

CHAPTER 429. RIGHT-OF-WAY ADMINISTRATION*

***Editor's note:** Ord. No. 96-Or-125, § 1, adopted Nov. 22, 1996, repealed former Ch. 429, §§ 429.10--429.70, which pertained to permitted excavations and obstructions. Ord. No. 96-Or-126, § 1, adopted Nov. 22, 1996, added provisions designated as a new Ch. 429 to read as herein set out. See the Code Comparative Table.

429.10. Findings and purpose. In order to provide for the health, safety and well-being of its citizens, as well as to insure the structural integrity of its streets and the use of the public rights-of-way, the city strives to keep its public rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the public rights-of-way, a primary cause for the early and excessive deterioration of its public rights-of-way is their frequent excavation by persons whose equipment or facilities are located therein as well as patching and restoration activities by persons undertaking adjacent construction activities.

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Public right-of-way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel plans because of them. Persons whose equipment or facilities are located within the public right-of-way are the primary cause of these frequent obstructions.

The city recognizes that it holds the public rights-of-way within its geographical boundaries as an asset in trust for its citizens. The city and other public entities have invested millions of dollars in public funds to build and maintain the public right-of-way. It also recognizes that some persons, by placing their equipment or facilities in the public right-of-way and charging the citizens of the city for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property.

In response to the foregoing facts, the city hereby enacts new Chapters 429 and 430 of the Minneapolis Code of Ordinances relating to right-of-way permits and administration, together with an ordinance making necessary revisions to other Code provisions. These ordinances impose reasonable regulations on the placement and maintenance of equipment or facilities currently within its public rights-of-way or to be placed therein at some future time. Under these ordinances, persons disturbing and obstructing the public rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, these ordinances provide for recovery of out-of-pocket and projected costs from persons using the public rights-of-way. (96-Or-126, § 1, 11-22-96; 2000-Or-025, § 1, 4-21-00)

429.20. Definitions. The following definitions apply in both Chapters 429 and 430 of the Minneapolis Code of Ordinances, (hereafter, "Chapters 429 and 430" or "these ordinances"). References hereafter to "sections" are, unless otherwise specified, references to sections in the Minneapolis Code of Ordinances. Defined terms remain defined terms whether or not capitalized.

Abandoned facility means 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.

Applicant means any person requesting permission to excavate, disturb or obstruct a right-of-way.

City means the City of Minneapolis, Minnesota.

City management cost means the actual costs incurred by the city for public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; creating information and maintaining information on a Geographical Information System ("GIS") mapping system; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment or facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits and performing all of the other tasks required by Chapters 429 and 430, including other costs the city may incur in managing the provisions of this chapter.

City engineer means the city engineer, or the city engineer's designee.

Deleted: -director of the department of public works of the city

Congested right-of-way means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, Section 216D.04, Subd. 3, over a continuous length in excess of five hundred (500) feet.

Construction security means any of the following forms of security provided at the city engineer's option:

- (1) Individual project bond.
- (2) Cash deposit.
- (3) Security, of a form listed or approved under Minnesota Statutes, Section 15.73, Subd. 3.
- (4) Letter of credit, in a form acceptable to the city.
- (5) Self-insurance, in a form acceptable to the engineer.
- (6) 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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Degradation means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

Degradation cost means the cost to achieve a level of restoration as determined by the city engineer at the time the permit is issued. When applicable, the cost may not exceed the maximum restoration shown in plates 1 to 13, which are set forth in parts 7819.9900 to 7819.9950.

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Degradation fee means the estimated fee established at the time of permitting by the city engineer 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.

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

Disruptive cost is the penalty imposed as the result of the adverse impact on city citizens and others who are required to alter travel routes and times resulting from right-of-way obstructions. When applied to utility services, the disruptive cost is the delay penalty.

Downtown business district means that portion of the City of Minneapolis lying within and bounded by the following: On the east by the Mississippi River and Interstate 35W; on the south and west by Interstate 94; and on the north by Plymouth Avenue North.

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

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

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

Excavation permit means the permit which, pursuant to Chapters 429 and 430, must be obtained before a person may excavate a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

Excavation permit fee means money paid to the city by an applicant to cover the costs as provided in Chapter 430.

Facility or *facilities* means any tangible asset in the right-of-way.

Five-year project plan shows projects adopted by the city for construction within the next five (5) years.

High-density corridor means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

Local representative means the 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 Chapters 429 and 430.

Minnesota Rules means Minnesota Rules as published by the Revisor of Statutes as they existed on June 1, 1999 whether or not they are currently in force.

Obstruct means 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.

Obstruction permit means the permit which, pursuant to Chapters 429 and 430, must be obtained before a person may obstruct a right-of-way.

Obstruction permit fee means money paid to the city by a permittee to cover the costs as provided in Chapter 430.

Patch or *patching* means a method of pavement replacement that is temporary in nature. A patch consists of:

- (1) The compaction of the subbase and aggregate base.
- (2) The replacement, in kind, of the existing pavement for a minimum of two (2) 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 (5) year project plan.

Pavement means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under Chapter 429 or 430.

Person means an individual or entity, subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Examples include:

- a. A business or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier or utility, and any successor or assignee of any of them.
- b. A social or charitable organization.
- c. Any type or combination of political subdivision, which includes the executive, judicial, or legislative branch of the state, a local government unit, or a combination of any of them.

Probation means the status of a person that has not complied with the conditions of Chapters 429 and 430.

Probationary period means one year from the date that a person has been notified in writing that they have been put on probation.

Registrant means 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 any equipment or facilities located in the right-of-way.

Registration fee means money paid to the city to cover the cost associated with registration.

Restore or *restoration* means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before excavation.

Restoration cost means the amount of money paid to the city by a permittee to cover the cost of restoration.

Right-of-way or *public right-of-way* means the area in, on, below, or above a public roadway, highway, street, cartway, bicycle lane and 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 nonwire telecommunications or broadcast service.

Right-of-way permit means either the excavation permit or the obstruction permit, or both, depending on the context, required by Chapters 429 and 430.

Right-of-way user means:

- (1) A telecommunications right-of-way user as defined by Minnesota Statutes, Section 237.162, Subd. 4; or
- (2) A person owning or controlling a facility in the public right-of-way that is used or is 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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Service or *utility service* includes:

- (1) Those services provided by a public utility as defined in Minnesota Statutes 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 system as defined in Minnesota Statutes Chapter 238.
- (4) Natural gas or electric energy or telecommunications services provided by the city.
- (5) Services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A.
- (6) Water, sewer, steam, cooling or heating services.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 1, 8-8-97; 2000-Or-025, § 2, 4-21-00)

429.30. Administration. The city engineer of the department of public works shall be the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The city engineer may delegate any or all of the duties hereunder. (96-Or-126, § 1, 11-22-96)

429.40. Utility coordination committee. There is hereby created a utility coordination committee. This committee shall be voluntary and advisory to the city engineer. It may be composed of any registrants or other individuals that wish to assist the city in obtaining information and by making recommendations regarding ways to take greater responsibility for the right-of-way, and to improve the process of performing construction work therein. The city engineer shall determine the size of such committee, make all appointments to such committee,

and establish rules governing such committee. (96-Or-126, § 1, 11-22-96; 2000-Or-025, § 3, 4-21-00)

429.50. Registration and right-of-way occupancy. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or any equipment or facility located in the right-of-way, or who has, or seeks to have, equipment or facility located in any right-of-way must register with the city engineer. Registration will consist of providing application information as required by the city engineer and payment of any registration fee.

No person may construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or facility or any part thereof located in any right-of-way.

Nothing herein or in Chapter 430 shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens or in the area of right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter or Chapter 430. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 2, 8-8-98; 2000-Or-025, § 4, 2-1-2000)

429.60. Enforcement. Failure to comply with the provisions of this chapter may result in permit cancellation, administrative fines, restrictions, or penalties as provided in Chapters 2, 429 and 430 of this Code. (2003-Or-095, § 1, 7-11-03)

429.70. Registration information. The information provided to the city engineer at the time of registration shall include, but not be limited to:

- (1) Each registrant's name, Gopher State One-Call registration certificate number, address and e-mail 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 shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance acceptable to the city:
 - a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or is covered by self-insurance which provides the city with protections equivalent to that of a Minnesota licensed insurance company, legally independent from registrant.
 - b. Verifying that the registrant 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 registrant, its officers, agents, employees and permittees, and
 2. Placement and use of equipment or facilities in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property.
 - c. 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.
 - d. Requiring that the city engineer be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.

e. Indicating comprehensive liability coverage, automobile liability coverage and umbrella coverage, workers' compensation in amounts established by the director of the office of risk management in amounts sufficient to protect the city and carry out the purposes and policies of Chapters 429 and 430.

(4) If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statutes, Section 300.06 as recorded and certified by the secretary of state.

(5) 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.

The registrant shall keep all of the information listed above current at all times by providing to the city engineer information of changes within fifteen (15) days following the date on which the registrant has knowledge of any change. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 3, 8-8-97; 2000-Or-025, § 6, 4-21-00)

429.80. Reporting obligations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan with the city engineer. Such plan shall be submitted using a format designated by the city engineer and shall contain the information determined by the city engineer to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

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

(1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project").

(2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the four (4) years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year the city engineer will have available for inspection in its offices a composite list of all projects of which it has been informed in the annual plans. All registrants are responsible for keeping themselves apprised of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city engineer and all other registrants of all such changes in said list.

Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant that was listed by the other registrant.

Notwithstanding the foregoing, the city engineer may, for good cause shown, allow a registrant to submit additional next-year projects. Good cause includes, but is not limited to, the criteria set forth in Chapter 430 concerning the discretionary issuance of permits. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 4, 8-8-97; 2000-Or-025, § 7, 4-21-00)

429.90. Mapping data. Pursuant to the authority of Minnesota Rules, Part 7819.4000 and 7819.4100, each registrant and permittee shall provide mapping information as required by this chapter, when applicable to utility services.

Within six (6) months of the acquisition, installation, or construction of additional equipment or any relocation, abandonment, or disuse of existing equipment, each registrant shall supplement the mapping information required herein.

A person wishing to undertake a project within the public right-of-way shall submit a right-of-way permit application which contains the following information:

- (1) Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:
 - a. Offsets from property lines, distances from the centerline of public right-of-way, and the curb lines as determined by the city engineer.
 - b. Coordinates derived from the coordinate system being used by the city engineer.
 - c. Any other system agreed upon by the right-of-way user and the city engineer.
- (2) The type and size of the utility facilities.
- (3) A description showing above ground appurtenances.
- (4) A legend explaining symbols, character, abbreviations, scale and other data shown on the map.
- (5) Any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, Section 216D.04, Subd. 3.

The permittee shall submit "as built" drawings reflecting any subsequent changes and variations from the information provided under this section.

The right-of-way user is not required to provide or convey mapping information or data in a format or manner that is different from that which it currently utilizes and maintains. The right-of-way user shall, however, include the cost to convert the data furnished by the right-of-way user to a format currently in use by the city engineer as part of the permit application fee. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process is completed and shall be immediately due to the city upon the ascertainment of the cost and notice of the fee to the applicant. Any permit for which such fee has not been paid within thirty (30) days of notice from the city engineer may upon written notice be revoked. The city engineer shall not issue any other permits to the registrant related to any city right-of-way until such fee is paid.

At the request of the city engineer, a right-of-way user shall provide existing data on its existing facilities within the public right-of-way in the form maintained by the user at the time the request was made, if available.

At the request of any registrant, any information requested by the city engineer which qualifies as a "trade-secret" under Minnesota Statutes, Section 13.37(b) shall be treated as trade secret information as detailed therein. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 5, 8-8-97; 2000-Or-025, § 8, 4-21-00)

429.100. Location of facilities. (a) *Undergrounding*. Unless otherwise permitted by an existing franchise, Section 99.860 of the Minneapolis Code of Ordinances or Minnesota Statutes, Section 216B.36, or unless existing above-ground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

The city engineer may approve the above ground location and installation of the following if they do not create any unreasonable safety, maintenance, or aesthetic concerns, or conflict with the current use of the right-of-way. In approving the above ground locations, the city engineer shall consider the size of the proposed facility in relation to the proposed site.

- (1) New poles and new pole lines under six hundred (600) feet in length which do not conflict with existing or planned trees or other facilities.
- (2) New ancillary facilities and appurtenances to existing facilities, such as transformers, meters, junction boxes and splice boxes.

- (3) New junction boxes for existing underground utility service to individual locations and homes.
- (4) New communication towers, antennae, and related new facilities and appurtenances which have already received zoning and any other necessary approvals.
- (5) The repair or placement of existing above ground facilities with similar new facilities.
- (6) Any other new facilities which the city engineer has determined that, due to expense, nature, or function cannot be placed underground.

(b) *Locations.* The city engineer shall assign specific locations within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, that the city engineer expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city engineer involving the installation or replacement of facilities shall designate the proper corridor for the facilities.

(c) *Nuisance.* One year after the passage of this chapter, any equipment or facility found in a right-of-way that has 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 taking possession of the equipment or facilities and restoring the right-of-way to a useable condition.

(d) *Limitation of space.* The city engineer shall have the power to prohibit or limit the placement of new or additional facilities at specific locations within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the city engineer shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's 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 which have been determined to be in the public interest. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 6, 8-8-97; 2000-Or-025, § 9, 4-21-00; 2000-Or-061, § 1, 7-14-00)

429.110. Relocation of existing facilities. A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for convenience of the city, in connection with:

- (1) A present or future city use of the right-of-way for a public project;
- (2) The public health or safety; or
- (3) The safety and convenience of travel over the right-of-way.

Notwithstanding the foregoing, a right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 7, 8-8-97; 2000-Or-025, §§ 10, 11, 4-21-00)

429.120. Pre-excavation facility location. In addition to complying with the requirements of Minnesota Statutes, Section 216D.01-.09 ("One call excavation notice system") before the start date of any right-of-way excavation, each registrant who has facilities located in the area to be excavated shall be responsible to mark the horizontal placement of all said facilities. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of their facilities to excavators upon request. Nothing in this

subsection is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in Minnesota Statutes, Sections 216D.01-.09.

Any right-of-way user whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish and mark the exact horizontal and vertical location of its facility and the best procedure for excavation. (96-Or-126, § 1, 11-22-96; 2000-Or-025, § 12, 4-21-00; 2000-Or-061, § 2, 7-14-00)

429.130. Damage to other facilities. When the city engineer performs work in the right-of-way and finds it will be necessary to maintain, support, or relocate a person's facilities in order to protect them, the city engineer shall order such person to maintain, support or relocate their facilities and, upon failure of such person to comply with the order to maintain, support of relocate the facilities, the city engineer may assess the costs associated therewith that will be billed to that person and must be paid within thirty (30) days from the date of billing. Each person shall be responsible for the cost of repairing any equipment or facility in the right-of-way that it or its equipment or facilities damages.

Each person shall be responsible for the cost of repairing any damage to the equipment or facilities of another registrant person caused during the city's response to an emergency occasioned by that person's equipment or facilities. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 8, 8-8-97; 2000-Or-025, § 13, 4-21-00)

429.140. Right-of-way vacation. If the city vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's facilities, the city shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any equipment or facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

If the vacation requires the relocation of registrant facilities; and

- (1) If the vacation proceedings are initiated by the right-of-way user, the right-of-way user must pay the relocation costs; or
- (2) If the vacation proceedings are initiated by the city for a public project, the right-of-way-user must pay the relocation costs unless otherwise agreed to by the city and the right-of-way user.
- (3) If the vacation proceedings are initiated for the purpose of benefiting a person other than the right-of-way user, the benefitted person must pay relocation costs. (96-Or-126, § 1, 11-22-96; 2000-Or-025, § 14, 4-21-00)

429.150. Indemnification and liability. By reason of the acceptance of a registration or the grant of a right-of-way permit, the city does not assume any liability:

- (1) For injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city; or
- (2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment or facilities by registrants or activities of registrants.

By accepting a permit under Chapters 429 and 430, a registrant is required to defend, indemnify, and hold the city whole and harmless from liability or claims of liability for both bodily injury or death to persons, or for property damage, in which the claim:

- (1) Alleges a negligent or otherwise wrongful act or omission of the registrant or its employee, agent or independent contractor in installing, maintaining, or repairing its equipment or facilities, and alleges that the city is liable, without alleging any independent negligent, or otherwise wrongful act omission on the part of the city; or
- (2) Is based on the city's neglect or otherwise wrongful act or omission in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition, or purpose of the permit granted to the registrant.

The registrant further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the city for any claim nor for any award arising out of the presence, installation, maintenance or operation of its or facilities, or any activity undertaken in a public right-of-way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit.

The foregoing does not indemnify the city for its own negligence except for losses or claims occasioned by the negligent or otherwise wrongful act or omission of the city to the extent authorized in part (2) of this section regarding the issuance of a permit or the inspection or enforcement of compliance with the permit, or when otherwise provided in an applicable franchise agreement.

This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the city; and the registrant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf. (96-Or-126, § 1, 11-22-96; 97-Or-068, § 9, 8-8-97; 2000-Or-025, § 15, 4-21-00)

429.160. Future uses. In placing any equipment or facility, or allowing it to be placed, in the right-of-way, the city is not liable for any damages caused thereby to any registrant's equipment or facility that is already in place. No person is entitled to rely on the provisions of Chapter 429 or 430, and no special duty is created as to any person. Chapters 429 and 430 are enacted to protect the general health, welfare and safety of the public at large. (96-Or-126, § 1, 11-22-96; 2000-Or-025, § 16, 4-21-00)

429.170. 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 engineer that the registrant's obligations for its facilities in the right-of-way under this chapter and Chapter 430 have been lawfully assumed by another registrant or the city. (96-Or-126, § 1, 11-22-96; 2000-Or-025, § 17, 4-21-00)

429.175. Abandoned facilities. 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, or as otherwise required by law, unless this requirement is waived by the city engineer. (2000-Or-025, § 18, 4-21-00)

429.180. Reservation of regulatory and police powers. The city by the granting of a right-of-way permit, or by registering a person under section 429.50, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the city under the Constitution and statutes of the State of Minnesota and under the Charter of the City of Minneapolis to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a right-of-way permit or of registration under section 429.50

must agree that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the city pursuant to such powers.

Any conflict between the provisions of a registration or of a right-of-way permit and any other present or future lawful exercise of the city's regulatory or police powers shall be resolved in favor of the latter. (96-Or-126, § 1, 11-22-96)

429.190. Severability. If any section, subsection, sentence, clause, phrase, or portion of this chapter or Chapter 430 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under Chapters 429 and 430 or any portions of these chapters is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit, right or registration shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the city council to issue such revocable permit and the power to revoke it. (96-Or-126, § 1, 11-22-96)

429.200. Franchise holder exemption. In the instance of a person holding a franchise agreement with the city, and a conflict in language occurs between the franchise and Chapters 429 and/or 430, the conflict shall be resolved by honoring the terms of the franchise. Further, in the instance of a person holding a franchise agreement with the city, which provides for the payment of franchise fees to the city, such person shall be exempt from paying any other fees or costs except administrative fines as provided for in Chapter 2 and the disruptive cost as required by Chapter 430. (96-Or-126, § 1, 11-22-96; 2000-Or-025, § 19, 4-21-00; 2003-Or-095, § 2, 7-11-03)