

**City of Roseville
ORDINANCE NO. 1661**

AN ORDINANCE AMENDING

TITLE 7, CHAPTER 707

**AMENDING TITLE 7, CHAPTER 707 OF THE ROSEVILLE CITY CODE TO
CLARIFY PERMIT AND RESTORATION REQUIREMENTS
FOR WORK DONE IN THE RIGHT-OF-WAY**

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1: Title 7, Section 707.02 of the Roseville City Code is amended to read as follows:

707.02: DEFINITIONS:

The following definitions apply in this Chapter. References hereafter to "sections" are, unless otherwise specified, references to sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

APPLICANT: Any person requesting permission to excavate or obstruct a right of way.

BUSINESS DISTRICT: That portion of the City lying within and bounded by the following streets: to be subsequently designated.

CITY: The City of Roseville, Minnesota. For purposes of Section 707.28 of this Chapter, City means its elected officials, officers, employees and agents.

COLLOCATE or COLLOCATION: To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit. (~~Ord. 1549, 4-9-2018~~)

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

DEGRADATION COST: The cost to achieve a level of restoration as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in proposed PUC rules parts 7819.9900 to 7819.9950.

DEGRADATION FEE: The estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right of way caused by the excavation, and which equals the degradation costs.

DELAY PENALTY: The penalty imposed as a result of unreasonable delays in right-of-way construction.

DEPARTMENT: The Department of Public Works of the City.

DEPARTMENT INSPECTOR: Any person authorized by the Director to carry out inspections related to the provisions of this Chapter.

DIRECTOR: The Director of the Department of Public Works of the City, or her or his designee.

EMERGENCY: A condition that: a) poses a clear and immediate danger to life or health, or of a significant loss of property; or b) requires immediate repair or replacement in order to restore service to a customer.

EQUIPMENT: Any tangible asset used to install, repair, or maintain facilities in any right of way.

EXCAVATE: to dig into or in any way remove or physically disturb or penetrate any part of a right of way.

EXCAVATION PERMIT: The permit which, pursuant to this Chapter, must be obtained before a person may excavate in a right of way. An excavation permit allows the holder to excavate that part of the right of way described in such permit.

EXCAVATION PERMIT FEE: Money paid to the City by an applicant to cover the costs as provided in Section 707.11 of this Chapter.

FACILITY OR FACILITIES: Any tangible asset in the right of way required to provide utility service.

LOCAL REPRESENTATIVE: A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter.

MANAGEMENT COSTS: The actual costs the City incurs in managing its rights of way, including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; creating, maintaining and updating mapping systems; budget analysis; systems analysis; legal assistance; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; and revoking right-of-way permits and performing all other tasks required by this Chapter, including other costs the City may incur in managing the provisions of this Chapter.

MICRO WIRELESS FACILITY: a small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches. (Ord. 1549, 4-9-2018)

OBSTRUCT: to place any 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: The permit which, pursuant to this Chapter, must be obtained before a person may obstruct a right of way, allowing the holder to hinder free and open passage over the specified portion of that right of way by placing equipment described therein on the right of way for the duration specified therein.

OBSTRUCTION PERMIT FEE: Money paid to the City by a registrant to cover the costs as provided in Section 707.11 of this Chapter.

PATCH OR PATCHING: A method of pavement replacement that is temporary in nature. A patch consists of: a) the compaction of the subbase and aggregate base, and b) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's five-year project plan.

PERFORMANCE AND RESTORATION BOND: A performance bond or letter of credit posted to ensure the availability of sufficient funds to assure that all obligations pursuant to this Chapter, including, but not limited to, right-of-way excavation, restoration, and obstruction work is timely and properly completed.

PERMITTEE: Any person to whom a permit to excavate or obstruct a right of way has been granted by the City under this Chapter.

PERSON: Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

PROBATION: The status of a person that has not complied with the conditions of this Chapter.

PROBATIONARY PERIOD: One year from the date that a person has been notified in writing that they have been put on probation.

REGISTRANT: Any person who: a) has or seeks to have its equipment or facilities located in any right of way, or b) in any way occupies or uses, or seeks to occupy or use, the right of way or any equipment in the right of way.

RESTORATION COST: An amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of PUC rules.

RESTORE OR RESTORATION: The process by which a right of way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

RIGHT OF WAY: The surface and space above and below a public roadway, highway, street, cartway, bicycle and public sidewalk in which the City has an interest, including County and State right-of-way and other dedicated rights of way for travel purposes, utility easements along rear lot lines paralleling and adjacent to public roadway, except those along front lot lines and any other real property owned by or under the control of the City. (Ord. 1549, 4-9-2018)

RIGHT-OF-WAY PERMIT: Either the excavation permit or the obstruction permit, or both, depending on the context, required by this Chapter.

SERVICE OR UTILITY SERVICE: Includes, but is not limited to: a) those services provided by a public utility as defined in Minnesota Statutes section 216B.02, subdivisions 4 and 6; b) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; c) the services provided by a corporation organized for the purposes set forth in Minnesota Statutes section 300.03; d) the

services provided by a district heating or cooling system; and e) cable communications systems as defined in Minnesota Statutes chapter 238; and f) a telecommunications right-of-way user as defined below; and g) water and sewer, including service laterals, steam, cooling or heating services. (~~Ord. 1333, 3-13-2006~~)

SERVICE LATERAL: means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises. (~~Ord. 1333, 3-13-2006~~)

SMALL WIRELESS FACILITY: a wireless facility owned and operated by an approved telecommunications right-of-way user that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and (ii) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, in an enclosure no more than 28 cubic feet in volume or enclosures totaling 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment. (~~Ord. 1549, 4-9-2018~~)

SUPPLEMENTARY APPLICATION: An application made to excavate or obstruct more of the right of way than allowed in, or to extend, a permit that had already been issued.

TELECOMMUNICATION RIGHT-OF-WAY USER: A entity, which directly provides and offers wireless service to the general public, owning or controlling a facility in the right of way, or seeking to own or control a facility in the public right of way that is used or is intended to be used for providing wireless services, or transporting telecommunication or other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under Minnesota Statutes chapter 238, and telecommunication activities related to providing natural gas or electric energy services are not included in this definition, except to the extent such entity is offering wireless service. This definition shall not be inconsistent with Minn. Stats. §237.162, subd. 4. (~~Ord. 1549, 4-9-2018~~)

UNUSABLE FACILITIES: Facilities in the right of way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve months or a potential purchaser or user of the equipment. (~~Ord. 1209, 8-24-1998~~)

UTILITY POLE: a pole that is used in whole or in part to facilitate telecommunications or electric service. (~~Ord. 1549, 4-9-2018~~)

WIRELINE BACKHAUL FACILITY: a facility used to transport communications data by wire from a wireless facility to a communications network. (~~Ord. 1549, 4-9-2018~~)

WIRELESS FACILITY: equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network. Including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline

backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna. (~~Ord. 1549, 4-9-2018~~)

WIRELESS SERVICE: any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934 as amended, including cable service. (~~Ord. 1549, 4-9-2018~~)

WIRELESS SUPPORT STRUCTURE: a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city. (~~Ord. 1549, 4-9-2018~~)

SECTION 2: Title 7, Section 707.09 of the Roseville City Code is amended to read as follows:

707.09: PERMIT APPLICATIONS:

- A. General Requirements: Application for a permit is made to the Director. 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 Director pursuant to this Chapter;
 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 known existing and proposed facilities;
 3. Payment of all money due to the City for:
 - a. Permit fees, estimated restoration costs and other management costs;
 - b. Prior obstructions or excavations;
 - c. Any outstanding fee, penalty, undisputed loss, damage, or expense suffered by or owed to the City by applicant including those caused by ~~because of~~ applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the City;
 - d. Franchise or user fees, if applicable.
 4. Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
 5. Satisfaction of all outstanding orders issued on similar permits held by or issued to the applicant.
- B. Additional Equipment: When an excavation permit is requested for purposes of installing additional equipment, and the performance and restoration bond presently existing is insufficient with respect to the additional equipment, in the sole discretion of the Director, the posting of an additional performance and restoration bond for the additional equipment may be required in accordance with subsection 707.05A of this Chapter. (~~Ord. 1209, 8-24-1998~~)

SECTION 3: Title 7, Section 707.12 of the Roseville City Code is amended to read as follows:

707.12: RIGHT-OF-WAY REPAIR AND RESTORATION:

- A. Timing: The work to be done under the excavation permit, and the patching and/or restoration of the right of way as required herein, must be completed within the dates specified in the permit. The time may be extended by the Public Works Director who may increase such time increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee, as determined by the Director, or by as many days that when work was prohibited as unseasonal or unreasonable under Section 707.15(B) of this Chapter.
- B. Patch and Restoration: ~~Permittee shall patch its own work.~~ The City has the right to ~~may~~ choose either to restore the right of way or to require have the permittee restore the right of way or to restore the right of way itself. Regardless of which party restores the right of way, the permittee is responsible to provide sufficient backfill in the excavated area to support the restoration.
1. City Restoration: If the City restores the right-of-way, permittee shall pay the costs ~~thereof within 30 days of billing of such restoration together with permit fee.~~ Restoration fees are established annually in the fee schedule. If, during the 36 months following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within 30 days of billing, all costs associated with having to correct the defective work. Upon any failure to pay, the City shall refund its cost through the restoration bond.
 2. Permittee Restoration: If the permittee restores the right of way itself, ~~it shall at the time of application for an excavation permit, if the Director determines additional security is necessary, post an additional performance and restoration bond in an amount determined by the Director to be sufficient to cover the cost of restoration. If, and~~ 36 months after completion of the restoration of the right of way, the Public Works Director determines that the right of way has been properly restored, the surety on the performance and restoration bond posted pursuant to this subsection shall be released. During the 36 months following such restoration, all costs associated with having to correct the defective work shall be funded cost through the restoration bond.
- C. Standards: The permittee shall perform patching and restoration according to the standards and with the materials specified by the Public Works Director. The Public Works Director 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 Public Works Director in exercising this authority shall be guided by the following considerations:
1. The number, size, depth and duration of the excavations, disruptions, or damage to

the right of way;

2. The traffic volume carried by the right of way; the character of the neighborhood surrounding the right of way;
 3. The pre-excavation condition of the right of way; the remaining life expectancy of the right of way affected by the excavation;
 4. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right of way that would otherwise result from the excavation, disturbance, or damage to the right of way; and
 5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right of way that would otherwise take place.
- D. ~~Guarantees: By choosing to restore the right of way itself~~ If the city requires the permittee to restore the right of way, the permittee guarantees its work and shall maintain it for 36 months following its completion. During this ~~36-month~~ 36-month period it shall, upon notification from the Public Works Director, correct all restoration work to the extent necessary, using the method required by the Public Works Director. Said correction work shall be completed within five calendar days of the receipt of the notice from the Public Works Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 707.15 of this Chapter.
- E. Failure to Restore: If the permittee fails to restore the right of way in the manner and to the condition required by the Public Works Director or fails to satisfactorily and timely complete all restoration required by the Public Works Director, the Public Works Director at its option may do such work. In that event the permittee shall pay to the City, within 30 days of billing, the cost of restoring the right of way. If permittee fails to pay as required, the City may exercise its rights under the restoration bond.
- F. ~~Degradation Fee In Lieu of Restoration: In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching, and the degradation fee shall not include the cost to accomplish these responsibilities. (Ord. 1209, 8-24-1998~~

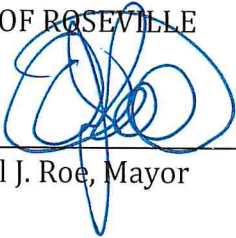
SECTION 4: Effective date. This ordinance shall take effect upon its passage and publication.

Passed by the City Council of the City of Roseville this 26th day of _____ 2024.

Ordinance – AN ORDINANCE AMENDING TITLE 7, SECTION 707 OF THE ROSEVILLE CITY CODE REGULATING PUBLIC WAYS AND PUBLIC PROPERTY

(SEAL)

CITY OF ROSEVILLE

BY: 
Daniel J. Roe, Mayor

ATTEST:


Patrick Trudgeon, City Manager