

**CITY OF JORDAN
ORDINANCE NO. 2017-05**

An Ordinance of the City of Jordan, Minnesota, amending Jordan, MN Code of Ordinances §§ 150.111 – 150.115, §§ 150.119 - 150.121, § 150.124, and § 150.131.

The City Council of Jordan ordains:

§ 150.111 DEFINITIONS of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

The definitions included in M.S. § 237.162, as amended by 2017 Session Laws, Chapter 94, Minn. Rules part 7819.0100, subparts 1 through 25, and Minn. Rules part 7560.0100, subparts 1 through 12 are hereby adopted by reference and are incorporated into this chapter as if set out in full. Where the definitions set forth in Minn. Rules part 7819.0100 and 7560.0100 refer to M.S. § 237.162, those terms shall be interpreted based upon M.S. § 237.162, as amended by 2017 Session Laws, Chapter 94.

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§ 150.112 PERMIT REQUIREMENT of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

(A) *Permit required.* Except as otherwise provided in this code, no person or right-of-way user may obstruct or excavate any right-of-way or install or collocate a small wireless facility or support structure without first having obtained the appropriate permit from the city.

1. *Excavation permit.* An excavation permit is required 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.
2. *Obstruction permit.* An obstruction permit is required 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.
3. *Small wireless facilities and support structures.* An obstruction permit or excavation permit when applicable, are required for the placement of wireless support structures and placement and collocation of small wireless facilities in the right-of-way.

4. *Small wireless facility permit.* A small wireless facility permit is required for the placement of a new wireless support structure within the right-of-way or collocation of small wireless facilities on existing wireless support structures within the right-of-way.
5. *Wireless support structure conditional use permit.* A conditional use permit under Chapter 154 of this Code is required to install a new wireless support structure or a small wireless facility in a right-of-way in a district or areas zoned for or allowing single family residential uses, or in an established historic district.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person makes a supplementary application for a new permit before the expiration of the initial permit, and a new permit is granted.

(C) *Delay penalty.* In accordance with Minn. Rules 7819.1000, subpart 3, and notwithstanding division (B) above 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.

(D) *Permit display.* Excavation and obstruction 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.

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§ 150.113 PERMIT APPLICATION of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

An application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- (A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project, the location of applicant's other existing projects, and the location of all known existing and proposed facilities, and the following information:
 1. Each permittee's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
 2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of permittee's 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 application.

3. A certificate of insurance or self-insurance:
 - a. Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the city;
 - b. Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and placement and use of facilities and equipment in the right-of-way by the permittee, 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;
 - c. 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;
 - d. Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
 - e. 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.
4. The city may require a copy of the actual insurance policies.
5. If the permittee is a corporation, a copy of the certificate required to be filed under M.S. § 300.06 as recorded and certified to by the Secretary of State.
6. 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.
7. Each small wireless facility permit application may consolidate up to 15 small wireless facilities provided that all the small wireless facilities in the application:
 - (a) are located within a two-mile radius;
 - (b) consist of substantially similar

equipment; and (c) are to be placed on similar types of wireless support structures.

8. Small wireless facility permit applications that seek to collocate a small wireless facility on an existing non-city owned wireless support structure shall provide the city at the time of application with proof that applicant has obtained the necessary authority from the owner of the wireless support structure to collocate the small wireless facility on the structure.
9. Small wireless facility permit applications that propose collocation of small wireless facilities shall indicate to the extent practicable the owner of the other facility or facilities, and if the city is the owner of those facilities, the application shall include a request for collocation and provide such information as required by the city.

(B) An applicant for a small wireless facility permit for purposes of placing, collocating, maintaining or removing a small wireless facility within the right-of-way, who has previously provided the city with the information requested in the permit application, need only specifically refer to the previous small wireless facility permit application.

(C) Payment of money due the city for:

1. Permit fees, cash escrow, estimated restoration costs and other management costs;
2. Prior obstructions or excavations;
3. Any 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; and
4. Franchise fees or other charges, if applicable.

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§ 150.114 ISSUANCE OF PERMIT; CONDITIONS of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit within ninety (90) days of receiving a completed application, or shall provide written reasons for denial of the application if the city believes the requirements herein have not been satisfied. If the city receives applications within a single seven-day period from one or more applicants seeking approval of small wireless facility permits for more than 30 small wireless facilities, the city may

extend the 90-day period by an additional 30 days. If the city elects to invoke this extension, it must provide written notice to any applicant to whom the extension will be applied.

- (B) *Conditions generally.* The city may impose reasonable conditions upon the issuance of the 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 M.S. § 216D.01-09 (Gopher One Call Excavation Notice System) and Minn. Rules part 7560.
- (C) *Small wireless facility permit conditions.* In addition to paragraph (B), a small wireless facility permit shall also be conditioned upon the new wireless support structure, new small wireless facilities and equipment meeting the following requirements:
1. The collation of small wireless facilities on utility poles or other structures owned or under the control of the city that are located within the right-of-way shall be authorized by City Council upon terms and conditions established by the City Council. A wireless service provider that is granted authority to collocate small wireless facilities on wireless support structures owned or controlled by the city and located within the public right-of-way are required to enter into a standard small wireless facility collocation agreement, but not an individual license, franchise, or other similar agreement with the local government unit or any other entity.
 2. A new wireless support structure shall not exceed fifty (50) feet above ground level and shall be separated from other wireless support structures by a minimum of six hundred (600) feet.
 3. Notwithstanding requirement 2, a new wireless support structure that replaces an existing wireless support structure that is higher than 50 feet above ground level may be placed at the height of the existing wireless support structure.
 4. The diameter of a new wireless support structure that replaces an existing wireless support structure shall not exceed the diameter of the existing wireless support structure by more than fifty percent (50%).
 5. 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.
 6. The small wireless facility shall not interfere with public safety wireless telecommunications.

7. 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 city determines that removal and relocation is necessary to prevent interference with: (a) present or future city use of the right-of-way for a public project; (b) the public health, safety, or welfare; or (c) the safety and convenience of travel over the right-of-way.
8. A small wireless facility attached to an existing wireless support structure shall not block light emanating from the wireless support structure and shall not otherwise interfere with the original use of the wireless support structure.
9. Ground mounted equipment associated with the 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, it shall comply with the provisions of this Code and shall also meet the following standards:
 - i. Ground-mounted equipment shall be placed below grade unless not technically feasible;
 - ii. Ground-mounted equipment shall not disrupt traffic or pedestrian circulation and shall not interfere with vehicle and pedestrian intersection sight lines;
 - iii. Ground-mounted equipment shall not create a safety hazard;
 - iv. If placed above grade, ground-mounted equipment shall be separated from the nearest ground-mounted equipment on the same block face by a minimum of 330 feet unless the equipment is placed underground, unless waived by the city;
 - v. If placed above grade and located adjacent to residential uses, ground-mounted equipment shall be limited to three (3) feet in height and twenty-seven (27) cubic feet in cumulative size; and
 - vi. If placed above grade and located adjacent to non-residential uses, ground-mounted equipment shall be limited to five (5) feet in height above grade and eighty-one (81) cubic feet in cumulative size.
 - vii. Ground-mounted equipment shall be designed or screened in a manner to comply with the following requirements:
 1. It shall blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in

instances where the color is dictated by federal or state authorities.

2. Landscaping plans for the base of the utility poles and around any ground-mounted equipment must be submitted with the small wireless facility permit application and must be approved by the City Council prior to the issuance of the small wireless facility permit.
3. Screening plans shall be provided and include a 100% opaque barrier to be constructed and must be approved by the City Council prior to the issuance of the small wireless facility permit.

(D) *Consolidated small wireless facilities permit applications.* In rendering a decision on a consolidated small wireless facility 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.

(E) *Small Wireless Exemptions.* A small wireless facility permit shall not be required, but an obstruction permit or excavation permit may be required, to conduct the following activities in the right-of-way:

1. Routine maintenance of a small wireless facility;
2. Replacement of a 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
3. 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.

(F) *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 M.S. Chapter 216D and Minn. Rules part 7560, and shall require potholing or open cutting over existing underground utilities before excavating, determined by the city.

(G) *Denial.* Any denial of a permit will be made in writing and will set forth the basis for the denial. The city will notify the applicant in writing within three business days of its decision to deny or revoke a permit. If a permit application is denied, the applicant may cure the deficiencies identified by the city and resubmit its application. If the applicant resubmits the application within 30 days of receiving

written notice of the denial, it will not be charged an additional fee. The city will either approve or deny the revised application within 30 days after the revised application is received by the city.

- (H) *Term.* The term of an obstruction or excavation permit shall be equal to the length of time set forth on the obstruction or excavation permit. The term of a small wireless facility permit shall be equal to the length of time that the small wireless facility is in use, unless earlier revoked under this chapter.

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§ 150.115 PERMIT FEES of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

- (A) *Excavation permit fee.* The city shall establish an excavation permit fee in an amount sufficient to cover the following costs:

1. The city management costs;
2. Degradation costs, if applicable.

- (B) *Obstruction permit fee.* The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

- (C) *Small wireless facility permit fee.* The city shall establish the small wireless facility permit fee and shall be an amount sufficient to recover the city management costs. In addition, each small wireless provider shall pay the following fees for each small wireless facility attached to a wireless support structure owned or controlled by the city:

1. \$150 per year for rent to occupy space on a wireless support structure;
2. \$25 per year for maintenance associated with the space occupied on a wireless support structure; and
3. A monthly fee for electricity used to operate a small wireless facility, if not purchased directly from the applicable electrical utility provider, at the rate of:
 - i. \$73 per radio node less than or equal to 100 max watts;
 - ii. \$182 per radio node over 100 max watts; or
 - iii. The actual costs of electricity, if the actual costs exceed the amount in clauses (i) or (ii) above.

- (D) *Payment of permit fees.* No excavation permit, obstruction permit, or small wireless facility permit shall be issued without payment of the permit fees. The city may allow applicant to pay such fees within ten days of billing. In addition to the permit fee(s), any initial engineering and preparatory construction work associated with the collocation or placement of small wireless facilities on city owned wireless support structures within the right-of-way shall be paid by the applicant.
- (E) *Non-refundable.* Permit fees that were paid for a permit that the city has revoked for a breach of this chapter are not refundable.
- (F) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.
- (G) *Establishment of fees.* All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.1000.

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§ 150.119 INSTALLATION REQUIREMENTS of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules part 7819.1100 and other applicable local requirements, insofar as they are not inconsistent with M.S. §§ 237.162 and 237.163, as amended by 2017 Session Laws, Chapter 94. Installation of service laterals shall be performed in accordance with Minn. Rules part 7560 and this code. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in § 150.124(B) of this chapter.

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§ 150.120 INSPECTION of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

- (A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate and the obligation to provide “as built” drawings both in accordance with Minn. Rules part 7819.1300.
- (B) *Site inspection.* Permittee shall make the work site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of city.*

1. At the time of inspection, the city may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.
2. The city 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 10 days after issuance of the order, the permittee shall present proof to the city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to § 150.123 of this chapter.

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§ 150.121 WORK DONE WITHOUT A PERMIT of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

- (A) *Emergency situations.* Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities that it considers being an emergency. Notice to Gopher State One Call regarding the emergency does not fulfill this requirement. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within 2 business days after the occurrence of the emergency the owner 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 facilities, the city will attempt to contact the local representative of each facility owner 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 person whose facilities occasioned the emergency.
- (B) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

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§ 150.124 MAPPING DATA of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

(A) *Information required.* Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100.

(B) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules part 7560.0150, subp. 2 shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this division (B) and with applicable Gopher State One Call law and Minnesota rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for payments to contractors working on a public improvement project including those under Minnesota Statutes, M.S. Chapter 429, and city approval of performance under development agreements, or other subdivision or site plan approval under M.S. Chapter 462. The city shall reasonably determine the appropriate method of providing such information. 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 for future permits to the offending permittee or its subcontractors.

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§ 150.131 APPEAL of the Jordan, MN Code of Ordinances is hereby amended to revise and add the following:

A right-of-way user that has been denied a permit; has had permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city regarding § 150.124(B) of this chapter may have the denial, revocation, fee imposition, or decision reviewed upon written request by the City Council. The City Council shall act on a timely written request at its next regularly-scheduled meeting. A decision by the City Council affirming a denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

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