional fee. County shall maintain a written record of any waivers granted.
- 116.2 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. The Director or the Director's Designee may orally waive the requirement for a permit extension or the payment of an additional fee. County shall maintain a written record of any waivers granted.

Sec. 117 Other Obligations

- 117.1 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 County or other appropriate jurisdiction or other applicable rule, law or regulation. Permittee shall comply

with other local codes and with road load restrictions. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. 216D.01-.09 ("Gopher State 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.

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

117.3 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 gutters, culverts, ditches tiles or other waterways shall be interfered. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with County or applicable township and city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices (MMUTCD) and its field manual and any written directions of the director.

Sec. 118 Denial of Permit

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 health, safety, and welfare or when necessary to protect the right-of-way and its current and future use. The County may deny a permit if the utility has failed to comply with previous permit conditions. The County may withhold issuance of a permit until conditions of previous permit are complied with.

Sec. 119 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, 7819.5000 and 7819.5100 and shall conform to MnDOT standard specifications and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat. §§ 237.162 and 237.163.

Sec. 120 Inspection

120.1 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.

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

120.3 Authority of County.

- a. At the time of inspection the director may order the immediate cessation and correction of any work which poses a serious threat to the life, health, safety or well being of the public.
- b. The director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes so long as the nonconformance constitutes a “substantial breach” as set forth in Minn. Stat. § 237.163, subd. 4(c)(1)-(5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within a reasonable time after issuance of the order, the permittee shall present proof to the director that the violation has been or will be corrected within a time period set forth by the director in the order. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Sec. 123.
- c. The cost of any action required by the County shall be paid by the permittee.

Sec. 121 Emergency Situations

Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant will proceed to take whatever actions are necessary to respond to the emergency or as directed by the director. 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 Ordinance for the actions it took in response to the emergency. The permittee requirements shall not apply if the repair is caused by another permittee’s work in the right-of-way.

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 appropriate to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Sec. 122 Work Done Without a Permit

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, 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.

Sec. 123 Supplementary Notification

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

Sec. 124 Revocation of Permits

124.1 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 relevant statute, ordinance, rule or regulation, or any material condition of the permit including a threat to the safety of workers, or the right-of-way user or the utility users. A substantial breach by permittee shall include, but shall not be limited to, the following:

- a. The violation of any material provision of the right-of-way permit;
- b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the County or its citizens;
- c. Any material misrepresentation of fact in the application for a right-of-way Permit;
- d. The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the permittee's control, or failure to relocate existing facilities as specified in Sec. 125; 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. 120.
- f. Failure of the utility to pay any required costs, fees, or charges billed by the County.

124.2 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.

- 124.3 Response to Notice of Breach.** Within five (5) working days of receiving a written notification of breach from the County, permittee shall provide the county with a plan acceptable to the director 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.
- 124.4 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.
- 124.5 Revoked Permit.** If the County revokes a permittee's permit for breach of this Ordinance, the permittee will not be allowed to obstruct or excavate within the County right-of-way until the breach situation is corrected to the satisfaction of the director and the permit is reissued.

Sec. 125 Mapping Data

- 125.1 Information Required.** Each registrant and permittee shall provide project data necessary to allow the County to develop a right-of-way mapping system in accordance with Minn. Stat. § 237.162, subd. 8 (6) 1998).
- 125.2 Application Required.** County requires a permit for excavation in or obstruction of its public right-of-way. A person wishing to undertake a project within the public right-of-way shall submit a right-of-way permit application, which will require the filing of mapping information pursuant to subdivision 3.
- 125.3 Mapping Information.** Scott County requires as part of its permit the filing of all of the following information for placement of utilities:
- a. Location and elevation of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on one of the following methods:
 - (1) The preferred method is: X, Y, and Z coordinates in NAD 83 1996 Adjustment (also known as HARN Adjustment) horizontal datum and NGVD 88 vertical datum. This information is to be supplied in an electronic format in an ASCII comma-delimited file including: Point Number, Northing, Easting, Elevation and Description. The alignment position shall be collected at a minimum interval of two hundred feet or as required by changes in direction of the utility being located to define the horizontal alignment. Elevation "as built" depth locations shall be collected at a minimum of 10 per mile. The horizontal and vertical accuracy requirements for all collected positions shall be within 0.5 feet of their reported position as evidenced by the certification of a licensed Land Surveyor or

Engineer registered in the State of Minnesota.

- (2) Offsets from property lines, distances from the centerline of the public right-of-way, and curb lines as determined by the County.
- (3) Any other system agreed upon by the right-of-way user and the County.

- b. the type and size of the utility facility;
- c. a description of above-ground appurtenances;
- d. any facilities to be abandoned, if applicable, in conformance with Minn. Stat. § 216D.04, subd. 3.

125.4 Changes and Corrections. The application must provide that the applicant agrees to submit “as built” data, reflecting any changes and variations from the information provided under subdivision 2, items A to D.

125.5 Additional Construction Information. In addition, the right-of-way user shall submit to County at the time the project is completed a completion certificate.

125.6 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.

125.7 Data on Existing Facilities. At the request of Scott County, a right-of-way user shall provide existing data on its existing facilities within the public right-of-way in the form maintained by the user at the time the request was made, if available.

Sec. 126 Location and Relocation of Facilities

126.1 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.

126.2 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 or equipment that

is, or, pursuant to current technology, the County expects will someday be, located within the right-of-way. All right-of-way, obstruction, or other permits issued by the County involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A typical cross section of the location for utilities may be on file at the director's office. This section is not intended to establish "high density corridors." Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the County shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, to prevent interference with planned local government use of 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.

126.3 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.

126.4 Relocation of Facilities. A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for convenience of the local government unit, in connection with: (1) a present or future local government use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

A right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.

Sec. 127 Location of Facilities During Design Process

In addition to complying with the requirements of Minn. Stat. 216D.01-.09 ("One Call Excavation Notice System"), each registrant who has facilities or equipment in the project area shall provide location information to the County of all said facilities.

Sec. 128 Damage to Other Facilities

The provisions of Minn. Stat. Ch.. 216D, as amended, shall apply to all situations involving damages to facilities during excavation operations.

Sec. 129 Right-of-Way Vacation

Reservation of Right. If the County vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rule 7819.3200 and other applicable laws.

Sec. 130 Indemnification and Liability

Limitation of Liability: By registering with the County, or by accepting a permit under this Ordinance, a registrant or permittee agrees to defend and indemnify the County for any liability for (1) for injuries to persons, damage to property or loss of service claims by parties other than the registrant or the County, or (2) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.

Indemnification: To the fullest extent permitted by law, a registrant or permittee shall indemnify, keep and hold the County, its officials, employees and agents, free and harmless from any and all costs, specifically including attorney fees and other costs and expenses of defense, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a public right-of-way permit. The foregoing does not indemnify the County for its own negligence except for claims arising out of or alleging the County's negligence in issuing the permit or failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permittee or the County, and the registrant or permittee, in defending any action on behalf of the County, shall be entitled to assert in any action every defense or immunity that the County could assert in its own behalf. In defending the County, any registrant or permittee shall obtain the consent of the County Board before any settlement shall be enforced.

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

Sec. 131 Abandoned or Unusable Facilities

131.1 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 Ordinance have been lawfully assumed by another registrant.

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

Sec. 132 Appeal

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request by the County Board. The County Board shall act on a timely written request. 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.

Sec. 133 Reservation of Regulatory and Police Powers

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

Sec. 134 Severability

If any portion of this Ordinance 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 Ordinance precludes the County from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Sec. 135 Permit Fee Schedule

The County Board shall periodically review and approve the fee schedule for permits issued under this Ordinance.