

ORDINANCE NO. 434

AN ORDINANCE TO REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF FOLEY, AND TO AMEND SECTION 13 OF THE CITY ZONING ORDINANCE TO REGULATE THE PLACEMENT OF SMALL WIRELESS FACILITIES IN THE R-1, SINGLE FAMILY RESIDENCE DISTRICT

WHEREAS, the City of Foley (the “City”) is authorized by Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 and other applicable laws and regulations to manage the public rights-of-way within its jurisdiction; and

WHEREAS, the City has and continues to manage the public rights-of-way within its jurisdiction consistent with all applicable laws, rules and regulations of the state of Minnesota; and

WHEREAS, the Minnesota Legislature has, by laws of Minnesota for 2017, Chapter 94, Article 9, Sections 1 through 20, amended Minn. Stat. §§ 237.162 and 237.163 (the “Law”) which, among other things, developed a process for the deployment and use of small cell wireless technology and facilities along the public rights-of-way within the State’s local units of government, including the City; and

WHEREAS, the City enacted a moratorium on the filing, receiving, processing or approval of applications for telecommunication towers and wireless telecommunications facilities within the City until December 31, 2017 in order to allow the City time to review its Comprehensive Plan and enact appropriate ordinances consistent with the Law; and

WHEREAS, the Foley City Council has now reviewed the City’s Comprehensive Plan and desires to revise the City’s existing ordinances and regulations to administer and regulate the public rights-of-way in the public interest and to provide for the issuance and regulation of right-of-way permits consistent with its statutory authority and the Law.

NOW, THEREFORE, the Foley City Council hereby ordains:

SECTION 1. CITY CODE REVISIONS

Section 800-Excavations is hereby repealed. The provisions are incorporated in to new Section 815 below.

The following language is adopted and shall be incorporated into the Foley City Code as **Section 815**:

Section 815.01. Right-Of-Way Management

Subd. 1. Findings, Purpose, and Intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Section 815 shall be interpreted consistently with Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 and the other laws governing applicable rights of the City and users of the

right-of-way. These Sections shall also be interpreted consistent with Minnesota Rules 7819.0050—7819.9950 and Minnesota Rules Chapter 7560 where possible. To the extent any provision of these Sections cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with other applicable statutes and case law is intended. These Sections shall not be interpreted to limit 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.

Section 815.02 Definitions

Subd. 1. Rules. Unless specifically defined in this Section, the words or phrases used in this Section, shall have the same meaning as they have in common usage. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “must” are always mandatory and not merely directive. Defined terms remain defined terms, whether or not capitalized.

Subd. 2. Statutory Terms. Unless the context specifically indicates otherwise, the following terms, as used in Section 815, shall have the meanings designated to them as provided in Minn. Stat. § 237.162 or Minn. R. 7819.0100:

“Abandoned Facility.”

“Collocate.”

“Construction Performance Bond.”

“Degradation Cost.”

“Excavate.”

“Facility.”

“Management Costs.”

“Micro Wireless Facility.”

“Obstruct.”

“Patch.”

“Pavement.”

“Permit.”

“Permittee.”

“Person.”

“Restoration.”

“Public Right-of-Way.”

“Right-of-Way Permit.”

“Right-of-Way User.”

“Small Wireless Facility.”

“Utility Pole.”

“Utility Service.”

“Wireless Facility.”

“Wireless Service.”

“Wireless Support Structure.”

Subd. 3. Additional Terms. Unless the context specifically indicates otherwise, the following terms, as used in this Section, shall have the meanings hereinafter designated:

“Applicant” means any person making a written application to the City for a permit under this Section.

“City” means the City of Foley, Minnesota, as well as the City’s elected officials, officers, employees and agents.

“Department” means the department of public works of the City.

“Director” means the Director of the department of public works of the City, or his or her designee.

“Emergency” means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

“Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

“Ground-Mounted Equipment” means equipment used in the operation of a wireless facility that is located on the ground and protrudes above the surface elevation of the ground.

“Registrant” means any person who (1) has or seeks to have its equipment or facilities 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 place its facilities or equipment in the right-of-way. Registrant includes, but is not limited to, any person wishing to place or operate a Wireless Facility.

“Service Lateral” means an underground facility that is used to transmit, distribute or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer’s premises.

Section 815.03 Administration

The Director is responsible for the administration of the rights-of-way, right-of-way permits, and the related City Code provisions. The Director may delegate any or all of the duties under this Section.

Section 815.04. Registration and Right-Of-Way Occupancy

Subd. 1. Registration. Each person who occupies or uses, or seeks to occupy or use the right-of-way or place any Equipment or Facilities in or on the right-of-way, including persons with

installation and maintenance responsibilities by lease, sublease or assignment, must register with the City. Registration will consist of providing application information.

Subd. 2. Registration Prior to Work. No person may operate, construct, install, repair, remove, relocate, or perform any other work on, or use any Equipment or Facilities or any part thereof, in any right-of-way without first being registered with the City.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting property owners to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens or other ordinary residential uses 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 boulevard plantings or gardens under this chapter. However, nothing herein relieves a property owner from complying with the provisions of the Minn. Stat. Chap. 216D, Gopher One Call Law.

Section 815.05. Registration Information

Subd. 1. Information Required. The information a Registrant must provide to the City at the time of registration shall include, but not be limited to:

- A. Each Registrant's name, Gopher One-Call registration certificate number if applicable, address, e-mail address, and telephone and facsimile numbers.
- B. The name, address, e-mail address, and telephone and facsimile numbers of a local representative. The local representative 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:
 - i. Verifying that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;
 - ii. 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 right-of-way by the Registrant, its officers, agents, employees and Permittees, and (ii) placement and use of facilities and 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 facilities and collapse of property;
 - iii. Naming 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;
 - iv. Requiring that the City be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and
 - v. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this chapter.

- vi. The City may require a copy of the actual insurance policies.
- vii. If the person is a corporation, a copy of the certificate is required to be filed under Minn. Stat. § 300.06 as recorded and certified to by the Secretary of State.
- viii. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

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

Section 815.06. Permit Requirements

Subd. 1. Permit Required. Except as otherwise provided in this chapter, such as in the case of an Emergency, 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.

- A. **Excavation Permit.** An excavation permit is required by a Registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein. Each excavation permittee shall be issued a permit, which shall state the permittee's name, the permit number and the date of expiration. It shall be the duty of any permittee to keep the permit posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such permit at or about any excavation not covered by such permit or to misrepresent the permit number or the date of expiration.
- B. **Obstruction Permit.** Except in the case of an Emergency, an obstruction permit is required by a Registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- C. **Small Wireless Facility Permit.** A small wireless facility permit is required by a Registrant to place a wireless support structure in or on any portion of the public right-of-way as described in the permit or to collocate small wireless facilities on wireless support structures in or on any portion of the public right-of-way as described in the permit.

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

Subd. 3. Delay Penalty. In accordance with Minnesota Rule 7819.1000 subp. 3 and notwithstanding subd. 2 of this Section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City council resolution.

Subd. 4. Permit Display. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

Section 815.07. Permit Applications

Subd. 1. Requirements. 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 following requirements:

- A. Registration with the City pursuant to this ordinance.
- 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 known existing and proposed facilities.
- C. Payment of money due the City for: (1) permit fees, estimated restoration costs and other management costs; (2) any permit fees or undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City; or franchise fees or other charges, if applicable.
- D. Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110% of the amount in dispute.
- E. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

Subd. 2. Joint Application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time. Registrants who apply for permits for the same obstruction or excavation, which the City does not perform, may share in the payment of the obstruction or excavation permit fee. In such cases, joint applicants shall be charged a single permit fee to obtain a joint permit. In order to obtain a joint permit, Registrants must agree among themselves as to the portion of the permit fee each will pay and indicate the same on their applications.

Subd. 3. Fee Exceptions for City Projects. Registrants who join in a scheduled obstruction or excavation performed by the City, whether or not it is a joint application by two or more Registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

Section 815.08. Permit Conditions

The City may impose reasonable conditions upon the issuance of a permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a Permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

Section 815.09. Permit Extension Applications

A right-of-way permit is valid only for the area of the right-of-way and the dates specified in the permit. No Permittee may do any work outside the area specified in the permit, or before or after the dates specified in the permit. Any Permittee which determines that work in an area greater than that

specified in the permit or additional time beyond that specified in a permit must (i) make application for a permit extension and pay any additional fees required thereby; and (ii) be granted a new permit or permit extension. This application must be submitted before the permit end date.

Section 815.09. Permit Fees

Subd. 1. Types of Permit Fee. The City shall establish an excavation permit fee in an amount sufficient to recover the following the City's management costs and degradation costs; an obstruction permit fee in an amount sufficient to recover the City's management costs; a small wireless facility permit fee in an amount sufficient to recover the City's management costs, all as provided in the City's Fee Schedule.

Subd. 2. Payment of Permit Fees. No excavation permit, obstruction permit or small cell wireless facility permit shall be issued without payment of the applicable permit fees.

Subd. 3. Non Refundable. Permit fees that were paid for a permit that the City has revoked for a violation are not refundable.

Section 815.10. Location of Facilities Pre-Excavation

In addition to complying with the requirements of Minn. Stat. 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each Registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and 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.

Section 815.10. Small Wireless Facility Permits

Subd. 1. Approval.

- A. In processing and approving a small wireless facility permit, the City may condition its approval on compliance with generally applicable and reasonable health, safety, and welfare regulations consistent with the City's public right-of-way management; reasonable accommodations for decorative wireless support structures or signs; and any reasonable replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.
- B. The City has 90 days after the date a small wireless facility permit application is filed to issue or deny the permit. If the City provides a written notice of incompleteness to the applicant within 30 days of receipt of the application, the 90 day period is tolled and the City shall follow the procedure set forth in Minn. Stat. § 237.163. Unless a tolling provision applies, a small wireless facility permit may be deemed approved if the City fails to approve or deny the application within 90 days after the permit application has been filed.

Subd. 2. General.

- A. The term of a small wireless facility permit shall terminate upon nonuse of the small wireless facility unless the permit is revoked under this ordinance or other applicable law.
- B. An applicant for a small wireless facility permit may file a consolidated permit application to collocate up to a maximum of fifteen (15) small wireless facilities, provided that all the small wireless facilities in the application: are located within a two-mile radius; consist of substantially similar equipment; and are to be placed on similar types of wireless support

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

- C. If the City receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the City may extend the 90-day period for permit approval by an additional 30 days. If the City elects to invoke this extension, it shall inform in writing any applicant to whom the extension will be applied. Minnesota Statutes Section 15.99 does not apply to this Section.

Subd. 3. Exemption.

- A. All of the following are exempt from small wireless facility permit requirements: routine maintenance of a small wireless facility; replacement of an existing small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.
- B. Notwithstanding, any person engaging in any activity described above shall provide the City at least fifteen (15) days advance written notification of such activities if the work will obstruct a public right-of-way.

Subd. 4. Height. Each Wireless Support Structure installed in the right-of-way shall not exceed 50 feet above ground level or more than 10 feet above an existing Wireless Support Structure in place as of the effective date of this ordinance, whichever is less.

Subd. 5. Collocation on City Owned Wireless Support Structures.

- A. A wireless service provider may collocate small wireless facilities on wireless support structures owned or controlled by the City and located within the public roads or rights-of-way subject to a small wireless facility collocation agreement.
- B. All engineering and construction work associated with collocation must be paid by the wireless service provider.
- C. In addition to other fees or charges allowed under this chapter, the City shall charge each small wireless facility attached to a wireless support structure owned by the City the maximum rent, fees, and charges authorized by state law.

Subd. 6. Ground Mounted Equipment. Ground mounted equipment associated with a small wireless facility is prohibited unless the applicant can show that ground-mounted equipment is necessary for the operation of the small wireless facility. If ground-mounted equipment is necessary is shall comply with the following standards:

- A. Ground-mounted equipment shall not disrupt traffic, pedestrian circulation, or snow removal and shall not interfere with vehicle and pedestrian intersection sight lines or the operation of snow removal equipment;
- B. Ground-mounted equipment shall not create a safety hazard;
- C. Ground-mounted equipment shall be limited to (3) feet in height and (28) cubic feet in cumulative size.

Subd. 7. Requirements for Small Wireless Facilities.

- A. The small wireless facility shall have limited exposed cabling and mounting hardware. It shall also match the wireless support structure it is attached to in color and, as close as practicable, in material and design.
- B. The small wireless facility shall not interfere with public safety wireless communications.
- C. Small wireless facilities in the right-of-way shall be removed and relocated at the City's request and at no cost to the City when the Director determines that removal and relocation is necessary to prevent interference with: 1) present or future City use of the right-of-way for a public project; 2) the public health, safety, or welfare; or 3) the safety and convenience of travel over the right-of-way.

Section 815.11. Right-Of-Way Patching And Restoration

Subd. 1. Timing. The work to be done under a permit, and the patching and restoration of the right-of-way as required, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited or unreasonable.

Subd. 2. Patch and Restoration. Permittee shall patch and restore its own work. The City may choose either to have the Permittee restore the right-of-way or to restore the right-of-way itself at the Permittee's cost.

- A. **City Restoration.** If the City restores the right-of-way, Permittee shall pay the costs, including the cost of any materials used, within thirty (30) days of billing. If, following such restoration, the pavement settles due to Permittee's improper backfilling or compacting, the Permittee shall pay to the City, within thirty (30) days of billing, all costs associated with correcting the defective work, including the cost of any materials.
- B. **Permittee Restoration.** If the Permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

Subd. 3. Standards. Excavation, backfilling, compacting, patching and restoration, and all other work performed in the right-of-way shall be done in according to the standards and with the materials specified by the City and subject to all City ordinances and requirements consistent with Minn. Stat. §§ 237.162 and 237.163, and Minnesota Rule 7819.1100 and 7819.5000.

Section 815.12. Utility Pole Spacing. No Permittee shall space utility poles or wireless support structures closer than 100 feet from another utility pole or wireless support structure owned by Permittee unless the Permittee demonstrates a need based on compliance with the electrical code, to address issues caused by topography or obstruction, or to provide service to a property within the City.

Section 815.13. Inspection

Subd. 1. Inspection and Notice of Completion. Permittee shall make the work-site available to the City for inspection at all reasonable times during the execution of and upon completion of the work. When the work under any permit is completed, the Permittee shall furnish a completion certificate to the Director in accordance Minnesota Rule 7819.1300.

Subd 2. Authority of Director.

- A. At the time of inspection, the Director 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 Director, with or without consulting the City's building inspector, may issue an order to the Permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within five (5) days after issuance of the order, the Permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit.

Subd. 3. Duty to Correct Defects. The Permittee shall correct defects in patching or restoration performed by Permittee or its agents. The Permittee upon notification from the City, shall 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 unreasonable.

Subd. 4. Failure to Restore. 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 restoration required by the City, the City at its option may do such work or compel Permittee to perform or complete the restoration through any legal means available. In the event the City performs or completes the work, the Permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way, including the cost of any materials. If Permittee fails to pay as required, the City may exercise its rights under the construction performance bond and no additional permits shall be issued to the Permittee until payment has been rendered.

Section 851.14. Other Obligations

Subd. 1. Compliance with Other Laws. Obtaining a right-of-way permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other governmental unit. A Permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

Subd. 2. Prohibited Work. Except in an Emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when conditions are unreasonable for such work.

Subd. 3. Interference with Right-of-Way. A Permittee shall not obstruct the natural free and clear passage of water through the gutters or other waterways. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Subd. 4. Trenchless excavation. As a condition of all applicable permits, Permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes Chapter 216D and Minnesota Rules Chapter

7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Director.

Section 815.15. Permit Denial Or Revocation

Subd. 1. Denial. The City may deny a permit issued under this chapter for failure to meet the chapter's requirements and conditions or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

Subd. 2. Revocation. The City may revoke a permit under this chapter without fee refund, in the event of a violation.

Subd. 3. Written Notification. Any denial or revocation of a permit issued under this chapter shall be made in writing and shall document the basis for the denial. The City shall notify the Permittee in writing within three business days of the decision to deny or revoke a permit. If a permit application is denied, the Permittee may cure the deficiencies identified by the City and resubmit its application. If the Permittee resubmits the application within 30 days of receiving written notice of the denial, it will not be charged an additional filing or processing fee. The City will approve or deny the revised application within 30 days after the revised application is submitted.

Subd. 4. Reimbursement of City costs. 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 attorneys' fees incurred in connection with such revocation.

Section 815.16. Work Done Without A Permit

Subd. 1. Emergency Situations. Each Registrant shall immediately notify the Director of any event regarding its facilities that it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to the Emergency. The Registrant's notification to Gopher State One Call regarding an Emergency situation does not fulfill this requirement. Within two (2) 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.

If the City becomes aware of an Emergency regarding a Registrant's facilities, the City will 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 to respond to the Emergency, the cost of which shall be borne by the Registrant whose facilities caused the Emergency.

Subd. 2. Penalty for Lack of Permit. Except in an Emergency, any person who obstructs or excavates a right-of-way without a permit must subsequently obtain a permit and pay double the normal permit fees.

Section 815.17. Notification

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, Permittee shall notify the City of the accurate information as soon as this information is known.

Section 815.18. Mapping Data

Subd. 1. Information Required. Each Registrant and Permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the Permittee shall provide the Director accurate maps and drawings certifying the “as-built” location of all equipment installed, owned and maintained by the Permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided in a manner acceptable to the Director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder’s registration.

Subd. 2. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the Permittee’s use of appropriate means of establishing the location of the service laterals to the Director’s satisfaction. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending Permittee or its subcontractors.

Section 815.19. Placement Of Facilities

Subd. 1. Location. Placement, location, and relocation of facilities must comply with all applicable laws, rules and regulations, to the extent the rules do not limit authority otherwise available to cities.

Subd. 2. Limitation of Space. To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way in accordance with state law. 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 utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

Section 815.20. Damage To Other Facilities

When the City does work in the right-of-way and finds it necessary to maintain, support, or move a Registrant’s facilities to protect it, the City shall notify the local representative as early as is reasonably possible. Such costs 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 facilities in the right-of-way which it or its facilities damage.

Section 815.21. Indemnification

By registering with the City, or by accepting a permit under this chapter, a Registrant or Permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

Section 815.22. Abandoned And Unusable Facilities

A Registrant who has determined to discontinue or transfer all or a portion of its operations in the City must provide information satisfactory to the City that the Registrant’s obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by or transferred to another Registrant. Any Registrant who has abandoned facilities in any right-of-way shall remove it

from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

Section 815.23. Appeal

A person that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6; or (5) disputes a determination of the Director regarding mapping data or service laterals may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City council within 15 days of the decision. The City council shall act timely on the appeal and provide such person with notice of a hearing at which the person may address the City council. 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.

Section 815.24. Severability

If any portion of this ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this ordinance precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

SECTION 2. CITY ZONING ORDINANCE REVISIONS

The following changes shall be made to the City of Foley Zoning Ordinance Section 13, “R-1” Single Family Residence District, Subdivision 4. Uses by Conditional Permits (additions shown in underline and deletions shown in ~~strikethrough~~):

Subdivision 4. CONDITIONAL USES.

The following uses require a Conditional Use Permit based on the procedures set forth in Section 22 of this Ordinance:

1. Governmental, municipal and public utility buildings and structures necessary for the community’s health, safety, and general welfare.
2. Public or semi-public recreational buildings and community centers.
3. Churches, public libraries, museums, primary and secondary schools, which are accredited by the State Department of Education, and hospitals.
4. Planned Unit Residential Developments regulated by Section 21 of this Ordinance.
5. Townhouses containing four (4) or fewer units whether in a single unit or on a combination of lots.
6. Essential Services structures.

7. Towers and Antennas as regulated by Section 9-, including the placement of small wireless facilities and wireless support structures in the public right-of-way to accommodate small wireless facilities.

8. Uses the City Council determines to be substantially similar in nature to the conditional uses listed above and not detrimental to the City's general health and welfare.

SECTION 3. SUMMARY PUBLICATION.

At least four-fifths of the City Council's members direct the Administrator to publish only the title and a summary of this Ordinance as follows:

“AN ORDINANCE REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF FOLEY, AND TO REGULATE THE PLACEMENT OF SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE R-1 SINGLE FAMILY DISTRICT. It is the intent and effect of this Ordinance to regulate the public rights-of-way in Foley and to regulate small cell wireless facilities in the R-1 Single Family Zoning District.”

Adopted this 5th day of December, 2017.

Gerard Bettendorf, Mayor

ATTEST:

Sarah Brunn, City Administrator