



CITY OF GEM LAKE
 Heritage Hall
 4200 Otter Lake Road | Gem Lake, MN 55110
 651-747-2790/92 | 651-747-2795 (fax)
 E-mail city@gemlakemn.org



Planning Commission Meeting – February 11, 2025

Call to Order of Planning Commission Meeting

By Chair Don Cummings at 7: ____ p.m.

Call of Roll

Cummings ____ Farrell ____ Pratt ____ Wippich ____ Vacant ____

Approve and Accept Agenda and Minutes

- Accept the Agenda for the February 11, 2025, Planning Commission Meeting
- Approve the Minutes from January 14, 2025, Planning Commission Meeting

Public Hearings

- None

Old Business

- Ordinance No. 131 Discussion on Next Steps

New Business

- Planning Commission Applications Review
- Ordinance No. 113 – Right-of-Way
 - Fee Schedule Update

Open Items for Commission Members to Bring Up

Future Meetings

- Next City Council Meeting, Tuesday, February 18, 2025
- Next Planning Commission Meeting, Tuesday, March 11, 2025
 - Attendance Inquiry

Adjournment – The meeting adjourned at ____

**City of Gem Lake
Planning Commission Meeting – January 14, 2025
Meeting Minutes**

Planning Commission Chair Don Cummings called the meeting to order at 7:00 p.m. Commission Members Art Pratt, Derek Wippich and Stephanie Farrell were present with one vacancy. Also present: City Planner Evan Monson, City Attorney Kevin Beck, Acting City Clerk Melissa Lawrence, Councilmember Joshua Patrick, and residents Isaac Nelson, Rich and Roberta Pientka, Dustin Marks and Sarah Ernhart.

January 14, 2025

A motion was introduced by Commissioner Pratt to accept the agenda, seconded by Commissioner Wippich. Motion carried 4-0.

Minutes

A motion was introduced by Commissioner Pratt, seconded by Commissioner Wippich to approve the November 12, 2024, Planning Commission Meeting minutes. Motion carried 4-0.

Public Hearings

Special Home Occupation Request – 3907 Tessier Road

City Planner Evan Monson summarized the request for the special home occupation. The applicant is proposing to use their detached garage as part of a home occupation. The plans submitted by the applicant call for utilizing their existing detached garage as a home photo studio for a pet photography business; the applicant currently runs the business out of a commercial space in Minneapolis. The applicant states in their narrative that the driveway serving the detached garage can accommodate at least four cars, while the ‘main’ driveway on the property can accommodate five to six cars. Customers per day on-site vary; the applicant anticipates at most four customers on-site in a day and having an average of two on-site customers per week. Most sessions are scheduled for Saturdays between noon and 5pm, with occasional appointments after 5pm. Home Occupations in the city are regulated by Ordinance 134. The ordinance breaks home occupations into three tiers: occupations that require no license or permit, occupations that require a license, and occupations that require a conditional use permit (CUP). Due to the applicant’s home occupation having occasional on-site customers, the request requires a home occupation license.

Commissioner Pratt introduced a motion to open the public hearing at 7:07 p.m., seconded by Commissioner Wippich. Motion carried 4-0.

Residents Rich and Roberta Pientka voiced their many concerns regarding this home occupation being granted. Some of the concerns included the amount of traffic driving along the newer paved street down a dead-end street. Applicant Sarah Ernhart shared that her property is located at the entrance of the street and cars should not be having to drive down the whole length of the street. Another concern was regarding the possibility of expanding into more than just photography of pets and adding grooming and the sale of pet products. Ms. Ernhart shared that she has no interest in expanding into any other avenues and the Commission stated if that was ever the case additional licenses would need to be obtained.

Ms. Ernhart shared that she has been doing pet photography for 20 years. Of the 60 to 80 sessions, she has annually, roughly only 20 to 40 of them would take place on site at her property in Gem Lake. Most photography sessions last between 30-60 minutes, and typically involve one or two dogs per client. There is rarely any barking, and most dogs don’t make any noise at all. Most sessions are scheduled for Saturdays between 12pm-5pm, although on occasion some clients need to come in the evenings, as late as 7pm. The driveway leading to the detached garage can accommodate up to 4 vehicles, so there would be no on-street parking.

City Planner Evan Monson assured the public that this request does fall within the ordinance regulations and will limit the applicant on what it can do. No signs are allowed to be placed on the property based on the current sign ordinance.

The public had no other comments.

Commissioner Pratt introduced a motion to close the public hearing at 7:21 p.m., seconded by Commissioner Wippich. Motion carried 4-0.

City Planner Evan Monson explained to the Commission that they have three (3) options they can take regarding the application, 1) recommend approval of the request by the City Council, with or without conditions, 2) recommend denial of the request by the City Council, with findings for denial, and 3) table the request for further review/study. City Planner Evan Monson recommends the commissioners recommend approval of the requested Special Home Occupation for 3907 Tessier Road, with the following conditions: 1) the applicant's Home Occupation shall adhere to the requirements of Ordinance No. 134, 2) the applicant's Home Occupation shall adhere to other applicable local, State, and Federal requirements, and 3) the applicant shall pay all fees and escrows associated with this request.

Commissioner Pratt introduced a motion to recommend approval with the conditions set by City Planner Evan Monson, seconded by Commissioner Wippich. Motion carried 4-0.

Old Business

None

New Business

Ordinance No. 131 – Consolidated Land Use Discussion

Acting City Clerk Melissa Lawrence shared with the Commission that over the next couple months or year that review of the bulky Ordinance No. 131 needs to be reviewed to ensure its accuracy. Some of the pictures and information within the ordinance may be dated. Instead of waiting until sections become very outdated it is best to look over sections every couple of years. City Planner Evan Monson reiterated this and asked the Commission to let staff know what sections they believe may need to be looked over first. Review of this ordinance will take many months, and city staff would like to make sure that the ordinance is in line with the what the city would like to see in the comprehensive plan.

Open Items for Commission Members to Bring Up

None

Future Meetings

City Council Meeting, Tuesday, January 21, 2025, at Heritage Hall, and Planning Commission Meeting, Tuesday, February 11, 2025, at Heritage Hall.

Attendance Inquiry

Commissioner Cummings surveyed the Commission to see if any of the members would have any issues attending the February 11 meeting. At that time Commissioner Farrell will not be in attendance. Commissioner Wippich will not be able to attend the March 11 meeting.

Adjournment

There being no further business, following a motion from Commissioner Pratt, seconded by Commission Wippich, the meeting adjourned at 7:35 p.m.

Respectfully submitted, Melissa Lawrence



City of Gem Lake
 Heritage Hall
 4200 Otter Lake Road | Gem Lake, MN 55110
 651-747-2790/92 | 651-747-2795 (fax)
 E-mail city@gemlakemn.org

Planning Commission Application

Applicant Information

Name: Debra Suhadolnik
 Address: [REDACTED]
 City: Gem Lake State: MN Zip: 55110
 Home Phone: _____ Cell Phone: [REDACTED]
 Email: [REDACTED]

Residency Information

How long have you been a resident of Gem Lake? 14 months
 Property owned, rented or leased in Gem Lake (other than residence): None besides residence

Employment Information

Present Employer: Retired
 Title: Sr. Director HR, Land O'Lakes Work Phone: _____

Education Information

High School: Tennsbury High school Fairless Hills, PA
 College: U of Minnesota - post grad PhD ABD
 Trade or Business School: _____

Organization Membership Information

Are you currently serving on other Boards, Commissions, or Committees? Yes No
 If yes, which are you serving on and the organization's name: Primativers/Substance Church Retiree Volunteers/Land O'Lakes
 Have you served on a Board, Commission, or Committee before? Yes No
 If yes, which have you served on and the organization's name: Countless task forces, steering committees, oversight boards in my job at Land O'Lakes and in my consulting practice before that

Supplemental Information

Briefly state why you want to serve on the City Commission:

 want to be more involved in my new community. Other neighbors have encouraged residents in our community to get more involved in the city process and this opportunity just jumped out at me.

The Commission meets on the second Tuesday of each month at 7:00 p.m., will this work for your schedule? Yes No
 Applicant Signature: D. Suhadolnik Date: 1/13/25

Note: The Planning Commission is an unpaid position.
 Please return this form to the City of Gem Lake offices, 4200 Otter Lake Road, Gem Lake, MN 55110, or email to the City Clerk at city@gemlakemn.org.



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Planning Commission Application

Applicant Information

Name: Laurel Amlee
 Address: [REDACTED]
 City: White Bear / Gem Lake State: MN Zip: 55110
 Home Phone: [REDACTED] Cell Phone: [REDACTED]
 Email: [REDACTED]

Residency Information

How long have you been a resident of Gem Lake? 20 years
 Property owned, rented or leased in Gem Lake (other than residence): rented

Employment Information

Present Employer: White Bear Floral / Country Lounge
 Title: Book Keeper / prop manager Work Phone: 651-484-3391

Education Information

High School: Turkey High School
 College: Concordia
 Trade or Business School: _____

Organization Membership Information

Are you currently serving on other Boards, Commissions, or Committees? Yes No
 If yes, which are you serving on and the organization's name: _____
 Have you served on a Board, Commission, or Committee before? Yes No
 If yes, which have you served on and the organization's name: _____

Supplemental Information

Briefly state why you want to serve on the City Commission:
I have previously served on the Planning Commission & was a city council member

The Commission meets on the second Tuesday of each month at 7:00 p.m., will this work for your schedule? Yes No

Applicant Signature: Laurel Amlee Date: 1-1-25

Note: The Planning Commission is an unpaid position.

Please return this form to the City of Gem Lake offices, 4200 Otter Lake Road, Gem Lake, MN 55110, or email to the City Clerk at city@gemlakemn.org.

Memorandum

To: <u>Gem Lake Planning Commission</u>	Project Reference: <u>Right-of-Way Ordinance Review</u>
Copies To: <u>Melissa Lawrence, City Clerk</u>	
<u>Kevin Beck, Attorney</u>	
From: <u>CJ Sycks, Planner</u>	TKDA Project No.: <u>22428.000</u>
<u>Evan Monson, Planner</u>	Client No.: _____
Date: <u>February 5, 2025</u>	_____

SUBJECT: Discussion regarding the Gem Lake Right-of-Way (ROW) Ordinance No. 113

MEETING DATE: February 11, 2025

ITEMS REVIEWED: Gem Lake Ordinance No. 113, League of Minnesota Cities Model Ordinance

OVERVIEW

The City Council has tasked the Planning Commission with reviewing Ordinance No. 113 regarding city right-of-way (typically shortened to ROW). ROW includes the street and area on either side of the street used to support the use of the street, such as sidewalks, shoulders, and ditches. ROW can also (per State Statute include cartways, bicycle lanes, other dedicated rights-of-way for travel purposes, and utility easements of local governments. Areas below and above the roadway are also part of the ROW. Private utilities (such as electric) and municipal utilities (such as water or sewer infrastructure) are typically constructed within a ROW. A ROW ordinance allows a city to manage the use and access to the ROW.

CURRENT ORDINANCE

The current ordinance (No. 113) was adopted by the city in January of 2010. This version was consistent with the current (at that time) model ordinance available from the League of Minnesota Cities (LMC). Ordinance No. 113 covers:

- when permits are needed
- permitting processes and procedures
- permitting fees
- patching and restoration when work is conducted in the ROW
- emergency vs non-emergency situations
- mapping of items constructed within a ROW
- moving above-ground items underground (or undergrounding)
- abandonment of facilities within a ROW

Since 2010, State and Federal law related to management and access to ROW has changed, most notably with regards to telecommunications. One of the bigger changes is “small cell wireless facilities”, which is technology that allows for increased usage of wireless networks by cell phones. It is imperative that the city ensures their ordinances are consistent with current State and Federal law.

ORDINANCE UPDATES

Staff has reviewed the current version of Ordinance No. 113 and proposes the following changes as summarized below. These changes are consistent with the latest model ordinance provided by LMC.

Table 1: Summary of Updates

Section #	Comments
Throughout	<ul style="list-style-type: none"> • Administration section is added (Section 3), with the City Engineer designated to administer the ordinance (consistent with current city practices). • Replace references to “zoning administrator” with “city engineer.” • New section (Section 7) added regarding small cell wireless facilities. Added references to small cell wireless facilities where needed in other sections. • Move fees to the Fee Schedule.
2	New definitions proposed to be added to Section 2.
5	Updates to payments and permit application language.
10 & 11	New sections regarding Joint Applications for ROW work and obligations, consistent with language from model ordinance.
12 & 13	Revised language regarding permit denial and installation requirements, consistent with language from model ordinance.
18 & 19	Updated language on requirements for mapping data, locating facilities, and undergrounding, consistent with language from model ordinance.
24	Revised language regarding abandonment and removal of facilities within the ROW, consistent with language from model ordinance.

CITY FEE SCHEDULE

To be consistent with other ordinances, and to ensure that fees are all in one location, permit fees previously listed in Ordinance No. 113 are proposed to be added into the city’s Fee Schedule (Ordinance No. 135). These would be placed in Section 13.

RECOMMENDATION

The Commission should review the draft ordinance and consider any additional amendments. If the Commission desires additional changes, direction regarding ordinance changes should be provided to staff.

Attachments:

1. Ordinance No. 113 ROW – Redlined
2. Ordinance No. 113 ROW – Clean
3. Ordinance No. 135 Fee Schedule

CIS:epm

**City Of Gem Lake, Ramsey County, Minnesota
Right-Of-Way
Ordinance No. 113**

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AN ORDINANCE TO ADMINISTER AND REGULATE THE PUBLIC RIGHT-OF-WAY IN THE PUBLIC INTEREST AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS

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Section 1. Findings, Purpose, and Intent. To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Accordingly, the City hereby enacts this new Section of this Code relating to right-of-way permits and administration. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of the state and federal agencies. Under this Section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this Section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

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

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- 1. **Election to Manage the Public Right-of-Way.** In accordance with the authority granted to the City under state and federal statutory, administrative, and common law, the City hereby elects pursuant to this Section to manage rights-of-way within its jurisdiction.

Section 2. Definitions.

Definitions. The following definitions apply in this Ordinance. References hereafter to "sections" are, unless otherwise specified, references to sections in this Ordinance. The definitions included in Minnesota Statutes § 237.162, Minnesota Rules 7819.0100 Subparts 1 through 23, and Minnesota Rules 7560.0100 Subparts 1 through 12 are hereby adopted by reference and are incorporated into this Section as if set out in full.

- 1. **Abandoned Facility.** A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.
- 2. **Applicant.** Any person requesting permission to excavate, obstruct, or otherwise place facilities in a right-of-way.
- 3. **City.** The city of Gem Lake, Minnesota. For purposes of Section 23, 'city' also means the City's elected officials, officers, employees, and agents.
- 4. **City Engineer.** The City Engineer, or other employee designated by the City Council to administer this Ordinance.
- 5. **Collocate or Collocation.** To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.
- 6. **Commission.** The State of Minnesota Public Utilities Commission.

7. Construction Performance Bond. 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. § 15.73, subd. 3.
- d. Letter of Credit, in a form acceptable to the city.
- e. Self-insurance, in a form acceptable to the city.
- f. A blanket bond for projects within the city, or other form of construction bond, for a time specified and, in a form, acceptable to the city.

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

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9. Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.

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10. Degradation Fee. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

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11. Department. The department of the city tasked by the City Council to oversee public works.

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12. Delay Penalty. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

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

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14. Equipment. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

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15. Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

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16. Excavation Permit. The permit which, pursuant to this ordinance, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

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17. Excavation Permit Fee. Money paid to the city by an applicant to cover the costs as provided in Section 8.

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18. Facility or Facilities. Any tangible asset in the right-of-way used to provide Utility or Telecommunications Service.

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19. Five-Year Project Plan. Shows projects adopted by the city for construction within the next five years.

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20. Local Representative. 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 ordinance.

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21. Management Costs. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable

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fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 25 of this ordinance.

22. Obstruct. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way, or so as to hinder maintenance of any city asset.

23. Obstruction Permit. The permit which, pursuant to this ordinance, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

24. Obstruction Permit Fee. Money paid to the city by a permittee to cover the costs as provided in Section 8.

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

26. Pavement. 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.

27. Permit. Has the meaning given "right-of-way permit" in this ordinance.

28. Permittee. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this ordinance.

29. Person. 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.

30. Probation. The status of a person that has not complied with the conditions of this ordinance.

31. Probationary Period. One year from the date that a person has been notified in writing that they have been put on probation.

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

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

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

35. Public Right-of-Way or Right-of-Way (ROW). The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

36. Right-of-Way Permit. Either the excavation permit, the obstruction permit, the small cell permit, or any combination thereof depending on the context, required by this ordinance.

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37. Right-of-Way User. (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.

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38. Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 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., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.

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

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40. Small Wireless Facility. A wireless facility that meets both of the following qualifications: each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

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41. Supplementary Application. 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.

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42. Temporary Surface. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

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43. Trench. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

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44. Telecommunications Right-of-Way User. 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. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right-of-way users for purposes of this ordinance except to the extent such entity is offering wireless service.

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45. Two Year Project Plan. Shows projects adopted by the city for construction within the next two years.

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46. Utility Pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.

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47. Wireless Facility. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

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~~48. Wireless Service. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.~~

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~~49. Wireless Support Structure. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.~~

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~~Section 3. Administration. The City Engineer is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and ordinances related thereto. The City Council may delegate any or all of the duties hereunder.~~

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~~Section 24. Permit RequirementRequired. Except as otherwise provided in this CodeOrdinance, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate permit from the Citycity.~~

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~~1. Excavation Permit. An ~~excavation~~ permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.~~

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~~2. Obstruction Permit. An ~~obstruction~~ permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.~~

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~~3. Small Wireless Facility Permit. A permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.~~

~~4. Permit Extensions. No person may excavate 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.~~

~~5. Delay Penalty. In accordance with Minnesota Rule 7819.1000 Subpart 3, the City shall impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The permittee shall not be assessed a delay penalty of delays in project commencement or completion are due to circumstances beyond the control of the permittee. An application for permit extension is independent of delay, and delay and does not preclude the assessment of a delay penalty even if the extension is granted.~~

~~6. Permit Display. Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Zoning AdministratorCity Engineer.~~

~~Section 35. Permit Applications. Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:~~

~~1. Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:~~

~~1. Each permittee's name, Gopher One-Call registration certificate number, address and, email address, if applicable, and telephone and facsimile numbers.~~

2. The name, address, and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of application.

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3. A certificate of insurance or self-insurance:

1. Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance self-insurance acceptable to the Zoning Administrator City Engineer.

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2. Verifying that the permittee is insured against claims for personal 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 permittee, its officers, agents, employees and permittees, and (2) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property.

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3. Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages.

4. Requiring that the Zoning Administrator City Engineer be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.

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5. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage in amounts established by the Zoning Administrator City Engineer, sufficient to protect the City and the public and to carry out the purposes and policies of this Section.

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6. The City may require a copy of the actual insurance policies.

7. If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statute § 300.03 as recorded and certified to by the Secretary of State.

8. 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.

2. Payment of money due to the City city, for:

1. Permit fees, estimated restoration costs and other management costs.

2. Prior obstruction or excavations.

3. Any undisputed loss, damage, or expense suffered by the City city, because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City city.

4. Franchise fees or other charges, if applicable.

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3. Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.

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4. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

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Section 46, Issuance of permit; Conditions.

- 1. **Permit Issuance.** If the applicant has satisfied the requirements of this Section, the ~~Zoning Administrator~~City shall issue a permit.
- 2. **Conditions.** The ~~Zoning Administrator~~City Engineer may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, ~~state~~state, and federal laws, including but not limited to Minnesota Statutes §216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules ~~Section~~Chapter 7560.

~~**Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Section 216D and Minnesota Rules Section 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.~~

Section 7, Small Wireless Facility Permits.

- 1. **Small Wireless Facility Conditions.** In addition to Section 6.2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:
 - a. ~~A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.~~
 - b. ~~No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.~~
 - c. ~~No wireless facility may extend more than 10 feet above its wireless support structure.~~
 - d. ~~Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.~~
 - e. ~~Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, such equipment shall be consistent with the City's aesthetic standards regarding wireless equipment as adopted by the City Engineer. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the City Engineer shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit.~~
 - f. ~~Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.~~
- a-g. ~~A permit will be deemed void if the approved equipment is not installed within one (1) year of issuance of the permit.~~

- 2. **Small Wireless Facility Agreement.** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. ~~The standard collocation agreement may require payment of the following:~~
 - 2-a. ~~Rent to collocate on the city structure.~~
 - 3-b. ~~Yearly fee for maintenance associated with the collocation; collocation.~~
 - 4-c. ~~A monthly fee for electrical service as follows:~~

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 (1) up to \$150 per year for rent to occupy space on a wireless support structure;
 (2) up to \$25 per year for maintenance associated with the space occupied on a wireless support structure; and
 (3) a monthly fee for electricity used to operate a small wireless facility, if not purchased directly from a utility, at the rate of:
 (i) \$73 per radio node less than or equal to 100 max watts;
 (ii) \$182 per radio node over 100 max watts; or
 (iii) the actual costs of electricity, if the actual costs exceed the amount in item (i) or (ii).

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- 5.i. A fee per radio node less than or equal to 100 maximum ~~watts;~~watts.
- 6.ii. A fee per radio node over 100 maximum watts; or
- 7.iii. The actual costs of electricity, if the actual cost exceed the foregoing.

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8- 9.3. The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, ~~alter~~alter, or affect any then-existing agreement between the city and applicant.

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4. Action on Small Wireless Facility Permit Applications.

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a. Deadline for Action. The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application or within any timeline established by state law. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

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b. Consolidated Applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

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i. are located within a two-mile radius;

ii. consist of substantially similar equipment; and

iii. are to be placed on similar types of wireless support structures.

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c. In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

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d. Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

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i. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

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ii. The applicant fails to submit all required documents or information, and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.

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iii. The city and a small wireless facility applicant agree in writing to toll the review period.

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Section 58. Permit Fees. The City Council establishes fees for permits, and shall from time to time examine and adjust as needed to conform to the City's actual costs of regulation, management, degradation, city engineering, and make-ready or construction costs associated with collocation of small wireless facilities. Said fees shall be in the City Fee Schedule as adopted by Ordinance.

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1. **Excavation Permit Fee.** A fee shall be collected with an application for an excavation permit, and the amount of the fee is determined by the type of excavation proposed:

1. Hole excavation: \$125.00

2. Emergency Hole: \$55.00

3. Trench: \$125.00 + \$70 per 100 lineal feet of trench

2. **Obstruction Permits Fee.** A fee of \$50.00 plus \$.05 per lineal foot of obstruction shall be collected with an application for a permit to obstruct a right-of-way.

~~3. **Payment of Permit Fees.** No excavation permit or obstruction permit shall be issued without payment of permit fees.~~

~~4. **Permit Extension Fee.** A fee of \$55.00 shall be collected with an application for extension of an existing right-of-way permit.~~

~~5. **Delay Penalty.** If the Zoning Administrator finds that a delay penalty is warranted under Section 2.3, the penalty shall be \$60.00 for the first three (3) days of delay, and \$10.00 per day thereafter.~~

~~6. **Non refundable.** Permit fees that were paid for a permit that the Zoning Administrator has revoked for a breach as stated in Section 14 are not refundable.~~

~~7.1. **Application to Franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way used in the franchise.~~

Section 6.9. Supplementary Applications.

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.

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 needs and~~ receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

Section 10. Joint Applications.

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

2. **Shared Fees.** ~~Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.~~

3. **City Projects.** ~~Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.~~

Section 11. Other Obligations.

1. **Compliance with other Laws.** ~~Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.~~

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

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3. Interference with ROW. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

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4. Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Section 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

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Section 712. Denial of permit. The City may deny a permit for failure to meet the requirements and conditions of this Section-ordinance, or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

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Sections 8-9. (RESERVED).

Section 4013. Installation Requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are consistent with the Minn. Stat., §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 17 of this ordinance. excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes § 237.162 and § 237.163.

Section 414. Right-of-Way Patching and Restoration.

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1. Timing. The work to be done under any excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 4417.

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2. Patch and Restoration. Permittee shall patch its own work. The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

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1. City Restoration. If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.

2. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.

3. **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

3. **Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100.

4. **Duty to correct defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the ~~Zoning Administrator~~City Engineer, correct all restoration work to the extent necessary, using the method require by the ~~Zoning Administrator~~City Engineer. Said work shall be completed within five (5) calendar days of the receipt of the notice from the ~~Zoning Administrator~~City Engineer, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section ~~4417~~.

5. **Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the ~~Zoning Administrator~~City Engineer, or fails to satisfactorily and timely complete all restoration required by the ~~Zoning Administrator~~City Engineer, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

Section ~~4215~~, Inspection.

1. **Notice of Completion.** When the work under and permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300-~~or other as-built documentation as deemed necessary by the City Engineer,~~

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

3. **Authority of ~~Zoning Administrator~~City Engineer,**

1. At the time of ~~inspection~~inspection, the ~~Zoning Administrator~~City Engineer may order the immediate cessation of any work which poses a serious threat to life, health, safety or ~~well being~~wellbeing of the public.

2. The ~~Zoning Administrator~~City Engineer may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the ~~Zoning Administrator~~City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the ~~Zoning Administrator~~City Engineer may revoke the permit pursuant to Section ~~4417~~.

3. **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 ~~Zoning Administrator~~City Engineer of the accurate information as soon as this information is known.

Section ~~4316~~, Work Done Without a Permit.

1. **Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities that it considers being an emergency. Excavator's notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay

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the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Section for the actions it took in response to the emergency.

If the City becomes aware of an emergency regarding facilities, the ~~City~~city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

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2. **Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the City the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Section.

Section ~~417~~17, Revocation of Permits.

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1. **Substantial Breach.** The City reserves its right, as provided herein, to revoke any right-of-way permit, without a refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

1. The violation of any material provision of the right-of-way ~~permit~~permit,
2. An envision or attempt to evade any material provision of the right-of-way permit, or the perpetuation or attempt to perpetrate any fraud or deceit upon the City or its ~~citizens~~citizens,
3. Any material misrepresentation of fact in the application for a right-of-way ~~permit~~permit,
4. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section ~~4815~~15.

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2. **Written Notice of Breach.** If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, ~~regulation~~regulation, or any condition of the permit that City shall make a written demand upon the permittee to remedy such violation. The demand shall state continued violations might be cause for revocation of the permit. A substantial or revised conditions on the permit to mitigate and remedy the breach.

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3. **Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, which will cure the breach.

Permittee's failure to so contact the City, 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.

4. **Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section ~~4518~~18, Mapping Data.

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1. **Information Required.** Each permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the ~~Zoning Administrator~~City Engineer,

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accurate maps and drawings certifying the “as-built” location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the city’s electronic mapping system, when practical or as a condition imposed by the ~~Zoning administrator~~City Engineer. Failure to provide maps and drawings pursuant to this subsection shall subject the permittee to the delay penalties established in accordance with Section ~~4.048~~ and may affect the grant of any future permits for right-of-way excavation or obstruction.

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2. Service Laterals. ~~All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the City Engineer reasonably requires it. Permittees or their subcontractors shall submit to the City Engineer evidence satisfactory to the City Engineer of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any city approval necessary for: All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 Subpart 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the City reasonably requires it. Permittees or their subcontractors shall submit to the City evidence of the installed service lateral locations. Compliance with this Section and with applicable Gopher State One Call law and Minnesota Rules governing service laterals shall be a condition of any City approval necessary for:~~

- ~~a. (1) payments to contractors working on a public improvement project (including those under Minnesota Statutes, Chapter 429); and~~
- ~~2.b. (2) City approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The City Engineer shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors. City approval of performance under development agreements, or other subdivision or site plan approval under the City’s official land use controls. The City shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.~~

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Section 1619. Location of Facilities; Undergrounding.

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- 1. Purpose.** ~~Placement, location, and relocation of facilities must comply with the Act, with other applicable law, with other applicable standards adopted by the city engineer, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities. The purpose of this section is to promote the health, safety, and general welfare of the public and is intended to foster (1) safe travel over the right of way, (2) non-travel related safety around homes and buildings where overhead feeds are connected and (3) orderly development in the City. Location and relocation, installation and reinstallation of Facilities in the right of way must be made in accordance with this section. This section is intended to be enforced consistently with state and federal law regulating right of way users, specifically including but not limited to Minnesota Statutes, §§ 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, USC Section 253.~~
- 2. Undergrounding of Facilities.** Unless otherwise agreed in a franchise between the applicable right-of-way user and the City, facilities places in the public right-of-way must be located, relocated and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards.
- 3. Undergrounding of New Facilities.** A new facility or a permanent extension of facilities must be installed and maintained underground when supplied to:

1. a new installation of buildings, signs, streetlights or other ~~structures; structures,~~
2. a new subdivision of land; or
3. a new development containing new commercial or industrial buildings.

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4. **Undergrounding of Permanent, Relocated or Reconstructed Facilities.** A permanent replacement, ~~relocation; relocation,~~ or reconstruction of a facility of more than 300 feet must be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding is required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the City in connection with (1) the present or future use by the City or other local government unit 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.

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

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6. **Limitation of Space.** The ~~Zoning Administrator~~City Engineer shall, to the extent possible, accommodate all existing and potential users of the right-of-way. In doing so, the Administrator shall be guided by consideration of the public interest, including the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects.

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6.7. **Nuisance.** One year after the passage of this Ordinance, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance, or taking possession of the facilities and restoring the right-of-way to a useable condition,

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Section 1720. Retirement of Overhead Facilities. The City Council may determine whether it is in the public interest that all facilities within the City, or within certain districts designated by the City, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to Section ~~16-19~~ of this Ordinance. The decision to underground existing facilities must be preceded by a public hearing, after notice published for two (2) consecutive weeks and written notice mailed to the utilities affected at least 30 days prior to the hearing. At the ~~hearing~~hearing, the City Council must consider, at a maximum, all of the issues stated in 17.2 below and make findings. Undergrounding of existing facilities may not take place until the City Council has, after hearing and notice, adopted a plan in accordance with ~~1720~~3 below.

1. **Public Hearings.** A hearing must be open to the public and may be continued from time to time. At each ~~hearing~~hearing, any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether Facilities in the right-of-way in the City, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under Section ~~16-19~~ of this Ordinance.

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2. **Public Hearing Issues.** The issues to be addressed at the public hearings include but are not limited to:

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1. The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way.
2. The feasibility and cost of undergrounding all facilities by a date certain as determined by the City Council and the affected unities.
3. The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the City.
4. Alternative financing options available if the City deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

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Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either Citywide or within districts designated by the City.

3. **Undergrounding Plan.** If the City finds that it is in the public interest to underground all or substantially all facilities in the public right of way, the City must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

1. Timetable for the undergrounding.
2. Designation of districts for the undergrounding unless, undergrounding plan is Citywide.
3. Exceptions to the undergrounding requirement and procedure for establishing such expectations.
4. Procedures for the undergrounding process, including but not limited to coordination with City projects and provisions to ensure compliance with nondiscrimination requirements under the law.
5. A financing plan for funding of the incremental costs if the City determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to undergrounding incurred by the utility.
6. Penalties or other remedies for failure to comply with the undergrounding.

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Section 1821. Damage to Other Facilities. When the City does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect its workers or its project, the Zoning Administrator/City Engineer shall notify the local representative as early as reasonably possible. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.

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Section 2219. Right-of-way Vacation. If the City vacated a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

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Section 2023. Indemnification and Liability. By applying for and accepting a permit under this Section ordinance, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

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Section 2124. Abandoned Facilities.

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

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~~2. **Removal.** Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city. Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the Zoning Administrator waives this requirement. Failure to remove abandoned facilities may affect the grant of any future permits to the person responsible for the abandoned facilities.~~

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Section 2225, Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the City regarding ~~Section 1.169~~ Subdivision 2 of this Ordinance, may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

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Section 2326, Reservation of Regulatory and Police Powers. A permittee's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, ~~safety~~safety, and welfare of the public.

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Section 2427, Severability. If any portion of this ~~chapter~~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 ~~chapter~~ordinance precludes the city from requiring a franchise agreement with the applicant, as allowed by law in addition to the requirements set forth herein.

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Section 2528, Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication.

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Dated: _____, ~~2010~~2025,

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~~Gretchen Artig-Swomley~~Robert Uzpen, Mayor

~~William Short~~Melissa Lawrence, Acting City Clerk

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~~Summary of Ordinance 113 approved by City Council and published in the White Bear Press on 1-27-2010.~~

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City of Gem Lake, Ramsey County, Minnesota
Right of Way (ROW)
Ordinance No. 113

This ordinance to administer and regulate the public right-of-way in the public interest and to provide for the issuance and regulation of right-of-way permits, was originally enacted by the City in January 2010. The City Council has made amendments to the Ordinance in keeping with changes in State law and the wishes of the community. The following table indicates the original Ordinances and the said amendments.

<u>Ordinance</u>	<u>Description</u>	<u>Enactment</u>
113	Ordinance adopted	January 2010
113	Amendment adding and revising definitions, adding requirements regarding small wireless facilities, moving fees to the Fee Schedule, and updating processes and procedures.	Month 202X

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Section 1

Building Permits and Inspections

Building Permit Fees: Building permit fees are either flat fee or based on current state valuation costs, plus Minnesota state surcharge. Permit fees not listed in the flat fee chart are based on valuation. See fee charts below.

**Building Permit Fees Based on Valuation
Minnesota Statute 326B.153 Building Permit Fees**

Total Valuation			State Building Permit Fees Based on Valuation
\$1.00	to	\$500.00	\$29.50
\$501.00	to	\$2,000.00	\$28.00 for the first \$500.00 plus \$3.70 for each additional \$100.00 or fraction thereof, to and including \$2,000.00
\$2,001.00	to	\$25,000.00	\$83.50 for the first \$2,000.00 plus \$16.55 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001.00	to	\$50,000.00	\$464.15 for the first \$25,000.00 plus \$12.00 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001.00	to	\$100,000.00	\$764.15 for the first \$50,000.00 plus \$8.45 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
\$100,001.00	to	\$500,000.00	\$1,186.65 for the first \$100,000.00 plus \$6.75 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00
\$500,001.00	to	\$1,000,000.00	\$3,886.65 for the first \$500,000.00 plus \$5.50 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00	to	\$5,000,000.00	\$6,636.65 for the first \$1,000,000.00 plus \$4.50 for each additional \$1,000.00 or fraction thereof, to and including \$5,000,000.00
\$5,000,001.00	to	and up	\$9,436.65 for the first \$5,000,000.00 plus \$3.70 for each additional \$1,000.00 or fraction thereof

Plan Review Fee: Multiply 65% (0.65) × the Building Permit Fee (listed above)

**Building Permit Surcharge Based on Valuation
Minnesota Statute 326B.148 Surcharge**

Total Valuation			State Building Permit Surcharge Based on Valuation
\$1.00	to	\$1,000,000.00	equivalent to one-half mill (.0005) of the value
\$1,000,001.00	to	\$2,000,000.00	\$500 plus two-fifths mill (.0004) of the value
\$2,000,001.00	to	\$3,000,000.00	\$900 plus three-tenths mill (.0003) of the value
\$3,000,001.00	to	\$4,000,000.00	\$1,200 plus one-fifth mill (.0002) of the value
\$4,000,001.00	to	\$5,000,000.00	\$1,400 plus one-tenth mill (.0001) of the value
\$5,000,001.00	to	and up	\$1,500 plus one-twentieth mill (.00005) of the value

Total Fee = Building Permit Fee + Plan Review Fee + Building Permit State Surcharge ***

Other Inspection and Fees:

- | | |
|--|--|
| 1. Inspections outside of normal business hours | \$100.00 per hour (minimum charge 2 hrs) * |
| 2. Re-Inspection Fees | \$100.00 per hour (minimum charge 2 hrs) * |
| 3. Inspections for which no fee is specifically indicated | \$100.00 per hour (minimum charge 2 hrs) * |
| 4. Additional plan review required by changes, additions or revisions to plans | \$100.00 per hour (minimum charge 2 hrs) * |
| 5. For use of outside consultants for plan checking and inspections, or both | Actual Costs ** |

Residential Flat Fee Building Permits

Permits are based on the fees below, plus \$1.00 state surcharge.

Permit Type	Permit Fee	Last Adjusted	Comments
Basement Finish	\$175.00	1/1/2023	Surcharge is based on Valuation
Deck	\$125.00	1/1/2023	Surcharge is based on Valuation
Demolition – Residential	\$125.00	1/1/2025	Surcharge is based on Valuation
Door(s)	\$125.00	1/1/2023	
Drain Tile	\$125.00	1/1/2023	Surcharge is based on Valuation
Egress Window(s) - New	\$125.00	1/1/2023	Surcharge is based on Valuation
Grading / Excavating - Commercial < 1 Acre	\$225.00		
Grading / Excavating - Commercial 1 Acre to 2 Acres	\$350.00		
Grading / Excavating - Commercial 2 Acres and Up	\$450.00		Per Every 2 Acres
Grading / Excavating - New Residential Development	\$100.00		Per lot
Grading / Excavating - Residential	\$100.00		
Moving a Building	\$1,000.00		
Pergola/Gazebo	\$125.00	1/1/2023	Surcharge is based on Valuation
Radon	\$125.00	1/1/2023	
Roofing	\$125.00	1/1/2023	
Siding	\$125.00	1/1/2023	
Solar Photovoltaic (PV) System	\$175.00	1/1/2023	
Swimming Pool – Above Ground	\$125.00	1/1/2023	Surcharge is based on Valuation
Swimming Pool – Below Ground	\$175.00	1/1/2023	Surcharge is based on Valuation
Window(s)	\$125.00	1/1/2023	

Section 2

Electrical Permits

Homeowners and Electrical Contractors: Complete an electrical permit form available from the Building Inspections Division. Add \$1.00 for State surcharge to the total cost of each permit. The fee is the total of the listed fees or the total number of inspection trips × \$50.00, whichever is greater.

Residential panel replacement is \$110.00, sub panel \$50.00

New service of power supply is:

0 to 300 Amp	\$55.00
400 Amp	\$71.00
Add \$16.00 for each additional 100 Amps	

Circuits and Feeders:

0 to 100 Amp	\$9.00
101 to 200 Amp	\$15.00
Add \$6.00 for each additional 100 Amps	

Minimum Fee:

Minimum permit fee is \$50.00 plus \$1.00 State surcharge. This is for one inspection only. Minimum fee for rough-in and final inspection is \$100.00 plus \$1.00 State surcharge.

Maximum Fee:

Maximum fee for single family dwelling or townhouse not over 200 Amps (No max if service is over 200 Amps) is \$200.00 plus \$1.00 State surcharge. Maximum of 2 rough-in's and 1 final inspection. (Failed inspections are an additional \$50.00 each)

Apartment Buildings:

Fee per unit of an apartment or condominium complex is \$90.00. This does not cover service, unit feeders or house panels.

Swimming Pools and Hot Tubs:

\$100.00 plus circuits at \$9.00 each. This includes 2 inspections

Additions, Remodels or Basement Finishes:

\$100.00 this includes up to 10 circuits and 2 inspections

Residential Accessory Structures:

The greater of \$55.00 for panel plus \$9.00 per circuit of \$100.00 for 2 inspections

Traffic Signals:

\$8.00 per each standard

Street and Parking Lot Lights:

\$5.00 per each standard

Transformers and Generators:

\$5.00 up to 10kva, \$45.00 11kva to 74kva, \$60.00 75kva to 299kva, over 299kva is \$165.00

Retrofit Lighting:

\$0.85 cents per fixture

Sign Transformer or Driver:

\$9.00 per transformer

Low voltage fire alarm, low voltage heating and air conditioning control wiring:

\$0.85 cents per device

Re-Inspection Fee in addition to all other fees:

\$50.00

Solar fees:

0kw to 5kw	\$90.00	5.1kw to 10kw	\$150.00
10.1kw to 2 kw	\$225.00	20.1kw to 30kw	\$300.00
30.1kw to 40kw	\$375.00	40.1kw and larger	\$375.00 plus \$25.00 for each additional 10kw

Electronic inspection fee for these items only:

Furnace, air conditioning, bath fan, fireplace or receptacle for water heater vent is \$40.00.

Refunds must be requested in writing. No refund unless more than the minimum fee. Refund are minus the cities 20% handling fee.

THE PERMIT FEE IS DOUBLED IF THE WORK STARTS BEFORE THE PERMIT IS ISSUED.

Minimum fee permits expire in 6 months.

Permits over the minimum fee and up to \$250.00 expire in 1 year.

Commercial Electrical Fees: The fee is 1% of the valuation with a minimum of \$125.00 per trip plus the state surcharge of .0005 × valuation

Description	Fee Calculation	Permit Fee
Re-Inspection fee (in addition to all other fees)	\$50.00	
Investigative fee (working without permit) the fee is doubled		
Refunds issued only for permits over:	\$100.00	

Solar fees for PV System

0-5,000 watts	\$90.00
> 5,000 watts to 10,000 watts	\$150.00
> 10,000 watts to 20,000 watts	\$225.00
> 20,000 watts to 30,000 watts	\$300.00
> 30,000 watts to 40,000 watts	\$375.00
Additional increments of 10,000 watts	\$25 (for each additional \$10k increment)

Section 3

Fire Protection

Residential and Commercial Permit Fees

Fee is 1% of the valuation with a minimum of \$125.00 and a surcharge of .0005 × valuation. Permit types are listed below.

Permit Type	Permit Fee	Comments
Installation of Aboveground Storage Tank(s)	See Above	Updated 1/1/2024
Installation of Underground Storage Tank(s)	See Above	Updated 1/1/2024
Modification of Aboveground Storage Tank(s)	See Above	Updated 1/1/2024
Modification of Existing Fire Sprinkler System	See Above	Updated 1/1/2024
Modification of Existing Fire Suppression System	See Above	Updated 1/1/2024
Modification of Underground Storage Tank(s)	See Above	Updated 1/1/2024
New Fire Alarm System	See Above	Updated 1/1/2024
New Fire Sprinkler System	See Above	Updated 1/1/2024
New Fire Suppression System	See Above	Updated 1/1/2024
Removal of Aboveground Storage Tank(s)	See Above	Updated 1/1/2024
Removal / Abandonment of Underground Storage Tank(s)	See Above	Updated 1/1/2024
Replacement of Fire Alarm System	See Above	Updated 1/1/2024

Section 4

Mechanical Permits

Residential Mechanical Permit Fees

Permits are based on the fees below, plus \$1.00 state surcharge.

Permit Type	Permit Fee	Comments
Addition	\$175.00	
Air Conditioner (new or replacement)	\$75.00	
Air Conditioner & Furnace (new or replacement)	\$75.00	
Boiler	\$75.00	
Fireplace – No Gas Line	\$75.00	
Fireplace including Gas Line	\$125.00	
Furnace (new or replacement)	\$75.00	
Garage Heater	\$125.00	
Gas Line – Only	\$75.00	
Geothermal Systems	\$75.00	
New Construction	\$300.00	
Remodel/Alteration	\$125.00	
Replacement/Other	\$75.00	
Swimming Pool Heaters	\$75.00	
Water Heater	\$75.00	

Commercial Heating, Ventilation and A/C Permit Fees

Fee is 1% of the valuation with a minimum of \$125.00 and a surcharge of .0005 × valuation

Section 5

Plumbing Permits

Residential Plumbing Permit Fees

Permits are based on the fees below, plus \$1.00 state surcharge.

Permit Type	Permit Fee	Comments
Addition	\$175.00	
Back Flow Prevention Device – Annual Testing per Device	\$50.00	(administrative fee)
Back Flow Prevention Device – New	\$75.00	(per device)
Back Flow Prevention Device – Repair	\$75.00	(per device)
Back Flow Prevention Device – Replacement	\$75.00	(per device)
New Construction	\$350.00	
Remodel/Alteration	\$125.00	
Water Heater	\$75.00	
Water Softener	\$75.00	

Commercial Flat Fee Plumbing Permits

Permit Type	Permit Fee	Comments
Back Flow Prevention Device – Annual Testing per Device	\$50.00	(administrative fee)
Back Flow Prevention Device – New	\$75.00	(per device)
Back Flow Prevention Device – Repair	\$75.00	(per device)
Back Flow Prevention Device – Replacement	\$75.00	(per device)

Commercial Plumbing Permit Fees

Fee is 1% of the valuation with a minimum of \$125.00 and a surcharge of .0005 × valuation

Section 6

Septic Permits

Residential Septic Permit Fees

Permit Type	Permit Fee	Comments
Abandon Subsurface Sewage Treatment Systems (SSTS)	\$125.00	
Install New Subsurface Sewage Treatment Systems (SSTS)	\$300.00	
Repair Subsurface Sewage Treatment Systems (SSTS)	\$75.00	
Replace Subsurface Sewage Treatment Systems (SSTS)	\$125.00	
ISTS Septic Inspection (performed annually)	\$45.00	Effective 1/1/2025
ISTS Re-Inspection	\$80.00	

Section 7

Sewer & Water Permits

Residential Sewer & Water Permit Fees

Permits are based on the fees below, plus \$1.00 state surcharge.

Permit Type	Permit Fee	Comments
New Outside Sewer Line	\$75.00	
New Outside Water & Sewer Line	\$125.00	
New Outside Water Line	\$75.00	
Open Cut of Road to Tap Main	\$75.00	
Repair Outside Sewer Line	\$75.00	
Repair Outside Water & Sewer Line	\$125.00	
Repair Outside Water Line	\$75.00	
Sewer Tap	\$175.00	
Sewer & Water Tap	\$225.00	
Sewer Re-Inspection Fee	\$80.00	
Water Tap	\$175.00	

Commercial Sewer & Water Permit Fees

Fee is 1% of the valuation with a minimum of \$125.00 and a surcharge of .0005 × valuation

Sewer and Water Connection Fees

Buildings or dwellings existing or constructed in the City of Gem Lake must connect to the municipal water and sanitary sewer system so long as it is reasonably available. Commercial buildings must connect within one (1) year and residential buildings must connect within ten (10) years from the time a connection is available to any such property.

Metropolitan Council Sewer Availability Charge (SAC) units and fees are established by the Metropolitan Council per state statute MN 473.517. Prior to connecting to public utilities, the owner or representative must pay the following fees:

Sewer Connection Fees

Dwelling Type	Fees	Comments
Single Family Dwellings	\$75.00	Plus SAC per unit (Sewer Changeover Permit from Septic or New Construction)
Two-Family Dwellings	\$75.00	Plus SAC per unit (Sewer Changeover Permit from Septic or New Construction)
Sewer Availability Charge (SAC) - City	\$1,000.00 per unit	As established by the City
Sewer Availability Charge (SAC) – Met Council	\$2,485.00	As established by the Metropolitan Council

Water Connection Fees

Dwelling Type	Fees	Comments
Single Family Dwellings	\$75.00	Plus WAC per unit (Water Changeover Permit from Well or New Construction)
Two-Family Dwellings	\$75.00	Plus WAC per unit (Water Changeover Permit from Well or New Construction)
Water Availability Charge (WAC) – Gem Lake	\$1,500.00 per unit	As established by the City

Commercial Sewer & Water Connection Fees

Fee is 1% of the valuation with a minimum of \$125.00 and a surcharge of .0005 × valuation, plus SAC and WAC per unit

Section 8

Stormwater

Permit Type	Permit Fee	Comments
Public – Linear Projects	\$100.00	Per mile
Public – Stormwater Pond	\$100.00	
Residential – New Home Construction	\$450.00	
Residential – Addition Remodel (excavation less than 1,000 cubic feet)	\$100.00	
Commercial (less than 5 acres)	\$1,500.00	
Commercial (more than 5 acres)	\$2,000.00	

Section 9

Zoning Permits

Residential Zoning Permit Fees

Permit Type	Permit Fee	Comments
Driveway	\$75.00	
Fence	\$75.00	
Patio / Impervious Surface	\$75.00	
Accessory Building < 200 sq. ft.	\$75.00	
Retaining Wall	\$75.00	
Tank Removal	\$250.00	

Commercial Zoning Permit Fees

Permit Type	Permit Fee	Comments
Driveway/Parking Lot	\$150.00	
Fence	\$150.00	
Retaining Wall	\$150.00	
Sign Permit:		
Temporary Sign	\$50.00 per sign	60 days
Comprehensive Sign Plan	\$500.00	
New Sign for new business	\$50.00 per sign	
New Sign for a Non-Profit	No fee	
On new stand or existing lighting or Electronic Sign	\$500.00	
Relocation of Sign	\$100.00 per sign	
Replacement of Sign-Same Business	\$50.00 per sign	

Section 10

Community Development / Planning

Fee Type	Fee	Comments
Appeals or Adjustments	\$100.00, plus \$1,000.00 escrow for review	
Garden Overlay Permit (IUP)	\$100.00	Years two and forward
Maps & Photos:		
Aerial Photos, laminated	\$600.00 per photo plus postage	
2' Topographical Map	\$400.00 – paper plus postage	
2' Topographical Map Set – CD-ROM	\$400.00 plus postage	
Non-Conforming Use Permit	\$600.00, plus \$1,000.00 escrow for review	
Planned Unit Development (PUD)		
5-10 acres	\$4,000.00, plus \$4,000.00 escrow for review	
10 + acres	\$5,000.00, plus \$5,000.00 escrow for review	
Requested Comprehensive Plan Amendment	\$2,000.00, plus \$6,000.00 escrow for review	
Requested Conditional or Interim Use Permit	\$275.00	
Requested Rezoning of Land/Zoning Ordinance Amendment	\$200.00, plus \$600.00 escrow for review	
Zoning Compliance Permit	\$200.00, plus \$1,500.00 escrow for review	
Requested Subdivision of Land		
Minor Subdivision (2-3 lots)	\$500.00	Plus \$1,000.00 Escrow
Major Subdivision (4 plus lots)	\$500.00 per lot created	Plus \$1,000.00 Escrow
Lot combination or lot line adjustment	\$500.00	Plus \$1,000.00 Escrow
Requested Variance	\$500.00	
Zoning Administrator Fee	\$100.00/hr	Minimum 1 Hour

NOTE:

All subdivision of land is subject to a park dedication fee. See the Subdivision Ordinance (Section 5.4) for details

Forms for most of these matters are available on the City of Gem Lake web page at www.gemlakemn.org

Escrow amounts for expenses are used to pay for outside consultants hired by the City to help evaluate items provided for a specific action as well as publication for public hearings and other such expenses. Excess money not used will be returned to the person who paid the escrow at the end of the project. Expenses that exceed the escrow amount will be billed to the applicant at the end of the project.

A Late Charge of \$35.00 plus 1% per month will be charged if payment for services billed is not paid within 30 days after invoicing. This billing will be updated every 30 days until it is paid.

Section 11

City Sewer and Water Rates

City Sewer Charges	Fee	Comments
Commercial Sewer User Charge	\$220.00/SAC unit (\$55.00/quarter)	Annual (Updated 1/1/2024)
Industrial Sewer User Charge	\$220.00/SAC unit (\$55.00/quarter)	Annual (Updated 1/1/2024)
Residential Sewer User Charge	\$220.00/SAC unit (\$55.00/quarter)	Annual (Updated 1/1/2024)
Metered Sanitary Sewer Charge	\$4.08	Per 1,000 gallons

City Sewer and Water Charges (White Bear Lake Connection)	Fee	Comments
Water Charges		
To White Bear Lake	\$500.00	
To Gem Lake WAC Charge	\$1,000.00	
A quarter to Gem Lake plus Water Charge	\$15.00	
Utility Rates Water (White Bear Lake Water)		
Water Rates – Base Charge	\$25.00	Per WAC Unit Effective 1/1/2025
Volume (Usage Charge)		
1-15,000 gallons	\$5.25	Per 750 gallons Effective 1/1/2025
15,0001-25,000 gallons	\$6.60	Per 750 gallons Effective 1/1/2025
Over 25,001 gallons	\$8.25	Per 750 gallons Effective 1/1/2025
Water State Surcharge	\$2.43	
State Sales Tax (on city water usage, commercial only)	8.38%	Effective 1/1/2025
Utility Rates Sewer		
Sewer Rates		
Base Rate	\$55.00	Per SAC Unit
1-6,000 gallons	\$40.40	Flat Fee
Over 6,000 gallons	\$5.05	Per 750 gallons

City Sewer and Water Charges (Vadnais Heights Connection)	Fee	Comments
Utility Rates Water (Vadnais Heights Water)		
Water Rates – Base Charge	\$25.00	Per WAC Unit Effective 1/1/2025
Volume (Usage Charge)		
1-15,000 gallons	\$7.00	Per 1,000 gallons Effective 1/1/2025
15,001-25,000 gallons	\$8.75	Per 1,000 gallons Effective 1/1/2025
Over 25,001 gallons	\$11.00	Per 1,000 gallons Effective 1/1/2025
Irrigation Account		
Base Rate	\$25.00	Effective 1/1/2025
Over 50,000 gallons	\$9.50	Per 1,000 gallons Effective 1/1/2025
Water State Surcharge	\$2.43	
State Sales Tax (on city water usage, commercial only)	8.38%	Effective 1/1/2025
Water inspection Charges	\$25.00	
Utility Rates Sewer		
Sewer Rates		
Base Rate	\$55.00	Per SAC Unit
Volume (Usage) charge per 1,000 gallons	\$7.00	Effective 1/1/2025
Winter Usage – 6,000 gallon minimum		

NOTE: Sewer use charges not paid within 30 days after the due date will be charged the following services charges which are added to amount due:

Residential: 10% of the amount due in each billing period (billing period is every three months)

Commercial / Industrial: 10% per month if not paid within one month after it is due

If 2 quarters of sewer charges (1/2 year) have not been paid when due, or if over \$100.00 of sewer charges are overdue, then a penalty charge of \$25.00 for up to \$250.00 in arrears or \$50.00 for amounts greater than \$250.00 will be added to the amount due.

Delinquent Utility Administrative Charge:

Any utility fees 30 days or more delinquent as of July 31st of each year shall be certified to the assessment rolls of the Ramsey County Auditor for payment along with the property taxes, and the City is authorized to collect an administrative charge to perform this service.

Administrative Charge:

\$50.00 per account

Section 12

City Licenses

Alcohol Licenses	Fee	Comments
3.2 Malt Liquor		
3.2 Malt Liquor On-Sale (including Brew Pup On-Sale Malt)	\$2,000.00	Annually
3.2 Malt Liquor Sunday On-Sale	\$200.00	Annually, State Maximum (M.S. 340A.504)
3.2 Malt Liquor Off-Sale (including Brewer Off-Sale Malt)	\$200.00	Annually
Intoxicating		
Liquor On-Sale (including Brew Pub On-Sale, Brewer Taproom Microdistiller On-Sale)	\$2,000.00	Annually, this fee applies to combination on-sale/off-sale intoxicating liquor licenses
Liquor Sunday On-Sale	\$200.00	Annually, State Maximum (M.S. 340A.504)
Liquor Off-Sale (including Microdistiller Off-Sale Liquor)	\$200.00	Annually, State Maximum is \$240.00 (M.S. 340A.408, subd. 3)
Golf Course, Wine, Culinary Classes		
9-Month Golf Course Liquor On-Sale	\$1,500.00	Annually
9-Month Golf Course Liquor Sunday On-Sale	\$150.00	Annually
Wine On-Sale	\$1,000.00	Annually, (M.S. 340A.408, subd. 2(c))
Culinary Class Limited On-Sale	\$200.00	
Temporary		
One Day Consumption and Display Permits	\$25.00	State Maximum (M.S. 340A414s subd. 9)
On-Sale Intoxicating Liquor	\$75.00	
3.2 Malt Liquor	\$25.00	
Off-Sale Wine	\$75.00	
Brewer On-Sale Intoxicating Liquor	\$75.00	
Microdistiller On-Sale Intoxicating Liquor	\$75.00	
Investigation Fee for New On-Sale Liquor		Actual Cost of Investigation, up to \$10,000.

Business Licenses	Fee	Comments
Adult Use	\$5,000.00	Annually
Adult Use Investigation of License	\$2,000.00	
Adult Use Change of Owner/Officer	\$500.00	
Adult Use Origination Fee	\$2,000.00	
Business License	\$100.00	Annually
Kennel License (Business Boarding Kennel)	\$300.00	Annually
Pawnbroker License	\$5,000.00	Annually
Pawnbroker License Investigation Fee	\$500.00/hr	Minimum 1 hour
Peddlers, Solicitors and Transient Merchants Annual	\$100.00	
Peddlers, Solicitors and Transient Merchants 1-14 Days	\$50.00	
Peddlers, Solicitors and Transient Merchants Background	\$50.00	Up to two people, then \$20 each additional person

Tobacco and Related Products Licenses	Fee	Comments
Edible Cannabinoid Products License	\$125.00	Annually
Edible Cannabinoid Products Application and Background	\$500.00	Initial Request and when a new owner is brought in
Tobacco	\$200.00	Annually

Animal Licenses	Fee	Comments
Chicken/Fowl Keeping Up to 5 Chickens	\$25.00	
Chicken/Fowl Keeping Up to 5 Chickens - Renewal	\$15.00	Annually
Chicken/Fowl Keeping Up to 25 Chickens	\$50.00	
Chicken/Fowl Keeping Up to 25 Chickens - Renewal	\$15.00	Annually
Dog License New	\$10.00	Per Dog (Maximum of 3)
Dog License Renewal	\$10.00	Annually Per Dog (Maximum of 3)
Dog License Lost/Replacement Tag	\$5.00	
Dog License Potentially Dangerous Dog Fee	\$120.00	Annually, Plus \$10.00 Registration Fee
Dog License Dangerous Dog Fee	\$500.00	Annually, Plus \$10.00 Registration Fee
Pigeon Keeping License	\$100.00	Annually
Stable License Personal Stable – three or less animals	\$50.00	Annually
Stable License Unlimited Stable – four or more animals	\$85.00	Annually

Contractor Licenses (If not licensed with the State)	Fee	Comments
Blacktopping & Cement (City Roads)	\$100.00	Annually
Commercial General Construction	\$100.00	Annually
Demolition	\$100.00	Annually
Excavating & Grading	\$100.00	Annually
Fence	\$100.00	Annually
Mechanical	\$100.00	Annually
Outside Sewer & Water Installation	\$100.00	Annually
Sign	\$100.00	Annually
Specialty Contractor	\$100.00	Annually
Tree/Trimming Removal	\$100.00	Annually

Rental Licenses	Fee	Comments
Single Family (House, Condo, Townhouse)	\$100.00	Annually
Two-Family (Duplex)	\$50.00/unit	Annually

Miscellaneous City Licenses	Fee	Comments
Amusement Devices	\$50.00	Per Device
Apartment Unit License	\$200.00	Plus \$25.00 per unit over 10. Annually
Archery Hunting Permit	\$100.00	Plus \$500.00 Escrow
Assisted Living License	\$200.00	Annually
Charitable Gambling Investigation Fee	\$100.00/hr	Minimum 1 hour
Golf Cart Permit (for use on City roads)	\$30.00	Annually
Home Occupation Permit	\$100.00	Annually
Nursing Home License	\$200.00	Annually
Outdoor Entertainment Fee	\$5,000.00	Per event held by business w/ liquor license plus \$5,000.00 escrow
Utility Permit for Work in Right-of-Way City Area	\$200.00	Per Request

Section 13

Miscellaneous

Administrative Offenses	Fee	Comments
Penalties for Alcohol, Tobacco, and Nicotine Sales		
Purchase, Possession	\$50.00	Issued by White Bear Lake Police Dept.
Underage Consumption	\$50.00	Issued by White Bear Lake Police Dept.
Lending ID to Underage Person	\$100.00	Issued by White Bear Lake Police Dept.
License Holder, First Offense	\$150.00	Issued by White Bear Lake Police Dept.
License Holder, Second Offense Within 12 Months	\$275.00	Issued by White Bear Lake Police Dept.
License Holder, Third Offense Within 18 Months	\$500.00	Issued by White Bear Lake Police Dept.
Other Alcohol, Tobacco, and Nicotine Related Offenses	\$100.00	Issued by White Bear Lake Police Dept.
Penalties for Edible Cannabinoid Products		
Underage Consumption	\$50.00	Issued by White Bear Lake Police Dept.
Lending ID to Underage Person	\$100.00	Issued by White Bear Lake Police Dept.
License Holder, First Offense	\$150.00	Issued by White Bear Lake Police Dept.
License Holder, Second Offense Within 12 Months	\$275.00	Issued by White Bear Lake Police Dept.
Other Edible Cannabinoid-Related Offenses	\$100.00	Issued by White Bear Lake Police Dept.
False Alarm User Fees		
4-7 False Alarms	\$50.00/occurrence	In one (1) calendar year Jan1 – Dec 31
8 plus False Alarms	\$150.00/occurrence	In one (1) calendar year Jan1 – Dec 31

Heritage Hall Room Rental Fees	Fee	Comments
Heritage Hall Rental Fees – Gem Lake & WBT Residents		
Large Conference Room (Mon-Thur Evenings)		
Room Fee	\$25.00/hr (minimum 2 hours)	Free during normal business hours
Cleaning/Staffing Fee	\$20.00/hr (minimum 2 hours)	
Refundable Deposit	\$150.00	
Large Conference Room (Fri-Sun)		
Room Fee	\$40.00/hr (minimum 2 hours)	
Cleaning/Staffing Fee	\$20.00/hr (minimum 2 hours)	
Refundable Deposit	\$150.00	
Small Conference Room (Mon-Thur Evenings)		
Room Fee	\$15.00/hr (minimum 2 hours)	Free during normal business hours
Cleaning/Staffing Fee	\$20.00/hr (minimum 2 hours)	
Refundable Deposit	\$50.00	
Small Conference Room (Fri-Sun)		
Room Fee	\$25.00/hr (minimum 2 hours)	
Cleaning/Staffing Fee	\$20.00/hr (minimum 2 hours)	
Refundable Deposit	\$50.00	
Heritage Hall Rental Fees – Non-Residents		
Large Conference Room (Mon-Thur Evenings)		
Room Fee	\$50.00/hr (minimum 2 hours)	\$10 discount during normal business hours
Cleaning/Staffing Fee	\$25.00/hr (minimum 2 hours)	
Refundable Deposit	\$150.00	
Large Conference Room (Fri-Sun)		
Room Fee	\$75.00/hr (minimum 2 hours)	
Cleaning/Staffing Fee	\$25.00/hr (minimum 2 hours)	
Refundable Deposit	\$150.00	
Small Conference Room (Mon-Thur Evenings)		
Room Fee	\$30.00/hr (minimum 2 hours)	\$5 discount during normal business hours
Cleaning/Staffing Fee	\$25.00/hr (minimum 2 hours)	
Refundable Deposit	\$50.00	
Small Conference Room (Fri-Sun)		
Room Fee	\$50.00/hr (minimum 2 hours)	
Cleaning/Staffing Fee	\$25.00/hr (minimum 2 hours)	
Refundable Deposit	\$50.00	

Administration	Fee	Comments
Administrative Charge	\$50.00	
Copying Documents		
1 to 100 Pages	\$0.25/page	MN Statutes, Section 13.03
1 to 100 Pages – Double Sided	\$0.50/page	MN Statutes, Section 13.03
Over 100 Pages	Actual Cost of Data Collection & Copies	MN Statutes, Section 13.03
Document Research	\$100.00/hr	Minimum 15 minutes
Mailing (Postage) and Packaging of Documents and Plans	\$40.00	
Property Assessment and Searches		
Property Assessment Searches	\$50.00	Per Address/PIN
If needed within 24 Hours	\$100.00	Per Address/PIN
Return Check Charges	\$30.00	
Use of City Professional Services		
Outside Consultants (Planner, Engineer, Attorney, etc.)	Actual Cost to the City	
Zoning Administrator	Actual Cost to the City	Minimum 1 hour
Miscellaneous Fees		
Fee		
Comments		
Burning Permit	Refer to the City of White Bear Lake page for permit and fees	
Comprehensive Plan, Local Water Management Plan, Water Distribution or Sewer Plan	\$200.00	Per Document plus Postage
City Codes or Ordinances	As indicated on the front page of said document	
Land Mining (400 yards or more)	\$2,500.00, plus \$3,000.00 escrow for review	
Tree & Vegetation Permits		
Per Development/Subdivision	\$1,500.00	When a building permit has not been issued
Escrow for Review	\$3,000.00	
Per Building Site	\$250.00	
Escrow for Review	\$750.00	

Right-Of-Way Fees	Fee	Comments
Excavation Permit	Hole excavation: \$125.00 Emergency Hole: \$55.00 Trench: \$125.00 + \$70 per 100 lineal feet of trench	
Obstruction Permit	\$50.00, plus \$.05 per lineal foot of obstruction	
Small Wireless Facility Permit	\$150.00	
Small Wireless Facility - Colocation Agreement	\$150 per year for rent to collocate on a city structure, plus \$25 per year for maintenance associated with the collocation. Monthly fee for electrical service as follows: <ul style="list-style-type: none"> \$73 per radio node less than or equal to 100 maximum watts. \$182 per radio node over 100 maximum watts. or The actual costs of electricity, if the actual cost exceed the foregoing. 	
Permit Extensions	\$55.00	
Delay Penalty Fee	\$60.00 for the first three (3) days of delay, and \$10.00 per day thereafter	

White Bear Township Fees for Services to the City of Gem Lake

Flat rate of \$95.00 per hour for all services (Accounting Clerk/Receptionist, Building Inspector, Clerk Treasurer, Finance Analyst and Officer, Para Legal Secretary, Planner, Secretary Receptionist, Public Works Director and all public works staff)

Section 14

Other Inspections & Fees

Fee Type	Fee	Comments
Building Plan Check Fee	65% of Building Permit Fee	
Building Plan Check Fee for Similar Plans	25% of Building Permit Fee	
Plan Check Fee for Decks / Pergola / Gazebo	\$50.00	
Street Maintenance Escrow – New Residential Construction	\$800.00	
Street Maintenance Escrow – New, Expansion or Addition for Commercial Buildings	\$5,000.00	
Erosion Control Escrow – Residential Construction	\$1,200.00	
Erosion Control Escrow – Commercial	\$5,000.00	
Soil Erosion Control Inspection	\$200.00	
Fire Inspections	\$100.00 per unit	Includes follow-up
Inspections Outside of Normal Business Hours	\$100.00/hr	Min Charge 2 Hrs
Re-inspection Fees	\$100.00/hr	Min Charge 2 Hrs
Investigation Fee	Up to the value of the permit with a min of \$95.00	
State Surcharge – Fixed Fee Permit	\$1.00	
State Surcharge 1,000,000 or less	.0005 × Valuation	

Refund Policy

Request for refund must be in writing within 60 days of permit issuance. No more than 50% of the permit fee will be refunded. No refunds for plan review fees. The State Surcharge is 100% refundable. See the Electrical Permits section for information on electrical permit refunds.

City Of Gem Lake, Ramsey County, Minnesota
Right-Of-Way
Ordinance No. 113

AN ORDINANCE TO ADMINISTER AND REGULATE THE PUBLIC RIGHT-OF-WAY IN THE PUBLIC INTEREST AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS

Section 1. Findings, Purpose, and Intent. To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Accordingly, the City hereby enacts this new Section of this Code relating to right-of-way permits and administration. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of the state and federal agencies. Under this Section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this Section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

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

1. **Election to Manage the Public Right-of-Way.** In accordance with the authority granted to the City under state and federal statutory, administrative, and common law, the City hereby elects pursuant to this Section to manage rights-of-way within its jurisdiction.

Section 2. Definitions.

The following definitions apply in this Ordinance. References hereafter to “sections” are, unless otherwise specified, references to sections in this Ordinance.

1. **Abandoned Facility.** A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.
2. **Applicant.** Any person requesting permission to excavate, obstruct, or otherwise place facilities in a right-of-way.
3. **City.** The city of Gem Lake, Minnesota. For purposes of Section 23, ‘city’ also means the City’s elected officials, officers, employees, and agents.
4. **City Engineer.** The City Engineer, or other employee designated by the City Council to administer this Ordinance.
5. **Collocate or Collocation.** To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.
6. **Commission.** The State of Minnesota Public Utilities Commission.
7. **Construction Performance Bond.** 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. § 15.73, subd. 3.
 - d. Letter of Credit, in a form acceptable to the city.
 - e. Self-insurance, in a form acceptable to the city.
 - f. A blanket bond for projects within the city, or other form of construction bond, for a time specified and, in a form, acceptable to the city.
8. **Degradation.** A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.
 9. **Degradation Cost.** Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.
 10. **Degradation Fee.** The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.
 11. **Department.** The department of the city tasked by the City Council to oversee public works.
 12. **Delay Penalty.** The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.
 13. **Emergency.** A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
 14. **Equipment.** Any tangible asset used to install, repair, or maintain facilities in any right-of-way.
 15. **Excavate.** To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
 16. **Excavation Permit.** The permit which, pursuant to this ordinance, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.
 17. **Excavation Permit Fee.** Money paid to the city by an applicant to cover the costs as provided in Section 8.
 18. **Facility or Facilities.** Any tangible asset in the right-of-way used to provide Utility or Telecommunications Service.
 19. **Five-Year Project Plan.** Shows projects adopted by the city for construction within the next five years.
 20. **Local Representative.** 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 ordinance.
 21. **Management Costs.** The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the

interpretation Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 25 of this ordinance.

22. **Obstruct.** To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way, or so as to hinder maintenance of any city asset.
23. **Obstruction Permit.** The permit which, pursuant to this ordinance, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.
24. **Obstruction Permit Fee.** Money paid to the city by a permittee to cover the costs as provided in Section 8.
25. **Patch or Patching.** A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.
26. **Pavement.** 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.
27. **Permit.** Has the meaning given "right-of-way permit" in this ordinance.
28. **Permittee.** Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this ordinance.
29. **Person.** 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.
30. **Probation.** The status of a person that has not complied with the conditions of this ordinance.
31. **Probationary Period.** One year from the date that a person has been notified in writing that they have been put on probation.
32. **Registrant.** Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.
33. **Restore or Restoration.** The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.
34. **Restoration Cost.** The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.
35. **Public Right-of-Way or Right-of-Way (ROW).** The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.
36. **Right-of-Way Permit.** Either the excavation permit, the obstruction permit, the small cell permit, or any combination thereof depending on the context, required by this ordinance.
37. **Right-of-Way User.** (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.

- 38. Service or Utility Service.** Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 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., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.
- 39. Service Lateral.** An underground facility that is used to transmit, distribute or furnish ‘gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer’s premises.
- 40. Small Wireless Facility.** A wireless facility that meets both of the following qualifications: each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.
- 41. Supplementary Application.** 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.
- 42. Temporary Surface.** The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city’s two-year plan, in which case it is considered full restoration.
- 43. Trench.** An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
- 44. Telecommunications Right-of-Way User.** 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. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right-of-way users for purposes of this ordinance except to the extent such entity is offering wireless service.
- 45. Two Year Project Plan.** Shows projects adopted by the city for construction within the next two years.
- 46. Utility Pole.** A pole that is used in whole or in part to facilitate telecommunications or electric service.
- 47. Wireless Facility.** Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

- 48. Wireless Service.** Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.
- 49. Wireless Support Structure.** A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

Section 3. Administration. The City Engineer is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and ordinances related thereto. The City Council may delegate any or all of the duties hereunder.

Section 4. Permit Required. Except as otherwise provided in this Ordinance, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate permit from the city.

- 1. Excavation Permit.** A permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- 2. Obstruction Permit.** A permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- 3. Small Wireless Facility Permit.** A permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
- 4. Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.
- 5. Delay Penalty.** In accordance with Minnesota Rule 7819.1000 Subpart 3, the City shall impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The permittee shall not be assessed a delay penalty of delays in project commencement or completion due to circumstances beyond the control of the permittee. An application for permit extension is independent of delay and does not preclude the assessment of a delay penalty even if the extension is granted.
- 6. Permit Display.** Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City Engineer.

Section 5. Permit Applications. Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- 1. Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:**
 - 1. Each permittee's name, Gopher One-Call registration certificate number, address, email address, and telephone number.**
 - 2. The name, address, e-mail address, and telephone number 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 application.**

3. A certificate of insurance or self-insurance:
 1. Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City Engineer.
 2. Verifying that the permittee is insured against claims for personal 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 permittee, its officers, agents, employees and permittees, and (2) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property.
 3. Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages.
 4. Requiring that the City Engineer be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.
 5. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage in amounts established by the City Engineer sufficient to protect the City and the public and to carry out the purposes and policies of this Section.
 6. The City may require a copy of the actual insurance policies.
 7. If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statute § 300.03 as recorded and certified to by the Secretary of State.
 8. 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.
2. Payment of money due to the city for:
 1. Permit fees, estimated restoration costs and other management costs.
 2. Prior obstruction or excavations.
 3. Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city.
 4. Franchise fees or other charges, if applicable.
3. Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
4. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

Section 6. Issuance of permit; Conditions.

1. **Permit Issuance.** If the applicant has satisfied the requirements of this Section, the City shall issue a permit.
2. **Conditions.** The City Engineer may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minnesota Statutes §216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

Section 7. Small Wireless Facility Permits.

1. **Small Wireless Facility Conditions.** In addition to Section 6.2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:
 - a. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
 - b. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
 - c. No wireless facility may extend more than 10 feet above its wireless support structure.
 - d. Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
 - e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, such equipment shall be consistent with the City's aesthetic standards regarding wireless equipment as adopted by the City Engineer. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the City Engineer shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit.
 - f. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
 - g. A permit will be deemed void if the approved equipment is not installed within one (1) year of issuance of the permit.
2. **Small Wireless Facility Agreement.** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:
 - a. Rent to collocate on the city structure.
 - b. Yearly fee for maintenance associated with the collocation.
 - c. A monthly fee for electrical service as follows:
 - i. A fee per radio node less than or equal to 100 maximum watts.
 - ii. A fee per radio node over 100 maximum watts; or
 - iii. The actual costs of electricity, if the actual cost exceed the foregoing.

3. The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter, or affect any then-existing agreement between the city and applicant.
4. **Action on Small Wireless Facility Permit Applications.**
 - a. **Deadline for Action.** The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application or within any timeline established by state law. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
 - b. **Consolidated Applications.** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
 - i. are located within a two-mile radius.
 - ii. consist of substantially similar equipment; and
 - iii. are to be placed on similar types of wireless support structures.
 - c. In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.
 - d. **Tolling of Deadline.** The 90-day deadline for action on a small wireless facility permit application may be tolled if:
 - i. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
 - ii. The applicant fails to submit all required documents or information, and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.
 - iii. The city and a small wireless facility applicant agree in writing to toll the review period.

Section 8. Permit Fees. The City Council establishes fees for permits, and shall from time to time examine and adjust as needed to conform to the City's actual costs of regulation, management, degradation, city engineering, and make-ready or construction costs associated with collocation of small wireless facilities. Said fees shall be in the City Fee Schedule as adopted by Ordinance.

1. **Application to Franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way used in the franchise.

Section 9. Supplementary Applications.

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.
2. **Limitation on Dates.** A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

Section 10. Joint Applications.

1. **Joint Application.** Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
2. **Shared Fees.** Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
3. **City Projects.** Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

Section 11. Other Obligations.

1. **Compliance with other Laws.** Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
2. **Prohibited Work.** Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
3. **Interference with ROW.** A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
4. **Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Section 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

Section 12. Denial of permit. The City may deny a permit for failure to meet the requirements and conditions of this ordinance or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

Section 13. Installation Requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are consistent with the Minn. Stat., §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 17 of this ordinance.

Section 14. Right-of-Way Patching and Restoration.

1. **Timing.** The work to be done under any excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 17.
2. **Patch and Restoration.** Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
 1. **City Restoration.** If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.
 2. **Permittee Restoration.** If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
 3. **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
3. **Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100.
4. **Duty to correct defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the City Engineer, correct all restoration work to the extent necessary, using the method require by the City Engineer. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City Engineer, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 17.
5. **Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the City Engineer, or fails to satisfactorily and timely complete all restoration required by the City Engineer, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

Section 15. Inspection.

1. **Notice of Completion.** When the work under and permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300 or other as-built documentation as deemed necessary by the City Engineer.
2. **Site Inspection.** Permittee shall make the work-site available to City personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. **Authority of City Engineer.**
 1. At the time of inspection, the City Engineer may order the immediate cessation of any work which poses a serious threat to life, health, safety, or wellbeing of the public.
 2. The City Engineer may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after

issuance of the order, the permittee shall present proof to the City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the City Engineer may revoke the permit pursuant to Section 17.

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

Section 16. Work Done Without a Permit.

- 1. Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities that it considers being an emergency. Excavator's notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the owner 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 Section for the actions it took in response to the emergency.

If the City becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

- 2. Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the City the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Section.

Section 17. Revocation of Permits.

- 1. Substantial Breach.** The City reserves its right, as provided herein, to revoke any right-of-way permit, without a refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
 - 1.** The violation of any material provision of the right-of-way permit.
 - 2.** An envision or attempt to evade any material provision of the right-of-way permit, or the perpetuation or attempt to perpetrate any fraud or deceit upon the City or its citizens.
 - 3.** Any material misrepresentation of fact in the application for a right-of-way permit.
 - 4.** The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
 - 5.** The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 15.
- 2. Written Notice of Breach.** If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit that City shall make a written demand upon the permittee to remedy such violation. The demand shall state continued violations might be cause for revocation of the permit. A substantial or revised conditions on the permit to mitigate and remedy the breach.

3. **Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, which will cure the breach.

Permittee's failure to so contact the City, 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.

4. **Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 18. Mapping Data.

1. **Information Required.** Each permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the City Engineer accurate maps and drawings certifying the "as-built" location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the city's electronic mapping system, when practical or as a condition imposed by the City Engineer. Failure to provide maps and drawings pursuant to this subsection shall subject the permittee to the delay penalties established in accordance with Section 8 and may affect the grant of any future permits for right-of-way excavation or obstruction.
2. **Service Laterals.** All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the City Engineer reasonably requires it. Permittees or their subcontractors shall submit to the City Engineer evidence satisfactory to the City Engineer of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any city approval necessary for:
 - a. (1) payments to contractors working on a public improvement project (including those under Minnesota Statutes, Chapter 429); and
 - b. (2) City approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The City Engineer shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

Section 19. Location of Facilities; Undergrounding.

1. **Purpose.** Placement, location, and relocation of facilities must comply with the Act, with other applicable law, with other applicable standards adopted by the city engineer, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
2. **Undergrounding of Facilities.** Unless otherwise agreed in a franchise between the applicable right-of-way user and the City, facilities places in the public right-of-way must be located, relocated, and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards.
3. **Undergrounding of New Facilities.** A new facility or a permanent extension of facilities must be installed and maintained underground when supplied to:
 1. a new installation of buildings, signs, streetlights, or other structures.

2. a new subdivision of land; or
 3. a new development containing new commercial or industrial buildings.
4. **Undergrounding of Permanent, Relocated or Reconstructed Facilities.** A permanent replacement, relocation, or reconstruction of a facility of more than 300 feet must be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding is required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the City in connection with (1) the present or future use by the City or other local government unit 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.
 5. **Corridors.** The City may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.
 6. **Limitation of Space.** The City Engineer shall, to the extent possible, accommodate all existing and potential users of the right-of-way. In doing so, the Administrator shall be guided by consideration of the public interest, including the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects.
 7. **Nuisance.** One year after the passage of this Ordinance, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance, or taking possession of the facilities and restoring the right-of-way to a useable condition.

Section 20. Retirement of Overhead Facilities. The City Council may determine whether it is in the public interest that all facilities within the city, or within certain districts designated by the city, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to Section 19 of this Ordinance. The decision to underground existing facilities must be preceded by a public hearing, after notice published for two (2) consecutive weeks and written notice mailed to the utilities affected at least 30 days prior to the hearing. At the hearing, the City Council must consider, at a maximum, all of the issues stated in 17.2 below and make findings. Undergrounding of existing facilities may not take place until the City Council has, after hearing and notice, adopted a plan in accordance with 20.3 below.

1. **Public Hearings.** A hearing must be open to the public and may be continued from time to time. At each hearing, any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether Facilities in the right-of-way in the City, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under Section 19 of this Ordinance.
2. **Public Hearing Issues.** The issues to be addressed at the public hearings include but are not limited to:
 1. The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way.

2. The feasibility and cost of undergrounding all facilities by a date certain as determined by the City Council and the affected unities.
3. The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the city.
4. Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either Citywide or within districts designated by the City.

3. Undergrounding Plan. If the City finds that it is in the public interest to underground all or substantially all facilities in the public right of way, the City must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

1. Timetable for the undergrounding.
2. Designation of districts for the undergrounding unless, undergrounding plan is Citywide.
3. Exceptions to the undergrounding requirement and procedure for establishing such expectations.
4. Procedures for the undergrounding process, including but not limited to coordination with City projects and provisions to ensure compliance with nondiscrimination requirements under the law.
5. A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to undergrounding incurred by the utility.
6. Penalties or other remedies for failure to comply with the undergrounding.

Section 21. Damage to Other Facilities. When the City does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect its workers or its project, the City Engineer shall notify the local representative as early as reasonably possible. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.

Section 22. Right-of-way Vacation. If the City vacated a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

Section 23. Indemnification and Liability. By applying for and accepting a permit under this ordinance, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

Section 24. Abandoned Facilities.

1. **Discontinued Operations.** A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this ordinance have been lawfully assumed by another registrant.
2. **Removal.** Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

Section 25. Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the City regarding Section 9 Subdivision 2 of this Ordinance, may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

Section 26. Reservation of Regulatory and Police Powers. A permittee’s rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

Section 27. 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 city from requiring a franchise agreement with the applicant, as allowed by law in addition to the requirements set forth herein.

Section 28. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication.

Dated: _____, 2025

Gretchen Artig-Swomley, Mayor

Melissa Lawrence, Acting City Clerk

City of Gem Lake, Ramsey County, Minnesota
Right of Way (ROW)
Ordinance No. 113

This ordinance to administer and regulate the public right-of-way in the public interest and to provide for the issuance and regulation of right-of-way permits, was originally enacted by the City on January 19, 2010, and published on January 37, 2010. The City Council has made amendments to the Ordinance in keeping with changes in State law and the wishes of the community. The following table indicates the original Ordinances and the said amendments.

Ordinance	Description	Enactment
113	Ordinance adopted	January 2010
113	Amendment adding and revising definitions, adding requirements regarding small wireless facilities, moving fees to the Fee Schedule, and updating processes and procedures.	Month 202X