

CITY OF GRANT
WASHINGTON COUNTY, MINNESOTA
ORDINANCE 2019-59

An Ordinance Amending the Grant Code of Ordinances
Amending Chapter 28 Streets, Sidewalks and Other Public Places

The City Council of the City of Grant, Washington County, Minnesota, does hereby ordain as follows:

SECTION 1. AMENDMENT OF CHAPTER 28, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, OF THE CITY’S CODE OF ORDINANCES.

That City Code Chapter 28 is hereby amended to ADD the following:

Article V. Small Wireless Facilities

Section 28-79. Findings, Purpose, and Intent

The purpose of this Article is to establish specific requirements for obtaining a Small Wireless Facility Permit for the installation, mounting, maintenance, modification, operation, and replacement of Small Wireless Facilities and installation or replacement of Wireless Support Structures by Commercial Wireless Providers on public and private property, including in the Public Right-of-Way. Where this ordinance is inconsistent with Article IV of this Chapter, pertaining only to Small Wireless Facilities as defined herein, the rules and regulations contained in this Article shall be enforced.

This Article does not apply to any Wireline Facilities, including Wireline Backhaul Facilities. A Wireless Provider must obtain a right-of-way permit pursuant to Article IV, Chapter 28 or other applicable authorization.

Section 28-80. Definitions.

Applicant means any person, group or company that has applied for a permit to excavate or obstruct a right-of-way.

City means the City of Grant, Minnesota, its elected officials, officers, employees and agents.

Collocate or *Collocation* means to install, mount, maintain, modify, operate, or replace a Small Wireless Facility on, under, within, or adjacent to an existing Wireless Support Structure that is owned privately or by the City.

Decorative Pole means a Utility Pole owned, managed, or operated by or on behalf of the City or any other governmental entity that: (a) is specifically designed and placed for an aesthetic purpose; and (b)(i) on which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than: (A) a Small Wireless Facility, (B) a specialty designed informational or directional sign; or (C) a temporary holiday or special event attachment; or (b)(ii) on which no appurtenance or attachment has been placed, other than: (A) a Small Wireless Facility, (B) a specialty designed informational or directional sign; or (C) a temporary holiday or special event attachment.

Director means the City Engineer of the City, or his or her designee.

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

Micro Wireless Facility means a Small Wireless Facility that is no larger than twenty-four (24) inches long, fifteen (15) inches wide, and twelve (12) inches high, and whose exterior antenna, if any, is no longer than eleven (11) inches.

Permitee means a person, group, company, or similar that has been granted a Small Wireless Facility Permit by the City.

Small Wireless Facility means: (a) a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment associated with the Small Wireless Facility, excluding 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, in aggregate no more than twenty eight (28) cubic feet in volume; or (b) a Micro Wireless Facility.

Small Wireless Facility Permit (Permit) means a permit issued by the City authorizing the installation, mounting, maintenance, modification, operation, or replacement of a Small Wireless Facility or installation or replacement of a Wireless Support Structure in addition to Collocation of a Small Wireless Facility on the Wireless Support Structure.

Utility Pole means a pole that is used in whole or in part to facilitate telecommunications or electric service. It does not include a traffic signal pole.

Wireless Facility means equipment at a fixed location that enables the provision of Wireless Service between user equipment and a wireless service network, including a) equipment associated with Wireless Service; b) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and c) a Small Wireless Facility. Wireless Facility does not include: a) Wireless Support Structures; b) Wireline Backhaul Facilities; or c) Coaxial or fiber-optic cables (i) between utility Poles or Wireless Support Structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

Wireless Provider means a provider of Wireless Service, including, but not limited to, radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates and/or terminates on the public switched network or its functional equivalent, regardless of the radio frequencies used.

Wireless Service means 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 a cable service under United States Code, title 47, section 522, clause (6).

Wireless Support Structure means a new or existing structure in a Public Right-of-Way designed to support or capable of supporting Small Wireless Facilities, including, but not limited to, a Utility Pole or a building, as reasonable determined by the City.

Wireline Backhaul Facility means a facility used to transport communications data by wire from wireless facility to a communications network.

Section 28-81. Administration

The City Engineer, Director, is the principal city official responsible for the administration of the Small Wireless Permit and the ordinances related thereto. The City Engineer may delegate any or all of the duties hereunder.

Section 28-82. Permit Requirement and Application.

(a) *Permit Required.* A Small Wireless Facility Permit is required, in addition to any required right-of-way permits, to excavate the right-of-way, to place Small Wireless equipment or facilities in or on the right-of-way, or to obstruct or otherwise hinder free and open passage over the right-of-way. The Small Wireless Facility permit shall specify the extent and the duration of the work permitted, and the conditions which vary from those of a standard right-of-way permit.

(b) *Complete Application.* A form of Application will be provided to the Applicant, and such form must be complete prior to any permit being issued. To the extent possible, Consolidated Applications pursuant to the following section shall be permitted.

(c) *Consolidated Application.* A Wireless Provider may apply for up to 15 Small Wireless Facility Permits in a Consolidated Application, provided all Small Wireless Facilities in the Consolidated Application are located within a two-mile radius, consist of substantially similar equipment, and are to be Collocated on similar types of Wireless Support Structures. The City shall review a Consolidated Application as allowed by this Article. If necessary, the applied for Small Wireless Facility Permits in a Consolidated Application may be approved or denied individually, but the City may not use the denial of one or more permits as a basis to deny all Small Wireless Facility Permits in a Consolidated Application. Any Small Wireless Facility Permits denied in a Consolidated Application shall be subject to a single appeal.

Section 28-83. General Standards for Small Wireless Facilities and Wireless Support Structures.

General Standards. The Director shall establish and maintain a set of standards for the installation, mounting, maintenance, modification, operation, or replacement of Small Wireless Facilities and placing new or replacement Wireless Support structures in the Public Right-of-way applicable to all Permittees under this section (the "General Standards"). The General Standards shall include, but not be limited to, information to be required in a Small Wireless Facility Permit Application, design and aesthetic standards, construction standards, a form Application, permitting conditions, insurance and security requirements, and Rates and Fees.

(a) *Design and Aesthetic Standards.* Any design standards established by the Director shall be: (a) reasonable and nondiscriminatory, and (b) include additional installation and construction details that do not conflict with this Article, or Article IV, of this Chapter, including, but not limited to, a

requirement that: (i) an industry standards pole load analysis be completed and submitted to the City indicating that the Wireless Support Structure to which the Small Wireless Facility is to be attached will safely support the load, and (ii) Small Wireless Facility equipment on new and existing Wireless Support Structures be placed higher than fifteen (15) feet above ground level. The Director shall additionally include the following in any design standards established under this Section:

- i. Any Wireless Support Structure installed in the Public Right-of-Way after May 31, 2017 may not exceed fifty (50) feet above ground level, unless the City agrees to a greater height, subject to local zoning regulations, and may be subject to separation requirements in relation to other Wireless Support Structures.
- ii. Any Wireless Support Structure replacing an existing Wireless Support Structure that is more than fifty (50) feet above ground level may be placed at the height of the existing Wireless Support Structure, unless the City agrees to a greater height, subject to zoning regulations.
- iii. Wireless Facilities constructed in the Public Right-of-Way after May 31, 2017 may not extend more than ten (10) feet above an existing Wireless Support Structure in place as of May 31, 2017.
- iv. And reasonable accommodations for a decorative pole.

(b) *Construction Standards.* Any construction standards established by the Director shall include at least the following terms and conditions:

- i. *Compliance with Applicable Law.* To the extent this requirement is not preempted or otherwise legally unenforceable, a Permittee shall comply with all Applicable Law and applicable industry standards.
- ii. *Prevent Interference.* A Permittee shall Collocate, install, and continuously operate any authorized Small Wireless Facilities and Wireless Support Structures in a manner that prevents interference with other Wireless Facilities and other facilities in the Right-of-Way and the operation thereof. With appropriate permissions from the City, a Permittee shall, as is necessary for the safe and reliable operation and maintenance of its facilities, maintain landscaping and trees as prescribed by standards promulgated by the City.
- iii. *Other Rights not Affected.* A Permittee shall not construe a contract, permit, correspondence, or other communication from the City as affecting a right, privilege, or duty previously conferred or imposed by the City to or on another person.
- iv. *Restoration.* Restoration shall be completed in compliance with the standards as specified within Article IV Right-of-Way of this Chapter.
- v. *Permittee's Liability.* A Permittee is solely responsible for the risk and expense of the Collocation of the Permittee's Small Wireless Facility and installing or replacing the Permittee's Wireless Support Structure. The City neither warrants nor represents that any area within the Public Right-of-Way is suitable for such Collocation or installation or replacement. A Permittee shall accept the Public Right-of-Way "as is" and "where is" and assumes all risks related to any use. The City is not liable for damage to Small Wireless Facilities due to an event of damage to a Wireless Support Structure in the Public Right-of-Way.

Section 28-84. Permit Application Review Process.

An Application shall be eligible for review if the Application conforms to the General Standards adopted by the Director. A Small Wireless Facility Permit issued pursuant to any Application processed hereunder shall authorize: (1) the installation, mounting, modification, operation, and replacement of a

Small Wireless Facility in the Public Right-of-way or City-owned property; or (2) construction of a new, or replacement of an existing, Wireless Support Structure, and Collocation of a Small Wireless Facility on a Wireless Support Structure.

(a) *Review Process.* An Application submitted pursuant to this Section shall be review as follows:

- i. *Submission of Application.* Applicant shall submit a complete Application accompanied by the appropriate application fee as set forth in Section 28-86. Prior to submitting a Small Wireless Facility Permit Application, an Applicant shall inspect any Wireless Support Structure on which it proposed to Collocate a Small Wireless Facility and determine, based on a structural engineering analysis by a Minnesota registered professional engineer, the suitability of the Wireless Support Structure for the proposed Collocation. The structural engineering analysis shall be submitted to the City with the Application, and shall certify that the Wireless Support structure is capable of safely supporting the proposed Small Wireless Facility considering conditions at the proposed location, including the condition of the Public Right-of-Way, hazards from traffic, exposure to wind, snow and/or ice, and other conditions affecting the proposed Small Wireless Facility that may be reasonably be anticipated.
- ii. *Application Review Period.* The City shall, within sixty (60) days after the date of a complete Application issue or deny a Small Wireless Facility Permit pursuant to the Application. The City shall within ninety (90) days after the date a complete Application for a new or replacement Wireless Support Structure in addition to the Collocation of a Small Wireless Facility is submitted to the City, issue or deny a Small Wireless Facility Permit pursuant to the Application. If the City receives applications within a single seven-day period from one or more Applicants seeking approval of a Small Wireless Facility Permit for more than thirty (30) Small Wireless Facilities of ten (10) Wireless Support Structures, the City may extend the ninety (90) day review period of this Article by an additional thirty (30) days. IF the City elects to invoke this extension, it must inform in writing any Applicant to whom the extension will be applied.
- iii. *Completeness Determination.* The City shall review a Small Wireless Facility Permit Application for completeness following submittal. The City shall provide a written notice of incompleteness to the Applicant within ten (10) days of receipt of the Application, clearly and specifically identifying all missing documents or information. If an Applicant fails to respond to the City's notice of incompleteness within ninety (90) days, the Application shall be deemed expired and no Small Wireless Facility Permit shall be issued. Upon an Applicants submittal of additional documents or information in response to a notice of incompleteness, the City shall within ten (10) days of submission notify the Applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not identified in the original notice of incompleteness.
- iv. *Reset and Tolling of Review Period.* In the event that a Small Wireless Facility Permit Application is incomplete, and the City has provided a timely and complete written notice of incompleteness, then the applicable review period shall be reset, pending the time between when a notice is mailed and the submittal of information in compliance with the notice. Subsequent notices shall toll the applicable review

period. An Applicant and the City can mutually agree in writing to toll applicable review period at any time.

- v. *Permit Not Required.* A Permittee shall provide thirty (30) days advance written notice to the City, but shall not be required to obtain a Small Wireless Permit, or pay an additional Small Wireless Facility Permit fee for:
 - a. Routine maintenance;
 - b. The replacement of a Small Wireless Facility with a Small Wireless Facility that is substantially similar to or smaller in size; or
 - c. The installation, placement, maintenance, operation, or replacement of a Micro Wireless Facility that is strung on a cable between existing Utility Poles, in compliance with the National Electrical Safety Code.

Section 28-85. Issuance of Permit; Conditions.

(a) *Permit Issuance.* If the Applicant has satisfied the requirements of this Article V the City shall issue a permit.

(b) *Conditions.* The City may impose reasonable conditions upon the issuance of the Small Wireless Permit and the performance of the Applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. Additional conditions may address:

- i. Reasonable accommodations for a Decorative Pole;
- ii. Any reasonable restocking, replacement, or relocation requirement when a new Wireless Support Structure is placed in the Public Right-of-Way;
- iii. Construction of the proposed Small Wireless Facility within six (6) months from the date the Small Wireless Facility Permit is issued;
- iv. Obtaining additional authorization for use of the Public Right-of-Way for the construction of Wireless Backhaul Facilities or any other wired facilities;
- v. Compliance with applicable sections of Article IV of this Chapter, and other applicable City Code;
- vi. Compliance with Applicable Law.

(c) *Authorized Use.* An approval of a Small Wireless Facility Permit under this Section authorizes the Collocation of a Small Wireless Facility on an existing Wireless Support Structure to provide Wireless Services, or the installation or replacement of a Wireless Support Structure and Collocation of a Small Wireless Facility, and shall not be construed to confer authorization to:

- i. Provide any service other than Wireless Service;
- ii. Construct, install, maintain, or operate any Small Wireless Facility or Wireless Support Structure in a Right-of-Way other than the approved Small Wireless Facility or Wireless Support Structure; or
- iii. Install, place, maintain or operation a Wireline Backhaul facility in the Right-of-Way

(d) *Other Permits Required.* Any Applicant desiring to obstruct or perform excavation in a Public Right-of-Way within the City for purposes of Collocating a Small Wireless Facility or installing or replacing a Wireless Support Structure shall, consistent with Article IV of this Chapter, obtain the necessary permit from the City prior to conducting such activities.

(e) *Exclusive Arrangement Prohibited.* The City shall not enter into an exclusive arrangement with an Applicant for use of a Public Right-of-Way for the Collocation of a Small Wireless Facility or for the installation or operation of a Wireless Support Structure.

(f) *Unauthorized Small Wireless Facility.* No Applicant shall install, mount, modify, operate, or replace a Small Wireless Facility in the Public Right-of-Way or on City-owned property, or install or replace a Wireless Support Structure without first obtaining a Small Wireless Facility Permit

from the City. If the City determines that any activity has occurred without the required permit the procedures set forth in Article IV pertaining to removal shall be followed.

(g) *Relocation.* The City may require a Permittee to relocate or modify a Small Wireless Facility or Wireless Support Structure in a Public Right-of-Way or on City-owned property in a timely manner and at the Permittee's cost if the City determines that such relocation or modification is required to protect public health, safety and welfare, or to prevent interference with other facilities authorized pursuant to this Article and Article IV of this Chapter, or to prevent interference with public works projects of the City.

(h) *Security Required.* Each Permittee shall submit and maintain with the City a bond, cash deposit, or other security acceptable to the City, in a form and amount determined by the City in accordance with the General Standards, securing the faithful performance of the obligations of the Permittee and its agents under any and all Small Wireless Facility Permits issued to the Permittee under this Article. If, in accordance with this Article, the City deducts an amount from such security, the Permittee must restore the full amount of the security prior to the City's issuance of any subsequent Small Wireless Facility Permit. The City shall return or cancel the security, less any fees necessary to restore the Right-of-Way and the City owned appurtenances to an acceptable condition to the Director, should the Permittee cease to operate any Small Wireless Facility in the Right-of-Way.

(i) *Insurance Required.* Each Permittee shall maintain in full force and effect, throughout the term of a Small Wireless Facility Permit, an insurance policy or policies issued by an insurance company satisfactory to the City. Such insurance shall be required to meet the requirements as stated within Article IV of this Chapter.

(j) *Payment of Fees Required.* A Small Wireless Facility Permit shall not be issued prior to the complete payment of all applicable Fees.

(k) *Notice of Assignment Required.* A Permittee upon or within ten (10) calendar days after transfer, assignment, conveyance, or sublet of an attachment that changes the permit and/or billing entity or ownership responsibilities shall provide written notification to the City.

(l) *Term.* A Small Wireless Facility Permit for a Small Wireless Facility in the Public Right-of-Way shall have a term equal to the length of time that the Small Wireless Facility in use, unless the Small Wireless Facility Permit is revoked under this Article or is otherwise allowed to be limited by Applicable Law. The term for all other Small Wireless Facility Permits shall be for a period of up to ten (10) years.

(m) *Revocation.* The City may revoke a Small Wireless Facility Permit, with or without refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule, regulation, or any material condition of the Small Wireless Facility Permit. Substantial Breach and the process of Revocation shall follow the applicable sections contained within Article IV of this Chapter.

(n) *Written Notice Required.* Any denial or revocation of a Small Wireless Facility Permit shall be made in writing and shall document the basis for the denial or revocation. If a Small Wireless Facility Permit Application is denied, the Applicant may cure the deficiencies identified by the City and submit its Application. If the Applicant resubmits the Application within thirty (30) days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The City must approve or deny the revised application within thirty (30) days after the revised application is submitted. If a Small Wireless Facility Permit or a Wireless Support Structure Permit is revoked, the Small Wireless Facility or Wireless Support Structure shall be subject to removal.

Section 28-86. Permit Fee.

(a) *Fee Schedule and Fee Allocation.* The City's permit fees shall be designed to recover the City's actual costs and shall be based on an allocation among all users of the right-of-way, including the City.

(b) *Permit Fee Amount.* The City shall charge a fee for reviewing and processing a Small Wireless Facility Permit Application. The purpose of this fee is to enable the City to recover its costs directly associated with reviewing a Small Wireless Facility Permit Application

(1) The City shall charge a fee of \$500 for a Small Wireless Facility Permit Application seeking to Collocate up to five (5) Small Wireless Facilities. This fee shall increase by \$100 for each additional Small Wireless Facility that an Applicant seeks to Collocate.

(2) The City shall charge a fee of \$1,000 for a Small Wireless Facility Permit Application seeking to install or replace a Wireless Support Structure in addition to Collocating of a Small Wireless Facility on the Wireless Support Structure.

(3) Commencing on January 1, 2020 the City shall adjust the Application Fees annually by the consumer price index for the Minneapolis-St. Paul area.

(c) *Payment of Permit Fees.* No permit shall be issued without payment of permit fees. The City may allow an applicant to pay such fees within thirty (30) days of billing. Permit fees paid for a permit that the City has revoked for a breach are not refundable.

(d) *Annual Small Wireless Permit Fee.* The City shall charge an Annual Small Wireless Permit Fee for each Small Wireless Facility Permit issued to a Permittee. The Annual Small Wireless Permit Fee shall be determined by the City and listed in the City's Fee Schedule. The Annual Small Wireless Permit Fee shall be based upon the recovery of the City's right-of-way management costs.

(e) *City-owned Wireless Support Structure Fees.* The City shall charge the following fees to the owner of any Small Wireless Facility Collocated on a Wireless Support Structure owned by the City or its assigns located in the Public Right-of-Way:

(1) \$150 per year for rent to occupy space on the Wireless Support Structure;

(2) \$25 per year for maintenance associated with the space occupied on the Wireless Support Structure; and

(3) A monthly fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, at the rate of:

i. \$73 per radio node less than or equal to 100 max watts;

ii. \$182 per radio node over 100 max watts; or

iii. Actual costs of electricity, if the actual costs exceed the above.

(f) *Discretion to Require Additional Fees.* In instances where the review of a Small Wireless Facility Permit Application is or will be unusually costly to the City, the Director, in his or her discretion, may require an Applicant to pay a sum in excess of the other fee amounts charged pursuant to this Article. This additional sum shall be sufficient to recover the actual, reasonable costs incurred by the City and/or other regulatory reviewers, in connection with a Small Wireless Facility Permit Application and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director, upon request, shall provide in writing the basis for the additional fees and an estimate of the additional fees. The City may not require a fee imposed under this Chapter through the provision of in-kind services by an Applicant as a condition of consent to use the City's Public Right-of-Ways or to obtain a Small Wireless Facility Permit.

(g) *Reimbursement of City Costs.* The City may determine that it requires the services of an expert in order to evaluate a Small Wireless Facility Permit Application. In such cases, the City shall not issue a Small Wireless Facility Permit pursuant to the Application unless the Applicant agrees to reimburse the City for the actual, reasonable costs incurred for the services of a technical expert.

Section 28-87. Denial of Permit.

The City may deny a permit for failure to meet the requirements and conditions of this Article, to protect the public health, safety, and welfare, or to protect the right-of-way and its current use. Such denial shall be provided in writing and will delineate all reasons for such denial.

Section 28-89. Inspection.

(a) *Notice of completion.* When the work under any permit hereunder is completed, the Permittee shall furnish a completion certificate in accordance with Minnesota Rule 7819.1300.

(b) *Site Inspection.* The Permittee shall make the work site available to the City for inspection at all reasonable times during the execution of and upon completion of the work. The City may inspect, at any time, a Permittee’s Collocation of Small Wireless Facility or installation or replacement of a Wireless Support Structure. The City shall determine during an inspection whether the Permittee’s Small Wireless Facility or Wireless Support Structure is in accordance with the requirements of the Small Wireless Facility Permit and other Applicable Law.

(c) *Authority of Director.* The Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, or order the Permittee to correct work that does not conform to the terms of the Permit or other applicable standards, conditions, or code. If the work failure is a “substantial breach” within the meaning of Minnesota Statute 237.163 subd. 4(c), the order shall state the failure to correct the violation will be cause for revocation of the permit after a specified period determined by the Director. The Permittee shall present proof to the Director that the violation has been timely corrected. If the violation is not timely corrected, the Director may revoke the Permit.

Section 28-90. Mapping Data.

Each right-of-way user and Permittee shall provide mapping information in a form required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Section 28-91. Right-of-Way Vacation.

If the City vacates a right-of-way that contains the facilities of a right-of-way user, the right-of-way user’s rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

Section 28-92. Indemnification and Liability.

By accepting a permit under this Article, a right-of-way user or Permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

Section 28-93. Abandoned and Unusable Facilities.

(a) *Discontinued Operations.* A right-of-way user who has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the right-of-way user’s obligations for its facilities in the right-of-way under this Article have been lawfully assumed by another right-of-way user.

(b) *Removal.* Any right-of-way user 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, unless this requirement is waived by the City.

Section 28-94. Appeal.

A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; or (3) believes that the fees imposed are not in conformity with Minnesota Statute 237.163, Section 410.06 may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing.

Section 28-95. Reservation of Regulatory and Policy Powers.

A Permittee's or right-of-way user's rights are subject to the regulatory and police power authority of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Section 28-96. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Article V is for any reason held invalid or unconstitutional by any court, regulatory body 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.

Section 28-97. Penalty.

Any person, group or company violating any provision of this Article V, or any permit or order issued hereunder, shall, upon conviction thereof, be guilty of a misdemeanor punishable in accordance with Section 2-102 of the City Code.

SECTION 2. SEVERABILITY.

In the event that court of competent jurisdiction adjudges any part of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included within that judgment.

SECTION 3. EFFECTIVE DATE.

This ordinance takes effect upon its adoption and publication according to law.

WHEREUPON, a vote, being taken upon a motion by Council member Rob and seconded by Council member Kaup, the following upon roll call:

Voting AYE: Rog, Kaup, Carr, Giefer and Mayor Huber

Voting NAY: None

Whereupon said Ordinance was declared passed adopted this 2nd day of April, 2019.

Jeff Huber, Mayor

Attest: Kim Points, City Clerk