

CHAPTER 6

TELECOMMUNICATIONS

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7-6-1: DEFINITIONS:

The terms defined in this Section have the meanings given to them.

!DEF! COMPANY: A natural or corporate person, business association or other business entity including partnerships and sole proprietorships, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks to or is required to construct, install, operate, repair, maintain, remove or relocate facilities in the City.

DIRECTOR: The Public Works Coordinator.

FACILITIES: Communications lines or equipment of any kind, including but not limited to, lines or equipment for the transmission of audio, video, or data, or other similar communications services, not otherwise governed by any State law granting exclusive jurisdiction to the State level, including all trunks, lines, cables, wires, optical fibers, or other fiber optic cables, laser equipment, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, towers and any necessary appurtenances owned, leased or operated by a company on, over, in, under, or along any public ground.

PUBLIC GROUND: Highways, roads, streets, alleys, sidewalks, skyways, public ways, utility easements and public easements in the City. (Ord. 92, 5-14-1996) !DEFEND!

7-6-2: PERMIT PROCEDURE:

A. Permit Required: A company may not construct, install, repair, remove or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a permit from the City. The City shall require a separate permit of a company for each location where construction, installation or other disturbance of the public ground is to occur, or for each convenient subdivision of construction, installation or other related work for which the City determines in its sole discretion

a permit is required. Each permit shall state specifically the locations of any facilities, and the nature of the work necessitating the permit, and shall contain reasonable regulations and conditions to protect the health, safety and welfare of the populace of the City.

B. Application: Application for a permit shall be made to the Director.

1. Time For Application: A company shall apply for a permit or renewal of a permit a minimum of two (2) weeks before starting work and must submit detailed plans for street or sidewalk use and pedestrian safety on major projects. This provision or portions thereof may be waived by the City in the event of an emergency.

2. Denial/Approval Of Application: Upon application by a company for a permit authorizing construction, installation, repair, removal, or relocation of facilities, or other disturbance of public ground, the City may deny or approve such application. Denial of a permit shall be accompanied by a written statement of the reasons for such denial. Denial of a permit shall be appealable to the City Council which shall issue detailed findings in the event such denial is sustained. An appeal of denial shall be heard at the first regularly scheduled Council meeting and any findings issued within thirty (30) days of such meeting.

C. Issuance Of Permit: If the Director determines that the applicant has satisfied the requirements of this Chapter, the Director may issue a permit to the company.

D. Permit Fee: A company shall make a permit fee payment for each permit required in an amount determined by the City.

1. Fees: The permit fee shall include an application fee for administrative costs, plus an additional amount to be computed according to the portion of public right of way being occupied, computed by the length of area in fifty foot (50') increments, and the duration of the permit. To the extent that a company applies for a permit to indefinitely or permanently occupy a right of way, City shall set a permanent occupancy fee requiring periodic permit payments payable at such times as determined by the City, but in any event at least annually.

2. Table Of Fees: The City shall establish a table of permit fees, which table shall be subject to approval by the City Council and a copy of which shall be maintained in City offices. The table of fees shall be amended annually and may be amended at other times as deemed necessary by the City.

3. Reimbursement: The permit fee shall be determined so as to fully reimburse the City for all costs incurred as a result of the construction, installation or other work approved by a permit, including but not limited to the costs for administrative processing of the application, engineering, inspection, and for

any costs incurred in returning the public ground to its original condition. Should the construction, installation, or other work approved by the permit decrease the useful life or value of the public ground, or should the same not be returnable to its original condition, the City may recover such decreased value, damage, cost or fees from the permit fee.

E. Term For Nonpermanent Occupancy Permit: The maximum period allowed for a nonpermanent occupancy permit to perform installations or repairs shall be three (3) months. Construction, installation or other opening, disturbance, or obstruction of public ground beyond the period covered by each permit, including construction, installation, repair, or other opening of public grounds covered by a permanent occupancy permit, shall require obtaining a new permit with payment of applicable fees. Application for such permit shall be subject to the same review as the original permit application.

F. Security For Completion Of Work: Prior to commencement of work, the company must deposit with the City security in the form of certified check, letter of credit, or construction bond, in a sufficient amount as determined by the Director for the completion of the work. If more than three (3) work projects are to be constructed during the calendar year, the applicant may, in lieu of individual securities, deposit a dollar amount to be determined by the Director with the City in a form satisfactory to the Director. The securities will be held until the work is completed plus a period of time, to be determined by the Director, thereafter to guarantee that restoration work has been satisfactorily completed. The security will then be returned to the company with interest if held for a sufficient length of time to be required by law and then interest at the applicable statutory rate.

G. Inspection Of Work: When the work is completed, the company must request an inspection by the Director. The Director will determine if the work has been satisfactorily completed and provide the company with a written report of the inspection and approval.

H. Display Of Permit: Permits shall be available at all times for ease of inspection on the indicated work site or at a site mutually agreed upon by the City and a company.

I. Penalty: Failure to secure required permits prior to beginning construction, excavation, installation, or work of any kind in public ground shall constitute a misdemeanor under this Chapter. (Ord. 92, 5-14-1996)

7-6-3: REGULATIONS AND SCHEDULES:

The Director is authorized and directed to prepare suitable regulations and schedules for the administration of permits issued under this Chapter. (Ord. 92, 5-14-1996)

7-6-4: RESTORATION AND RELOCATION:

A. Restoration:

1. By Company: Upon completion of the work to be contemplated by a permit, the company must restore the general area of the work, including the pavement and its foundations, to the same or better condition than existed prior to commencement of the work necessitating a permit. The work must be completed as promptly as weather permits.

2. By City: If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, the City may put it in the same condition at the expense of the company. The company must, upon demand, pay to the City the direct and indirect cost of the work done for or performed by the City, including, but not limited to, the City's administrative costs.

3. Recovery Of Costs: To recover its costs, the City will first draw on the security posted by the company then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the City.

B. Company-Initiated Relocation: The company must give the City written notice prior to a company-initiated relocation of facilities. A company-initiated relocation must be at the company's expense and must be approved by the City, such approval shall not be unreasonably withheld.

C. City Required Relocation: The company must promptly, with due regard for seasonal working conditions, permanently relocate its facilities whenever the City, in writing, requires such relocation.

1. If the relocation is a result of the proper exercise of the City's police power in grading, regrading, changing the location or shape of or otherwise improving public ground or constructing or reconstructing a public service or utility system therein, the relocating will be at the expense of the company.

2. In other cases, the company and City may, by written agreement, apportion the costs of relocation between them.

3. If such relocation is done without an agreement first being made as to whom is to pay the relocation cost, the relocation of the facilities by the company is not to be construed as a waiver of its right to reimbursement for its relocation costs. If the company claims reimbursement for the relocation costs, it must notify the City within thirty (30) days after receipt of the City's request for the costs.

D. Relocation Where Public Ground Vacated: The vacation of public grounds does not deprive the company of the right to operate and maintain its facilities in the City.

1. Vacation Initiated By City: If the vacation proceedings are initiated by the City, the City must pay the relocation costs.

2. Vacation Initiated By Company: If the vacation proceedings are initiated by the company, the company must pay the relocation costs.

3. Vacation Initiated By Others: If the vacation proceedings are initiated by other persons, the company must pay the relocation costs unless otherwise agreed to by City, company and other persons. (Ord. 92, 5-14-1996)

7-6-5: COMPANY DEFAULT:

A. Notice: If the company is in default in the performance of the work or occupancy authorized by the permit, including, but not limited to, restoration requirements or permanent occupancy fee payments for more than thirty (30) days after receiving written notice from the City of the default, the City may terminate the rights of the company under the permit, subject to City's absolute right to revoke at any time in the exercise of City's police powers. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to that address.

B. City Action On Default: If the company is in default in the performance of the work or occupancy authorized by the permit, the City may, after the above notice to the company and failure of the company to cure the default, take such action as may be reasonably necessary to abate the condition caused by the default. The company must reimburse the City for the City's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under subsection 7-6-2F of this Chapter will be applied by the City first toward payment for such reimbursement. (Ord. 92, 5-14-1996)

7-6-6: CONDITIONS OF USE:

A. Use Of Public Ground: Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established therein, including, but not limited to:

1. The right of inspection by the City at reasonable times and places;

2. The obligation to relocate the facilities pursuant to subsections 7-6-3C and D of this Chapter; and

3. Compliance with all applicable regulations imposed by the Public Utilities Commission and other State and Federal laws and regulations.

B. Location: The facilities must be placed in a location and in such manner as is designated in a permit by the City. The City may designate whether facilities shall be placed aboveground or in subsurface conduits.

C. Emergency Work: A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event, the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit.

D. Street Improvements, Paving, Or Resurfacing: The City will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain:

1. The nature and character of the improvements;

2. The streets upon which the improvements are to be made;

3. The extent of the improvements;

4. The time when the City will start the work; and

5. If more than one street is involved, the sequence in which the work is to proceed.

E. Company Protection Of Facilities: A company must take all reasonable measures to prevent its facilities from causing damage to persons or property. A company must take all reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The company must take all reasonable protective measures when the City performs work near the facilities.

F. Guarding Of Obstructions Or Dangers: If a company shall obstruct any public ground, such company shall keep such obstruction or obstructions properly guarded at all times. From sunset to sunrise, all obstructions must be guarded by a sufficient number of warning lights placed in such a manner that they will give proper warning of said obstruction. The City may require any other restrictions or safety regulations as may be in the public interest.

G. Prior Service Connections: In cases where streets are at final width and grade and the City has installed underground sewer and water mains or other utilities and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of the streets, and the facilities are located under such street, a company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five (5) year period following the paving or resurfacing. (Ord. 92, 5-14-1996)

7-6-7: INDEMNIFICATION:

A. Scope: The company will indemnify, keep, and hold the City, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, removal, relocation or operation of the facilities affecting public ground, unless such injury or damage is the result of the negligence of the City, its elected officials, employees, officers, or agents. The City will notify the company of claims or actions and provide a reasonable opportunity for the company to accept and undertake the defense.

B. Claim Defense: If a claim or action is brought against the City under circumstances where indemnification applies, the Company, at its sole expense, shall defend the City if written notice of the claim or action is given to the company within a period wherein the company is not prejudiced in the defense of such claim or action by lack of such notice. The company shall have complete control of such claim or action, but it may not settle without the consent of the City, which shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. In defending any action on behalf of the City, the company is entitled to assert every defense or immunity that the City could assert on its own behalf. (Ord. 92, 5-14-1996)