

Wisconsin Alliance of Cities Model Right-of-Way Ordinance Executive Summary

The following model Right-of-Way Ordinance is the result of a cooperative effort between the Wisconsin Alliance of Cities, Inc., and its member communities.

The purpose of the model ordinance is to give cities a set of regulations to help them govern the use of their rights-of-way. It is intended to provide a single set of regulations that cities can apply to all public rights-of-way users. The ordinance conforms to the provisions of the federal 1996 Telecommunications Act and Wisconsin statutes Chapter 196 regarding telecommunications regulation. In particular, the ordinance implements a city's authority to manage its rights-of-way and to recover its costs incurred in managing excavations within the right-of-way.

Note this model was written to be an omnibus ordinance for use of the public rights-of-way by any person or company. It therefore contains provisions and language, which will in most cases overlap with existing city ordinances. Cities must therefore determine whether they wish to implement the entire model ordinance, which would generally require repeal of some existing ordinances. An

alternative approach would be to implement just the “new” parts, relating mainly to cost recovery from rights- of- way users.

Each city must evaluate the importance of the various provisions of this model. One ordinance cannot anticipate the many variations of city needs. In recognition of this fact, some provisions are specifically identified as optional.

Of particular significance, however, is the fact that the model does not seek fees, taxes or rates for the privilege of using the right- of- way. It seeks reimbursement only for the costs incurred in management of the public right- of- way. User fees, on the other hand, are beyond the scope of this project and any city considering such an approach should first consult with their city attorney.

Please have your risk manager or insurance agent review the certificate of insurance/self- insurance language in Section 1.05 and Section 1.24 relating to indemnification of the attached ordinance. As drafted the language may be too broad and may expose you to liability.

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Model Right-of-Way Ordinance

City of _____ , _____ County, Wisconsin

An ordinance to enact a new Chapter of the _____ Code of Ordinances to administer and regulate the public right-of-way in the public interest, and to provide for the issuance and regulation of permits to excavate, obstruct and/or occupy the public rights-of-way.

THE COMMON COUNCIL OF THE CITY OF _____ DO
ORDAIN AS FOLLOWS:

Chapters ____ of _____ Code of Ordinances (hereafter "this Code") are hereby repealed in their entirety, and replaced by the following new Chapter 1 (hereafter "this Chapter"), to read as follows: **(Note: may not be necessary to repeal existing ordinances in their entirety. Cities may want to only adopt certain provisions in Chapter 1.)**

Chapter 1 Right-of-Way Management

Sec. 1.01. Findings and Purpose.

The City finds that the passage of the Telecommunications Act of 1996 has resulted in increased use of the public rights-of-way and increased costs to the taxpayers of the City and that these costs are likely to continue into the foreseeable future.

The City finds that excavation and occupancy of the public rights-of-way causes direct and indirect costs to be borne by the City and its taxpayers, including but not limited to:

1. Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair costs to the roadway associated with the actual excavation into the public right-of-way.
4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way.

In response to the foregoing facts, the City hereby enacts this new ordinance relating to administration of and permits to excavate, obstruct and/or occupy the public rights-of-way, together with an ordinance making necessary revisions to other Code provisions. This ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

The City's authority to enact this ordinance is pursuant, but not limited to, the following federal, state and local authority: 47 U.S.C. 253(c); Sec. 62.11(5) Wis. Stats; Sec66.045 Wis. Stats; Sec. 66.048 Wis. Stats; Sec. 86.16 Wis. Stats; Sec. 182.017 Wis. Stats; Sec. 196.58(1) Wis. Stats; Sec. 196.499(1) Wis. Stats; and **[insert local ordinance references]**.

The purpose of this ordinance is to provide the City a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of costs. This ordinance provides for the health, safety and welfare of the residents of the City as they use the rights-of-way of the City, as well as to ensure the structural integrity of the public rights-of-way. The City desires to minimize and

anticipate the number of excavations taking place thereon and to regulate the placement of facilities within the rights-of-way to ensure that they remain available for public services. The taxpayers of the City bear the financial burden for the upkeep of the rights-of-way. A primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by Persons who locate facilities therein.

Under this Chapter, all Persons who excavate, obstruct and/or occupy the public rights-of-way will reimburse the City's administrative, ongoing management and degradation costs. Right-of-way users will bear a fair share of the financial responsibility for the integrity of the public rights-of-way.

Sec. 1.02. 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.

“Alternative Telecommunications Utility Other” has the meaning in Section 196.01 of the Wisconsin Statutes.

"Applicant" means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

"City" means the City of _____, Wisconsin, a Wisconsin municipal corporation.

"Degradation" means the accelerated depreciation of the right-of-way, caused by an excavation 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,

"Department" means the Department of Public Works of the City.
(Note: If a city does not have a public works department, an equivalent department may be designated.)

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

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

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

"Facilities" means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

"In", when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.

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

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

"Occupy" means to dwell or reside above, on, in, or below the boundaries of the public rights-of-way.

"Permittee" means any person to whom a permit to excavate or occupy a right-of way has been granted by the City under this Chapter.

"Person" means, municipality, corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

"PSC" means the Public Service Commission of the State of Wisconsin.
"Public Utility" has the meaning provided in Wis. Stats. 196.01 (5).

"Registrant" means any person who has registered with the City (1) to have its facilities located in any right-of-way, or (2) to use or seek to occupy or use the right-of-way or any facilities in the right-of-way.

"Repair" means to perform construction work necessary to make the right-of-way useable for travel, according to department specifications, or to return facilities to an operable condition.

"Repair Bond" means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation repair work is completed in both a

timely and quality manner, per Department specifications.

"Restore or Restoration" means the process by which an excavated right- of- way and surrounding area, including pavement and foundation, is reconstructed according to Department specifications.

"Restoration Bond" means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right- of- way excavation restoration work is completed in both a timely and quality manner, per Department specifications.

"Right- of- Way" means the surface and space above and below a public roadway, highway, street, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights- of- way for travel purposes.

"Service" or "Utility Service" includes municipal sewer and water services and also includes, except as provided herein, but is not limited to (1) those services provided by a public utility as defined in Wis. Stats. 196.01(5); (2) telecommunications, pipeline, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a district heating or cooling system; and (4) cable service as defined and regulated under

47 U.S.C. 521 through 573. Wireless telecommunications service and cellular mobile radio telecommunications (CMRS) services as defined by Section 332(d) of the Federal Communications Act of 1996 (47U.S.C. 332 (d)(l)) are excluded, unless these services have a presence in the right-of-way.

"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.

"Telecommunications Carrier" has the meaning in Section 196.01 of the Wisconsin Statutes.

"Telecommunications Provider" has the meaning in Section 196.01 of the Wisconsin Statutes.

"Telecommunications Rights-of-Way User" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. This includes Telecommunications Providers, Utilities, ATUs, and Carriers. For purposes of this Chapter, a cable television system defined and regulated under Wis. Stats.

66.082(2)(d), and telecommunication activities related to providing natural gas or electric energy services, and which are not offered for resale as telecommunications services, are not telecommunications right-of-way users.

“Telecommunications Service” means the offering for sale or the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including the regulated sale of customer premises equipment. Telecommunications Service does not include cable television service, wireless service or broadcast service.

“Telecommunications Utility” has the meaning in Section 196.01 of the Wisconsin Statutes.

"Unusable Facilities" means facilities in the right-of-way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using them within the next twenty-four (24) months or a potential purchaser or user of the facilities.

Sec. 1.03. Administration.

The Department of Public Works (“Department”) is responsible for the administration of the rights- of- way, and the permits and ordinances related thereto. **(Note: Your city may designate some other body or person.)**

Sec. 1.04. Registration for Right- of- Way Occupancy.

Subd. 1. Registration. Each person who occupies, uses, or seeks to occupy or use, the right- of- way or any facilities in the right- of- way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any right- of- way shall register with the Department and pay the fee set forth in Section 1.06. Registration will consist of providing application information and paying a registration fee. **(Note: Some cities may opt to make registration and information collection a part of the actual permit process, rather than a separate requirement.)**

This section shall not apply to those persons exclusively utilizing facilities provided by another right- of- way user.

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 Department.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance requiring persons to plant or maintain the tree lawn in the area of the right- of- way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this Chapter. **(Note: The city may want to adopt these or other exceptions to registration.)**

Sec. 1.05. Registration Information.

Subd. 1. Information Required. The information provided to the Department at the time of registration shall include, but not be limited to:

Each registrant's name, Diggers Hotline registration certificate

number, address and e-mail address, if applicable, and telephone and facsimile numbers.

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.

All right-of-way users shall demonstrate to the satisfaction of the City the financial capability to cover any liability which might arise out of their presence in the right-of-way.

If the person is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wis. Stats. as recorded and certified to by the Secretary of State.

A copy of the person's certificate of authority from the Wisconsin Public Service 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.

Execution of an indemnification agreement in a form prescribed by the Department, which is consistent with, and shall not exceed the obligations provided in, Section 1.24 herein.

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

Sec. 1.06. Registration Fee.

Subd. 1. Registration Fee. The Department shall establish the Registration Fee in an amount sufficient to recover the costs incurred by the City for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.

[Note: The Springsted study formula for this fee is as follows:

Registration Fee = Total Annual (Labor Cost + Other Costs + Indirect Costs) / Total Number of Annual Registrations]

Subd. 2. Fee Computation. The City may recalculate, and by resolution, establish the Registration Fee.

Sec. 1.07. Reporting Obligations.

(Note: This section is optional.)

It is in the best interests of all affected parties to attempt to coordinate construction in the public right-of-way whenever it is reasonably possible. Therefore, periodic reporting by the registrant of known construction plans will be useful to achieve this objective.

Subd. 1. Operations. Every registrant shall, at the time of registration and no later than January 1 of each year, file a construction and major maintenance plan with the Department. The Department shall make available at the time of registration, and on January 1 of each year the Department's construction and major maintenance plan. The registrant's plan and the Department's plan shall be submitted on a form prescribed by the Department and shall contain the information determined by the Department to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way.

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

The locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this section, a "Next-year Project"); and

The tentative locations and estimated beginning and ending dates for all Projects contemplated for the two years following the next calendar year (in this section, a "Two year Project").

The term "project" in this section shall include both Next-year Projects and Two-year Projects.

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

Thereafter, by February 1, each registrant may change any Project in its list of Next-year Projects, and must notify the Department of all such changes in said list. The Department will make all such changes available for inspection in its office. Notwithstanding the foregoing, a

registrant may at any time join in a Next- year Project of another registrant listed by the other registrant. (See Section 1.15 Joint Applications.)

Subd. 2. Additional Next- year Projects. Notwithstanding the foregoing, the Department may, for good cause shown, allow a registrant to submit additional Next- year Projects. Good cause includes, but is not limited to, the criteria set forth in Section 1.18 concerning the discretionary issuance of permits.

Sec. 1.08. Excavation Permit Requirement.

(Note: Some cities may call this a Street Opening permit, or some other name.)

Subd. 1. Excavation permit required. Except as otherwise provided in this Chapter or other Chapters of the City Code, no person shall excavate any right- of- way or place facilities in a right- of- way without first having obtained an excavation permit from the Department.

No person shall excavate the right- of- way or maintain an excavation in the right- of- way beyond the date or area specified in the permit

unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit, pursuant to Section 1.16, and a new permit or permit extension is granted.

Subd. 2. Permit Display. A copy of any permit issued under this Chapter shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

Sec. 1.09. Excavation Permit Application.

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

Registration with the Department if required by this Chapter;

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 existing and proposed facilities;

Payment of all money due to the City for:

applicable permit fees and costs as set forth below;

subject to section (e), unpaid fees or costs due for prior excavations; or

subject to section (e) any loss, damage, or expense suffered by the City because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the City.

When an excavation permit is requested for purposes of installing additional facilities, and the posting of a restoration bond for the additional facilities is insufficient, the posting of an additional or larger restoration bond for the additional facilities may be required.

The Department shall not deny a registrant an excavation permit because of a dispute between the City and the registrant, related to Section 1.09 (c) (2) and/or (3) if:

the dispute has been adjudicated in favor of the

registrant;

the dispute is the subject of an appeal filed by the registrant and no decision in the matter has at yet been rendered.

Sec. 1.10. Excavation Permit Fee.

Subd. 1. Fee Calculation. The Excavation Permit Fee shall be established by the Department in an amount sufficient to recover the costs incurred by the City. This fee shall recover costs incurred by the City for each of the following categories as provided herein:

Administrative: The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.

[Note: The Springsted study formula for this fee is as follows:
Administrative Cost = Total Annual (Labor Cost + Other Costs + Indirect Costs) / Total Annual Permits.]

Repair: No repair fee shall be collected by the City, however the Permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance

by the Department, as per Section 1.11, and to pay a degradation fee.

Degradation: The general formula for computing the degradation fee shall be the cost per square yard for street, overlay and seal coat multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch.

The area of the patch shall be calculated by adding two feet to each side of the actual street cut. Depreciation schedules shall be provided by type of street. **(Note: A city may choose to use the average schedules provided in the Springsted study, or to provide its own more specific schedules, based on local data.)**

[Note: The Springsted study formula for this fee is as follows:
Degradation Fee = (Cost per Square Yard for Street, Overlay and Sealcoat) X (Depreciation Schedule Rates) X (Area of Patch).]

The total excavation permit fee shall be calculated as follows:

Total Excavation Permit Fee = Administrative Cost + Degradation Fee
(if applicable).

Subd. 2. City Exemption. Notwithstanding Subd. 1(c), the City and its contractors shall not pay degradation fees.

Subd. 3. Payment of Permit Fees. No excavation permit shall be issued without payment of applicable fees [unless the applicant shall agree to pay such fees within thirty (30) days of billing therefor].

Subd. 4. Non refundable. Permit fees paid for a permit that the Department has revoked for a breach as stated in Section 1.18 are not refundable.

Sec. 1.11. Right- of- Way Repair.

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

Subd. 2. Repair. In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas,

including the paving and its foundations, to the specifications of the Department. The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Department.

A Permittee may request to have the City repair the right- of- way.

(Note: This is optional for cities that may wish to use it.)

City Repair. If the Permittee requests to have the City repair the right- of- way, the City may accept or reject the request at its sole option. If the City accepts, the Permittee shall be billed for the City's costs, and shall pay the amount thereof within thirty (30) days of billing. **(Note: City repair for the Permittee is optional.)**

Permittee Repair. If the Permittee chooses to repair the right- of- way, it shall at the time of application for an excavation permit post a repair bond in an amount determined by the Department to be sufficient to cover the cost of repairing the right- of- way to Department specifications. If, thirty- six (36) months after completion of the repair of the right- of- way, the Department determines that the right- of- way has been properly repaired, the surety on the repair bond shall be released.

Subd. 3. Standards. The Permittee shall perform repairs according to the specifications of the Department and/or in the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair, and may do so in written procedures of general application or on a case-by-case basis.

Subd. 4. Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion, except for organic material which shall be maintained for twelve (12) months. During this period it shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.17.

Subd. 5. Failure to Repair. If the Permittee fails to repair the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all repair required by the Department, the Department at its option may do

such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing the right- of- way. If Permittee fails to pay as required, the city may exercise its rights under the repair bond.

Sec. 1.12. Restoration in Lieu of Repair and Degradation.

The Permittee may elect to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. If restoration is elected, the Department shall specify the area to be restored, and the methods and materials to be used for the restoration. The Permittee shall then also comply with the preceding Sec. 1.11, Subd. 1 through 5 as applied to restoration instead of repair.

Sec. 1.13. Inspection.

Subd. 1. Notice of Completion. When the work under any permit hereunder is completed, the Permittee shall notify the Department.

Subd. 2. Site Inspection. Permittee shall make the work site available to the Department 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 Department. At the time of inspection the City may order the immediate cessation of any work which poses a threat to the life, health, safety or well being of the public. The City may issue an order to the registrant for any work that does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to Sec. 1.18.

Sec. 1.14. Ongoing Management Fees.

Subd. 1. Fee Basis. Fees shall reflect the ongoing or long-term costs to the City of managing access to the right-of-way. These costs are exclusive of Administrative costs collected under Excavation Permit Fees. Fees shall be initially set, and may be annually re-computed, to recover the costs incurred by the City in ongoing management of the

right-of-way. Ongoing management costs include, but are not limited to, inventory maintenance, facility tracking, GIS, tree trimming, grass mowing, right of way maintenance, location marking and general inquiries related to public right-of-way users. The fee shall be based on the number of feet of right-of-way occupancy by a Telecommunications Right-of-Way User.

The per foot management fee shall be calculated as follows: Annual management fee per foot = Total annual management cost / Total ROW occupancy feet.

Subd. 2. Payment of Fees. Ongoing management fees shall be subject to adjustment and correction at the conclusion of the calendar year. Such fees shall be paid for all and any part of a calendar year, prorated on a daily basis, during any time period in which the said Person:

Uses or occupies the right-of-way to furnish Telecommunications Service, or Places, maintains or uses the Person's wires, mains, pipes, or any other facilities in the right-of-way.

Sec. 1.15. Joint Applications.

(Note: All of the following provisions are optional.)

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

Subd. 2. With City Projects. Registrants who join in a scheduled excavation performed by the City, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the degradation portion of the excavation permit fee.

Subd. 3. Shared Fees. Registrants who apply for permits for the same excavation, which the Department does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Sec. 1.16. Supplementary Applications.

Subd. 1. Limitations on Area. An excavation permit is valid only for the area of the right-of-way specified in the permit. No Permittee may perform any work or excavate 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 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. An excavation 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.

Subd. 3 . Fees for Supplementary Applications. A Permittee shall pay administration costs for any additional permits.

A Permittee is not required to pay an additional degradation fee for the same excavation, if one has already been paid on the original permit.

Sec. 1.17. Other Obligations.

Subd. 1. Compliance with Other Laws. Obtaining a permit to excavate and/or occupy the right- of- way does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, County, State, or Federal rules, laws or regulations. A Permittee shall comply with all requirements of local, state and federal laws. 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, or with the approval of the Department, no right- of- way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Sec. 1.18. Revocations, Suspensions, Refusals to Issue or Extend Permits.

Subd. 1. Grounds. The Department may refuse to issue a permit or

may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

(Note: A city may adopt any or all of the following conditions or variations thereof, depending on the adoption of other section in this Chapter.)

The applicant or Permittee is required by Sec. 1.04 to be registered and has not done so;

The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan required under Section 1.07; which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;

Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;

Misrepresentation of any fact by the applicant or Permittee;

Failure of the applicant or Permittee to maintain required bonds and/or insurance;

Failure of the applicant or Permittee to complete work in a timely manner;

The proposed activity is contrary to the public health, safety or welfare;

The extent to which right- of- way space where the permit is sought is available;

The competing demands for the particular space in the right- of- way;

The availability of other locations in the right- of- way or in other rights- of- way for the facilities of the permit applicant;

The applicability of ordinances or other regulations of the right- of- way that affect location of facilities in the right- of- way;

The condition and age of the right- of- way, and whether and when its is scheduled for total or partial reconstruction; or

The applicant or Permittee is otherwise not in full compliance with the requirements of this chapter or state or federal law.

Subd. 2. Discretionary Issuance. Notwithstanding Subd. 1 (b), the Department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or city ordinance or an order of a court or administrative agency.

Subd. 3. Appeals. Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Board of Public Works. **(Note: Communities may wish to specify a different committee or board for appeals).** A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Board of Public Works may affirm, reverse or modify the decision of the Department.

Sec. 1.19. Work done Without a Permit.

Subd. 1. Emergency Situations. Each registrant shall immediately notify the City by verbal notice on an emergency phone number

provided by the City 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 otherwise fully comply with the requirements of this Chapter.

If the City becomes aware of an emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The City may take whatever action it deems necessary to protect the public safety as a result of 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, excavates a right- of- way must subsequently obtain a permit, and shall in addition to any penalties prescribed by Ordinance, pay double the normal fee for said permit, pay double all the other fees required by this Chapter or other Chapters of the City Code, deposit with the Department the fees necessary to correct any damage to the right-

of- way and comply with all of the requirements of this Chapter.

Sec. 1.20. Supplementary Notification.

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

Sec. 1.21. Location of Facilities.

Subd. 1. Undergrounding. Under conformity with local, state and federal law, unless existing aboveground facilities is used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes. **(Note: This subsection is optional and may be applied only in certain specified districts of the city, or may be omitted entirely.)**

Subd. 2. Corridors. The Department may assign specific corridors within the right- of- way, consistent with Wisconsin Public Service

Commission standards. All excavation or other permits issued by the Department involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Wisconsin Public Service Commission's corridor selection standards.

Subd. 3. Limitation of Space. The Department may prohibit or limit the placement of new or additional facilities within the right- of- way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the right- of- way. In making such decisions, the Department shall strive to the extent possible to accommodate all existing and potential users of the right- of- way, but may prohibit or limit the placement of new or additional facilities when required to protect the public, health, safety or welfare.

Sec. 1.22. Relocation of Facilities.

Except as prohibited by State or Federal law, 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 Department requests such removal and relocation, and shall restore the right- of- way to the same condition it was in prior to said removal or relocation. The

Department may make such request to prevent interference by the Company's facilities with (i) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City 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.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

Sec. 1.23. Interference with Other Facilities during Municipal Construction.

When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the City shall notify the local representative. The registrant shall meet with the City's representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the

registrant's facilities. The registrant shall accomplish the needed work within 72- hours, unless the City agrees to a longer period.

In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the City may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days.

Sec. 1.24. Indemnification.

Subd. 1. Indemnification. Permittee expressly acknowledges and agrees, by acceptance of the permit, to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the permittee's acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the City or its agents

or employees.

Sec. 1.25. Abandoned Facilities.

Subd. 1. Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:

Provide information satisfactory to the Department that the registrant's obligations for its facilities under this Chapter have been lawfully assumed by another registrant; or

Submit to the Department a proposal and instruments for dedication of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:

accept the dedication for all or a portion of the facilities;

or

require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or

require the registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

However, any registrant who has unusable and abandoned facilities in any right- of- way shall remove it from that right- of- way within two years, unless the Department waives this requirement.

Subd. 2. Abandoned Facilities. Facilities of a registrant who fails to comply with Section 1.25 subd. 1, and which, for two (2) years, remains unused shall be deemed to be abandoned.

Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.

Subd. 3. Public Utilities. This section shall not apply to a public utility as defined by WI. Stats. 196.01 (5).

Sec. 1.26. Reservation of Regulatory and Police Powers.

The City, by the granting of a permit to excavate, obstruct and/or occupy the right- of- way, or by registering a person under this Chapter does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or maybe hereafter granted to the City under the Constitution and statutes of the State of Wisconsin to regulate the use of the right- of- way by the Permittee; and the Permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right- of- way or of registration under this Chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the City pursuant to such powers.

Sec. 1.27. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this

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Chapter is for any reason held invalid or unconstitutional by any court or administrative agency 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.

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