

CHAPTER 134

RIGHT-OF-WAY / STREET EXCAVATION MANAGEMENT

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134.01 DEFINITIONS. For the purpose of this chapter, certain terms are defined as follows:

1. "Applicant" means any Person requesting permission to Excavate a City right-of-way.
2. "City right-of-way" means the area on, below, or above a City roadway, street, bridge, bicycle path, strip of land or City sidewalk, in which the City has interest, including other dedicated right-of-way for travel purposes and utility easements. This area is measured between the property lines dedicated to and accepted for public use and providing access to abutting properties. This shall include state and other local government right-of ways within the City. A City right-of-way does not include the airwaves above a City right-of-way with regard to cellular or other non-wire telecommunications or broadcasts service or utility poles owned by the City.
3. "Permittee" means any Person to whom a Permit to Excavate has been granted by the City under this Chapter.
4. "Right-of-way users" means those entities, including the City of Milford, that own or operate facilities, unless included in other ordinances, that are or are proposed to be installed within the City right of-way for purposes of conducting, transmitting or distributing water, drainage, sanitary sewage, electricity, steam, gas, cable television, electronic communications or any form of telecommunications.
5. "Utility easements" means authorization by a property owner for the use by another, and for a specified purpose, of any designated part of such owner's property.

134.02 RIGHT-OF-WAY PERMITS.

1. An applicant or right-of-way user shall obtain, by application to the Public Works Director, a permit for installation in the City right-of-way whenever the applicant or right-of-way user desires to place, construct, or bury anything in the City right-of-way. Such application shall be accompanied by:
 - a. Written and graphic material that states and shows the particular part of or point on the city right-of-way where placement, construction, or excavation is proposed to occur.

b. A statement of the beginning and ending dates for the time during which the work is to be done and completed.

c. The Public Works Director shall determine the placement of such facilities in a manner reasonably consistent with how various kinds of facilities are shown to be placed on a model right-of-way cross section established and maintained on file for public inspection by the Public Works Director.

d. Plans and specifications for the proposed work in such detail as the Public Works Director shall reasonably require to show that the work as proposed conforms to city ordinances, regulations, and policies.

2. When making excavations in the City right-of-way the permittee or right-of-way user shall do the work in a manner devised to cause the least possible inconvenience to the public.

3. The permittee or right-of-way user shall properly protect, according to safety standards generally accepted at the time that the installation in the City right-of-way occurs, all excavations and obstructions by proper placement of barricades, warning lights and such other or additional devices, in accordance with The Manual on Uniform Traffic Control Devices, as circumstances may warrant. If in the opinion of the Public Works Director such excavation or obstruction is not properly and safely protected, the Public Works Director shall notify the permittee or right-of-way user and the permittee or right-of-way user shall comply immediately with the instructions of the Public Works Director. Failure or refusal by the permittee or right-of-way user to follow such instructions shall constitute a violation of this section.

4. Any trenches or excavations opened by a permittee or right-of-way user in the City right-of-way shall be filled by the permittee or right-of-way user. All backfilling in the City right-of-way shall be done in compliance with the adopted SUDAS standards of the City, including specification for the replacement of grass and other landscaping features.

5. Temporary street surfacing shall be placed in excavations in a city street as soon as the same has been backfilled. Pavements, sidewalks, curbs and gutters or other portions of streets and public places opened, disturbed or damaged shall be promptly restored and replaced with like materials at the expense of the permittee or right-of-way user and left in as good a condition as before the opening, disturbance or damage occurred. In the event that like materials for replacement are not available, the Public Works Director may approve the use of an alternative material that is reasonably close in effect to the original material. The Public Works Director will consider and evaluate for approved use, on a case-by-case basis, such alternative methods that meet standards of good engineering practice.

6. Where a cut or disturbance is made by a permittee or right-of-way user to a section of a street or a sidewalk paving, rather than replacing only the area cut, the right-of-way user shall replace the full width of the existing sidewalk or street paving and the full length of the section or sections cut, a section being that area marked by expansion joints or scoring, or as directed by the City.

7. Right-of-way users shall maintain, repair and keep in good condition for a period of two (2) years following such disturbance all portions of the City street surface disturbed by a permittee or right-of-way user. Landscaping that is so disturbed shall be repaired and maintained for a period of one (1) year. Grass that is so disturbed shall be

repaired and maintained in compliance to SUDAS specifications, and states until 70% coverage is obtained.

8. All landscaping and grounds removed, damaged or disturbed as a result of installations by a permittee or right-of-way user in the City right-of-way shall be replaced or restored in a manner satisfactory to the city.

9. No permittee or right-of-way user or any person acting on the permittee or right-of-way user's behalf shall commence any non-emergency work in the City right-of-way without five (5) working days advance notice to the City. In the event of an emergency involving public safety, the Public Works Director or designee may issue the permit orally, but the written documentation of the application for and issuance of the permit shall be completed as soon as practicable after the work has started.

10. Whenever any existing electric utility facilities, cable television facilities, or other telecommunications facilities are installed underground in a certain segment of the City right-of-way, any other right-of-way user shall also locate its facilities underground in that segment of the City right-of-way.

11. Street crossings and sidewalk crossings by right-of-way user facilities shall be bored at those locations where reasonably required by the Public Works Director. Some examples of where such boring may be required are: major streets, new streets, and locations of major events that conflict with construction.

12. No permit shall be issued for the installation of right-of-way user facilities in the City right-of-way unless the right-of-way user has filed a permit with the City.

13. No permit for installation of right-of-way user facilities in the City right-of-way shall be issued by the Public Works Director unless the right-of-way user has paid such installation permit fee as shall be established from time to time by resolution of the City Council.

14. Permit Exemption. Milford Municipal Utilities is exempt from the permit application requirement of this section. Milford Municipal Utilities shall, however, comply with all other pertinent provisions.

134.03 MANNER OF EXCAVATION. Excavation shall be in compliance with the adopted SUDAS standards of the City. It is the responsibility of the permittee or right-of-way user to locate property pins if work in right-of-way abuts to personal property. Call Iowa One Call at 811 for locates before excavation begins and obtain the proper permit with the City. If City or MMU owned utilities are damaged during any manner or excavation or boring, the permittee or right-of-way user shall notify the City and fix at their expense immediately. All other work shall cease until such damage is corrected and approved by the Public Works Director or designee. If such damage is not fix immediately, the City may revoke the Permit and shall constitute a violation of this section. All equipment used by the permittee or right-of-way user during the project shall not be left overnight or on weekends.

134.04 TEMPORARY BARRIERS AND WARNING DEVICES. Temporary barriers, warning devices and construction signage shall be in compliance with the Manual for Uniform Traffic Control Devices (MUTCD) standards.

134.05 SIGNAGE. No signs shall be removed without the approval of the City. If signs are removed without permission or damaged, the permittee or right-of-way user shall reimburse the

City for the actual cost of replacement and labor by the City.

134.06 COMPLETION OF INSTALLATIONS. A permittee or right-of-way user shall promptly complete all installations in the City right-of-way so as to minimize disruption of the City ways and other public and private property. All installation work authorized by permit within the City right-of-way, including restoration work, must begin within thirty (30) days after the date of its issuance and shall be completed as soon as possible but not later than 180 days of the date the Public Works Director issued a permit for the installation. An extension may be granted for good cause due to circumstances beyond the control of the right-of-way user. When the work under any permittee or right-of-way user is completed, the City shall be notified. The permittee or right-of-way user shall make the work-site available to the Public Works Director or designee and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work. If a major excavation project is being completed throughout the city at multiple locations, each section will need to be completed and the Public Works Director shall inspect and approve the completion of that section before a new section can begin. At the time of inspection, the Public Works Director or designee 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 Public Works Director or designee may issue an order to the permittee or right-of-way user 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 permittee or right-of-way user shall present proof to the City that the violation has been corrected, or proof that reasonable measures satisfactory to the City have been commenced and will be diligently pursued to completion to correct a violation that cannot be corrected within ten (10) days. If such proof has not been presented within the required time, the City may revoke the Permit.

134.07 AS BUILT DRAWINGS. A right-of-way user shall, within sixty (60) days of making an installation of facilities in the City right-of-way, furnish the City with one (1) complete set of as built drawings, in an electronic format, drawn to scale and certified by the contact person for the right-of-way user as accurately depicting the location of the facilities installed pursuant to the permit. When the Public Works Director has issued a single installation permit document relative to multiple installations linked in a single project, the as built drawings pertaining to those installations are not required as aforesaid until sixty (60) days after completion of all installations to be done for the project.

134.08 INTERFERENCE WITH THE CITY. A right-of-way user shall so construct, maintain, operate and locate its facilities in the City right-of-way so as not to interfere with the construction, location, maintenance and operation of City sanitary sewer, drainage, communication, signal and fiber optic facilities, or any other operations or facilities of the City. The City shall have the right and power by resolution of its City Council, or by order of the Public Works Director or designee, to specifically direct the location of right-of-way user facilities with reference to City facilities, existing or proposed, in such a manner as shall serve the public use and convenience. Failure or refusal by a right-of-way user to promptly follow such directions shall be a violation of this section.

134.09 RELOCATION OR REMOVAL. Within sixty (60) days following written notice

from the City, a right-of-way user shall, at its own expense, temporarily or permanently relocate, change or alter the position of any facilities within the City right-of-way whenever the City shall have determined that such relocation, change or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any City public improvement, or for the operations of the City in or upon the City right-of-way.

134.10 REMOVAL OF UNAUTHORIZED FACILITIES. Within thirty (30) days following written notice from the City, a right-of-way user that owns, controls or maintains any unauthorized facility within the City right-of-way shall remove such facilities from the City right-of-way at the right-of-way user's sole expense. A facility is unauthorized if:

1. Any license, permit or authorization required by Federal, State or City regulations with respect to the facilities has not been obtained, or has been revoked, or allowed to expire.
2. The facilities are not installed in accordance with the permit for installation or other requirements of this chapter.

134.11 COMPLIANCE WITH PERMIT. All installation work and activities for permittee or right-of-way user facilities in the City right-of-way shall be in accordance with the installation permit issued by the Public Works Director. Any work done that is not in accordance with an applicable installation permit shall be a violation of this section by the right-of-way user; and, failure to do work required by an installation permit shall be a violation by the permittee or right-of-way user, regardless of involvement of agents or contractors of the permittee or right-of-way user. The Public Works Director is not responsible for onsite inspections.

134.12 EMERGENCY REMOVAL OR RELOCATION. The City shall have the right and power to cut or move any right-of-way facilities in the City right-of-way as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall endeavor to give notice of such emergency disruption, but nothing in this chapter shall be deemed to create a duty to such notice. Restoration of right-of-way facilities that have been cut or moved as aforesaid shall be done by the right-of-way user at its own expense.

134.13 COORDINATION OF INSTALLATIONS. All right-of-way users with facilities in the City right-of-way or who expect to install facilities in the City right-of-way shall coordinate such activities with the City, so as to minimize public inconvenience and costs.

134.14 CERTIFICATE OF INSURANCE, BOND REQUIREMENTS AND INDEMNIFICATION. A permit shall be issued by the Public Works Director only upon the contractor furnishing the City with all of the following:

1. A performance and restoration/maintenance bond in a form and from a company authorized to do business in the state of Iowa acceptable to the City in the sum of ten thousand dollars (\$10,000) conditioned upon the full observance of all City ordinances applicable to the work of construction in public streets/right of way/city property. The bond shall also guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this section

2. Proof satisfactory to the City that the applicant or right-of-way user will indemnify, defend and hold the City harmless from any and all claims for losses and damages sustained by any claimant as a consequence of an alleged or proven act of omission or commission on the part of such applicant or right-of-way user, or the applicant or right-of-way user's subcontractors, agents, employees or assigns while engaged in excavation or construction in the ROW as defined above.

3. Proof satisfactory to the City that the applicant or right-of-way user will reimburse the City for all costs, including but not limited to attorney fees, incurred by the City in enforcing the terms of the bond.

4. A Certificate of Insurance showing insurance coverage in accordance with the following requirements, or such other requirements as may from time to time be established by the City Council by resolution:

a. Public liability insurance covering all operations, for the duration of the permit, performed by permittee or right-of-way user agents, persons directly employed by the permittee or right-of-way user, subcontractors or their employees, or independent contractors, in the following amounts: one million (\$1,000,000) each occurrence, one million (\$1,000,000) aggregate.

b. Automobile liability insurance on all self-propelled vehicles in the following amounts: one million (\$1,000,000) each occurrence, one million (\$1,000,000) aggregate.

c. Workers' compensation and employer's liability, if required by the Code of Iowa, at such policy limits as are required by the Code of Iowa.

d. In lieu of the limits established by the sub-paragraphs set forth immediately above, the applicant or right-of-way user may show proof of comprehensive excess liability coverage in conjunction with lower limits for public liability and automobile liability insurance, which taken together provide insurance coverage to a limit of one million (\$1,000,000) each for public liability and automobile liability.

5. The City of Milford, Iowa, shall be designated as an additional named insured on all insurance policies required by this section.

6. Upon approval of the application, compliance with all of the above requirements and payment of any required fees, the permit shall be issued.

134.15 ABOVE-GROUND CABLES, WIRES, CONDUITS AND POLES. All cables, wires and conduits shall be placed underground except where above-ground connection to buildings or other locations above ground is reasonably necessary. Such above-ground connection shall be by means of poles located, as far as reasonably practical, within alleys. No such poles shall be installed or erected until the Public Works Director or designee has approved the proposed location, construction and pole heights.

134.16 FRANCHISE REQUIRED. No person or other entity shall use the public right of way or other public property without first obtaining a franchise from the City. The City shall not enter into or issue any franchise that grants exclusive rights. An application for an agreement shall be filed with the City Clerk on a form provided by the City and shall include as a minimum the following information: the name, address and telephone number of the applicant; the name, address and telephone number of a person whom the City may notify or contact at any time concerning the permit; an engineering site plan showing the proposed location of the facilities

including any manholes, the size, type and proposed depth of any conduit or other enclosures; and any additional information the City may require. All agreements required by this section shall be granted by the City Council.

134.17 **FRANCHISE FEE REQUIRED.** No franchise for the use of right-of-way shall be granted without requiring the grantee thereof to pay a reasonable and competitively neutral fee for the use of right-of-way. Each new franchisee shall be assessed an annual franchise fee on July 1 of each year that the franchise is enforced of up to five percent (5%) of the franchisee's gross receipts derived from the sale of local services to customers within the City limits.

134.18 **TERM LIMIT.** No franchise for use of the right-of-way or other public property shall be granted for a term of more than twenty-five (25) years.

134.19 **FRANCHISE SUPREMACY.** The terms of any existing franchise or other existing agreement allowing the use of the right-of-way which are in direct conflict with any provision of this chapter, shall control and supersede the conflicting terms of this chapter until the expiration of such franchise or other agreement, provided, however, that requirements set forth in this chapter relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the City may also be applicable in the sole determination of the City or unless otherwise negotiated by the City and franchise grantee. All other terms of this chapter shall be fully applicable to all persons whether franchised or not.

134.20 **NO EASEMENT, PERMISSION ONLY, NOT ASSIGNABLE.** The provisions of this chapter, and the permits and authorizations granted pursuant to this chapter, shall not be deemed to create or grant to anyone any easement, estate, or interest in the property of the City. A permit to install right of-way user facilities in the City right-of-way is a mere license, that is, an authorization to the stated entity to go onto the land of the City to do only that which is explicitly stated by the permit, that may be revoked by the City as provided in this chapter, and that cannot be assigned to another. A right-of-way user that occupies City right-of-way or makes an installation of facilities in the City right-of-way on the basis of a purported assignment of an installation permit granted to another entity, shall be in violation of this section.

134.21 **NON-EXCLUSIVE REMEDY.** The remedies provided in this Chapter and other Chapters in the Milford 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 ROW, including damages to the ROW, whether or not caused by a violation of any of the provisions of this Chapter or other provisions of the Iowa Code.