

ORDINANCE NO. 2010-6

AN ORDINANCE REGULATING THE USE OF CITY RIGHT-OF-WAY

Adopted by City of Baxter Council on May 4, 2010

The City Council of the City of Baxter, in the County of Crow Wing, State of Minnesota, does ordain as follows:

SECTION 1. Title 7 is hereby amended by adding the following section 7-4.

CHAPTER 4

RIGHT-OF-WAY MANAGEMENT

SECTION:

- 7-4-1: Findings Purpose and Intent
- 7-4-2: Election to Manage the Public Rights-of-Way
- 7-4-3: Definitions
- 7-4-4: Administration
- 7-4-5: Registration and Right-of-Way Occupancy
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- 7-4-7: Permit Requirement
- 7-4-8: Permit Applications
- 7-4-9: Issuance of Permit; Conditions
- 7-4-10: Permit Fees
- 7-4-11: Right-of-Way Patching and Restoration
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7-4-1: **FINDINGS, PURPOSE, AND INTENT:** To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this new chapter of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out of pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

7-4-1: **ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY:** Pursuant to the authority granted to the City under state and federal statutory, administrative and common law, the City hereby elects, pursuant to Minn. Stat. § 237.163, subd. 2(b) to manage rights-of-way within its jurisdiction.

7-4-2: **DEFINITIONS:** The following definitions apply to this chapter of this code. References hereafter to “sections” are, unless otherwise specified, references to sections in this chapter. 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.

APPLICANT: means any person requesting permission to excavate or obstruct a right-of-way.

CITY: means the City of Baxter, Minnesota. “City” also means its elected officials, officers, employees, and agents.

COMMISSION: means the State Public Utilities Commission.

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 § 216D.04 subd. 3. over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND: means any of the following forms of security provided at permittee’s option:
A. Cash deposit;
B. Irrevocable letter of credit in a form acceptable to the city:

DEPARTMENT: means the department of public works of the city.

DEPARTMENT INSPECTOR: means any person authorized by the city to carryout inspections related to the provisions of this chapter.

DIRECTOR: means the director of the department of public works of the city, or her or his designee.

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.

EMERGENCY: means a condition that (1) poses a danger to life or health or of a significant loss of

property or (2) requires immediate repair or replacement of facilities in order to service a customer.

EQUIPMENT:

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

EXCAVATE:

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

FACILITY or FACILITIES:

means any tangible asset in the right-of-way required to provide Utility Service.

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.

HOLE:

means an excavation in the pavement with the excavation having a length less than the width of the pavement.

LOCAL REPRESENTATIVE:

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

MANAGEMENT COSTS:

means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during 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. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way the fees and costs of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to this chapter.

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.

PATCH or PATCHING:

means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the sub-base and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

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.

PERMIT:

has the meaning given “right-of-way permit” in Minnesota Statutes Section 237.162.

PERMITTEE:

means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

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.

PUBLIC RIGHT-OF-WAY:	means the area on below or above a public roadway, highway, street, cartway, bicycle lane or 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. Public right-of-way includes outlots, parks, and drainage and utility easements.
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 place its facilities or equipment in the right-of-way.
RESTORE or RESTORATION:	means the process by which an excavated right-of-way and surrounding area including pavement foundation sidewalk and trail is returned to the condition in the City of Baxter’s most recent revision of the Public Works Policy Manual
RESTORATION COST:	means the amount of money paid to the city by a permittee to achieve the level of restoration according to the City of Baxter’s most recent revision of the Public Works Policy Manual.
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 right-of-way that is used or 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.
SERVICE or UTILITY SERVICE:	includes (1) those services provided by a public utility as defined in Minn. Stat. 21613.02 subd. 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 systems as defined in Minn. Stat. 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 Minn. Stat., Chapter 308A; and (6) water, and sewer, including service laterals, steam, cooling or heating services.

SERVICE LATERAL:

means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, water, or sanitary sewer from a common source to an enduse customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer premises.

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.

TEMPORARY SURFACE:

means the compaction of sub-base and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation.

TRENCH:

means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

**TELECOMMUNICATION
RIGHT-OF-WAY USER:**

means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a

public utility as defined in Minn. Stat. Sec. 21613.02 a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way-users for purposes of this chapter.

7-4-4: **ADMINISTRATION:** The director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

7-4-5: **REGISTRATION AND RIGHT-OF-WAY OCCUPANCY:**

- A. Registration: Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.
- B. Registration Prior to Work: No person may construct, install, repair, remove, relocate, or perform any other work on or use any facilities or any part thereof, in any right-of-way without first being registered with the city.
- C. Exceptions: This Title shall not regulate landowners working within the right-of-way adjacent to their lot. See Title 7-5 for regulation of said landowners. This Title shall not regulate contractors connecting to city sanitary sewer and water lines to privately owned structure. See Title 3-14-11 registration requirements. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. Chap. 2161), Gopher One-Call Law.

7-4-6: **REGISTRATION INFORMATION:**

- A. Information Required: The information provided to the city at the time of registration shall include, but not be limited to:
 - 1. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee 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.

2. Each registrant's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
3. A certificate of insurance:
 - 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 acceptable to the city; and
 - 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 (i) use and occupancy of the right-of-way by the registrant its officers agents, employees and permittees, and (ii) placement and use of facilities and equipment 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; and
 - c. Naming the city as a 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; and
 - d. Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and
 - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage. The limits of the coverage shall not be less then \$1,000,000.
3. The city will require a copy of the actual insurance policies.
4. If the person is a corporation a copy of the certificate is required to be filed under Minn Stat 300.06 as recorded and certified to by the Secretary of State.
5. The registrant shall submit a cash deposit or irrevocable letter of credit in the amount of \$10,000 to the City of Baxter. The security is to insure compliance with the approved plan.
6. 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.

- B. Notice of Changes: The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

7-4-7: **PERMIT REQUIREMENT:**

- A. Permit Required: Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.
 - 1. Permit: A permit is required by a registrant to excavate or directionally bore 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 facilities described therein, to the extent and for the duration specified therein.
- B. Permit Extensions: No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.
- C. Permit Display: Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.
- D. Exceptions:
 - 1. This Title shall not regulate landowners working within the right-of-way adjacent to their lot. See Title 7-5 for regulation of said landowners. This Title shall not regulate contractors connecting to city sanitary sewer and water lines to privately owned structure. See Title 3-14-1 registration requirements. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. Chap. 2161), Gopher One-Call Law.
 - 2. Since the following list of activities is routine and typically non-intrusive, the utility providers need not apply for a permit. However, said providers will still be registered as set forth above and any damage to the right-of-way shall be repaired by the provider or the City may use the cash deposit or letter of credit to make said repairs in their behalf. List of activities that shall not require a permit:
 - a. Tree trimming within the right-of-way.
 - b. Street light bulb or pole replacement or other routine maintenance to existing street lights or other above grade transformers and inverters.

7-4-8: **PERMIT APPLICATIONS:** Application for a permit is made to the city.

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

- A. Registration with the city pursuant to this chapter.
- B. Submission of 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.
- C. Payment of money due the city for:
 - 1. permit fees, estimated restoration costs, and other management costs;
 - 2. prior obstructions or excavations;
 - 3. any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
 - 4. Franchise fees or other charges if applicable;
 - 5. Posting an additional or larger irrevocable letter of credit and/or cash deposit for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing Irrevocable letter of credit and/or cash deposit inadequate under applicable standards.

7-4-9: **ISSUANCE OF PERMIT; CONDITIONS:**

- A. Permit Issuance: If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.
- B. Conditions: The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.
- C. Notice: The applicant must provide ten day written notice to any landowners lying adjacent to any permitted work. Mailed notice to the address used for tax purposes as shown at City Hall shall suffice for notice.

7-4-10: **PERMIT FEES:**

- A. Permit Fee: The city shall establish a Permit fee in an amount sufficient to recover the following costs:

1. the city management costs;
 2. city labor and engineering costs.
- B. Payment of Permit Fees: No permit shall be issued without full payment of the permit fees.
- C. Non Refundable: Permit fees that were paid for a permit that the city has revoked for a breach are not refundable. Permit fees should be not refunded if permittee cancels permit.
- D. Application to Franchises: Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

7-4-11: **RIGHT-OF-WAY PATCHING AND RESTORATION:**

- A. Timing: The work to be done under the 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 the permittee.
- B. Patch and Restoration: Permittee shall patch and restore its own work. The city may choose to restore the right-of-way itself if the work is not completed in accordance with the deadlines outlined in the permit.
1. City Restoration: If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling and compaction, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.
 2. Permittee Restoration: If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post an irrevocable letter of credit and/or cash deposit.
- C. Standards: The permittee shall perform excavation backfilling, patching and restoration in accordance to the City of Baxter's Public Works Policy Manual and City Code 8-5.
- D. Duty to Correct Defects: The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of

circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.

- E. Delay Penalty: The city shall establish and impose delay penalty for unreasonable delays in right-of-way patching or restoration. The delay penalty shall be established from time to time by city council resolution.
- F. Failure to Restore: If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event, the permittee shall pay to the city, within thirty (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 to collect from the cash deposit and/or irrevocable letter of credit.

7-4-12: **JOINT TRENCH APPLICATIONS:**

- A. Joint application: Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- B. Shared fees: Registrants who apply for permits for the same excavation, which the city does not perform, may share in the payment of the permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- C. With city projects: Registrants, who join in a scheduled excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the permit fee, but a permit would still be required.

7-4-13: **SUPPLEMENTARY APPLICATIONS:**

- A. Limitation on Area: A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.
- B. Limitation on Dates: 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 apply for a new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

7-4-14:

OTHER OBLIGATIONS:

- A. Compliance With Other Laws: 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 the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. 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 does the work.
- B. Prohibited Work: Except in an emergency or the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. Interference with Right-of-way: 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 of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- D. Trenchless Excavation: As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

7-4-15:

DENIAL OF PERMIT: The city may deny a permit for failure to meet the requirements and conditions of this chapter or if work is not completed on a previous permit issued to the same applicant, or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

7-4-16:

INSTALLATION REQUIREMENTS: The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.110 and the City of Baxter's Public Works Policy Manual, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject

to those requirements and conditions set forth by the city in the applicable permits and/or agreements.

7-4-17: **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: Permittee shall make the worksite available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

- C. Authority of Director:
 - 1. At the time of inspection 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.

 - 2. The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other 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 director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit.

7-4-18: **WORK DONE WITHOUT A PERMIT:**

- A. Emergency Situations: Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. 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 this chapter for the actions it took in response to the emergency. If the city becomes aware of an emergency regarding a registrant facilities the city will attempt to contact the local representative of each registrant affected or potentially affected by the emergency In any event the city may take whatever action it deems necessary to respond to the emergency the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

- B. Non Emergency Situations: Except in an emergency any person who without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently

obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the city code, deposit with the city the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter.

7-4-19: **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 of the accurate information as soon as this information is known.

7-4-20: **REVOCAION OF PERMITS:**

A. **Substantial Breach:** The city reserves its right as provided herein to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation or any material 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; or
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; or
3. Any material misrepresentation of fact in the application for a right-of-way permit; or
4. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by the City.

B. **Written Notice of Breach:** If the city 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 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. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

C. **Response to Notice of Breach:** Within twenty-four (24) hours of receiving notification

of the breach, permittee shall provide the city with a plan, acceptable to the city that will cure the breach. Permittees failure to so contact the city, or permittee's failure to timely 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, or 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 (1) full year.

- D. Cause for Probation: From time to time, the city may establish a list of conditions of the permit, which 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 authorization.
- E. Automatic Revocation: 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.
- F. Reimbursement of city costs: 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 attorney's fees incurred in connection with such revocation.

7-4-21: **MAPPING DATA:**

- A. Information Required: Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder registration.
- B. Service Laterals: All permits issued for the installation or repair of service laterals other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittees of appropriate means of establishing the horizontal locations of installed service use laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31 2005 shall be a condition of any city approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes Chapter 429 and 2) city approval of performance under development agreements or other subdivision or site

plan approval under Minnesota Statutes Chapter 462. The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service lateral installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

7-4-22:

LOCATION AND RELOCATION OF FACILITIES:

- A. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- B. Corridors: The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

- C. Limitation of Space: To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city 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.

7-4-23:

PRE EXCAVATION FACILITIES LOCATION:

In addition to complying with the requirements of Minn. Stat. 216D-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

7-4-24: **DAMAGE TO OTHER FACILITIES:** When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. If the registrant does not maintain support or move the facilities at the city request and the city maintain, support or move the facilities the costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

7-4-25: **RIGHT-OF-WAY VACATION:**

A. Reservation of right: If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

7-4-26: **INDEMNIFICATION AND LIABILITY:** By registering with the city or by accepting a permit under this chapter a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

7-4-27: **ABANDONED AND UNUSEABLE FACILITIES:**

A. 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 that the registrant obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

B. Removal: 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 unless this requirement is waived by the city.

7-4-28: **APPEAL:** A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6; or (5) disputes a determination of the director regarding the denial, revocation, fee imposition, or decision reviewed, upon written request, by the city council. The written request shall be filed with the city within ten (10) days after the notice, order, or determination for which review is sought has been mailed to or served upon the person requesting review. upon receipt of the petition, the city administrator shall set a date for the hearing and give the petitioner at least five (5) days' prior written notice of the date, time, time, and place of the hearing. At the hearing, the petitioner shall

be given an opportunity to show cause why the notice, order, or determination should be modified or withdrawn. The hearing shall be conducted by the city council or its authorized representative and it shall make written finding of fact and conclusions based upon the applicable section of the city code. A decision by the city council or its authorized representative may affirm, reverse, revocation or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

7-4-29: **SEVERABILITY:** If any portion of this chapter is for any reason held invalid by any court, 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. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant as allowed by law in addition to requirements set forth herein.

SECTION 2. Title 10-3J as set forth below is hereby deleted in its entirety.

~~ARTICLE J. T TRANSPORTATION DISTRICT~~

~~10-3J-1: PERMITTED USES:~~

~~No structure or land shall be used except for one or more of the following uses to provide for and regulate:~~

~~—Landscaping and screening to increase the aesthetic appearance and minimize the visual and sound effects of transportation corridors on surrounding land uses.~~

~~—Nonmotorized recreation and walking trails and rights of way.~~

~~—Public roads and rights of way.~~

~~—Public safety through information signs, warning and traffic management structures, and landscaping.~~

~~—Railroads and railroad rights of way.~~

~~—Seasonal and year around motorized recreation vehicle trails and rights of way.~~

~~—Utility use of public rights of way for roads, railroads and trails. (Ord. 8, 12-17-1996)~~

~~10-3J-2: CONDITIONAL USES:~~

~~No structure or land shall be used for one or more of the following uses except by~~

~~conditional use permit:~~

~~—Crude oil, gasoline, or other liquid storage tanks.~~

~~—Essential service structures, including, but not limited to, buildings such as telephone exchange stations, booster or pressure regulating stations, wells, pumping stations, elevated tanks, lift stations and electrical power substations, provided no building shall be located within fifty feet (50') of any lot line of an abutting lot in an R district.~~

~~—Any activity which emits smoke darker than shade no. 3 on the Ringelmann chart. (Ord. 2003-2, 8-5-2003)~~

~~10-3J-2-1: INTERIM USES:~~

~~Open storage (primary or secondary use).~~

~~Storage areas, borrow pits and equipment staging. (Ord. 2003-2, 8-5-2003)~~

~~10-3J-3: PERFORMANCE STANDARDS:~~

~~Applicants for construction permits in the T transportation district shall submit such evidence as may be required by the building inspector to assure compliance with the performance standards. Should the zoning administrator have any doubt as to the ability of any proposed use to meet the required standards, the matter shall be referred to the planning and zoning commission who shall make a recommendation to the council who shall then grant or deny the application. (Ord. 8, 12-17-1996; amd. 2002 Code)~~

~~10-3J-4: ACCESSORY USES:~~

~~No accessory structure or use of land shall be permitted except for one or more of the following uses:~~

~~Off street parking and loading as regulated in this title.~~

~~Signs as regulated by section [10-5-1](#) of this title. (Ord. 8, 12-17-1996; amd. Ord. 8.38, 9-18-2001)~~

SECTION 3. Title 10-3-10 as set forth below is hereby deleted in their entirety.

~~10-3-10: TRANSMISSION AND PIPELINES:~~

~~All pipelines, electrical transmission lines over thirty kilovolts (30 kV) and underground electrical lines shall require a conditional use permit in all zoning districts. (Ord. 8, 12-17-1996)~~

SECTION 4. Title 10-5-1 A(1) is hereby amended by deleting the current section and inserting the following in lieu thereof:

~~1. Private Signs Prohibited: Private signs are prohibited within the public right of way, public easements or on public property. This provision would include election and realtor signs. Garage sale signs, family event signs, open house signs and auction signs are permitted in the public right of way as long as they comply with subsection A9 of this section. Nameplates on or near a residential mailbox shall be permitted as long as the nameplate does not exceed five feet (5') in height.~~

1. Private Signs Prohibited: Private signs are prohibited within the public right of way, public easements or on public property. With a written limited use agreement with the City, signs may be allowed in the right of way if the City, in its sole discretion, determines that the sign does not disturb necessary sight lines, prevent right of way maintenance and other uses necessary to a public right of way. This provision would include election and realtor signs. Garage sale signs, family event signs, open house signs and auction signs are permitted in the public right of way as long as they comply with subsection A9 of this section. Nameplates on or near a residential mailbox shall be permitted as long as the nameplate does not exceed five feet (5') in height.

SECTION 5. Title 7 is hereby amended by adding the following section 7-5.

A. Landowners shall not be required to register to work within the right-of-way as set forth in Title 7-4. Work within in the right-of-way by landowners shall be regulated as follows:

1. Signs. The regulation of signs within the right-of-way shall be as set forth in Title 10-5-1.
2. Staking. Landowners may not install stakes within the right-of-way to obstruct snowplows, car traffic or for any other use. Instead, landowners may ask the City to install such stakes and the City, in its sole discretion, may install stakes where it sees fit to protect the turf within the right-of-way.
3. Mailboxes. See City of Baxter's most recent revision of the Public Works Policy Manual.
4. Lawns and sprinkler systems. Landowners may install and maintain lawn and lawn sprinklers within the right-of-way without permit or City review. However, the City, in its sole discretion, may have to disturb or damage said lawn or sprinkler system from time to time to properly maintain the right-of-way or enable necessary utility use within the right-of-way. Landowners install such lawns and sprinklers systems at their own risk and shall not have a claim against the City or any utility, working within its rights under a properly issued City permit, for the destruction or disturbance of lawns or sprinkler systems within the right-of-way.
5. Trees.

a. Trees planted within the right-of-way prior to the adoption of this ordinance may remain, subject to the ongoing right of the City to either trim or remove said tree if, in the City's sole discretion, the tree is obstructing sight lines or hindering utilities.

b. Trees may be planted after the passage of this ordinance, but only upon application and acceptance of a landscape plan and with a written limited use agreement with the City

6. Nuisances within the right-of-way. See Title 4-1-4.

7. Parking. For Off-Street parking regulations, see Title 10-5-2. For parking within the right-of-way, see Title 6-2.

8. Access to City Streets. See Title 10-4-6.

9. Stormwater Ponds. Stormwater retention requirements as set forth in Title 10 and 11 may be satisfied by using ponding within the right-of-way. However, such ponding may only be allowed in the sole discretion of the City by resolution and written limited use agreement after a finding that the location of the pond, with proper conditions, will not unreasonably threaten adjacent use of the street or trails located nearby.

10. Landscaping, Structures and Fences. No landscaping rocks, fences or other structures shall be allowed within the right-of-way unless specifically authorized by the City and with a written limited use agreement with the City.

11. Rain Gardens. As with tree plantings as set forth above, rain gardens may be installed within the right-of-way upon application and acceptance by the City and with a written limited use agreement with the City.

12. Street Lights. See Title 8-6.

13. Nonconforming structures or uses now in the right-of-way. Nonconforming uses or structures within the right-of-way after the passage of this ordinance shall apply for an after the fact variance or application as set forth in this Chapter or shall be considered a public nuisance as set forth in paragraph C. below.

B. Written Limited use Agreement. For City approval of any use or structure within the right-of-way as listed above, the applicant shall submit an application to the Utilities Commission for approval. Plan submittals shall be as set forth for landscape plans in Title 10-4-4C.2. Any applicable fees shall be as set forth in the annual fee schedule.

C. Penalty. Any work done or remaining in the right-of-way after the passage of this ordinance and in violation thereof shall be declared a public nuisance and remedied as set forth in Title 4-1.

SECTION 6. This ordinance shall be in full force and effect upon its passage and publication according to law.

Passed by the Baxter City Council on May 4, 2010.

Darrel Olson
Its Mayor

ATTEST:

Beva Olson
City Clerk

Published in the Brainerd Daily Dispatch on _____.
Recorded at the Crow Wing Recorder's Office on _____.

THIS DOCUMENT DRAFTED BY:

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