The City of Brookfield Common Council do ordain as follows:

PART I. Chapter 12.15 is hereby created to read:

Chapter 12.15 Excavation and Placement of Facilities in the City Right-of-Way

Sections:
12.15.010 Findings, Purpose, and Applicability
12.15.020 Administration.
12.15.030 Definitions.
12.15.040 Non-discrimination.
12.15.050 Designation of Corridors and Limitation of Space.
12.15.060 Removal and Relocation.
12.15.070 Restoration.
12.15.080 Storage and Disposal of Property.
12.15.090 Interference with Other Facilities during Municipal Construction.
12.15.100 Abandonment.
12.15.110 Emergency Notification.
12.15.120 Public Records.
12.15.130 Record Retention.
12.15.140 Penalty.

12.15.010 Findings, Purpose, and Applicability.

In the exercise of its police powers, the City has priority over all other uses of the right-of-way. The purpose of Chapters 12.15, 12.16, 12.17, 12.18, and 12.19 is to provide the City with a process for managing and uniform standards for acting upon requests for the placement of facilities within the right-of-way consistent with the City’s obligation to promote the public health, safety, and welfare; to manage the right-of-way and its structural integrity; and to ensure that the public’s use is not obstructed or
incommoded by the use of the right-of-way for placement of facilities. The provisions of this Chapter are applicable to any registration, excavation, or facilities placement in the right-of-way.

12.15.020 Administration.

The City Engineer and his/her designee are responsible for the administration of Chapters 12.15, 12.16, 12.17, 12.18, and 12.19.

12.15.030 Definitions.

The definitions set forth in Sections 12.16.010 and 12.17.010 of this Code apply to this Chapter.

12.15.040 Non-discrimination.

In establishing the rights, obligations, and conditions set forth in Chapters 12.15, 12.16, 12.17, 12.18, and 12.19, the City’s intent is to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

12.15.050 Designation of Corridors and Limitation of Space.

A. Corridors.

1. The City Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or will be placed within the right-of-way in the future. All permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the City Engineer’s assignment.

2. Any person 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 person.

B. Limitation of Space. To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the City Engineer may prohibit or limit the placement of new, replacement or additional facilities within the right-of-way if there is insufficient space to accommodate all requests. In making such decisions, the City Engineer shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public’s needs for the particular 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 determined to be in the public interest.

12.15.060 Removal and Relocation.

A. Requirement. Except as prohibited by state or federal law, a person must promptly and at his or her own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the City orders such removal and relocation and shall restore the right-of-way in accordance with City standards. The City may order removal and relocation to prevent the facility from interfering with a present or future City use of the right-of-way; a public improvement undertaken by the City; an economic development project in which the City has a financial interest or investment; when the public health, safety, or welfare require it; when the facility is abandoned; when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way; or when the applicant is in violation of any provision of Chapters 12.15, 12.16, 12.17, 12.18, or 12.19. Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way that has been discontinued or vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the person.

B. Order. The order for removal and relocation shall be in writing and include a description of the items to be removed and a reasonable due date for facility removal. The order shall be personally served or sent via certified mail, return receipt requested, to the facility owner or operator, registrant, or permittee.

C. City's Right to Perform Removal. In the event that a person does not remove its facilities as ordered in this Section, the City or its designee may perform the removal and bill the facility owner or operator, registrant, or permittee for the costs of removal. All costs shall be paid within thirty (30) days of the date of invoice.

12.15.070 Restoration.

In the event that a person removes or is required to remove a facility and/or relocate a facility from the right-of-way pursuant to Section 12.15.060, the person must restore the right-of-way to its prior condition in accordance with City specifications. If the person fails to make the restoration required by this Section, the City or its designee may perform the restoration and bill the facility owner or operator, registrant, or permittee for the costs of removal. All costs shall be paid within thirty (30) days of the date of invoice.

12.15.080 Storage and Disposal of Property.
If the City removes a facility, the City shall store the aforementioned facility for thirty (30) days after taking possession of it. At the end of thirty (30) days, if the owner has not claimed the facility, the City may discard it, retain it, or sell it with all proceeds benefitting the City.

12.15.090 Interference with Other Facilities during Municipal Construction.

When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant’s facilities, the City shall notify the local representative. The registrant or local representative shall meet with the City’s representative within one (1) business day of notice and coordinate the protection, maintenance, supporting, and/or shoring of the registrant’s facilities. The registrant shall accomplish any needed work within seventy-two (72) hours from meeting, unless the City agrees to a longer period. In the event that the registrant does not maintain, support, shore, or move its facilities within the required time period, the City or its designee may perform the work and bill the registrant for the cost of the work. If the registrant completes the work outside the required time period, the City may bill the registrant for any additional costs the City incurs due to the delay caused by registrant. All costs shall be paid within thirty (30) days of the date of invoice.

12.15.100 Abandonment.

A. Cessation of Use. In the event that a permitted facility within the right-of-way is not in use for a continuous period of sixty (60) days or longer, the permittee must promptly notify the City and do one of the following:

1. Provide information satisfactory to the City Engineer that the permittee’s obligations for its facilities under this Chapter have been lawfully assumed by another permittee; or

2. Remove its facilities from the right-of-way within one (1) year and perform the required restoration under Section 12.15.070, unless the City Engineer waives this requirement or provides a later deadline and post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration.

B. Abandoned Facilities. Facilities of a permittee who fails to comply with Subsection 12.15.100.A and which, for one (1) year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option:

1. abate the nuisance and recover the cost of removal, restoration, and storage of removed facilities from the permittee or the permittee’s successor in interest;

2. take possession of the facilities; and/or
3. require removal of the facilities by the permittee or the permittee’s successor in interest.

C. Public Utilities. A public utility that is required to follow the provisions of Section 196.81, Wisconsin Statutes, must seek authorization from the PSCW to discontinue or abandon its facilities within 90 days.

12.15.110 Emergency Notification.

A person shall immediately call 911 when any emergency regarding its facilities or excavation occurs.

12.15.120 Public Records.

Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the City shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the City’s determination that the applicant’s request for confidential or proprietary treatment of the application materials is reasonable. The City shall not be required to incur any costs to protect the application from disclosure.

12.15.130 Record Retention.

All permittees and registrants shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the facilities permit, registration, or regulatory approval. In the event the City cannot locate any such full and complete permits, registrations, or other regulatory approvals in its official records, and the permittee fails to retain full and complete records in the permittee’s files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved in favor of the City.

12.15.140 Penalty.

Any person, firm, partnership, or corporation who violates any part of this Chapter shall be subject to the penalty and enforcement provisions in Chapter 1.12 of this Code.

PART II. Chapter 12.16 is hereby repealed and recreated to read:

Chapter 12.16 Registration of Facilities in the City Right-of-Way
12.16.010 Definitions.
12.16.020 Registration for Right-of-Way Occupancy Required.
12.16.030 Registration and Reporting Information.
12.16.040 Penalty.
12.16.010 Definitions.

The following definitions apply in this Chapter:

“City” means the City of Brookfield

“City Engineer” means the City Engineer or his or her designee

“City inspector” means any person authorized by the City Engineer to carry out inspections related to the provisions of this Chapter.

“Company” means the same as defined as in Section 182.017(1g)(b), Wisconsin Statutes.

“Degradation” means the accelerated deterioration of the paved portion of the right-of-way caused by its excavation resulting in the need to reconstruct the paved right-of-way earlier than would be required if the excavation had not occurred.

“Emergency” means a condition that poses a clear and immediate danger to life or health or a significant loss of property.

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

“Facilities” means any pipe, pipeline, pole, structure, wire, cable, duct, conduit, fiber optics or radio signal transmission equipment, and associated plant and equipment, whether underground or above ground, that has been placed or proposed to be placed in the right-of-way and that is owned and/or operated by a company or public utility or any other person to provide utility services. “Facilities” includes wireless telecommunications facilities as defined in Section 12.17.010 of this Code. Pipes that will be connected to each other or attached to existing underground pipes as part of the same placement project shall be considered one facility for the purposes of this Section.
“Local representative” means a person designated by the permittee or registrant to accept notices and communication from the City who is available so as to be at a facility location quickly and authorized to make decisions for the permittee or registrant regarding all matters within the scope of this Chapter.

“Person” means any person, firm, entity, organization, or corporation. “Person” does not include the City or any contractor doing work in the right-of-way for the City.

“Proper restoration” means that turf grass is growing and covers all unpaved portions of the right-of-way in sufficient quantity to prevent erosion and that all excavated pavement has been restored to standard and has not failed.

“PSCW” means the Public Service Commission of Wisconsin.

“Public utility” means the same as defined in Section 196.01(5), Wisconsin Statutes.

“Registrant” means any person who has registered with the City (1) to have its facilities placed in any right-of-way or (2) already has its facilities in the right-of-way.

“Repair” means to perform work necessary to return facilities to an operable or more optimal condition.

“Restoration deposit” means a cash deposit to ensure the availability of sufficient funds to assure that right-of-way excavation restoration is completed in a timely manner per City specifications.

“Restore” or “Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement, foundation, turf and landscaping, are reconstructed, per City specifications.

“Right-of-way” means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the City of Brookfield exercises any rights of management and control or in which the City of Brookfield has an interest.

“Tower” means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services
including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and the associated site. This definition does not include utility poles.

“Utility pole” means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole. “Utility pole” shall not include poles used for governmental operations such as traffic signals or traffic control devices, street lights, and emergency alert signals, or a utility’s high-voltage transmission lines.

“Utility service” means water, sewer, stormwater, gas, electric, wireless communications, telecommunications, cable, or other similar service provided by a public utility or a company subject to Section 182.017, Wisconsin Statutes.

12.16.020 Registration for Right-of-Way Occupancy Required.
A. Registration. Any person who owns, or will own, including by lease, sublease or assignment, facilities shall register with the City Engineer and pay the fee set forth in Subsection 3.28.010.TT of this Code.

B. Applicability. This Section shall not apply to those persons exclusively utilizing facilities provided by another or installing items other than facilities.

C. Annual Registration Renewal Required. Each registrant with facilities in the right-of-way shall annually renew its registration or discontinue and properly abandon its facilities as provided for under Section 12.15.100 of this Code.

D. Failure to Register. Any person who is required to timely register, renew, or update its registration by the terms of this Chapter, but who fails to do so shall pay double permit and registration fees.

12.16.030 Registration and Reporting Information.
A. Registration Information.

1. Registration information shall be provided on City forms and include, in addition to the construction plans required in Subsection 12.16.030.B, the following, but not be limited to:

a. The registrant’s name, street address, email address, and telephone number.

b. The name, street address, email address, and telephone number of a local representative. The local representative or designee shall be chosen by registrant to respond
quickly on site in emergencies and when the City has issues with the registrant’s facilities during construction and be authorized to make decisions as to facilities. Any changes to the contact information for the local representative shall be updated within one (1) business day.

c. A copy of the registrant’s certificate of authority from the PSCW or other applicable state or federal agency if the registrant is required to have such a certificate.

d. Certificate(s) of insurance compliant with the City’s standards, which are set forth in Subsection 12.17.070.D.14 of this Code.

e. Execution of an indemnification agreement with the terms set forth in §12.17.070.D.5 and included in the application form prescribed by the City.

2. The registrant shall at all times maintain with the City accurate contact information for the registrant and all companies using the facility, which shall include a phone number, mailing address, and email address for at least one natural person.

B. Construction and Major Maintenance Plan Reporting Obligations. Registrants shall attempt to coordinate construction in the public right-of-way whenever reasonably possible. Periodic reporting by the registrant of known construction plans will be useful to achieve this objective, therefore:

1. Every registrant shall, at the time of registration and no later than January 1st of each year, file a construction and major maintenance plan with the City Engineer. The registrant’s plan shall be submitted on a form prescribed by the City and shall contain information determined by the City Engineer to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way, including, but not limited to, the following information:

   a. The locations and estimated beginning and ending dates of all construction and maintenance projects planned to be commenced during the next calendar year; and

   b. The tentative locations and estimated beginning and ending dates for all projects contemplated for the following two calendar years.

2. Notwithstanding the foregoing, registrants may, with permission of another registrant, undertake construction or maintenance during the other’s project as long as the other registrant’s project was listed in a filed plan, without amending either registrant’s filed plans.

3. Any registrant may change any project in its list, but must notify the City of all such changes in the list.

12.16.040 Penalty.
Any person, firm, partnership, or corporation who violates any part of this Chapter shall be subject to the penalty and enforcement provisions in Chapter 1.12 of this Code.

PART III. Chapter 12.18 is hereby created to read:

Chapter 12.18 Excavation in the City Right-of-Way

12.18.010 Definitions.
12.18.020 Excavation Permits.
12.18.030 Permit Application, Review, and Approval.
12.18.040 Permit Fees.
12.18.060 Inspection.
12.18.070 Other Obligations.
12.18.080 Revocation or Suspension and Appeal.
12.18.090 Work Done without a Permit.
12.18.100 Penalty.
12.18.010 Definitions.

The definitions set forth in Section 12.16.010 of this Code apply to this Chapter.

12.18.020 Excavation Permits.

A. Excavation Permit Required. Except as otherwise provided in this Chapter or elsewhere in this Code, no person shall excavate any right-of-way without first having obtained an excavation permit from the City Engineer.

B. Area and Dates Specified. The excavation permit shall specify the completion date for the work and the area of the work. No permittee may perform any work or excavate outside the area or dates specified in the permit, except as provided herein.

C. Supplemental Permit. No person shall excavate the right-of-way or maintain an excavation in the right-of-way beyond the date or area specified in the excavation permit without first having obtained a supplemental permit from the City Engineer. A permittee shall apply for a supplemental permit before the expiration of the initial permit.

12.18.030 Permit Application, Review, and Approval.

A. Application Information. An application for a permit shall be filed with the City Engineer and shall contain, and will not be considered complete, unless federal or state regulations require otherwise, the following information:
1. Applicant’s name, street address, email address, and telephone number.

2. Certificate(s) of insurance compliant with the City’s standards, which are set forth in Subsection 12.17.070.D.14 of this Code.

3. Execution of an indemnification agreement with the terms set forth in Subsection 12.17.070.D.5 of this Code and included in the application form prescribed by the City.

4. Evidence that the applicant has registered with the City under Section 12.16.020 as applicable.

5. Identification in detail of the location of the proposed project and any affected right-of-way, public utility easements, public trees, the location of all existing and proposed facilities or improvements within the project area, installation details, traffic control plans, proposed project dates, proposed excavations, and an explanation of how the project differs from plans submitted with registration, along with other details requested by the City Engineer.

6. A description of the proposed use(s) of the facilities or improvements to be installed in the right-of-way.

7. If the proposed project involves the installation of a new or extension of an existing utility pole or tower in the right-of-way, the applicant must include all of the following:

   a. Scaled drawings of the proposed utility pole or tower and all proposed attachments and related facilities;

   b. Except in the case of a utility pole or tower extension, evidence sufficient to demonstrate that the applicant is prohibited from using an existing utility pole or tower (either owned by the applicant or a third party) because such use is technically infeasible, economically prohibitive, or prohibited by law;

   c. If the utility pole or tower exceeds a height of fifty (50) feet, the applicant shall also provide the following information:

      i. A description of the ice build-up mitigation techniques to be used where the utility pole or tower is adjacent to a sidewalk or other pedestrian walkway;

      ii. Evidence sufficient to demonstrate that the greater height is required to accomplish the applicant’s purposes; and
iii. Evidence sufficient to demonstrate that the utility pole or tower, due to its height and size, poses no greater danger to the health, safety, and welfare of the public than existing poles or towers in nearby right-of-way;

d. A structural analysis stamped by a professional engineer licensed in Wisconsin;

8. Any other information as requested by the City Engineer.

9. The applicant shall indicate if any federal or state rules apply to the processing of the application, citation to the specific rule, and the basis for that conclusion.

10. Applicable permit fees and costs as set forth in this Chapter.

B. Review and Approval. The City Engineer shall review the application and plans submitted and issue or refuse to issue a permit based on the provisions of Section 12.18.080 of this Code within sixty (60) days of receiving a complete application in compliance with any applicable federal or state laws based on the type of facility, unless the City Engineer and the applicant agree, in writing, to a longer review period. Any application indicating it is submitted under Wisconsin Statutes will be denied if it is incomplete to avoid automatic approval under the provisions of Section 66.0404 Wisconsin Statutes, while waiting for additional information from the applicant.

C. Joint applications.

1. Joint Application. Registrants may jointly apply for permits to excavate the right-of-way or place facilities at the same place and time.

2. Joint Projects with City. Registrants who join in a scheduled excavation performed by the City, whether the registrant has submitted a joint or a single application, are not required to pay the degradation portion of the permit fee.

3. Shared Fees. Registrants who apply for permits for the same excavation may share in the payment of the permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

12.18.040 Permit Fees.

A. Permit Fee Calculation. The total permit fee shall be calculated by adding the administrative cost, restoration deposit, inspection deposit, and degradation fee, if applicable. The Common Council shall establish the excavation and facilities placement permit fee from time to time by resolution for each of the categories.
1. Administrative. The City Engineer’s estimate of time to review the permit and plans.

2. Restoration Deposit. The City Engineer’s estimate of the cost to restore the right-of-way.

3. Inspection Deposit. The estimated cost for inspecting the interim and completed work and shall include inspections within and outside the pavement areas of the right-of-way and the size of the project.

4. Degradation Fee. The general formula for computing the degradation fee for projects involving excavation of paved right-of-way shall be the cost per square yard for street, overlay, and seal coat multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch. Depreciation schedules shall be calculated by the City Engineer by type of street. The area of the patch shall generally be square and calculated by adding two feet to each side of the anticipated street cut and then, at the option of the City Engineer, extending to the full pavement lane width.

B. Fees for Supplemental Permit Applications. A permittee shall pay the same fees and deposits for a supplemental permit as for a regular permit, except that no restoration or inspection deposit or degradation fee is required if the supplemental application is only for an extension of time. The administrative fee for a time extension only permit will be established by the Common Council from time to time.

C. Payment of Permit Fees. No permit shall be issued until payment of applicable fees and deposits.

D. Nonrefundable. Administrative and degradation fees are nonrefundable. Inspection and restoration deposits will be held until the City approves the restoration of the right-of-way and the restoration deposit may be held until the expiration of the guarantee period as set forth in Subsection 12.18.050.C of this Code.


A. The permittee must complete the work and restore the general area of the work, right-of-way, and the surrounding areas, including the paving, its base, turf, and landscaping to City specifications and permit conditions, if any, within the dates specified in the permit.

B. The City Engineer shall prescribe the manner and extent of the restoration either in written general procedures, on a case-by-case basis, or both.

C. Guarantees. The permittee shall guarantee its restoration work for 24 months following its completion. During this period, the permittee shall, upon written notification from the City Engineer,
correct all defective restoration work using the method required by the City Engineer. The correction work shall be completed within ten (10) business days of the receipt of the notice from the City Engineer, not including days during which work cannot be done due to circumstances beyond the permittee’s control or when work was prohibited as unseasonable or unreasonable under Subsection 12.18.070.B of this Code.

D. Failure to Restore. If the permittee fails to restore the right-of-way in accordance with City specifications or permit conditions, or fails to satisfactorily and timely complete corrections to restoration work required by the City Engineer during the guarantee period, the City or its designee may perform such work. In that event, the permittee shall pay to the City, within thirty (30) days of date of invoice, the cost of restoring the right-of-way. The City may utilize the restoration deposit to pay the costs of restoration.

E. City Restoration. A permittee may request to have the City restore the right-of-way. If the permittee requests to have the City restore the right-of-way, the City may accept or reject the request in its sole discretion. If the City accepts, the permittee must still submit all fees and deposits. If the deposits are insufficient to cover the costs, the permittee will be billed for the City’s costs and shall pay the amount thereof within thirty (30) days of date of invoice.

12.18.060 Inspection.

A. Standards. The permittee shall perform all work and install all facilities in the right-of-way according to City specifications and/or in accordance with the conditions specified in the permit.

B. Notice of Completion. When work under any permit issued hereunder is completed, the permittee shall notify the City Engineer. The permittee shall certify, on forms provided by the City Engineer, either that the work was completed in conformance with the plans and drawings approved by the City Engineer when issuing the permit or shall submit as-built plans and drawings and list the ways in which the as-built plans and drawings differ from the approved plans and drawings. If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the City Engineer of the actual commencement and end dates as soon as this information is known.

C. Site Inspection. The permittee shall make the work site available to the City inspector and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

D. Restoration. The City inspector shall inspect the area of the work and accept the restoration when it is determined that proper restoration has been made.
E. Authority of City Engineer. At any time, the City Engineer may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The City Engineer may issue an order to the permittee to correct any work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) business days after issuance of the order, the permittee shall present proof to the City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the City Engineer may revoke the permit pursuant to Section 12.18.080 of this Code.

12.18.070 Other Obligations.

A. Compliance with Other Laws. Obtaining an excavation permit in the right-of-way does not relieve a permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any City, county, state, or federal rules, laws, or regulations. A permittee shall comply with all requirements of local, state, and federal laws. 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 with the approval of the City Engineer, no right-of-way excavation may be done when the ground is frozen or when conditions are unreasonable for such work.

12.18.080 Revocation or Suspension and Appeal.

A. The City Engineer may refuse to issue a permit or may revoke, suspend, or refuse to extend an existing permit if he or she finds any of the grounds stated below. The City Engineer’s decision shall be in writing and shall state the reasons for the action taken.

1. The applicant or permittee is required by Section 12.16.020 of this Code to be registered and has not done so;

2. The permit application is incomplete unless federal or state regulations provide otherwise;

3. The applicant or permittee is seeking to perform work not included in its construction and major maintenance plan required under Section 12.16.030 of this Code, which work was reasonably foreseeable by the applicant or permittee at the time the plan was filed;

4. The applicant or permittee is seeking to perform work that does not meet the standards set forth in one or more provisions of this Chapter;
5. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival, or other City-sponsored or approved event;

6. Misrepresentation of any fact by the applicant or permittee;

7. Prior failure of the applicant or permittee to maintain required deposits or insurance;

8. Prior failure of the applicant or permittee to complete work within permitted time;

9. The proposed activity is contrary to the public health, safety or welfare;

10. The extent to which space is available in the right-of-way for which the permit is sought;

11. The competing demands for the particular space in the right-of-way;

12. The availability of other usable locations in the right-of-way or in other rights-of-way for the facilities of the permittee or applicant;

13. If the permittee or applicant proposes to install a new pole in the right-of-way, the availability of other existing poles or towers owned by the permittee or applicant or by a third party;

14. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;

15. The condition and age of the right-of-way and whether and when it is scheduled for total or partial reconstruction;

16. The Director of Parks, Recreation and Forestry or his or her designee has not approved the issuance of the permit pursuant to Section 12.28.050 of this Code; or

17. The applicant or permittee is otherwise not in full compliance with the requirements of this Code or state or federal law.

B. Appeal to Administrative Appeals Board. Any person adversely affected by the decision of the City Engineer may appeal that decision to the Administrative Appeals Board, which may decide the issues de novo, and whose written decision will be the final decision of the City. The City elects not to be governed by Chapter 68 of the Wisconsin Statutes in whole for an appeal under this Chapter.

C. Deadline to Appeal. Appeals must be filed within ten (10) business days of the written decision of the City Engineer. An extension may not be granted where extension would result in approval of the application by operation of law.
12.18.090  Work Done without a Permit.

A.  Emergency Situations.

1.  In an emergency, a person may proceed to take whatever actions are reasonably necessary to respond to the emergency; provided, that those actions do not unreasonably interfere with any City, other registrant's, or the public's use of the right-of-way. The person may not excavate to make permanent repairs without first obtaining a permit. Within two business days after the occurrence of the emergency, the person shall apply for the necessary permits, pay the associated fees, and otherwise fully comply with the requirements of this Chapter.

2.  The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be billed to the registrant, regardless of whether the facilities are damaged by natural forces or by a third party.

B.  Nonemergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates in a right-of-way must subsequently register, if not already registered, and apply for a permit and shall, in addition to any penalties prescribed by ordinance, pay double the normal fee for such permit, deposit with the City Engineer the fees necessary to correct any damage to the right-of-way, and comply with all other requirements of this Chapter. If an after-the-fact permit application is denied, the person shall discontinue use of its facilities and immediately remove them from the right-of-way.

12.18.100  Penalty.
Any person, firm, partnership, or corporation who violates any part of this Chapter shall be subject to the penalty and enforcement provisions in Chapter 1.12 of this Code.

PART IV.  Chapter 12.19 is hereby created to read:

Chapter 12.19  Facilities Placement in the City Right-of-Way.

12.19.010  Definitions.
12.19.030  Administration.
12.19.040  Application.
12.19.050  Application Processing, Refusal to Issue, Revocation, and Appeal.
12.19.060  General Standards.
12.19.080  Penalty.
12.19.010 Definitions.

The definitions set forth in Sections 12.16.010 and 12.17.010 of this Code apply to this Chapter.


A. Applicability. No person shall place or modify facilities in a right-of-way without first having obtained a facilities placement permit.

B. Exemption. The provisions of this Chapter do not apply to the following:

1. Wireless telecommunications facilities that are subject to the permitting process in Section 12.17.030 of this Code.

2. Placement or modification of a facility by City staff or any person performing work under contract with the City.

3. Modification of an existing facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street and if the work does not change the visual or audible characteristics of the facility.

12.19.030 Administration.

A. Administrator. The City Engineer is responsible for administering this Chapter.

B. Powers. As part of the administration of this Chapter, the City Engineer may:

1. Interpret the provisions of the Chapter.

2. Develop forms and procedures for submission of applications for permits consistent with this Chapter.

3. Collect any fee required by this Chapter.

4. Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the facility that is the subject of the permit application.

5. Establish deadlines for submission of information related to an application and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations.
6. Issue notices of incompleteness or requests for information in connection with any permit application.

7. Select and retain an independent consultant with expertise in utilities to review any issue that involves specialized or expert knowledge in connection with any permit application.

8. Coordinate and consult with other City staff, committees, and governing bodies to ensure timely action on all other required permits under this Code.

9. Subject to appeal as provided in Subsection 12.19.050 of this Chapter, determine whether to grant, grant subject to conditions, or deny an application.

10. Take such other steps as may be required to timely act upon permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

12.19.040 Application.

A. Content. To be considered complete, an application must contain:

1. All information required pursuant to this Chapter.

2. The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number.

3. A separate and complete description of each proposed facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each utility pole, tower, structure, and above-ground equipment.

4. A copy of the registrant’s certificate of authority from the PSCW or other applicable state or federal agency if the registrant is required to have such a certificate.

5. To the extent that filing the facilities placement application establishes a deadline for action on any other permit that may be required in connection with the facility, the application must include complete copies of applications for every required permit, including without limitation electrical permits, building permits, traffic control permits, and excavation permits, with all design engineering completed and with all fees associated with each permit.

6. A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the facility comply with applicable safety standards.
7. Payment of all required fees.

8. If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the City from complying with any deadline for action on an application.

B. Waivers. Requests for waivers from any requirement of this Section shall be made in writing to the City Engineer. The City Engineer may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the City will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the facilities placement permit sought.

C. Fees. Applicant must provide an application fee, as calculated by the City Engineer, which shall include all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants, and an inspection deposit for the cost of inspecting the work. Additionally, if the applicant or permittee seeks to attach a facility to a City-owned structure, the applicant or permittee shall pay an annual fee of $270.00 per facility.

12.19.050 Application Processing, Refusal to Issue, Revocation, and Appeal.

A. Review and Approval. The City Engineer shall review the application and plans submitted and issue or refuse to issue a permit based on the provisions of this Code within sixty (60) days of receiving a complete application in compliance with any applicable federal or state laws based on the type of facility, unless the City Engineer and the applicant agree, in writing, to a longer review period. Any application indicating it is submitted under the Wisconsin Statutes will be denied if it is incomplete to avoid automatic approval under the provisions of Section 66.0404 Wisconsin Statutes while waiting for additional information from the applicant.

B. Written Decision. In the event that an application is denied, or approved with conditions beyond the standard permit conditions set forth in Subsection 12.19.060.D, the City Engineer shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.

C. Grounds. The City Engineer may refuse to issue, revoke, suspend, or refuse to renew an existing permit if he or she finds any of the grounds stated below. The City Engineer’s decision shall be in writing and shall state the reasons for the actions taken.

1. The applicant or permittee is required by Section 12.16.020 of this Code to be registered and has not done so;
2. The permit application is incomplete unless federal or state regulations provide otherwise;
3. The applicant or permittee is seeking to place facilities that do not meet the standards set forth in one or more provisions of this Chapter;
4. Misrepresentation of any fact by the applicant or permittee;
5. The proposed facility is contrary to the public health, safety, or welfare;
6. The extent to which space is available in the right-of-way for which the permit is sought;
7. The competing demands for the particular space in the right-of-way;
8. The availability of other usable locations in the right-of-way or in other rights-of-way for the facilities of the permittee or applicant;
9. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
10. The permittee or applicant failed to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations.

C. Appeal to Administrative Appeals Board. Any person adversely affected by the decision of the City Engineer may appeal that decision to the Administrative Appeals Board, which may decide the issues de novo, and whose written decision will be the final decision of the City. An appeal by an infrastructure provider must be taken jointly with the service provider that intends to use the facility. The City elects not to be governed by Chapter 68 of the Wisconsin Statutes in whole for an appeal under this Chapter.

D. Deadline to Appeal. All appeals must be filed within ten (10) business days of the written decision of the City Engineer.

12.19.060 General Standards.

A. Generally. Facilities shall meet the minimum requirements set forth in this Chapter in addition to the requirements of any other applicable law or regulation.

B. Regulations. The decisions on facilities permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal or state law, prohibit or effectively prohibit the provision of a utility service, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter and the facilities regulations may be waived, but only to the extent required to avoid the prohibition.

C. Standards.

1. Facilities shall be installed and modified in a manner that:
   a. Minimizes risks to public safety;
b. Ensures that placement of facilities on existing structures is within the tolerance of those structures;

c. Avoids placement of aboveground facilities or installation of new support structures or equipment cabinets in underground areas in the public right-of-way;

d. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;

e. Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;

f. Ensures that the City bears no risk or liability as a result of the installations; and

g. Ensures that applicant’s use does not inconvenience the public, interfere with the primary uses of the right-of-way, including existing utilities, or hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way. Specifically, the applicant’s use shall comply with the City’s Public Infrastructure and Development Handbook regarding placement of utilities in the public right-of-way and shall not encroach within five (5) feet of an existing City utility.

2. No facilities permit shall be issued unless the applicant has immediate plans to use the proposed facility or has a contract with a utility service provider that has immediate plans to use the proposed facility. Facilities permit applicants shall attach its contract with the utility service provider to its facilities permit application.

3. Installation of new and modification of existing facilities shall meet the following standards:

a. Facilities and support structures, towers, and utility poles shall not obstruct, impede, or hinder vehicular, pedestrian, or bicycle travel or public safety within the right-of-way, except for authorized temporary lane or sidewalk closures.

b. Facilities and support structures, towers, and utility poles shall not be located within vision setback lines as set forth in Subsection 17.112.010.B of this Code.

c. Facilities and support structures, towers, utility poles, and any other ground-mounted equipment shall comply with the requirements of the Americans with Disabilities Act of 1990, as it is from time to time amended.

d. New facilities and support structures, towers, and utility poles shall not be located directly in front of any existing residential or commercial structure.

e. Rigid nonbreakaway poles and other support structures or towers shall be located a minimum of ten (10) feet away from roadway curbs or shoulders, underground facilities, and behind existing or future sidewalks.
f. The height of a facility, support structure, tower, or utility pole may not exceed the greater of fifty (50) feet above ground level or ten (10) feet above the tallest existing support structure, tower, or utility pole that is in place on the effective date of this ordinance and that is located in the same right-of-way and within five hundred (500) feet of the facility that is the subject of the application. The City Engineer may waive this requirement upon consideration of such factors as whether the greater height is necessary and convenient to the provision of utility service to the public and/or will avoid the need for an additional site; whether the proposed facility will be located in a commercial, industrial, or nonresidential area; whether greater separation is required to avoid interference with other equipment on the pole or facility; whether a building or structure is within the fall zone radius of the facility, support structure, tower, or utility pole; and whether nearby buildings are taller than fifty (50) feet.

g. Equipment mounted to support structures must be a minimum of ten (10) feet above any pedestrian or bicycle thoroughfare or trail and a minimum of twenty (20) feet above any traffic lane.

h. Unless in conflict with state or federal law, the installation of new facilities and replacements of existing facilities shall be placed underground when proposed in an area where utilities or other equipment in the right-of-way are primarily located underground. In all other areas, facilities shall be placed underground to the extent feasible. All installations shall be in accordance with the State Electrical Code. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of utility services. Nothing in this subsection is intended to require the applicant to install any electric meter underground.

i. All ground-mounted equipment shall be contained in a secured equipment shroud or cabinet to prevent public safety risks and unauthorized access. Any cables and conduits associated with the equipment shall be concealed from view.

j. All facilities and support structures, towers, and utility poles shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

k. The owner and/or operator must post an identification sign at each facility, including current owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to City review and approval. If at any time a new owner or operator provider takes over operation of an existing facility, the new owner or provider shall notify the City of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new owner and/or operator. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size.

l. Any proposed pruning of trees, shrubs, or other landscaping already existing in the right-of-way must be noted in the application and approved by the City.
D. Standard Facilities Permit Conditions. All facilities permits under this Chapter are issued subject to the following minimum conditions:

1. Compliance. The permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations, and other rules.

2. Term. A facilities permit shall be valid for a period of five (5) years from the date of issuance unless revoked pursuant to Subsection 12.17.090.B of this Chapter.

3. Contact Information. The permittee shall at all times maintain with the City accurate contact information for the permittee and all utility service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.

4. Emergencies. The City shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.

5. Indemnification. The permittee, by submitting an application for a facilities permit under this Chapter, agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the “Indemnified Parties”) from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys’ fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the permittee or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the sole negligence or willful misconduct of an Indemnified Party.

6. Adverse Impacts on Adjacent Properties. The permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility. At least three (3) business days prior to any construction or placement of the facility, the permittee shall mail a notice to all property owners adjacent to the facility placement location. The notice shall contain the facility’s location, its description and scale image, and an e-mail address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

7. General Maintenance. The facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

8. Graffiti Removal. All graffiti on facilities shall be removed at the sole expense of the permittee within two (2) business days after notification from the City.
9. Relocation. At the request of the City, pursuant to Section 12.15.060 of this Code, the permittee shall promptly and at its own expense permanently remove and relocate any facility in the right-of-way.

10. Abandonment. The permittee shall promptly notify the City whenever a facility has not been in use for a continuous period of sixty (60) days or longer and must comply with Section 12.15.100 of this Chapter.

11. Restoration. A permittee who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section 12.15.070 of this Code.

12. Certificate of Insurance. A certificate of insurance with the following minimum insurance limits:

a. Commercial general liability insurance: $1,000,000 per each occurrence, $1,000,000 personal and advertising injury, $2,000,000 products and completed operations, and $2,000,000 general aggregate – all written on an occurrence basis.

b. Business automobile liability insurance: $1,000,000 combined single limit, written on an occurrence basis, for “any auto.”

c. Worker’s compensation insurance: Coverage as required by the State of Wisconsin and employers’ liability insurance with a minimum limit of $100,000 each accident, $500,000 disease policy, and $100,000 disease each employee.

d. Umbrella liability insurance: $5,000,000 each occurrence and $5,000,000 general aggregate; the self-insured retention cannot exceed $10,000.


A. Expiration. Upon expiration of the facilities permit, the permittee must either:

1. Remove the facility; or,

2. Submit an application to renew the permit at least ninety (90) days prior to its expiration. The facility must remain in place until the renewal application is acted on by the City and any appeals from the City’s decision are exhausted.

B. Removal and Costs. Upon revocation or non-renewal, the facility must be removed within thirty (30) days of receipt of written notice from the City. All costs incurred by the City in connection with the revocation, removal, storage of removed facilities, and right-of-way restoration shall be paid by the person whose permit was revoked.

C. Failure to Obtain Permit. Unless exempted from permitting by Subsection 12.19.020.B of this Chapter, a facility installed without a permit must be removed within thirty (30) days of receipt of written notice from the City. All costs incurred by the City in connection with the notice,
removal, storage of removed facilities, and right-of-way restoration shall be paid by entities who
own or control any part of the facility.

12.19.080 Penalty.
Any person, firm, partnership, or corporation who violates any part of this Chapter shall be subject to the
penalty and enforcement provisions in Chapter 1.12 of this Code.

PART V. Sections 12.17.040, 12.17.110, 12.17.120, and 12.17.130 are hereby repealed.

PART VI. Section 12.17.100 is hereby repealed and recreated to read.

12.17.100 Penalty.
Any person, firm, partnership, or corporation who violates any part of this Chapter shall be subject to the
penalty and enforcement provisions in Chapter 1.12 of this Code.


PART VIII. Subsection 12.17.060.B.4 is amended to read:

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4. A separate and complete description of each proposed facility and the work that will be
required to install or modify it, including but not limited to detail regarding proposed
excavations, if any; detailed site plans showing the location of the facility and technical
specifications for each element of the facility, clearly describing the site and all structures
and facilities at the site before and after installation or modification and identifying the
owners of such preexisting structures and facilities; and describing the distance to the nearest
residential dwelling unit. Before and after 360-degree photo simulations must be provided for
each utility pole, tower, structure, and above-ground equipment.

***

PART IX. Subsection 12.17.060.D is amended to read:

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D. Fees. Applicant must provide an application fee, as calculated by the City Engineer, which
shall include all costs reasonably incurred in reviewing the application, including costs incurred
in retaining outside consultants, and an inspection deposit for the cost of inspecting the work.
Additionally, if the applicant or permittee seeks to attach a facility to a City-owned structure, the
applicant or permittee shall pay an annual fee of $270.00 per facility.

***
PART X. Subsection 12.17.070.D.6 is hereby amended to read:

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6. Adverse Impacts on Adjacent Properties. The permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility. At least three (3) business days prior to any construction or placement of the facility, the permittee shall mail a notice to all property owners adjacent to the facility placement location. The notice shall contain the facility’s location, its description and scale image, and an e-mail address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

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PART XI. Section 12.17.010 is hereby amended to read:

“Administrator” means the director of public works or his or her designee.

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“City Engineer” means the City Engineer or his or her designee.

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PART XII. Chapter 12.17 is hereby amended as follows:

The term “Administrator” shall be replaced throughout with the term “City Engineer.”

PART XIII. The heading of Section 12.17.080 and Subsection 12.17.080.D-F is hereby repealed and recreated to read:

12.17.080 Application Processing, Refusal to Issue, Revocation, and Appeal

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D. Grounds. The City Engineer may refuse to issue, revoke, suspend, or refuse to renew an existing permit if he or she finds any of the grounds stated below. The City Engineer’s decision shall be in writing and shall state the reasons for the actions taken.

1. The applicant or permittee is required by Section 12.16.020 of this Code to be registered and has not done so;
2. The permit application is incomplete unless federal or state regulations provide otherwise;
3. The applicant or permittee is seeking to place facilities that do not meet the standards set forth in one or more provisions of this Chapter;
4. Misrepresentation of any fact by the applicant or permittee;
5. The proposed facility is contrary to the public health, safety, or welfare;
6. The extent to which space is available in the right-of-way for which the permit is sought;
7. The competing demands for the particular space in the right-of-way;
8. The availability of other usable locations in the right-of-way or in other rights-of-way for the facilities of the permittee or applicant;
9. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
10. The permittee or applicant failed to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations.

E. Appeal to Administrative Appeals Board. Any person adversely affected by the decision of the administrator may appeal that decision to the administrative appeals board, which may decide the issues de novo, and whose written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility. The City elects not to be governed by Chapter 68, Wisconsin Statutes, in whole for an appeal under this Chapter.

F. Deadline to Appeal.

1. Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the City Engineer.

2. All other appeals not governed by subsection (F)(1) of this subsection must be filed within ten business days of the written decision of the City Engineer.

G. Decision Deadline. All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

PART XIV. The heading of Section 12.17.090 and Subsection 12.17.090.B is hereby amended to read:

12.17.090 Expiration, Removal, and Failure to Obtain Permit.

***

B. Removal and Costs. Upon revocation or non-renewal, the facility must be removed within thirty (30) days of receipt of written notice from the City. All costs incurred by the City in connection with the revocation, removal, storage of removed facilities, and right-of-way restoration shall be paid by the person whose permit was revoked.
PART XV. Subsection 12.17.070.D.5 is hereby amended to read:

5. Indemnification. The permittee, by submitting an application for a facilities permit under this Chapter, agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the “Indemnified Parties”) from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys’ fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the permittee or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the sole negligence or willful misconduct of an Indemnified Party.

PART XVI. Subsection 12.17.070.C.3.h. is hereby amended to read:

h. Unless in conflict with state or federal law, to conceal the nonantenna equipment, all nonantenna equipment shall be installed underground when proposed in an area where utilities or other equipment in the right-of-way is primarily located underground. In all other areas, nonantenna equipment shall be placed underground to the extent feasible. All installations shall be in accordance with the State Electrical Code. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services. Nothing in this subsection is intended to require the applicant to install any electric meter required by the applicant’s electrical service provider underground.

PART XVII. Subsection 15.08.160 is hereby amended to read:
Unless in conflict with state or federal law or the provisions of Chapters 12.16 and 12.17 of this Code, all telephone and electric cable, including feeder cables and individual service connections, hereafter installed in the City shall be buried underground and in accordance with the specifications of the State Electrical Code. If the applicant demonstrates by clear and convincing evidence that burying the cable underground will cause additional expense to install and maintain an underground equipment enclosure and effectively prohibit the provision of utility services, the Electrical Inspector may waive this requirement.

**PART XVIII.** All ordinances and parts of ordinances contravening the provisions of this ordinance are hereby repealed.

**PART XIX.** Severability. If any section or portion of this ordinance shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.

**PART XX.** The provisions of this ordinance shall be in full force and effect from and after its passage and publication.

Adopted by the Common Council this 18th day of June 2019.

Approved: 

[Signature]

Steven N. Ponto, Mayor

Attested:

[Signature]

Kelly Michaels, City Clerk

Publish Date: June 26, 2019