Ordinance No. 2018-01

An Ordinance amending sections 1120.015, 1120.035, 1120.045, 1120.055, and 1120.060 of the Minnetonka City Code, and adding a new section 1120.062, all relating to location of small wireless facilities within public right of way; amending section 710.005, paragraph 8, relating to permit fees for small wireless facilities

The City of Minnetonka Ordains:

Section 1. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding a new subdivision 4, to read as follows, and renumbering subsequent subdivisions (including those amended by sections 2 through 6 of this ordinance) accordingly:

4. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately or by the city or other governmental unit.

Section 2. Section 1120.015, subdivision 19 of the Minnetonka City Code, related to definitions, is amended to read as follows:

19. "Management costs" means the actual costs the city incurs in managing its rights-of-way, including the costs associated with registering right-of-way users; issuing, processing, and verifying right-of-way or small wireless facility excavation and obstruction permits; inspecting project work and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; enforcing and correcting non-complying project work; mapping of facilities located in the right-of-way; revoking right-of-way or small wireless facility permits; performing all other tasks required by this section; and managing matters described in this section. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city, including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city; the fees and cost of litigation related to the interpretation of state law or this section; or the city costs related to appeals taken pursuant to this section.

Section 3. Section 1120.015, subdivision 23 of the Minnetonka City Code, related to definitions, is amended to read as follows:

23. "Permittee" means a person to whom an excavation or obstruction permit or small wireless facility permit has been issued by the city under this section.

Section 4. Section 1120.015, subdivision 26 of the Minnetonka City Code, related to definitions, is amended to read as follows:

26. "Public right-of-way" or "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 public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Section 5. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding new subdivisions 32 and 33, to read as follows, and by renumbering subsequent subdivisions accordingly:

32. "Small wireless facility" means a wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

b. All other wireless equipment associated with the small wireless facility is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

33. "Telecommunications 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 providing wireless service or transporting telecommunication or other voice or data information. A cable communication system defined and regulated under Minn. Stat. Ch. 238, and telecommunication activities related to providing a natural gas or electric energy services, a public utility as defined in Minn. Stat. Ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Ch. 308A, are not telecommunications right-of-way users for purposes of this section except to the extent such entity is offering wireless service.

Section 6. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding new subdivisions 35, 36, 37, 38 and 39 to read as follows:

35. "Utility pole" means a pole that is used in whole or in part to facilitate telecommunications or electric service.

36. "Wireless facility" means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility.

The stricken language is deleted; the underlined language is inserted.
"Wireless facility" does not include: wireless support structures; wireline backhaul facilities; or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

37. "Wireless service" means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

38. "Wireless support structure" means a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

39. "Wireline backhaul facility" means a facility used to transport communication data by wire from a wireless facility to a communications network.

Section 7. Section 1120.035 of the Minnetonka City Code, subdivision 1, relating to registered right of way users, is amended to read as follows:

1. Information Required. The registrant must provide the following at the time of registration and must promptly notify the city of changes in such information:
   a. registrant's name, address, telephone number, facsimile number and gopher one-call registration certificate number if required by state law;
   b. name, address, telephone number, email address, and facsimile number of the person responsible for fulfilling the obligations of the registrant;
   c. a certificate of insurance or self-insurance verifying the coverage required in this section;
   d. 24-hour emergency number;
   e. an acknowledgement by the registrant of the indemnification pursuant to section 1120.130; and
   f. if the registrant is a corporation, a copy of the certificate that is required to be filed under Minn. Stat. § 300.06 as recorded and certified to the Minnesota secretary of state;
   g. a copy of the registrant's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from

The stricken language is deleted; the underlined language is inserted.
Sec 8. Section 1120.045 of the Minnetonka City Code is amended to read as follows:

1120.045. Permit Requirements.

1. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so. A public right-of-way user that owns or controls a facility within a public right-of-way, or any portion of it, on May 27, 2010 and that subsequently excavates or otherwise obstructs a public right-of-way, or any portion of it, must first obtain a permit as required under this section.

   a. Excavation permit. An excavation permit is required by a registrant to excavate the part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities as described in the permit, to the extent and for the duration specified in the permit.

   b. Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the part of the right-of-way described in the permit by placing equipment described in the permit on the right-of-way, to the extent and for the duration specified in the permit. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

   c. Small wireless facility permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified in the permit, provided that the permit remains in effect for the length of time the facility is in use, unless lawfully revoked.

2. Routine Obstruction and Excavation. Routine excavations and obstructions are permitted without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that last less than a continuous eight hour period in duration between 7 a.m. and 7 p.m. Monday through Friday, excluding holidays, may, in the director’s discretion, be considered routine obstruction and excavation and include by way of example, switching, replacing fuses, replacing transformers, placing line guards, animal protection, leak surveys, anode installations and inspections, or to repair facilities due to public damage or accident.

The stricken language is deleted; the underlined language is inserted.
Section 9. Section 1120.055, subdivision 1 of the Minnetonka City Code, related to permit fees, is amended to read as follows:

1. Establishment. Permit fees Fees for right-of-way permits will be established to recover the city management costs and, when applicable, restoration costs. Fees for small wireless facility permits will be established to recover the city’s management costs and, for facilities to be collocated on city-owned support structures, the city engineering, make-ready, and construction costs associated with collocation. The permit fees are specified in section 710.005 of the city code. No permit fee is refundable. No permit fee will be required for an obstruction or excavation permit issued to the city, although the city must be allocated its full portion of the city management costs in calculating the permit fees.

Section 10. Section 1120.060 of the Minnetonka City Code is amended to read as follows:

1120.060. Permit issuance.

1. Issuance. Except as otherwise provided in section 1120.062, if the applicant has satisfied the requirements of this section and there are no reasons for denial under paragraph 3 below, the city will issue a permit within ten business days after receiving a completed application.

2. Conditions. The city may impose reasonable conditions upon the issuance of the permit to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

3. Denial or revocation. The city may deny or revoke a permit for any one or more of the following reasons:

   a. The applicant failed to meet the requirements and conditions of this section;

   b. The applicant failed to register pursuant to this section;

   c. The street surface was constructed or reconstructed at the proposed location within the preceding five years, unless the director determines that no other locations are feasible or when necessitated by emergency;

   d. The applicant is subject to revocation of a prior permit issued pursuant to this section;

   e. The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival or other similar event;

The stricken language is deleted; the underlined language is inserted.
f. The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way;

g. The time schedule for the project conflicts with scheduled public improvement of the public right-of-way;

h. Businesses or residences in the vicinity will be unreasonably disrupted;

i. The applicant failed to meet a reasonable schedule to participate in a mandated joint trench operation with other applicants, and the additional work will unreasonably disrupt the restored right-of-way, businesses or residences;

j. The proposed project violates a provision of this code;

k. Environmental or seasonal conditions are unreasonable for the work; or

l. The proposed project is adverse to the public health, safety and welfare, by interfering with the safety and convenience of ordinary travel over the public right-of-way, or endangers the public right-of-way and its users, as reasonably determined by the city based on relevant factors that may include:

1) the extent of public right-of-way area available;

2) the competing public service demands for the particular proposed space in the public right-of-way;

3) the availability of other feasible locations in the public right-of-way or in other public rights-of-way for the facility(s) of the permit applicant;

4) the applicability of an ordinance or other regulation that affects the location of a facility in the public right-of-way;

5) the applicant's prior lack of compliance with the terms and conditions of its franchise, this section or other applicable ordinances and regulations;

6) the condition and age of the public right-of-way and the city's scheduled reconstruction of it; or

7) the costs of disruption to the public and damage to the public right-of-way balanced against the benefits to the public served by an expansion into additional parts of the public right-of-way.

The stricken language is deleted; the underlined language is inserted.
4. Appeal. The applicant may appeal a denial to the city council by submitting a written request to the director. The city council may affirm, reverse or modify the director's decision.

Section 11. Section 1120 of the Minnetonka City Code, relating to right of way management, is amended by adding a new section 1120.062 as follows:

1120.062. Small Wireless Facility Permit Applications

1. Deadline for action. The city shall approve or deny a small wireless facility permit application within 90 days after the application is filed. The small wireless facility permit, and any associated building application, will be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

2. Consolidated applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the city, provided that all small wireless facilities in the application:

   a. are located within a two-mile radius;
   b. consist of substantially similar equipment; and
   c. are to be placed on similar types of wireless support structures.

   In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

3. Tolling of deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

   a. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In that case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of the extension.

   b. The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt of the application. Upon submission of additional documents or information, the city will have ten days to notify the applicant in writing of any still-missing information.

The stricken language is deleted; the underlined language is inserted.
c. The city and a small wireless facility applicant agree in writing to toll the review period.

4. Small wireless facility conditions. In addition to conditions imposed under section 1120.060, subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way is subject to the following conditions:

a. A small wireless facility must be collocated on the particular wireless support structure, under the attachment specifications and at the height as indicated in the applicable permit application.

b. Small wireless facilities must comply with applicable provisions of section 300 of this code, including, but not limited to, separate requirements.

c. No new wireless support structure installed within the right-of-way may exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure that exceeds 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

d. No wireless facility may extend more than 10 feet above its wireless support structure.

e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of the structure.

f. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of the structure.

5. Denial or revocation. A small wireless facility permit may be denied or revoked for one or more of the reasons in section 1120.060, subdivision 3. The denial or revocation of a small wireless facility permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days after its decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of

The stricken language is deleted; the underlined language is inserted.
the notice of denial, no additional application fees may be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

6. Small wireless facility agreement. A small wireless facility may not be collocated on a small wireless support structure owned or controlled by the city, or on any other city asset in the right-of-way, unless the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement is in addition to, and not in lieu of, the required small wireless facility permit; provided, however, that the applicant is not required to also obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and the applicant.

Section 12. Section 710.005, paragraph 8 of the Minnetonka City Code, relating to permit fees for engineering and street items, is amended to read as follows:

<table>
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<th>para. no.</th>
<th>description</th>
<th>amount</th>
<th>code section</th>
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<tr>
<td>8</td>
<td>engineering and street items</td>
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<td></td>
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<td></td>
<td>driveway permit</td>
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<td></td>
<td>excavation within street</td>
<td>$50.00/hole</td>
<td></td>
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<tr>
<td></td>
<td>excavation within boulevard</td>
<td>$30.00/hole</td>
<td></td>
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<tr>
<td></td>
<td>open cut trench</td>
<td>$50.00 for first 100 linear feet, plus $0.50/foot over 100 feet</td>
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<tr>
<td></td>
<td>small wireless facility</td>
<td>$500.00/location</td>
<td></td>
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<tr>
<td></td>
<td>Rent to occupy space on a city-owned wireless support structure</td>
<td>$150.00/facility/yr</td>
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<tr>
<td></td>
<td>Maintenance associated with space occupied on a city-owned wireless support structure</td>
<td>$25.00/facility/yr</td>
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<td>Electricity used to operate a small wireless facility if not purchased directly from a utility</td>
<td>$73.00/facility/mo/radio node less than or equal to 100 max watts OR actual costs, whichever is greater</td>
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</tr>
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<td></td>
<td>Electricity used to operate a small wireless facility if not purchased directly from a utility</td>
<td>$182.00/facility/mo/radio node over 100 max watts OR actual costs, whichever is greater</td>
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</table>

The stricken language is deleted; the underlined language is inserted.
Ordinance No. 2018-01

<table>
<thead>
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<th>subdivision inspections</th>
<th>engineering inspection fee</th>
<th>1100.035</th>
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<tr>
<td>Infrastructure project value</td>
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<td>$150,000 to $300,000</td>
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</tr>
<tr>
<td>$300,000 and above</td>
<td>$6,250 for first $300,000 plus 0.5% of each additional dollar</td>
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subdivisions - street signs

street name signs | $130.00 each |
all other signs | $120.00 each |

Section 13. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 14. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this Ordinance:

Date of introduction: February 5, 2018
Date of adoption: February 26, 2018
Motion for adoption: Ellingson
Seconded by: Acomb
Voted in favor of: Calvert-Bergstedt-Wagner-Ellingson-Acomb-Wiersum
Voted against: None
Abstained: None
Absent: None
Ordinance adopted.
Date of publication: March 8, 2018

The stricken language is deleted; the underlined language is inserted.
I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on Feb. 26, 2018

David E. Maeda, City Clerk

The stricken language is deleted; the underlined language is inserted.