CHAPTER 141

PROW MANAGEMENT

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141.01 FINDINGS AND PURPOSE. 1

Findings:

A. City's street and alley PROW is owned or controlled by the City primarily for the purpose of pedestrian and vehicular passage and for City's provision of essential public safety services, including police, fire, and emergency medical response services, and public health services, including sanitary sewer, water, and storm drainage services; all other purposes are deemed subservient.

B. In order to provide for the health, safety and well-being of its citizens, as well as to insure the structural integrity of its streets and other infrastructure, City strives to keep its PROW in a state of good repair and free from unnecessary encumbrances; although the general population bears the financial burden for the upkeep of the PROW, a primary cause for the early and excessive deterioration of streets and other City infrastructure is frequent excavation of the PROW by persons whose equipment is located therein.

C. City recognizes that it holds PROW within its geographical boundaries as an asset in trust for its citizens; City and other public entities have invested substantial public funds to acquire,

build, and maintain PROW and City infrastructure located therein; City also recognizes that some persons, by placing their equipment in the PROW and charging certain City residents and some nonresidents for goods and services delivered thereby, are burdening for private gain this property held by the City for the public good; although such services are often necessary or convenient for various groups of resident and non-resident customers, such persons receive revenue and/or profit as a consequence of this burden on PROW.

D. The demands upon City PROW space are virtually unlimited but the space itself is finite; burdens on City PROW will only increase as competition for retail utility customers grows, providers multiply, and new technologies are developed and installed.

E. As City PROW space is consumed, acquisition of new PROW has to be anticipated and provision has to be made for funding such acquisition in a manner that spreads the costs as fairly among current and future registrants as is reasonably practicable.

F. City is obliged to devote substantial City staff and resources to balancing and reconciling competing infrastructure needs with the fundamental governmental function of maintaining regular and convenient public access to safe and structurally sound City streets and other City facilities.

G. The cost of restoration efforts that are abandoned or insufficiently performed by PROW registrants has to be recovered.

H. Each intrusion into the City's PROW can damage and shorten the useful life of overlying streets, alleys, sidewalks and other City facilities to the detriment of City residents who are not necessarily customers or beneficiaries of the entity causing the particular intrusion.

I. A responsible City program of PROW management should seek to recover the City's costs associated with PROW restoration, administration, and consumption/acquisition, hereinafter collectively called "PROW management program costs," from franchised and franchiseable utilities, nonfranchiseable telephone utilities including but not limited to municipal telephone utilities, and other private PROW occupiers. J. Franchised utilities that pay franchise fees already contribute to the City's PROW management program costs.

K. Burdens on and consumption of PROW by municipal utilities and departments of the City constitute the City's management of its own property.

L. PROW management program costs attributable to PROW intrusions accomplished by franchised or franchiseable utilities that do not pay franchise fees, non-franchiseable telephone utilities including but not limited to municipal telephone utilities, and other private PROW occupiers, should be recovered from the entity causing each intrusion, and their customers, and should not fall generally upon City taxpayers as a whole.

2. Purpose. The purposes of this chapter are:

A. With respect to franchised utilities that pay franchise fees, to ratify and confirm existing franchise agreements and franchise fees, and to clarify their regulatory obligations consistent with, and to the extent that such matters are not addressed by, existing franchise agreements.

B. With respect to franchised or franchiseable utilities that do not pay franchise fees, non-franchiseable telephone utilities including but not limited to municipal telephone utilities, and other private PROW occupiers, to confirm City authority to regulate their activity relative to City PROW, to specify procedures for their application for City permission to locate and operate facilities in City PROW, to identify and quantify all costs of the City's PROW management, and to provide for the recovery of all such costs specifically from the entity causing each intrusion, or their customers, so that such costs do not fall generally upon City taxpayers as a whole.

C. To ensure that all users of the PROW are subject to the same provisions and fees. The provisions of this chapter shall be applied in a competitively neutral and non-discriminatory manner.

141.02 EXISTING AGREEMENTS; OTHER FACILITIES SUBJECT TO THIS CHAPTER.

1 All existing franchise agreements and fees in existence as of the effective date of this chapter are hereby ratified and confirmed.

2. Franchised utilities that pay a franchise fee shall be subject to all regulatory provisions of this chapter to the extent that such provisions are in addition to and not in conflict with existing franchise agreements; applicable fees shall be waived in recognition of the payment of the franchise fees.

3. Franchised and franchiseable utilities that do not pay franchise fees, non-franchiseable telephone utilities including but not limited to municipal telephone utilities, other private PROW occupiers including but not limited to gas, electric, and cable television providers, and work done to maintain City provided services are subject to this chapter.

141.03 DEFINITIONS; SCOPE; ADMINISTRATION; UTILITY COMMITTEE.

1 Definitions. The following definitions apply to registrants. Defined terms remain defined terms whether or not capitalized.

A. "Administration cost" means all direct and indirect City staff and material cost of administration associated with the City's PROW management program, including but not limited to registering applicants; issuing, processing, and verifying PROW license applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving registrant facilities during PROW work; determining the adequacy of PROW restoration; providing notice of violations or needed corrective action, and revoking PROW licenses. The administration costs shall be recouped through a set fee, subject to periodic review by the City Council.

B. "Applicant" means any person requesting permission to intrude upon, excavate, obstruct or consume City PROW.

C. "Cable television utility" means a franchiseable utility as defined by [FCC Regulations].

D. "City-provided services" means any utility provided to citizens by the City, including but not limited to sewer and water service.

E. "Construction performance bond" means any form of financial guarantee authorized under Iowa Law for assuring full performance of public construction contracts.

F. "Consumption cost" is the projected cost of consumption of PROW by an occupier of the PROW, calculated in accordance

with Schedule "A" on file at City Hall; consumption cost is a PROW management cost.

G. "Delay penalty" is the penalty imposed as a result of unreasonable delays in PROW construction.

H. "Department" means the Department of Public Works of the City.

I. "Department Inspector" means any person authorized by the PROW administrator to carry out inspections related to the provisions of this chapter.

J. "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 of facilities in order to restore service to a customer.

K. "Equipment" means any tangible asset used to install, repair, or maintain facilities in any PROW.

L. "Excavate" means to dig, place, repair, construct or bury anything in, on or under the PROW, or in any way remove or physically disturb or penetrate any part of the PROW.

M. "Excavation license" means the license which, pursuant to this chapter, must be obtained before a person may excavate in a PROW. An excavation license allows the holder to excavate that part of the PROW described in such license.

N. "Excavation license fee" means money paid to the City by an applicant to cover the costs as provided in Section 141.10(1) below. The fee shall be a set fee, subject to periodic review by the City Council.

0. "Facility or facilities" means any tangible asset in the PROW required to provide utility service.

P. "Franchisee" means any person who has been granted a franchise by City which allows the installation of infrastructure within City PROW or who is hereafter granted a franchise which allows installation of infrastructure within City PROW.

Q. "Intrusion" means any disturbance of the PROW.

R. "Licensee" means any person to whom a license to excavate or obstruct a PROW has been granted by the City under this chapter.

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

T. "Obstruct" means to impede or hinder the free and unrestricted use of PROW by others or to place any tangible object upon the surface of PROW so as to hinder free and open passage over that or any part of the PROW, or so as to effectively impede the free and unrestricted use of PROW by others.

U. "Patch or patching" means a method of pavement replacement for an excavation in the PROW. A patch consists of (a) the compaction of the subbase and aggregate base, and (b) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

V. "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, anyone who has been contracted to perform work on City provided services, property owners, or any other legal entity.

W. "Private PROW occupiers" means utility companies not owned by the City including but not limited to gas, electric, telecommunications and cable television.

X. "Probation" means the status of a person that has not complied with the conditions of this chapter.

Y. "Probationary period" means one year from the date that a person has been notified in writing that they have been put on probation.

Z. "PROW" (see "public right of-way" below).

AA. "PROW administrator" means the City building official, and/or his or her designee.

BB. "PROW management program costs" means costs associated with a responsible City program of PROW management including costs associated with PROW degradation, restoration, administration, and consumption/acquisition.

CC. "PROW license" means any one or more of the excavation license, the disruption license, or the consumption/acquisition license, treewell license, or irrigation system license, depending on the context, required by this chapter.

DD. "Public right of way" (PROW) means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated PROW for travel purposes and utility easements of the City. A PROW does not include the airwaves above a PROW with regard to cellular or other nonwire telecommunications or broadcast service.

EE. "Registrant" means any person who (a) has or seeks to have its equipment or facilities located in any PROW, or (b) in any way occupies or burdens, or seeks to occupy or burden, the PROW or place its facilities in the PROW; registrants include utilities that are franchised or franchiseable.

FF. "Restoration cost" means the full cost of restoration of City infrastructure and PROW to as good or better condition than before an intrusion when such restoration is not accomplished, or is insufficiently accomplished, by the entity causing an intrusion; restoration cost is a PROW management program cost.

GG. "Restore or restoration" means the process by which a PROW is returned to the same condition and life expectancy that existed before excavation in accordance with the *Urban Standard Specifications for Public Improvements* and *Urban Design Standards Manual*.

HH. "Supplementary application" means an application made to excavate or obstruct more of the PROW than allowed in, or to extend, a license that had already been issued.

II. "Telecommunication PROW licensee" means a person owning or controlling a facility in the PROW, or seeking to own or control a facility in the PROW, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility, a municipality, or a cooperative electric association, are not telecommunications PROW licensees for purposes of this chapter. JJ. "Treewell" means any opening or cut in a sidewalk used for planting trees, whether covered by a grate or not.

KK. "Undedicated portions of the ROW" means ROW that has been platted but not yet deeded or transferred to the City.

LL. "Unused equipment" or "unused facilities" means equipment or facilities located in the PROW which has remained unused for six months and for which the Registrant is unable to provide proof that it has either a plan to begin using that equipment within the next twelve (12) months or a potential purchaser or user of that equipment for the same purpose.

2. Scope. Except as may be specifically provided, the requirements of this chapter do not apply to municipal departments or to municipal utilities, in regards to payment of fees, except municipal telephone utilities.

3. Administration. The PROW administrator is the principal City official responsible for the administration of the PROW; of registration of registrants; of PROW licenses; of the franchising, licensing and leasing of PROW; and the ordinances related thereto; the PROW administrator may delegate any or all of the duties hereunder.

4. Utility Committee. The Utility Committee of the City Council shall be responsible for obtaining information and making recommendations to the City Council regarding activities relative to the PROW.

141.04 REGISTRATION AND PROW OCCUPANCY.

1. Registration. Each person who occupies, burdens, or seeks to occupy or burden, the PROW or place any equipment or facilities in the PROW, including persons with installation and maintenance responsibilities by lease, sublease or assignment, or are contracted to perform work on City provided services must register with the PROW administrator. Registration will consist of providing application information and paying a registration fee as established by the Council.

2. Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or utilize any facilities or any part thereof, in any PROW without first being registered with the PROW administrator.

3. Exceptions, Nothing herein shall be construed to repeal or amend the provisions of a City ordinance licensing persons to plant or maintain

boulevard plantings or gardens in the area of the PROW between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to burden or occupy the PROW, and shall not be required to obtain any licenses or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of Iowa's "One Call" law. Additionally, nothing herein constitutes a grant of permission to permanently locate plantings in the PROW, nor does the City waive any potential claims, counterclaims, crossclaims or interpleaders relative to persons putting plantings in the PROW that give rise to injuries or damages to others. The City may at any time require the removal or relocation of plantings at the owners' expense.

141.05 REGISTRATION INFORMATION.

1. Information Required. The information provided to the PROW administrator at the time of registration shall include, but not be limited to:

A. Each registrant's name, One Call registration certificate number, 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) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Iowa, or a form of self insurance acceptable to the PROW administrator;

(2) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the PROW by the registrant, its officers, agents, employees and licensees, and (ii) placement and operation of facilities in the PROW by the registrant, its officers, agents, employees and licensees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

(3) Naming the City as an additional insured as to whom the coverages required therein are in force and applicable and for whom defense will be provided as to all such coverages;

(4) Requiring that the PROW administrator be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(5) Indicating comprehensive liability coverage, automobile liability coverage, worker's compensation and umbrella coverage established by the PROW administrator in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this chapter.

(6) The City may require a copy of the actual insurance policies.

(7) If the person is a corporation, proof of corporate status satisfactory to the PROW administrator.

(8) Minimum general liability insurance shall be \$500,000.

D. A copy of the person's order granting a certificate of authority from the Iowa Utility Board or other applicable State or Federal agency, where the person is lawfully required to have such certificate from said Board or other State or Federal agency.

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

3. Mailing of Notices. All notices required by this chapter shall be sent to the address contained on the registration form unless otherwise notified.

141.06 REPORTING OBLIGATIONS.

1 Operations. Each registrant shall, at the time of registration and by December 1 of each year, file any construction or major maintenance plans for the upcoming year for underground facilities with the PROW administrator. Routine maintenance is exempted from this requirement. Such plan shall be submitted using a format designated by the PROW administrator and shall contain the information determined by the PROW administrator to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of PROW.

A. The plan shall include, but not be limited to 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").

B. By January 1 of each year the PROW administrator will have available for inspection in the PROW administrators office a composite list of all projects of which the PROW administrator has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

C. After February 1, each registrant may change any project, requiring registration in its list of next-year projects, and must notify the PROW administrator of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

2. Registrants Limited to Projects Identified In Construction and Major Maintenance Plan. A registrant which does not file a construction or major maintenance plan with the PROW administrator as provided above may be denied PROW licenses to construct or emplace new equipment, or to engage in major maintenance of existing equipment, in the PROW during the two-year period succeeding the date upon which such plan was due; a registrant which seeks to undertake a project to construct or emplace new equipment in the PROW, or to undertake a major maintenance project as to existing equipment, which project is not identified in the construction and major maintenance plan for the year in which the registrant seeks to undertake the project, may be denied a PROW license for such project; this provision shall not apply to emergency repair projects or utility service extension projects which the registrant could not have anticipated for inclusion in its construction and major maintenance plan.

3. Additional Next-year Projects. Notwithstanding the foregoing, the PROW administrator will not deny an application for a PROW license for failure to include a project in a plan submitted to the City if

the registrant has used commercially reasonable efforts to anticipate and plan for the project.

4 Registrants Which Own or Occupy Buildings Abutting City PROW. Registrants which own or occupy buildings abutting City PROW on either side thereof, and which have or desire to establish utility or telecommunications connections between such buildings, and whose utility or telecommunications equipment is or will be contained within ducts or tunnels which cross, rather than run parallel in, City PROW, or which have or will have less than 300 lineal feet of such ducts or tunnels in City PROW, are exempt from the requirement of submitting construction and major maintenance plans with respect to (a) the construction of ducts or tunnels for such equipment, (b) the maintenance of equipment within such ducts or tunnels, and (c) the placement of additional utility or telecommunications equipment (pipes, wires, or cables) within such ducts or tunnels.

141.07 LICENSE REQUIREMENT.

1 License Required. Except as otherwise provided in this chapter, no person may obstruct or excavate any PROW without first having obtained the appropriate PROW license from the PROW administrator to do so.

A. Excavation License. An excavation license is required by a registrant to excavate that part of the PROW described in such license and obstruction free and open passage over the specified portion of the PROW by placing facilities described therein, to the extent and for the duration specified therein.

B. Consumption License. A consumption license is required by a registrant whenever a portion of the PROW, in addition to that already consumed by a registrant, is devoted to the exclusive benefit of registrant with the result that said additional portion is rendered permanently unavailable to any other PROW registrant, provided that registrants who have been granted the power of eminent domain in a franchise shall use such power to obtain private right-of-way to accommodate their needs and shall not be required to obtain a consumption license or pay a consumption license fee. The consumption fee will be assessed using the following method: Any trench four (4) feet or less will be considered a one (1) foot wide trench; any trench greater than four (4) feet will be considered two (2) feet wide. A consumption fee will not be assessed when the work is performed to repair/replace existing services. Utilities that are placed in undedicated portions of the right of way will not be assessed a consumption fee.

C. Treewell License. A treewell license is a license which allows the holder to construct a treewell in the PROW in the area between the property line and the back of the curb, provided such treewell has been approved as part of a site plan.

2. License Extensions. No person may excavate or obstruct the PROW beyond the date or dates specified in the license unless such person (i) makes a supplementary application for another PROW license before the expiration of the initial license, and (ii) a new license or license extension is granted.

3. Delay Penalty. Notwithstanding subsection 2 immediately above, the City shall establish and impose a delay penalty for unreasonable delays in PROW excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

4. License Display. Licenses issued under this chapter shall be available at all times at the indicated work site and shall be available for inspection by the PROW administrator.

141.08 LICENSE APPLICATIONS. Application for a license is made to the PROW administrator. PROW license applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

1. Registration with the PROW administrator pursuant to this chapter.

2. Submission of a completed license application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

3. Payment of money due the City for:

A. License fees, estimated restoration costs and other management costs,

B. Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the PROW or any emergency actions taken by the City;

C. Other fees, if applicable.

4. Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

When an excavation license is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond, not to exceed 125% of the project cost, for the additional facilities may be required.

141.09 ISSUANCE OF LICENSE; CONDITIONS.

1. License Issuance. If the Applicant has satisfied the requirements of this chapter, the PROW administrator shall issue a license.

2. Conditions. The PROW administrator may impose reasonable conditions upon the issuance of the license and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the PROW and its current use.

141.10 LICENSE FEES.

1. Excavation License Fee. The excavation license fee shall be established by Council resolution in an amount sufficient to recover City PROW management costs as follows: administration cost, as defined above, associated with the intrusion, as per a set fee. The Administration fee shall be assessed for all permits issued pursuant to this chapter.

2. Consumption License Fee. The consumption license fee shall be established by Council resolution in an amount sufficient to cover the future acquisition costs for additional PROW, in accordance with Schedule 'A' on file at City Hall. This fee will be subject to periodic review.

3. Treewell License Fee. The license fee shall be established by Council resolution.

4. Payment of License Fees. No licenses shall be issued without payment of license fees. The City may allow applicant to pay such fees within thirty (30) days of billing.

5. Nonrefundable. License fees that were paid for a license that the PROW administrator has revoked for a breach pursuant to the provisions of this chapter are not refundable.

141.11 ADMINISTRATIVE PENALTIES FOR SCHEDULED VIOLATIONS.

1 The following schedule of administrative penalties for violations of this chapter shall be charged on a per day basis:

VIOLATION	PENALTY/DAY	
Failure to obtain any license	\$	100.00
Failure to provide required notification of emergency		
trenching or excavations	\$	50.00
Failure to provide required traffic control devices	\$	100.00
Failure to restore PROW as required	\$	50.00
Failure to properly secure steel plates	\$	75.00
Failure to provide required notification for inspection	\$	75.00
Failure of restoration within the maintenance period	\$	100.00
Failure to restore street cuts within the period provided in the		
license	\$	100.00

2. Notice of violation with the applicable penalty for such violation noted thereon shall be issued by the PROW administrator to the violator. The violator may request in writing a hearing before the City Council within ten (10) days of receiving the notice of violation. If no request of hearing is made, it shall be presumed that the violator is guilty and the penalties shall be paid within thirty (30) days of the issuance of the notice at the PROW administrator's office. If a hearing is held and the City Council finds that the penalties should remain in place, the penalties shall be paid within twenty (20) days of the Council's decision unless appealed to the Iowa District Court within ten (10) days of the Council's final decision. The violator shall pay only when the final decision is made by a court of law that the penalties are warranted, if appealed to the district court.

3. The administrative penalties set out above shall be charged in lieu of fines for municipal infractions or misdemeanors, unless the PROW administrator determines that immediate enforcement action by municipal infraction or misdemeanor prosecution is necessary to achieve compliance.

4. The PROW administrator shall maintain a record of all violations, administrative penalties charged, or other enforcement action taken and shall use such records when refusal to issue a permit pursuant to this chapter is being contemplated.

5. The applicant shall be liable for any and all costs incurred by City because of such violations.

141.12 PROW PATCHING AND RESTORATION OF ROAD SURFACES.

1 Timing. The work to be done under the excavation license, and the patching and restoration of the PROW as required herein, must be completed within the dates specified in the license, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the licensee or when work was prohibited as unseasonal or unreasonable under Section 141.14(2), as deterinined by the PROW administrator; delays caused by OSHA shall not be deemed to be beyond the control of the licensee.

2 Patch and Restoration. Licensee shall patch its own work involving all road surfaces including but not limited to gravel, rock, asphalt, and portland cement, including any road surfaces in alleys. The licensee shall also restore all other areas of the PROW pursuant to specifications adopted by the City for such purposes. However, in certain instances at the discretion of the PROW administrator, the City may choose to restore the PROW itself, and such election shall be absolutely binding on the licensee.

A. City Restoration. If the City restores the PROW, licensee shall be relieved from future responsibility associated with defective work by the City. The licensee, however, shall pay the costs thereof within thirty (30) days of billing.

B. Licensee Restoration. If the licensee restores the PROW itself, it shall agree in writing to be responsible for any failure of the work for thirty-six (36) months after completion of the restoration of the PROW. If, within the thirty-six months after completion of the restoration of the PROW, a failure occurs or the administrator determines the PROW was improperly restored, the licensee shall be notified in writing of such failure or improper restoration and be given ten (10) days to remedy the situation. If the licensee fails to repair the failure or improper restoration, the City may do it on their own and collect the necessary costs, including any attorney fees and court costs from the licensee by any legal means.

3. Standards. The licensee shall perform patching and restoration according to the standards and with the materials specified by the PROW

administrator. The PROW administrator shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The PROW administrator in exercising this authority shall comply with standards of the industry for PROW restoration and shall further be guided by the following considerations:

A. The number, size, depth and duration of the excavations, disruptions or damage to the PROW;

B. The traffic volume carried by the PROW; the character of the neighborhood surrounding the PROW;

C. The pre-excavation condition of the PROW; the remaining life expectancy of the PROW affected by the excavation;

D. Whether the relative cost of the method of restoration to the licensee is in reasonable balance with the prevention of an accelerated depreciation of the PROW that would otherwise result from the excavation, disturbance or damage to the PROW; and

E. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the PROW that would otherwise take place.

4. Guarantees. If the City elects to require licensee to restore the PROW itself, the licensee shall remain exclusively responsible and liable for the sufficiency of the restoration for thirty-six (36) months following its completion. During this 36-month period it shall, upon notification from the PROW administrator, correct all restoration work to the extent necessary, using the method required by the PROW administrator. Said work shall be completed within five (5) calendar days of the receipt of the notice from the PROW administrator, 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 141.14(2).

5. Failure to Restore. If the licensee fails to restore the PROW in the manner and to the condition required by the PROW administrator, or fails to satisfactorily and timely complete all restoration required by the PROW administrator, the PROW administrator at its option may do such work. In that event the licensee shall pay to the City, within thirty (30) days of billing, the cost of restoring the PROW. If licensee fails to pay as required, the City may exercise its rights under the construction performance bond.

141.13 SUPPLEMENTAL APPLICATIONS.

1. Limitation on Area. A PROW license is valid only for the area of the PROW specified in the license. No licensee may do any work outside the area specified in the license, except as provided herein. Any licensee which determines that an area greater than that specified in the license must be obstructed or excavated must before working in that greater area (i) make application for a license extension and pay any additional fees required thereby, and (ii) be granted a new license or license extension.

2. Limitation on Dates. A PROW license is valid only for the dates specified in the license. No licensee may begin its •work before the license start date or, except as provided herein, continue working after the end date. If a licensee does not finish the work by the license end date, it must apply for a new license for the additional time it needs, and receive the new license or an extension of the old license before working after the end date of the previous license. This supplementary application must be done before the license end date.

141.14 OTHER OBLIGATIONS.

1. Compliance with Other Laws. Obtaining a PROW license does not relieve licensee of its duty to obtain all other necessary licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A licensee shall comply with all requirements of local, State and Federal laws, including Iowa's "One Call" law, Chapter 480, Code of Iowa, "Underground Facilities Information." A licensee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the PROW pursuant to its license, regardless of who does the work.

2. Prohibited Work. Except in an emergency, and with the approval of the PROW administrator, no PROW obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

3. Interference with PROW. A licensee shall not so obstruct a PROW that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the PROW may not be parked within or next to a license area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined license area unless specifically authorized by the license.

141.15 DENIAL OF LICENSE. The PROW administrator may deny a license for failure to meet the requirements and conditions of this chapter or if the PROW administrator determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the PROW and its current use.

141.16 INSTALLATION REQUIREMENTS. The excavation, backfilling, patching and restoration, and all other work performed in the PROW shall be done in conformance with the *Urban Standard Specifications for Public Improvements* and *Urban Design Standards Manual.*

141.17 INSPECTION.

1. Notice of Completion. When the work under any license hereunder is completed, the licensee shall furnish a completion certificate satisfactory to the City.

2. Site Inspection. Licensee shall make the work site available to the PROW administrator and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

3. Authority of PROW administrator.

A. At the time of inspection the PROW administrator may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

B. The PROW administrator may issue an order to the licensee for any work that does not conform to the terms of the license or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the license. Within ten (10) days after issuance of the order, the licensee shall present proof to the PROW administrator that the violation has been corrected. If such proof has not been presented within the required time, the PROW administrator may revoke the license pursuant to Section 141.20 below.

141.18 WORK DONE WITHOUT A LICENSE.

1. Emergency Situations. Each registrant shall immediately notify the PROW administrator of any event regarding its facilities that it considers to be an emergency. After hours, the registrant shall notify the City Emergency phone number. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary licenses, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency. If a storm, flood, or other City-wide emergency event causes system-wide damages to the equipment of a utility service company, requiring emergency repairs without obtaining the necessary PROW licenses, the City Council may, upon request by the company sustaining such damage, waive or modify the requirement that licenses be obtained after the making of emergency repairs in response to such event. If the PROW administrator becomes aware of an emergency regarding a registrant's facilities, the PROW administrator will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the PROW administrator may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

2 Non-emergency Situations. Except in an emergency, any person who, without first having obtained the necessary license, obstructs or excavates a PROW must subsequently obtain a license, and shall also be subject to the penalties contained in Section 141.11.

141.19 SUPPLEMENTARY NOTIFICATION. If the obstruction or excavation of the PROW begins later or ends sooner than the date given on the license, licensee shall notify the PROW administrator of the accurate information as soon as this information is known.

141.20 REVOCATION OF LICENSES.

1. Substantial Breach. The City reserves its right, as provided herein, to revoke any PROW license, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the license. A substantial breach by licensee shall include, but shall not be limited to, the following:

A. The violation of any material provision of the PROW license;

B. An evasion or attempt to evade any material provision of the PROW license, 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 PROW license;

D. The failure to complete the work in a timely manner; unless a license extension is obtained or unless the failure to complete work is due to reasons beyond the licensee's control; or

E. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 141.17.

2. Written Notice of Breach. If the PROW administrator determines that the licensee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the license the PROW administrator shall make a written demand upon the licensee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the license. A substantial breach, as stated above, will allow the PROW administrator, at his or her discretion, to place additional or revised conditions on the license to mitigate and remedy the breach.

3. Response to Notice of Breach. Within ten (10) business days of receiving notification of the breach, licensee shall either provide the PROW administrator with a request to invoke Section 141.34 or a plan, acceptable to the PROW administrator as to a remedy of the breach. Licensee's failure to so contact the PROW administrator, or the licensee's failure to submit an acceptable plan, or licensee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the license. Further, licensee's failure to so contact the PROW administrator, or the licensee's failure to reasonably implement the approved plan, shall be cause for immediate plan, or licensee's failure to reasonably implement the approved plan, shall automatically place the licensee on probation for one (1) full year.

4. Cause for Probation. From time to time, the PROW administrator may establish a list of conditions of the license, which if breached will automatically place the licensee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on PROW grossly outside of the license authorization.

5. Revocation. If a licensee, while on probation, commits a breach as outlined above, the licensee will be notified within 2 business days that the license will be revoked and licensee will not be allowed further licenses for one full year, except for emergency repairs. 6 Reimbursement of City Costs. If a license is revoked, the licensee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

141.21 CITY'S REMEDIES NOT EXCLUSIVE. The remedies provided in this chapter and other chapters of the City code 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 PROW, including damages to PROW, whether or not caused by a violation of any of the provisions of this chapter or other provisions of this Code of Ordinances.

141.22 MAPPING DATA.

1. Information Required. Each registrant shall provide mapping information required by the PROW administrator. All installations shall be constructed per mapping data supplied.

2. Trade Secret Information. At the request of any registrant, any information requested by the PROW administrator, which qualifies as a "trade secret" under Iowa law, shall be treated as trade secret information.

141.23 LOCATION OF FACILITIES,

1. Underground and Above Ground. All cables, wires, fibers, pipes •and conduits in connection with any utility system may be placed either underground or on poles above ground, except for those instances in which undergrounding is required pursuant to City's subdivision or site plan requirements as expressed in this Code of Ordinances; no such poles shall be installed or erected, and no license or permit for same shall be issued, until the PROW administrator has approved the proposed location of such poles.

2. High Density Corridors. The PROW administrator shall assign specific corridors within the PROW, or any particular segment thereof as may be necessary, for each type of facilities or equipment that is or, pursuant to current technology, the PROW administrator expects will someday be located within the PROW; registrants shall, when installing or replacing equipment in the PROW, place and locate such equipment in the appropriate corridor, either as provided. in City's utility accommodation and street restoration specifications, or as ordered by the PROW administrator; all excavation, obstruction, or other licenses issued by the PROW administrator involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the PROW in a position at variance with the corridors established by the PROW administrator 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 PROW, unless this requirement is waived by the PROW administrator 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. Correction of Improper Installations. Any facilities or equipment found in a PROW that have not been registered, or which is found (a) in a location other than the location specified therefore in City's utility accommodation and street restoration specifications, or (b) in a location other than the location specified therefor by the PROW administrator, or (c) in a location other than the location shown on the maps filed in the office of the PROW administrator by the person owning or operating that equipment will be deemed improperly installed. After giving the registrant thirty (30) days to correct the condition, the City may exercise any remedies or rights it has at law or in equity, including, but not limited to, restricting future installations or taking possession of the facilities and restoring the PROW to a useable condition.

4. Limitation of Space. To protect health, safety, and welfare or when necessary to protect the PROW and its current use, the PROW administrator shall have the power to prohibit or limit the placement of new or additional facilities within the PROW -- if there is insufficient space to accommodate all the requests of registrants or persons to occupy the PROW. In making such decisions, the PROW administrator shall strive to the extent possible to accommodate all existing and potential licensees of the PROW, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the PROW, the time of year with respect to essential utilities, the protection of existing facilities in the PROW, and future City plans for public improvements and development projects which have been determined to be in the public interest.

141.24 RELOCATION OF FACILITIES.

1 A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the PROW whenever the PROW administrator determines public health, safety and welfare require it and shall restore the PROW to the same conditions it was in prior to said removal or relocation.

2. In the event the PROW administrator determines that a registrant must permanently remove and relocate its facilities because (a) the PROW which the registrant or licensee is occupying will be required for expanded or new City purposes, or (b) the location of the licensee's or registrant's equipment will interfere with (i) a present or future City use of the PROW, (ii) an economic development project, the registrant shall be compensated for the relocation costs at a fair and reasonable cost.

3. Notwithstanding the foregoing, a registrant or licensee shall not be required to move or relocate its facilities from any PROW which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the registrant or licensee.

141.25 PRE-EXCAVATION FACILITY AND FACILITIES LOCATION. In addition to complying with the requirements of Iowa's "One Call" system, before the start date of any PROW excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

141.26 DAMAGE TO OTHER FACILITIES. When the PROW administrator, any City department, or any municipal utility other than a municipal telephone utility, does work in the PROW and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the PROW administrator 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. In such event, the PROW administrator shall notify the affected registrant, inform the registrant of the action intended to be taken, and afford such registrant the opportunity to review and comment on the action before it is taken. Each registrant shall be responsible for the cost of restoring any facilities in the PROW which it or its facilities damages. Each registrant shall be responsible for the cost of restoring any facilities in the City's response to an emergency occasioned by that registrant's facilities.

141.27 PROW VACATION.

1. Reservation of Right. If the City vacates a PROW which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or licensee's facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated PROW, the right to install, maintain and operate any facilities in the vacated PROW and to enter upon such PROW at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

2. Relocation of Facilities. If the vacation requires the relocation of registrant's or licensee's facilities; and (i) if the vacation proceedings are initiated by the registrant or licensee, the registrant or licensee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the City, the City must pay the relocation costs; or (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or licensee, such other person or persons must pay the relocation costs.

141.28 TUNNELING. No person shall tunnel under the surface of any City PROW for the purpose of making any gas, sewer, water, steam heating pipe, underground electric, telecommunications, telephone, or cable television connection without special permission from the PROW administrator.

141.29 TRAFFIC CONTROL DEVICES, LIGHTING AND PLATING.

1. The public shall be protected at all excavations or trenches or open vaults in the PROW by the placement of proper traffic control devices, lighting and plating as specified in the *Iowa Manual on Uniform Traffic Control Devices* and applicable provisions of City's utility accommodation and street restoration specifications.

2. Every person making such an excavation or trench shall maintain any and all protection required immediately above until the trench or excavation has been refilled and the street, pavement, sidewalk or curb has been restored as required herein.

141.30 FAILURE TO SECURE, RENEW OR COMPLY.

1 Any person who fails to secure a franchise, license or lease required under this chapter, or any franchisee, licensee, or lessee who fails to comply with the requirements of its respective franchise, license, or lease, or this chapter, or with any other applicable legal requirements shall, upon notification of such violation by the PROW administrator, immediately act either to abate the violation or to cease its occupancy of the PROW and remove its equipment or system from the PROW. 2 City reserves the right either to remove or to disconnect and render inoperative any equipment or system in the PROW under franchise, license or lease which is used or maintained contrary to the provisions of this chapter, provided, however, that City will give written notice of its intent to take such action, including the date upon which such action will be taken, to the affected franchisee, licensee or lessee not less than seven (7) days prior to taking such action.

141.31 INDEMNIFICATION AND LIABILITY. By registering with the PROW administrator, or by accepting a license under this chapter, a registrant or licensee agrees as follows:

1. Limitation of Liability. By reason of the acceptance of a registration or the grant of a PROW license, the City does not assume any liability (i) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.

2. Indemnification. As a condition for the use of a license issued by the City authorizing a licensee to obstruct or excavate on or within a PROW for the installation, maintenance, or repair or licensee's facilities in a PROW, the licensee shall defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons or property damage in which the claims: (a) allege negligent or otherwise wrongful acts or omissions of the licensee or its employees, agents or independent contractors in installing, maintaining, or repairing the licensee's facilities; or (b) are based on the City's negligence or otherwise wrongful act or omission in issuing such license or in failing to properly or adequately inspect or enforce compliance with the terms, conditions, or purposes of the license or licenses granted to licensee. Registrant or licensee shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the issuance of licenses or by the construction, maintenance, repair, inspection, or operation of registrant's or licensee's facilities located in the PROW. Except to the extent authorized above regarding the issuance of licenses or inspection or enforcement thereof, or unless otherwise provided in an applicable franchise agreement, the City shall not be indemnified for losses or claims occasioned by the negligent or otherwise wrongful act or omission by the City.

3 Defense. If a suit is brought against the City under circumstances where the registrant or licensee is required to indemnify, the registrant or licensee, at its sole cost and expense, shall defend the City in the suit if written notice of the suit is promptly given to the registrant or licensee within a period in which the registrant or licensee is not prejudiced by the lack or delay of notice. If the registrant or licensee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or licensee may not settle the litigation without the consent of the City. Consent will not be unreasonably withheld. This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the City. In defending an action on behalf of the City, the registrant or licensee is entitled to assert in an action every defense, immunity, or damage limitation that the City could assert in its own behalf.

141.32 NO SPECIAL DUTY CREATED. In placing any equipment, or allowing equipment to be placed, in the PROW, City is not liable for any damages caused thereby to any registrant's or licensee's equipment which is already in place, and no such person is entitled to rely on the provisions of this chapter for the protection of its equipment; the ordinance codified in this chapter is enacted to protect the general health, welfare, and safety of the public at large, and no special duty is created as to any registrant or licensee by the enactment of such ordinance, or by acceptance of registration, or by issuance of a license, or by grant of a franchise or lease.

141.33 ABANDONED AND UNUSABLE FACILITIES.

1 Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:

A. Provide information satisfactory to the PROW administrator that the registrant's obligations for its facilities in the PROW under this chapter have been lawfully assumed by another registrant; or

B. Submit to the PROW administrator a proposal and instruments for transferring ownership of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:

(1) Purchase the facilities; or

(2) Require the registrant, at its own expense, to remove it; or

(3) Require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

2. Abandoned Facilities. Facilities of a registrant who fails to comply with subsection 1 of this section, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are 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, (i) abating the nuisance (ii) taking possession of the facilities and restoring it to a useable condition, or (iii) requiring removal of the facilities by the registrant, or the registrant's successor in interest.

3. Removal. Any registrant who has unusable and abandoned equipment or facilities in any PROW shall remove it from that PROW during the next scheduled excavation, unless this requirement is waived by the PROW administrator.

141.34 APPEAL.

1. A PROW licensee that: (a) has been denied registration; (b) has been denied a license; (c) has had license revoked; or (d) believes that the fees imposed are invalid or excessive, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act no later than sixty (60) days after receiving a written request for relief. A decision by the City Council affirming the denial, revocation, or fee imposition will 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 PROW licensee shall have the right to have the matter resolved either by binding arbitration with the consent of the governing body or bring an action in the district court to review the decision of the governing body. Binding arbitration must be before an arbitrator agreed to by both the City Council and PROW licensee. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitrator selected by the PROW licensee and one selected by the other two arbitrators. The costs and fees of single arbitrator shall be borne equally by the City and PROW licensee. 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.

141.35 RESERVATION OF REGULATORY AND POLICE POWERS.

A licensee's registrant's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

141.36 PROVISIONS OF EXISTING FRANCHISES PREVAIL. In the event that a conflict of language occurs between the provisions of this chapter and an existing franchise, or between the provisions of this chapter and an existing lease of vacated PROW, the conflict shall be resolved in favor of the franchise or lease until it expires.

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