

**CITY OF JORDAN
ORDINANCE 2022-08**

**AN ORDINANCE AMENDING SECTION 150.112 AND 150.121 OF CHAPTER 150, BUILDING
REGULATIONS ORDINANCE, OF THE CITY CODE**

NOW BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF JORDAN THAT Chapter 150 is hereby amended as follows:

Section 150.112. Registration, Reporting and Permit Requirements.

(A) *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.

(1) *Registration Prior to Work.* No person may occupy, use, construct, install, repair, remove, relocate, or perform any other work on any facilities or any part thereof, in any right-of-way without first being registered with the city.

(2) *Information Required.* The information provided to the city at the time of registration shall include, but not limited to:

- (a) Each registrant's name, Gopher 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. Current information regarding how to contact the local representative in an emergency.
- (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 (A) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (B) 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;
 - v. Indicating comprehensive liability coverage, automobile liability coverage,

workers compensation and umbrella coverage in amounts established by the city for purposes of protecting the city and the public;

- vi. The city may require a copy of the actual insurance policies; and
- vii. 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.

(3) *Notice of Changes.* The registrant shall keep all the registration information current at all times by providing to the city information as to changes within fifteen (15) days following the dates on which the registrant has knowledge of any change.

(B) *Reporting Obligations.* Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for their facilities within the city. Such plan shall be submitted using a format designated by the city and shall contain the frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:

- (1) *Next-Year Projects.* The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
- (2) *Five-Year Projects.* To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

By August 15 of each year, the city will have available for inspection in the city's office a composite list of all next-year projects and five-year projects of which the city has been notified as well as a list of city projects for the up-coming year. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by September 15, each registrant may change any project in its list of next-year projects. When a registrant changes any project in its list of next-year projects, the registrant must notify the city and all other registrants of all such changes in said list.

Thereafter, by September 30, each registrant must notify the city of all city projects, identified in the list of city projects for the up-coming year, that the registrant has a next-year project within the same right-of-way. The registrant shall cooperate and coordinate its next-year project with the city, the city's engineers and contractors and schedule and perform its next-year projects within those right-of-ways prior to, concurrent with, or after the city project as determined and directed by the city or city's engineers.

(3) *Eighteen Month Period.* In addition to its authority to deny a permit application pursuant to § 150.118, the city may deny any permit application under this Chapter where the work to be performed under the permit would be within a right-of-way where the city has completed a project within the past eighteen (18) months preceding the date of the permit application. Notwithstanding the foregoing, the city will not unreasonably deny a permit application for a right-of-way permit for failure to include a project in its next-year plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(C) *Permit Requirements.*

(1) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.

(a) *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 herein.

(b) *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.

(c) *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.

(d) *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.

(e) *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 area zoned for or allowing single family residential uses, or in an established historic district.

(2) *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 another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

(3) *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.

(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.

Subdivision 4. REPLACEMENT OF SECTION 150.121. NOW BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF JORDAN THAT Section 150.121 shall now read as follows:

Section 150.121 Work Done without a Permit.

(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 situation provided for in paragraph (A), any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must immediately cease its obstruction and/or excavation of the right-of-way and take necessary safety measures to prevent injury to persons or property that may arise from the obstruction and/or excavation of the right-of-way, and apply for a permit. The city reserves the right deny a permit application pursuant to §§ 150.112(B)(3) and/or 150.118. In addition to the penalty provided by § 150.999, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way shall 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 §§ 150.110 – 150.999

Subdivision 5. SUMMARY APPROVED.

The City Council determines that the text of the summary ordinance marked “Official Summary of Ordinance No. 2022-08” clearly informs the public of the intent and effect of the ordinance. The City Administrator shall publish the title of this ordinance and the official summary in the official newspaper with notice that the printed copy of the ordinance is available for inspection by any person during regular office hours at the office of the city.

Subdivision 6. EFFECTIVE DATE.

This Ordinance shall become effective following its publication in the official newspaper of the City. ORDAINED by the City Council of the City of Jordan, Scott County, Minnesota this ____ day of _____, 2022.

Moved by:

Seconded by:

Mike Franklin, Mayor

Tom Nikunen, City Administrator

Codified in the City Code:

Summary of Ordinance 2022-08

Ordinance 2022-08 repeals and replaces Jordan City Code sections 150.112 and 150.121 which govern construction within City of Jordan right-of-way. The new sections require any one desiring to perform work within the City's right-of-way to first register with the City, inform the City of upcoming anticipated projects at certain time periods and obtain a permit for the project. Ordinance 2022-08 permits persons with facilities within the right-of-way to perform emergency work without waiting for a permit but must immediately notify the City of such work. Ordinance 2022-08 also describes the penalties for violating these sections while working within the City's right-of-way.