

CHAPTER 430. RIGHT-OF-WAY PERMITS

430.10. Purpose. In order to provide for the health, safety and well-being of its populace as it uses the rights-of-way, as well as to ensure the structural integrity of its rights-of-way, the city desires to minimize the number of obstructions and excavations taking place thereon. The purpose of this chapter is to regulate obstructions of and excavations in the rights-of-way by providing, among other things, for the issuance of permits granting authority to obstruct or excavate therein and by providing for the subsequent restoration of the rights-of-way. The findings and purpose statement in Chapter 429 is hereby incorporated in and adopted as part of this chapter. (96-Or-127, § 1, 11-22-96)

430.20. Definitions. The definitions found in section 429.20 of the Minneapolis Code of Ordinances (hereinafter, "Code") apply to this chapter. (96-Or-127, § 1, 11-22-96)

430.30. Permit requirement. Except as otherwise provided in the Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permits from the city engineer to do so.

(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 equipment or facilities described therein, to the extent and for the duration specified therein.

(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 for the duration specified therein.

No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:

(1) Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit.

(2) A new permit or permit extension is granted.

Permits issued under this chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the city engineer. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 1, 8-8-97; 2000-Or-026, § 1, 4-21-00)

430.35. Enforcement. Failure to comply with 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-096, § 1, 7-11-03)

430.40. Permit applications. Application for a permit is made to the city engineer.

Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Registration with the city engineer pursuant to Chapter 429.

(2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities when applicable.

(3) Payment of all money due to the city for:

a. Permit fees and costs.

b. Prior obstructions or excavations.

c. Any loss, damage, or expense suffered by the city as a result of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city.

(4) The posting of ~~construction security~~. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 2, 8-8-97; 2000-Or-026, § 2, 4-21-00)

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430.50. Issuance of permit; conditions. If the city engineer determines that the applicant has satisfied the requirements of Chapters 429 and 430 the city engineer shall issue a permit. The city engineer may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public. (96-Or-127, § 1, 11-22-96; 2000-Or-026, § 3, 4-21-00)

430.60. Permit fees. (a) *Excavation permit fee*. The excavation permit fee shall be in an amount sufficient to recover the following costs, if applicable:

- (1) The city management cost.
- (2) The disruptive cost.
- (3) The mapping data cost.
- (4) The degradation cost.

(b) *Obstruction permit fee*. The obstruction permit fee shall be in an amount sufficient to recover the following costs, if applicable:

- (1) The city management cost.
- (2) The disruptive cost.
- (3) The mapping data cost.

(c) *Payment of permit fees*: No excavation permit or obstruction permit fee shall be issued without payment of excavation or obstruction permit fees.

(d) *Non refundable*: Permit fees that were paid for a permit that the city engineer has revoked for a breach of these chapters are not refundable.

(e) *Application to franchisees*: Unless otherwise agreed to in a franchise, city management costs shall be charged separately from and in addition to the franchise fees imposed on a right-of-way user.

(f) *Permit fees*: All permit fees, pursuant to Chapters 429 and 430, shall be proposed by the city engineer and established from time to time by city council resolution.

(96-Or-127, § 1, 11-22-96; 97-Or-069, § 3, 8-8-97; 2000-Or-026, § 4, 4-21-00)

430.65. Delay penalty. ~~The city engineer shall impose a delay penalty for unreasonable delays in the right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be proposed by the city engineer as established from time to time by city council resolution, and shall be in accordance with Minnesota Rules, Section 7819.1000 Subd. 3 when applicable.~~ (2000-Or-026, § 5, 4-21-00)

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430.70. Right-of-way patching and restoration. The work to be done under the 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 permittee or when work was prohibited as unseasonable or unreasonable under this chapter. In addition to patching its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the

Comment [h1]: This word is defined in MCO Chapter 429; it should sufficiently cover all scenarios.

work. The permittee must ensure compliance with this section by inspecting the area of the work before commencement and following completion of all work performed under the permit.

In its application for an excavation permit, the permittee may indicate a preference either to have the city restore the right-of-way or to restore the right-of-way itself. The city retains the right of first refusal for all or any portion of restoration work within the right of way.

(1) *City restoration.* If the city restores all or any portion of the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing.

(2) *Permittee restoration.* If the city foregoes its right of first refusal under this section and the permittee restores all or any portion of the right-of-way itself, permittee shall at the time of application of an excavation permit post construction security. If, following such restoration by permittee, the pavement settles due to defective work, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.

When performing any work in the right of way, the permittee shall act according to the standards of and shall utilize the materials specified by the city engineer. The city engineer shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The city engineer in exercising this authority shall be guided by Minnesota Rule 7819.1100, when applicable.

Methods of restoration may include, but are not limited to, patching, replacement of the right-of-way base, and milling and overlay of the entire area of the right-of-way affected by the work.

The permittee shall correct defects in patching or restoration performed by the permittee or its agents upon notification from the city engineer, and correct all restoration work to the extent necessary using the method required 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 was prohibited as unseasonable or unreasonable pursuant to chapter 429 and 430.

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 restorations required by the city engineer, the city engineer, at his or her option, may do such work at the expense of permittee and/or the city engineer may pursue collection of any construction security required under this chapter.

In lieu of right-of-way restoration the city engineer may impose 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. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 4, 8-8-97; 2000-Or-026, § 6, 4-21-00)

430.80. Joint applications. Registrants are encouraged to make joint application for permits to excavate or obstruct the right-of-way at the same place and time. Registrants who join in a scheduled obstruction or excavation performed by the city engineer, whether or not it is a joint application by two (2) or more registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee. Registrants who apply for permits for the same obstruction or excavation, which is not performed by the city engineer, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves

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as to the portion each will pay and indicate the same on their applications. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 5, 8-8-97)

430.90. Supplementary applications. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may perform any work outside the area specified in the permit, except as provided herein. Any permittee who 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 necessitated thereby.
- (2) Be granted a new permit or permit extension.

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 make application 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 approved before the permit end date. (96-Or-127, § 1, 11-22-96; 2000-Or-026, § 7, 4-21-00)

430.100. Other obligations. 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 any other city or other applicable rule, law or regulation.

A permittee shall comply with all requirements of local, state and federal laws, including Minnesota Statutes, Sections 216D.01-.09 ("One Call Excavation Notice System").

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 performs the work.

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

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 may not be parked within or adjacent to a permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit. (96-Or-127, § 1, 11-22-96; 2000-Or-026, § 8, 4-21-00)

430.110. Denial of permit. (a) *Mandatory denial.* Except in the case of an emergency, no right-of-way permit will be granted:

- (1) To any person required to be registered who has not done so.
- (2) To any person required to file an annual report but has failed to do so.
- (3) For any next-year project not listed in the construction and major maintenance plan required under chapter 429, reporting obligations, except that a permit will not be denied when the right-of-way user has used commercially reasonable efforts to anticipate and plan for the project.
- (4) For any project which requires the excavation of any portion of a right-of-way which was constructed or reconstructed within the preceding five (5) years.
- (5) To any person who has failed within the past three (3) years to comply, or is presently not in full compliance, with the requirements of Chapters 429 and 430.

(6) To any person who has outstanding debt owed to the city that is in arrears, due, owing, and unpaid.

(7) To any person as to whom there exists grounds for the revocation of a permit under chapter 430.

(b) *Permissive denial.* The city engineer may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, would cause a conflict or interfere with an exhibition, celebration, festival, or any other event, or when necessary to protect the right-of-way and its users. The city engineer, at the city engineer's discretion, may consider one or more of the following factors:

(1) The extent to which right-of-way space where the permit is sought is available.

(2) The competing demands for the particular space in the right-of-way.

(3) The availability of other locations in the right-of-way or in other rights-of-way for the equipment facilities of the permit applicant.

(4) The applicability of ordinance or other regulations of the right-of-way that affect location of facilities in the right-of-way.

(5) The degree of compliance of the applicant with the terms and conditions of its franchise, Chapters 429 and 430, and other applicable ordinances and regulations.

(6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way.

(7) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction.

(8) The balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.

(c) *Discretionary issuance.* Notwithstanding the provisions of sections 430.110(3) and 430.110(4), the city engineer may issue a permit in any case where the permit is necessary (a) to prevent substantial economic hardship to a customer of the permit applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow a new economic development project and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when it was required to submit its list of next year projects.

(d) *Permits for additional next-year projects.* Notwithstanding the provisions this chapter, the city engineer may issue a permit to a registrant who was allowed under Chapter 429 to submit an additional next-year project, such permit shall be subject to all other conditions and requirements of law, including such conditions as may be imposed under chapter 430. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 6, 8-8-97; 2000-Or-026, § 9, 4-21-00)

430.115. Appeal. A right-of-way user that:

(1) has been denied registration;

(2) has been denied a permit;

(3) has had a permit revoked; or

(4) believes that the fees imposed are invalid,

may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness for the decision.

(2000-Or-026, § 10, 4-21-00)

430.120. Installation requirements. The excavation, backfilling, patching restoration, and all other work performed in the right-of-way shall be done in conformance with specifications as

promulgated by the city engineer, Minnesota Rules 7819.1100 and 7819.5000 when applicable, and at a location required by this code. (96-Or-127, § 1, 11-22-96; 2000-Or-026, § 11, 4-21-00)

430.130. Inspection. When the work under any permit hereunder is completed, the permittee shall submit a completion certificate to the city engineer at the time the project is completed, including any and all testing results and supporting documents generated to meet the requirements of restoration established by the city engineer. The completion statement, signed by a person designated by the right-of-way user as a responsible employee, shall show the completion date for the work performed, identify the installer and designer of record, and certify that the work was completed according to the requirements of the city engineer.

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Permittee shall make the work site available to the city engineer and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.

At the time of inspection, the city engineer may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The city engineer may issue an order to the permittee for any work that does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the 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. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 7, 8-8-97; 2000-Or-026, § 12, 4-21-00)

430.140. Work done without a permit. (a) *Emergency situations*. Each registrant shall immediately notify the city engineer or the city engineer's designee of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. Within two (2) business days after the occurrence of the emergency, the registrant 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 Chapters 429 and 430 for the actions it took in response to the emergency. In the event that the city engineer becomes aware of an emergency regarding a registrant's equipment or facilities, the city engineer may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city engineer may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose equipment or facilities occasioned the emergency. (b) *Non-emergency situations*. Except in the case of an emergency, any person who obstructs or excavates a right-of-way without a permit must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by the Code, deposit with the city engineer the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of Chapters 429 and 430. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 8, 8-8-97; 2000-Or-026, § 13, 4-21-00)

430.150. 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. If the obstruction of a right-of-way is of a shorter duration than that estimated on the permit application, the city engineer will, upon request, refund or credit to the permittee a proportionate amount of the permit fee. (96-Or-127, § 1, 11-22-96; 97-Or-069, § 9, 8-8-97)

430.160. Revocation of permits. Registrants hold permits issued pursuant to the Code as a privilege and not as a right. The city reserves its right, as provided herein, to revoke any right-of-way permit, without fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any 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 evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration 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 maintain the required construction security and/or insurance;
- (5) The failure to complete the work in a timely manner; or
- (6) The failure to correct a condition indicated on an order issued pursuant to this Chapter.

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If the city engineer 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 the city engineer shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the city engineer, at the city engineer's discretion, to place additional or revised conditions on the permit.

Within twenty-four (24) hours of receiving notification of the breach, permittee shall contact the city engineer with a plan, acceptable to the city engineer, for its correction. Permittee's failure to so contact the city engineer, 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. Further, permittee's failure to so contact the city engineer, or the permittee's failure to submit an acceptable plan, or permittee's failure to implement the approved plan, shall automatically place the permittee on probation for one full year.

From time to time, the city engineer may establish a list of conditions of the permit, if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit. If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

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. (96-Or-127, § 1, 11-22-96; 2000-Or-026, § 14, 4-21-00)

430.170. Non-exclusive remedy. The remedies provided in this chapter and in Chapter 429 and other chapters in the Code are not exclusive or in lieu of other rights and remedies that the city may have at law or in equity. The city is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public rights of way, including damages to the rights of way, whether or not caused by a violation of any of the provisions of this chapter or other provisions of the Code. (96-Or-127, § 1, 11-22-96)