

City of Minneapolis
Right of Way Pole Attachment Policies
Pursuant to MCO Section 451.30 (B)

Prepared by Public Works and Approved by City Council

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I – Definitions

Applicant – Means a person who applies to use City infrastructure

Attachment – Includes

- a. On a pole – each aerial cable, together with its associated messenger cable, guy wire, anchors and other appurtenant and incidental facilities.
- b. In a conduit, each linear foot of occupancy of a city-owned conduit or duct by each cable or other attachment
- c. Each antenna, transceiver, amplifier, repeater or other device or equipment of a user supported by, affixed to, contained in, or placed on or in a unit of City infrastructure

Attachment Permit – Means the permission for a user to place, install, construct, replace, move, remove, keep, maintain, operate, or use an attachment on or in City owned infrastructure under Chapter 451 of the Minneapolis Code of Ordinances and pursuant to these policies.

Cable – Means a wire rope or a bound or sheathed assembly of conductors, wires, or fibers, including fiber optic cable, coaxial cable, and twisted pair copper cable. Each cable that is lashed to another cable or to a common messenger cable is a separate attachment.

City – Means the City of Minneapolis, Minnesota

City Owned Infrastructure – Means City owned facilities as defined specifically in Section 4 “Installation of Equipment”, number 6 in this policy that are located in the public right of way. It does not mean State, County, or other municipally or government entity owned infrastructure on City owned right of way. It does not mean infrastructure owned by a public utility. It does not mean infrastructure located outside of the public right of way.

Director – Means the Director of the Minneapolis Public Works Department, or unless the context indicates otherwise, the Director’s designees.

Premises – Tangible or intangible real, personal or mixed City owned infrastructure placed within right of way and the improvements on it.

Person – Any individual, corporation, firm, partnership, association, organization or other group acting as a unit. It also includes any executor, administrator, trustee, receiver or other representative appointed by law. Whenever the word "person" is used in any section for the violation of which a penalty or fine may be assessed, it shall include the partners or members of any partnership or corporation, and, as to corporations, the officers, agents or members thereof who are responsible for the violation.

ROW – Means City of Minneapolis right of way managed by the City pursuant to this policy.

User – Means a person who has been granted a permit to install an attachment under this policy.

II - Request to Affix Attachments to City Owned Infrastructure

1. Before any person shall make use of any space on any of the City owned light poles, traffic signal poles, conduits or other approved objects on City ROW as listed in Section 4; #6 of this policy, such person shall request permission in writing, which will include submission of a completed Attachment Permit application which shall be on a form approved by the Public Works Director or his/her designee, if so required. The Attachment Permit application will include but is not limited to the following information;
 - a. Operations and Maintenance Plan for the life of the system;
 - b. Graffiti removal plan for the attachment;
 - c. 24 hour response plan for issues such as wrecks, break-ins, etc.
2. A user with an approved application and at its sole cost and expense may use the premise, as identified in the Attachment Permit Application.
3. In accordance with the approved application, user may install, operate, maintain, repair, replace or remove its Attachment. The user may, upon written approval and with submission of signed structural drawings, replace the aforementioned Attachment with similar and comparable equipment, provided the replacement does not increase structure loading on the City's infrastructure.
4. Regarding each individual installation, the City shall have the right to reject the installation or any portion of the installation and will give the user 30 days written notice to remove or alter the installation to the extent required.
5. The user shall use the premises only in accordance with good engineering practices and in compliance with all applicable Federal Communications Commission (FCC), federal, state and local rules laws and regulations.
6. Before receiving approval from Public Works to install an attachment on City owned infrastructure in City ROW the user shall submit to the Director detailed construction plans and drawings for each individual location, together with necessary maps, indicating specifically the poles of the City to be used, the number and character of the attachments to be placed on such poles, equipment necessary for the use, replacement of existing poles, any additional pole(s) which may be required and any new installations for transmission conduit, pull boxes, and appurtenances. The Director shall, on the basis of review of such detailed construction plans and drawings, determine whether to give the user permission to proceed with the work as proposed by the user. Upon application approval, the user shall have permission to use the premises and make attachments in accordance with the terms of the application, this policy and of the Minneapolis Code of Ordinances. The user shall perform all work at its own expense and make attachments in such manner as to not interfere with the services of the City.
7. Any infrastructure approved by the Director to be used/purchased by the user to facilitate the attachment of user's equipment shall be the property of the City and shall not entitle the user to ownership of such infrastructure.
8. The City reserves the right to exclude any City Owned Infrastructure from use by the user.
9. As provided in the Minneapolis Code of Ordinances, the user only has a permit that is revocable by the City at any time and has no vested rights of any kind regarding continued use of City owned infrastructure.
10. The user must obtain and submit to the Director a structural engineering study carried out by a qualified structural engineer, as required by the Minneapolis Code of Ordinances showing that the pole(s) and foundation(s) is (are) able to support the proposed Attachment. The study must be signed by an engineer licensed pursuant to Minnesota Rules, Part 1800.4200 and Minnesota Statutes, Section 326.12, Subd. 3.

11. Other affected jurisdictions (state, County, Park Board, etc...) shall be notified by the user. The user will submit written approval from the affected jurisdiction if located on, over, under or above their ROW.

III – Premises

1. The primary use of City owned infrastructure is to provide for traffic control and street lighting. City operations, maintenance and repair take priority over users operations.
2. The following priorities of use, in descending order, shall apply in the event of communication interference, emergency public safety needs, premises repair or reconditioning.
 - a. The City;
 - b. Public safety agencies, including law enforcement, fire and ambulance services;
 - c. Other governmental agencies where use is not related to public safety;
 - d. Pre-existing licenses or contracts;
 - e. Other agencies attachments;
 - f. User attachments.
3. In the event that the attachment poses an immediate threat of substantial harm or damage to the health, safety and welfare of the public, City Employees and/or property/premises, as solely determined by the City, the City may take actions the City determines are required to protect, the health, safety and welfare of the Public, or personal property of the Public, from such Jeopardy provided that after such emergency access onto the Premises, and in no event later than twenty-four (24) hours after such access, City gives notice to user of City's emergency access. If the City determines that these conditions would be benefited by cessation of user's operations, the user shall immediately cease its operations on the Premises upon notice from Director of the Department of Public Works or the Director's Designee.

IV - Installation of Equipment

1. For the initial installation of all Attachments and for any and all subsequent revisions and/or modifications thereof, or additions thereto, the applicant shall provide the City with two (2) sets of construction plans ("Construction Plans") consisting of the following:
 - a. Line or CAD drawings showing the location and materials of all planned installations plus an Engineer's estimate of all materials required and construction methods.
 - b. Construction specifications and product specifications for all planned installations.
 - c. Diagrams and Shop Drawings of proposed Attachment.
 - d. A complete and detailed inventory of all equipment and personal property of the user actually placed on the City Premises. The City retains the right to inspect the installed equipment.
 - e. The City requires signed structural plans from a State of Minnesota licensed Engineer for any installation (including new replacement poles if necessary).
2. At least ten (10) business days prior to the proposed construction mobilization, user shall conduct a pre-construction meeting at the proposed site or other location as agreed upon. The meeting shall be attended by the users Construction Engineer, City's representative(s) and all parties involved in the installation.
3. All construction activity shall be subject to inspection and approval by the Construction Engineer. Inspection will be performed beginning with the Pre-Con Meeting and continuing through installation/construction/punch-list and verification of as-built drawings at project completion as determined by the City, at the user's expense. If deemed necessary by the Construction Engineer, Construction work performed without approval of the Construction

Engineer will not be accepted and shall be removed or uninstalled at the user's sole expense. The user shall be solely responsible for all costs associated with the inspection and approval of construction work by Construction Engineer.

4. The user shall install a power disconnect to the attachment in the base of the structure.
5. The City will not share any conduit (electric or Communication) or fiber strands within existing City owned conduit with user.
6. Attachments will be allowed only on City approved;
 - a. 30 foot City approved Poles;
 - b. Traffic Signal Davits.
7. The City will have first right of refusal to install all signal and light pole foundations if necessary for new installations.
8. City may allow cut-ins to foundations with prior written approval from the Director.
9. No underground work is allowed in City ROW from November 15th to March 15th. The Director, or the Director's designee, may, in writing, extend/reduce this timeframe as winter conditions dictate.
10. All Attachments affixed to the Structure which have exterior exposure shall match the color of the Structure.
11. Any damage to the leased Premises, or City's equipment thereon caused by the user's installation or operations shall be repaired or replaced at user's expense and to the Director's satisfaction.
12. Within thirty (30) days after the user activates the Attachment facilities, user shall provide the City with As-Built drawings in electronic file format compatible with the City's record file system consisting of As-Built drawings of the Attachment installed at each Premises and any improvements installed on the ROW, which shall show the actual location of all equipment and improvements. These drawings shall be accompanied by a complete and detailed site plan for the installation and an inventory of all equipment, and Attachments.
13. The user shall obtain from the City, any and all permits required for a complete installation. These permits include, but are not limited to: Obstruction/Excavation, Meter Hooding, Storm Water, etc. Applicable fees for any permits shall be borne by the user. The user shall be bound by the requirements of each permit.

V - Maintenance and Repair

1. The City reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Premises in connection with user's Operations.
2. Upon request from the City, the user shall disconnect the power to the user's pole attachment within eight (8) hours of such request to facilitate any maintenance or repair work to the pole or City attached infrastructure. After eight (8) hours or immediately after an emergency, the City reserves the right to disconnect the power to the vendor's pole attachment.
3. Except in cases of emergency, prior to commencing work on City Owned Infrastructure with an attachment, the City will provide user with 24 hour prior notice thereof. Upon receiving such notice; it shall be the sole responsibility of the user to take adequate measures to remove or otherwise protect users Facilities from the consequences of such activities. The City reserves the right to require user to remove or power down any Attachments during the work.
4. User shall, at its own cost and expense, maintain the Attachment in good and safe condition, and in compliance with applicable fire, health, building, and other life safety codes. The user shall obtain from the City any and all permits required for the purposes of maintaining the installation. Applicable fees for any permits shall be borne by the user. The user shall be bound by the requirements of these permits.

VI – Term; Rental

1. Starting April 25, 2015, to provide fair compensation to the City including but not limited to its costs related to the management and use of the Premises, the user shall pay to the City a Base Rent ("Base Rent") equal to Seven Hundred Twenty dollars (\$720.00) for the year for each Premises (i.e., Pole, whether new or existing) upon which the user has installed their attachment. This fee includes operational costs and City staff costs which include administration, inspections, pole depreciation, and additional work due to attachment.
2. This Base Rent does not include the Encroachment Fee that the City might otherwise impose for installations in the ROW.
3. User shall pay to the City a one-time, lump-sum administrative and power installation fee of Four Thousand Dollars (\$4,000.00) per pole which shall be paid before commencement. This one-time fee does not include the cost of a new pole or any foundation work which may be required.
4. Before the Commencement Date, the user shall pay the City in advance for rental payments owed to complete annual rental payments pro-rated for the remainder of the calendar year. After the first of the year, rental payments shall commence and be due at a total annual rental as set forth in this policy, to be paid in advance annually to the City on or before January 1 of every year thereafter.
5. Commencing January 1, 2016, and on January 1st of each subsequent year, the Base Rent shall be increased automatically by three percent (3%) each year. This fee is subject to change upon 30 days notice should there be a substantial change in any of the above listed costs.

VII – Use; City of Minneapolis and Government Approvals

1. The user shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto, in a manner consistent with each Attachment permit. It is understood and agreed that user's ability to use the Premises is contingent upon its obtaining and maintaining all of the certificates, permits and other approvals (collectively the "Government Approvals") that are required by The City of Minneapolis, Federal, State, County or other governmental authorities as well as a satisfactory structural analysis, and a radio frequency analysis as stated in "ENVIRONMENTAL" below, which will permit use of the Premises as set forth above.
2. In the event that;
 - a. Any of such applications for such Governmental Approvals should be finally rejected,
 - b. Any Governmental Approval issued to user is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority, or
 - c. User determines that such Governmental Approvals may not be obtained in a timely manner.

The user shall have the right to terminate the use of particular premises. Notice of user's exercise of its right to terminate as to a particular premises shall be given to the City in accordance with the notice provisions set forth herein and shall be effective upon the mailing of such notice by user. All rentals paid to the termination date for a particular premises shall be retained by the City.

VIII – Indemnification

As a condition of the user having its facilities in City right of way and on City owned infrastructure placed within the right of way the user agrees to and shall, to the extent permitted by law, defend, indemnify and hold harmless the City, its employees, officers, contractors and agents against any claim of liability or loss of any kind, including administrative orders and

regulations, and specifically including, without limitation, any claim of liability or loss from personal injury or property damage resulting from or arising out of the presence of user's equipment in City right of way or on City owned infrastructure placed within the right of way and also as to any willful misconduct of the user, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the willful misconduct of the City, or its employees, officers, contractors or agents.

IX – Insurance

The user agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$2,000,000 for damage or destruction to property in any one occurrence. The user shall provide Certificates of Insurance which specifically name The City of Minneapolis as an additional insured.

X – Limitation of Liability

The City shall be not be liable to the user, or any of its respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, use of rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if the City has been advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise that is related to, arises out of, flows from or is, in some part, caused by user's attachment to or use of City owned infrastructure.

XI – Annual Termination

Notwithstanding anything to the contrary contained herein, provided the user is not in default hereunder beyond applicable notice and cure periods, the user shall have the right to terminate upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to the City.

XII – Interference

User agrees to and shall install equipment of the type and frequency which will not cause harmful interference to any equipment of the City or other users of the Premises which existed on the Premises prior to the date the attachment permit was acquired by the user. At the City's discretion, in the event any after-installed user's equipment causes such interference, user will be required to remove the equipment. It is the user's responsibility to confirm that their equipment will not cause harmful interference before pursuing approval from the City.

XIII – Removal

The user shall, upon 30 days notice of termination, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition. All of the equipment, conduits, fixtures and personal property of user shall remain the ultimate responsibility of the user, but the City nonetheless shall have the right to remove the same at any time. All poles, conduit and pole boxes are and shall remain property of the City. If time used by the user for removal of its facilities from City Owned Infrastructure causes the user to continue to have

user's facilities attached to City Owned Infrastructure after the user's facilities are no longer operational the user shall continue to pay rent until user's facilities are completely removed from City Owned Infrastructure.

XIV – Notices

1. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender.
2. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.
3. Notices to the City of Minneapolis Public Works Department will be sent by certified mail to:

The Director of Traffic and Parking Services
350 South 5th Street – Room 203
Minneapolis, MN 55415

XV – Environmental

1. The user shall obtain a radio frequency interference study carried out by an independent professional radio frequency engineer ("RF Engineer") showing that the user's intended use will not interfere with the City's licensed and unlicensed communications facilities, which are located on or near the structure. The user shall not transmit or receive radio waves at the Premises until such evaluation has been satisfactorily completed and approved.
2. The user shall implement all measures at the transmission site required by FCC regulations. In the event the user causes the site to exceed FCC Radio Frequency radiation limits, as measured on the Premises, or otherwise violate FCC standards, the user shall be liable for all such non-compliance and shall defend, indemnify and hold the City harmless from all claims arising from non-compliance.

XVI – Casualty

In the event of damage to the City Owned Infrastructure or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the City Owned Infrastructure is damaged so that such damage may reasonably be expected to disrupt the user's operations at the Premises for more than forty-five (45) days, then the user may, at any time following such casualty, provided the City has not completed the restoration required to permit the user to resume its operation at the Premises, terminate upon fifteen (15) days prior written notice to the City as to such location. With any such notice of termination the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due. Notwithstanding the foregoing, the rent shall abate during the period of repair following such casualty in proportion to the degree to which the user's use of the Premises is impaired. The City is not liable for any damage to attachment(s) due to an event of damage to the pole or premises.