

CHAPTER 140

RIGHT-OF-WAY MANAGEMENT

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140.01 LEGISLATIVE POWER. By enactment of this Chapter, the Council hereby exercises its lawful police power and common law authority, and all statutory authority which is available to it, but not limited to, the powers conferred on it under Iowa Law, including Iowa Code Sec. 364, and other provisions of law.

140.02 DEFINITIONS. The following definitions apply in this Chapter of this Code, (hereinafter, "this Chapter"). References hereafter to "Sections" are, unless otherwise specified, references to Section if this Chapter. Defined terms remain defined terms whether or not capitalized.

1. "Applicant" means any Person requesting permission to Excavate or Obstruct a Right-of-Way.
2. "Business District" means any portion of the City of Grimes zoned for business or commercial use.
3. "City" means the City of Grimes, Iowa, and/or its elected officials, officers, employees, agents or any commission, committee or subdivision

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acting pursuant to lawfully delegated authority.

4. "City Cost" means the actual costs incurred by the City for managing Rights-of-Way including, but not limited to costs associated with registering of applicants; issuing, processing, and verifying Right-of-Way Permit applications; revoking Right-of-Way Permits; inspecting job sites; creating and updating mapping systems; determining the adequacy of Right-of-Way restoration; restoring work inadequately performed; maintaining, supporting, protecting or moving user equipment during Right-of-Way work; budget analysis; record keeping; legal assistance; systems analysis; and performing all of the other tasks required by this Chapter, including other costs the City may incur in managing the provisions of this Chapter except as expressly prohibited by law.
5. "City Inspector" means any Person authorized by the City to carry out inspections related to the provisions of this Chapter.
6. "Degradation" means the accelerated depreciation of the Right-of-Way caused by Excavation in or disturbance of the Right-of-Way, resulting in the need to reconstruct such Right-of-Way earlier than would be required if the Excavation did not occur.
7. "Emergency" means a condition that (a) poses a clear and immediate danger to life or health, or of a significant loss of property; or (b) requires immediate repair or replacement in order to restore Service to a customer.
8. "Equipment" means any tangible thing located in any Right-of-Way; but shall not include plantings or gardens planted or maintained in the Right-of-Way between a Person's property and the street curb.
9. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a Right-of-Way, except horticultural practices or penetrating the boulevard area to a depth of less than 12 inches.
10. "Excavation Permit" means the Permit which, pursuant to this Chapter, must be obtained before a Person may excavate in a Right-of-

Way. An excavation Permit allows the holder to Excavate that part of a Right-of-Way described in such Permit.

11. "Excavation Permit Fee" means money paid to the City by an Applicant to cover the costs as provided in Section 140.12.

12. "In", when used in conjunction with "Right-of-Way", means over, above, in, within, on, or under a Right-of-Way.

13. "Local Representative" means the Person or Persons, or designee of such Person or Persons, authorized by a Registrant to accept Service and to make decisions for the Registrant regarding all matters within the scope of this Chapter.

14. "Obstruct" means to place any tangible object in a Right-of-Way so as to hinder free and open passage over that or any part of the Right-of-Way.

15. "Obstruction Permit" means the Permit which, pursuant to this Chapter, must be obtained before a Person may Obstruct a Right-of-Way, allowing the holder to hinder free and open passage over the specified portion of a Right-of-Way by placing Equipment described therein on the Right-of-Way for the duration specified therein.

16. "Obstruction Permit Fee" means money paid to the City by a Registrant to cover the costs as provided in Section 140.12.

17. "Performance and Restoration Bond" means a performance bond or letter of credit posted to ensure the availability of sufficient funds to assure that all obligations pursuant to this Chapter, including, but not limited to, Right-of-Way Excavation and Obstruction work, is timely and properly completed.

18. "Permittee" means any Person to whom a Permit to Excavate or Obstruct a Right-of-Way has been granted by the City under this Chapter

19. "Person" means any natural or corporate Person, business association

or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have Equipment located in any Right-of-Way.

20. "Probation" means the status of a Person that has not complied with the conditions of this Chapter.

21. "Probation Period" means one (1) year from the date that a Person has been notified in writing that they have been put on Probation.

22. "Registrant" means any Person who (1) has or seeks to have its Equipment located in any Right-of-Way, or (2) in any way occupies or uses, or seeks to occupy or use, the Right-of-Way or any Equipment located in the Right-of-Way and, accordingly, is required to register with the City.

23. "Restore" or "Restoration" means the process by which an Excavated or Obstructed Right-of-Way and surrounding area, including, but not limited to, pavement and foundation, is returned to the same condition that existed before the commencement of Excavation.

24. "Restoration Fee" means an amount of money paid to the City by a Permittee to cover the cost of Restoration.

25. "Right-of-Way" means the area on, below or above any real property in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements.

26. "Right-of-Way Permit" means either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this Chapter.

27. "Service" or "Utility Service" includes, but is not limited to, (a) those

services provided by a public or private utility; and (b) a Telecommunications Right-of-Way User, pipeline, community antenna television, cable communications systems, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services.

28. "Supplementary Application" means an application made to Excavate or Obstruct more of the Right-of-Way than allowed in, or to extend, a Permit that had already been issued.

29. "Telecommunications Right-of-Way User" means a Person owning or controlling a facility in the Right-of-Way, or seeking to own or control the same, that is used or intended to be used for transporting telecommunication or other voice or data information.

30. "Unusable Equipment" means Equipment located in the Right-of-Way which has remained unused for one (1) year and for which the Registrant is unable to provide proof that it has a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the Equipment.

140.03 ADMINISTRATION. The City may designate a principal City official responsible for the administration of the Rights-of-Way, Right-of-Way Permits, and the ordinances related thereto. The City may delegate any or all of the duties hereunder.

140.04 REGISTRATION, BONDING AND RIGHT-OF-WAY OCCUPANCY.

1. Each Person which occupies, uses, or seeks to occupy or use, the Right-of-Way or any Equipment located in the Right-of-Way, including by lease, sublease or assignment, or who has, or seeks to have, Equipment located in any Right-of-Way must register with the City. Registration will consist of providing application information to and as required by the City, paying a registration fee, and posting a Performance and Restoration Bond.

The Performance and Restoration Bond required in this Section, and in Section 140.10.02; 140.13.02B, and Section 140.32.1B.03 shall be in an

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amount determined in the City's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this Chapter, including any costs, expenses, damages, or loss the City pays or incurs because of any failure to comply with this Chapter or any other applicable laws, regulations or standards. During periods of construction, repair or Restoration of Rights-of-Way or Equipment in Rights-of-Way, the Performance and Restoration Bond shall be in an amount sufficient to cover 100% of the estimated cost of such work, as documented by the Person proposing to perform such work, or in such lesser amount as may be determined by the City, taking into account the amount of Equipment in the Right-of-Way, the location and method of installation of the Equipment, the conflict or interference of such Equipment with the Equipment of other Persons, and the purposes and policies of this Chapter. Sixty (60) days after completion of the work, the Performance and Restoration Bond may be reduced in the sole determination of the City.

2. No Person may construct, install, repair, remove, relocate, or perform any other service on, or use any Equipment or any part thereof located in any Right-of-Way without first being registered with the City.
3. Nothing herein shall be construed to restrict or regulate the planting or maintaining of plantings or gardens in the area of Right-of-Way between property owners and the street curb. Persons planting or maintaining plantings or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any Permits or satisfy any other requirements for planting or maintaining such plantings or gardens under this Chapter.

140.05 RIGHT TO OCCUPY RIGHTS-OF-WAY; PAYMENT OF FEES.

1. Any Person required to register under Section 140.04, which occupies, uses, or places its Equipment in the Right-of-Way, is hereby granted a right to do so if and only so long as it (a) timely pays all fees provided herein; and (b) complies with all other requirements of law.
2. The grant of right in Section 140.05.01 is expressly conditioned on,

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and is subject to, the police powers of the City, continuing compliance with all provisions of law now or hereinafter enacted, including this Chapter as it may be from time to time amended and, further, is specifically subject to the obligation to obtain any and all additional required authorizations, whether from the City or other body or authority.

140.06 FRANCHISE; FRANCHISE SUPREMACY. The City may, in addition to the requirements of this Chapter, require any Person which has or seeks to have Equipment located in any Right-of-Way to obtain a franchise to the full extent permitted by law, now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this Chapter, whether granted prior or subsequent to enactment to this Chapter, shall control and supersede the conflicting terms of this Chapter provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the City may be cumulative in the sole determination of the City or unless otherwise negotiated by the City and the franchise grantee. All other terms of this Chapter shall be fully applicable to all Persons.

140.07 REGISTRATION INFORMATION.

1. The information provided to the City at the time of registration shall include, but not be limited to:
 - A. The Registrant's name, address and e-mail address if applicable, and telephone and facsimile numbers.
 - B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a Local Representative. The Local Representative or designee shall be available at all times. Current information regarding how to contact the Local Representative in an Emergency shall be provided at the time of registration.
 - C. A certificate of insurance or self-insurance:
 - (1) Shall be on a form approved by the City,

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(2) Shall verify that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Iowa or is covered by self-insurance which the City determines to provide the City with protections equivalent to that of an Iowa licensed insurance company, legally independent from Registrant,

(3) Shall verify that the Registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (a) use and occupancy of the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, and (b) placement and use of Equipment in the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Equipment and collapse of property,

(4) Shall name the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages,

(5) Shall require that the City be notified thirty (30) days in advance of cancellation of the policy, and

(6) Shall indicate comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage in amounts established by the City in amounts sufficient to protect the City and carry out the purposes and policies of this Chapter.

D. Such other information as the City may require.

2. The Registrant shall keep all of the information listed above current at all times by providing the City information of changes within fifteen (15) days following the date on which the Registrant has knowledge of any

change.

140.08 REPORTING OBLIGATIONS.

1. Operations. Each Registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan with the City. Registrants must use commercially reasonable efforts to anticipate and plan for all upcoming projects and include all such projects in a construction or major maintenance plan. Such plan shall be submitted using a format designated by the City and shall contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of Excavations and Obstructions of Rights-of-Way.

A. The plan shall include, but not be limited to, the following information:

- (1) The specific locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this Section, a "Next-year Project"); and
- (2) The tentative locations and beginning and ending dates for all Projects contemplated for the five years following the next calendar year (in this Section, a "Five-year Project").

The term "Project" in this Section shall include both Next-year Projects and Five-year Projects.

By January 1 of each year the City will have available for inspection in its offices a composite list of all Projects of which it has been informed in the annual plans. All Registrants are responsible for keeping themselves apprised of the current status of this list.

Thereafter, by February 1, each Registrant may change any Project in its list of Next-year Projects, and must notify the City and all other Registrants of all such changes in said list. Notwithstanding the

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foregoing, a Registrant may at any time join in a Next-year Project of another Registrant that was listed by the other Registrant.

2. Additional Next-year Projects. Notwithstanding the foregoing, the City may, for good cause shown, allow a Registrant to submit additional Next-year Projects. Good cause includes, but is not limited to, the criteria set forth in Section 140.17.03 concerning the discretionary issuance of Permits.

140.09 PERMIT REQUIREMENT. Except as otherwise provided in this Code, no Person may Obstruct or Excavate any Right-of-Way without first having obtained the appropriate Right-of-Way Permit from the City to do so.

1. Excavation Permit. An Excavation Permit is required to allow the holder to Excavate that part of the Right-of-Way described in such Permit and/or to hinder free and open passage over the specified portion of the Right-of-Way by placing Equipment described therein, to the extent and for the duration specified therein.

2. Obstruction Permit. An Obstruction Permit is required to allow the holder to hinder free and open passage over the specified portion of Right-of-Way by placing Equipment, vehicles, or other obstructions described therein on the Right-of-Way for the duration specified therein.

No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the Permit unless such person (a) makes a Supplementary Application for another Right-of-Way Permit before the expiration of the initial Permit, and (b) a new Permit or Permit extension is granted.

Permits issued under this Chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the City Inspector and authorized City personnel.

140.10 PERMIT APPLICATIONS.

1. Application for a Permit is made to the City. Right-of-way Permit applications shall contain, and will be considered complete only upon

compliance with, the requirements of the following provisions:

- A. Registration with the City pursuant to this Chapter.
- B. Submission of a completed Permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed Equipment.
- C. Payment of all money due to the City for:
 - (1) Permit fees and costs due;
 - (2) prior Obstructions and Excavations;
 - (3) any loss, damage, or expense suffered by the City as a result of Applicant's prior Excavations or Obstructions of the Rights-of-Way or any Emergency actions taken by the City; and
 - (4) franchise fees, if applicable.

2. When an Excavation Permit is requested for purposes of installing additional Equipment, and a Performance and Restoration Bond which is in existence is insufficient with respect to the additional Equipment in the sole determination of the City, the Permit applicant may be required by the City to post an additional Performance and Restoration Bond in accordance with Section 140.04.01.

140.11 ISSUANCE OF PERMIT; CONDITIONS.

1. If the City determines that the Applicant has satisfied the requirements of this chapter, the City may issue a Permit.
2. The City may impose any reasonable conditions upon the issuance of a Permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to ensure the structural

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integrity of the Right-of-Way, to protect the property and safety of other users of the Right-of-Way, to minimize the disruption and inconvenience to the traveling public, and to otherwise efficiently manage use of the Right-of-Way.

140.12 PERMIT FEES.

1. Excavation Permit Fee. The Excavation Permit Fee shall be established by the City in an amount sufficient to recover the following costs:

- A. the City Cost;
- B. the Degradation of the Right-of-Way that will result from the Excavation;
- C. Restoration, if done or caused to be done by the City.

2. Obstruction Permit Fee. The Obstruction Permit Fee shall be established by the City and shall be in an amount sufficient to recover the City Cost.

3. Disruption Fees. The City may establish and impose a disruption fee as a penalty for unreasonable delays in Excavations, Obstructions, or Restoration.

4. Payment of Permit Fees. No Excavation Permit or Obstruction Permit shall be issued without payment of all fees required prior to the issuance of such a Permit unless the Applicant shall agree (in a manner, amount and substance acceptable to the City) to pay such fees within thirty (30) days of bill therefore. All Permit fees shall be doubled during a probationary period. Permit fees that were paid for a Permit which was revoked for a breach are not refundable. Any refunded Permit Fees shall be less all City Cost up to and including the date of refund.

5. Use of Permit Fees. All Obstruction and Excavation Permit Fees shall be used solely for City management, construction, maintenance and Restorations costs of the Right-of-Way.

140.13 RIGHT-OF-WAY RESTORATION.

1. The work to be done under the Permit, and the Restoration of the Right-of-Way as required herein, must be completed within the dates specified in the Permit, increased by as many days as work count not be done because of circumstances constituting force majeure or when work was prohibited as unseasonal or unreasonable under Section 140.16.02 all in the sole determination of the City.

In addition to repairing its own work, the Permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition thereafter.

2. In its application for an Excavation Permit, the Permittee may choose to have the City restore the Right-of-Way. In any event, the City may determine to perform the Right-of-Way Restoration and shall require the Permittee to a Restoration Fee to provide for reimbursement of all costs associated with such Restoration. In the event Permittee elects not to perform Restoration, City may, in lieu of performing the Restoration itself, impose a fee to fully compensate for the resultant Degradation as well as for any and all additional City Costs associated therewith. Such fee for Degradation shall compensate the City for costs associated with a decrease in the useful life of the Right-of-Way caused by Excavation and shall include a Restoration Fee component. Payment of such fee does not relieve a Permittee from any Restoration obligation.

A. City Restoration. If the City restores a Right-of-Way, the Permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such Restoration, the Right-of-Way settles due to Permittee's Excavation or Restoration, the Permittee shall pay the City, within thirty (30) days of billing, the cost of repairing said Right-of-Way.

B. Permittee Restoration. If the Permittee chooses at the time of application for an Excavation Permit to restore the Right-of-Way

itself, such Permittee shall post an additional Performance and Restoration Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Right-of-Way to its pre-Excavation condition. If, thirty-six (36) months after the completion of the Restoration of the Right-of-Way, the City determines that the Right-of-Way has been properly restored, the surety on the Performance and Restoration Bond posted pursuant to this 140.13.02B shall be released.

3. The Permittee shall perform the work according to the standards and with materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures or general application or on a case-by-case basis. The City, in exercising this authority, shall be guided but not limited by the following standards and considerations:

- A. the number, size, depth and duration of the Excavations, disruptions or damage to the Right-of-Way;
- B. the traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way;
- C. the pre-excavation condition of the Right-of-Way; the remaining life-expectancy of the Right-of-Way affected by the Excavation;
- D. whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Right-of-Way that would otherwise result from the Excavation, disturbance or damage to the Right-of-Way; and
- E. the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place.

4. By choosing to restore the Right-of-Way itself, the Permittee guarantees its work and shall maintain it for thirty-six (36) months

following its completion. During this thirty-six month period it shall, upon notification from the City, correct all Restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 140.16.02 all in the sole determination of the City.

5. If the Permittee fails to restore the Right-of-Way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City at its option may perform or cause to be performed such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the Right-of-Way. If Permittee fails to pay as required, the City may exercise its rights under the Performance and Restoration Bond.

140.14 JOINT APPLICATIONS.

1. Registrants may jointly make applications for Permits to Excavate or Obstruct the Right-of-Way at the same place and time.
2. Registrants who join in and during a scheduled Obstruction or Excavation performed by the City, whether or not it as a joint application by two or more Registrants or a single application, are not required to pay the Obstruction and Degradation portions of the Permit Fee.
3. Registrants who apply for Permits for the same Obstruction or Excavation, which is not performed by the City, may share in the payment of the Obstruction or Excavation Permit Fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

140.15 SUPPLEMENTARY APPLICATIONS.

1. A Right-of-Way Permit is valid only for the area of the Right-of-Way specified in the Permit. No Permittee may perform any work outside the

the area specified in the Permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the Permit must be Obstructed or Excavated must before working in that greater area (a) make application for a Permit extension and pay any additional fees necessitated thereby, and (b) be granted a new Permit or Permit extension.

2. A Right-of-Way Permit is valid only for the dates specified in the Permit. No Permittee may begin its work before the Permit start date or, except as provided herein, continue working after the end date. If a Permittee does not finish the work by the Permit end date, it must make application for a new Permit for the additional time it needs, and receive the new Permit or an extension of the old Permit before working after the end date of the previous Permit. This Supplementary Application must be done before the Permit end date.

140.16 OTHER OBLIGATIONS.

1. Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, franchises or other authorizations and to pay all fees required by the City, any other 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 performs the work.

2. Except in the case of an Emergency, and with the approval of the City, no Right-of-Way Obstruction or Excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

3. A Permittee shall not so Obstruct a Right-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

140.17 DENIAL OF PERMIT. The City may, deny any application for a Permit as

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provided in this Section.

1. Mandatory Denial. Except in the case of an Emergency, no Right-of-Way Permit will be granted.
 - A. To any Person required by Section 140.04 to be registered who has not done so;
 - B. To any Person required by Section 140.08 to file an annual report but has failed to do so;
 - C. For any Next-year Project not listed in the construction and major maintenance plan required under Section 140.08 unless the Person used commercially reasonable efforts to anticipate and plan for the project;
 - D. For any project which required the Excavation of any portion of a Right-of-Way which was constructed or reconstructed within the preceding three (3) years;
 - E. To any Person who has failed within the past three (3) years to comply, or is presently not in full compliance, with the requirements of this Chapter;
 - F. To any Person as to who there exists grounds for the revocation of a Permit under Section 140.22; and
 - G. If, in the sole discretion of the City, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The City, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Right-of-Way, and by considerations relating to the public health, safety and welfare.
2. Permissive Denial. The City may deny a Permit in order to protect the public health, safety and welfare, to prevent interference with the safety

and convenience of ordinary travel over the Right-of-Way, or when necessary to protect the Right-of-Way and its users. The City may consider one or more of the following factors:

- A. the extent to which Right-of-Way space where the Permit is sought is available;
- B. the competing demands for the particular space to the Right-of-Way;
- C. the availability of other locations in the Right-of-Way or in other Rights-of-Way for the Equipment of the Permit Applicant;
- D. the applicability of ordinance or other regulations of the Right-of-Way that affect location of Equipment in the Right-of-Way;
- E. the degree of compliance of the Applicant with the terms and conditions of its franchise, if any, this Chapter, and other applicable ordinances and regulations;
- F. the degree of disruption to surrounding communities and businesses that will result from the use of that part of the Right-of-Way;
- G. the condition and age of the Right-of-Way, and whether and when it is scheduled for total or partial reconstruction; and
- H. the balancing of the costs of disruption to the public and damage to the Right-of-Way, against the benefits to that part of the public served by the expansion into additional parts of the Right-of-Way.

3. Discretionary Issuance. Notwithstanding the provisions of Section 140.18.01C and D above, the City may issue a Permit in any case where the Permit is necessary (a) to prevent substantial economic hardship to a customer of the Permit Applicant, of (b) to allow such customer to materially improve its Utility Service, or (c) to allow a new economic

development project; and where the Permit Applicant did not have knowledge of the hardship, the plans for improvement of Service, or the development project when said Applicant was required to submit its list of Next-year Projects.

4. Permits for Additional Next-year Projects. Notwithstanding the provisions of Section 140.18.01C above, the City may issue a Permit to a Registrant who was allowed under Section 140.08.02 to submit an additional Next-year Project, or in the event the Registrant demonstrates that it used commercially reasonable efforts to anticipate and plan for the project, such Permit to be subject to all other conditions and requirements of law, including such conditions as may be imposed under Section 140.11.02.

140.18 INSTALLATION REQUIREMENTS. The City may enforce local standards of installation prior to adoption of mandatory, preemptive statewide standards pursuant to its inherent and historical police power authority.

140.19 INSPECTION.

1. When the work under any Permit hereunder is completed, the Permittee shall notify the City.
2. 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 and upon completion of the work.
3. At the time of inspection the City Inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The City Inspection may issue an order to the Registrant for any work which 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) days after issuance of the order, the Registrant shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the Permit pursuant to Section 140.22.

140.20 WORK DONE WITHOUT A PERMIT.

1. Emergency Situations. Each Registrant shall immediately notify the City or the City's designee of any event regarding its Equipment which it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary in order to respond to the Emergency. Within three (3) business days after the occurrence of the Emergency, the Registrant shall apply for the necessary Permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the Emergency.

In the event that the City becomes aware of an Emergency regarding a Registrant's Equipment, the City may attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Registrant whose Equipment occasioned the Emergency.

2. Non-Emergency Situations. Except in the case of an Emergency, any Person who, without first having obtained the necessary Permit, Obstructs or Excavates a Right-of-Way must subsequently obtain a Permit, pay double the normal fee for said Permit, pay double all other fees required by City ordinance, including, but not limited to, criminal fines and penalties, deposit with the City the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this Chapter.

140.21 SUPPLEMENTARY NOTIFICATION. If the Obstruction or Excavation of the Right-of-Way begins later or sooner than the date given on the Permit, Permittee shall notify the City of the accurate information as soon as this information is known.

140.22 REVOCATION OF PERMITS.

1. Registrants hold Permits issued pursuant to this Code as a privilege and not as a right. The City reserves its right, to revoke any Right-of-Way

Permit, without fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any condition of the Permit. A substantial breach by Permittee shall include, but not be limited to, the following:

- A. The violation of any material provision of the Right-of-Way Permit;
- B. An evasion or attempt to evade any material provision of the Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- C. Any material misrepresentation of fact in the application for a Right-of-Way Permit;
- D. The failure to maintain the required bonds and/or insurance;
- E. The failure to complete the work in a timely manner; or
- F. The failure to correct a condition indicated on an order issued pursuant to Section 140.19.03.

2. If the City determines that the Permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the Permit, the City shall make a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. Further, a substantial breach, as stated above, will allow the City, at the City's discretion, to place additional or revised conditions on the Permit.

3. Within twenty-four (24) hours of receiving notification of the breach, Permittee shall contact the City with a plan, acceptable to the City Inspector, for its correction. Permittee's failure to so contact the City Inspector, the Permittees failure to submit an acceptable plan, or the Permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the Permit. Further, Permittee's failure to so contact the City Inspector, or the Permittee's failure to submit an

acceptable plan, or Permittee's failure to reasonably implement the approved plan shall automatically place the Permittee on Probation for one (1) full year.

4. From time to time, the City may establish a list of conditions of the Permit which, if breached, will automatically place the Permittee on Probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on Right-of-Way outside of the Permit.

5. If a Permittee, while on Probation, commits a breach as outlined above, Permittee's Permit will automatically be revoked and Permittee will not be allowed further Permits for one (1) full year, except for Emergency repairs.

6. If a Permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

140.23 APPEALS.

1. A Person that:

- A. has been denied Registration;
- B. has been denied a Right-of-Way Permit;
- C. has had its Right-of-Way Permit revoked; or
- D. believes that the fees imposed on the user by the City do not conform to the requirements of law.

may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness

of the decision.

2. Upon affirmation by the City Council of the denial, revocation, or fee imposition, the telecommunications Right-of-Way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City and the Person. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the Person, and one arbitrator selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the City and the Person. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

3. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

140.24 MAPPING DATA.

1. Except as provided in Subsection 2 of this Section, each Registrant shall provide to the City information indicating the horizontal and vertical location, relative to the boundaries of the Right-of-Way, of all Equipment which it owns or over which it has control and which is located in any Right-of-Way ("Mapping Data"). Mapping Data shall be provided with the specificity and in the format requested by the City for inclusion in the mapping system used by the City.

Within six months of the acquisitions, installation, or construction of additional Equipment or any relocation, abandonment, or disuse of existing Equipment, each Registrant shall supplement the Mapping Data required herein.

Each Registrant shall, within six (6) months after the date of passage of this ordinance, submit a plan to the City specifying in detail the steps it will take to comply with the requirements of this Section. Said plan shall provide for the submission of all Mapping Data not later than five (5)

years after the date of passage of this ordinance.

Notwithstanding the foregoing, Mapping Data shall be submitted by all Registrants for all Equipment which is being installed or constructed after the date of passage of this ordinance at the time any Permits are sought under this Chapter.

After six (6) months after the passage of this ordinance, a new Registrant, or a Registrant which has not submitted a plan as required above, shall submit complete and accurate Mapping Data for all its Equipment at the time any Permits are sought under this Chapter.

2. Information regarding Equipment of Telecommunications Right-of-Way Users constructed or located prior to January 1, 1997, need only be supplied in the form maintained, however, all Telecommunications Right-of-Way Users must submit some type of documentary evidence regarding the location of Equipment within the Rights-of-Way of the City.

3. At the request of any Registrant, any information requested by the City, which qualifies as a "trade secret" shall be treated as trade secret information as detailed therein.

140.25 LOCATION OF EQUIPMENT.

1. Undergrounding. Unless otherwise permitted by an existing franchise or unless existing above-ground Equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new Equipment, and the replacement of old Equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes unless otherwise agreed to by the City in writing, and such agreement is reflected in applicable Permits.

2. Corridors. The City may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of Equipment that is or, pursuant to current technology, the City expects will someday be located within the Right-of-Way. Excavation,

Obstruction, or other Permits issued by the City involving the installation or replacement of Equipment may designate the proper corridor for the Equipment at issue and such Equipment must be located accordingly.

Any Registrant whose Equipment is located prior to the enactment of this Chapter 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 its Equipment is located, move that Equipment to its assigned position within the Right-of-Way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the Registrant.

3. Nuisance. One year after the passage of this ordinance, any Equipment found in a Right-of-Way that has not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the Equipment and restoring the Right-of-Way to a useable condition.

4. Limitation of Space. To protect health, safety and welfare, the City shall have the power to prohibit or limit the placement or new or additional Equipment within the Right-of-Way if there is insufficient space to accommodate all of the requests of Registrants or Persons to occupy and use the Right-of-Way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular Service, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of existing Equipment in the Right-of-Way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

140.26 RELOCATION OF EQUIPMENT. The Person must promptly and at its own expense, with due regard to seasonal working conditions, permanently remove and relocate its Equipment and facilities in the Right-of-Way whenever

the City requests such removal and relocation, and shall restore the Right-of-Way to the same condition it was in prior to said removal or relocation. The City may make such requests in order to prevent interference by the Company's Equipment or facilities with (a) a present or future City use of the Right-of-Way, (b) a public improvement undertaken by the City, (c) and economic development project in which the City has an interest or investment, (d) when the public health, safety and welfare requires is, (e) or when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Notwithstanding the foregoing, a Person shall not be required to remove or relocate its Equipment from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid by such non-governmental entity to the Person therefore.

140.27 PRE-EXCAVATION EQUIPMENT LOCATION. Before the start date of any Right-of-Way Excavation, each Registrant who has Equipment located in the area to be Excavated shall mark the horizontal and approximate vertical placement of all said Equipment. Any Registrant whose Equipment is less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the Excavation contractor in an effort to establish the exact location of its Equipment and the best procedure for Excavation.

140.28 DAMAGE TO OTHER EQUIPMENT. When the City performs work in the Right-of-Way and finds it necessary to maintain, support, or move a Registrant's Equipment in order to protect it, the City shall notify the Local Representative as early as is reasonably possible. The costs associated therewith will be billed to that Registrant and must be paid within thirty (30) days from the date of billing.

Each Registrant shall be responsible for the cost of repairing any Equipment in the Right-of-Way which it or its Equipment damages. Each Registrant shall be responsible for the cost of repairing any damage to the Equipment of another Registrant caused during the City's response to an Emergency occasioned by the Registrant's Equipment.

140.29 RIGHT-OF-WAY VACATION.

1. If the City vacates a Right-of-Way which contains the equipment of a Registrant, and if the vacation does not required the relocation of Registrant or Permittee Equipment, the City shall reserve, to and for itself and all Registrants having equipment in the vacated Right-of-Way, the right to install, maintain and operate any Equipment in the vacated Right-of-Way and to enter upon such Right-of-Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
2. If the vacation requires the relocation of Registrant or Permittee Equipment and: (a) if the vacation proceedings are initiated by the Registrant or Permittee, the Registrant or Permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the Registrant or Permittee must pay the relocation costs unless otherwise agreed to by the City and the Registrant or Permittee; or (c) if the vacation proceedings are initiated by a Person or Persons other than the Registrant or Permittee, such other Person or Persons must pay the relocation costs.

140.30 INDEMNIFICATION AND LIABILITY.

1. By reason of the acceptance of a registration or the grant of a Right-of-Way Permit, the City does not assume any liability: (a) for injuries to Persons, damage to property, or loss of Service claims by parties other than the Registrant or the City; or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Equipment by Registrants or activities of Registrants.
2. By registering with the City, a Registrant agrees, or by accepting a Permit under this Chapter, a Permittee is required to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Equipment, or out of any activity undertaken in or near a Right-of-Way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a Right-of-Way Permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award

arising out of the presence, installation, maintenance or operation of its Equipment, or any activity undertaken in or near a Right-of-Way, whether or not the act or omission complained of is authorized, allowed or prohibited by a Right-of-Way Permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said Equipment by the Registrant or on the Registrant's behalf, including, but not limited to, the issuance of Permits and inspection of plans or work. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Registrant or to the City; and the Registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

140.31 FUTURE USES. In placing any Equipment, or allowing it to be placed, in the Right-of-Way the City is not liable for any damages caused thereby to any Registrant's Equipment which is already in place. No Registrant is entitled to rely on the provisions of this Chapter, and no special duty is created as to any Registrant. This Chapter is enacted to protect the general health, welfare and safety of the public at large.

140.32 ABANDONED AND UNUSABLE EQUIPMENT.

1. A Registrant who has determined to discontinue its operations with respect to any Equipment in any Right-of-Way, or segment or portion thereof, in the City must either:
 - A. Provide information satisfactory to the City that the Registrant's obligations for its Equipment in the Right-of-Way under this Chapter have been lawfully assumed by another Registrant; or
 - B. Submit to the City a proposal and instruments for transferring ownership of its Equipment to the City. If a Registrant proceeds under this clause, the City may, at its option:
 - (1) purchase the Equipment, or

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(2) require the Registrant, at its own expense, to remove it, or

(3) require the Registrant to post an additional bond or an increased bond amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Equipment.

2. Equipment of a Registrant which fails to comply with the preceding paragraph and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned Equipment is deemed to be a nuisance. The City may exercise any remedies of rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession of the Equipment and restoring it to useable condition, (c) requiring removal of the Equipment by the Registrant or by the Registrant's surety; or (d) exercising its rights pursuant to the Performance and Restoration Bond.

3. Any Registrant who has unusable Equipment in any Right-of-Way shall remove it from that Right-of-Way during the next scheduled Excavation, unless this requirement is waived by the City.

140.33 RESERVATION OF REGULATORY AND POLICE POWERS. The City by granting a Right-of-Way Permit, or by registering a Person under this Chapter does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it now has or may be hereafter vested in the City under the Constitution and statutes of the State of Iowa (or the Charter of the City) to regulate the use of the Right-of-Way by the Permittee; and the Permittee by its acceptance of a Right-of-Way Permit or of registration under those ordinances agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or Registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the

between the provisions of a registration or of a Right-of-Way Permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

140.34 NON-EXCLUSIVE REMEDY. The remedies provided in this Chapter and other Chapters in the Grimes City Code of Ordinances, and the Code of Iowa, are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public Rights-of-Way, including damages to the Rights-of-Way, whether or not caused by a violation of any of the provisions of this Chapter or other provisions of the Iowa Code.

