

Telecommunications Permit Ordinance

ORDINANCE NO. 177

CITY OF BIRD ISLAND, RENVILLE COUNTY, MINNESOTA

An ordinance governing the construction, installation, operation, repair, maintenance, removal, and relocation of facilities and equipment used for the transmission of telecommunications or related services in the public ground of the City of Bird Island.

THE CITY COUNCIL OF BIRD ISLAND ORDAINS:1

SECTION 1. DEFINITIONS. Subdivision 1. The terms defined in this Section have the meanings given them.

Subd. 2. Company. A natural or corporate person, business association, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks or is required to construct, install, operate, repair, maintain, remove or relocate facilities in the city.

Subd. 3. Director. The director of public works (or equivalent position at the city) or designated representative.2

Subd. 4. Facilities. Telecommunications equipment of any kind, including but not limited to audio, video, paging, facsimile or similar service, not governed by Minnesota Statutes, chapter 238, including all trunks, lines, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, and any necessary appurtenances owned, leased or operated by a company on, over, in, under, across or along public ground.

Subd. 5. Public Ground. Highways, roads, streets, alleys, public ways, utility easements and public grounds in the city.

SECTION 2. PERMIT PROCEDURE.

Subdivision 1. Permit Required. A company may not construct, install, repair, remove or relocate facilities, or any part thereof, in, on, over, under or along public ground without first obtaining a permit from the city.

Subd. 2. Application. Application for a permit is made to the director.

Subd. 3. Issuance of permit. If the director determines that the application has satisfied the requirement of this ordinance the director may issue a permit to the company. An applicant may contest a permit denial or the conditions of approval by written notice to the clerk requesting a city council review within fourteen (14) days of the director's action. The Council shall hear any contest of the director's actions under this ordinance within forty-five (45) days of the city clerk's receipt of the contest notice. Nothing in this ordinance precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to the issuance of a permit set forth herein.

Subd. 4. Permit fee. The application must be accompanied by the permit fee set by the city council by resolution.3

Subd. 5. Security for completion of work. Prior to commencement of work, the company must deposit with the city security in the form of certified check, letter of credit or construction bond, in a sufficient amount as determined by the director for the completion of the work. The securities will be held until the work is completed plus a period of \_\_\_\_\_ months thereafter to guarantee that restoration work has been satisfactorily completed. Upon application of the company, providing such information as the director may require, if two or more work projects are to be constructed during a calendar year, the director may accept, in lieu of separate security for each project, a single security for multiple projects in such form and amount as determined, in the discretion of the director, to be sufficient to assure completion of all projects which may be in progress at any one time during that calendar year and to guaranty that restoration work

will be satisfactorily completed. The security will then be returned to the company with interest if required by law and then interest at the applicable statutory rate.<sup>4</sup>

Subd. 6. Inspection of work. When the work is completed the company must request an inspection by the director. The director will determine if the work has been satisfactorily completed and provide the company with a written report of the inspection and approval.

### SECTION 3. RESTORATION AND RELOCATION.

Subdivision 1. Restoration. Upon completion of the work, the company must restore the general area of the work, including paving and its foundations, to the same condition that existed prior to commencement of the work and must exercise reasonable care to maintain the same condition for two years thereafter. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, the city may put it in the same condition at the expense of the company. The company must, upon demand, pay to the city the direct and indirect cost of the work done for or performed by the city, including but not limited to the city's administrative costs. To recover its costs, the city will first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the city.

Subd. 2. Company initiated relocation. The company must give the city written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the city, such approval not to be unreasonably withheld.

Subd. 3. City required relocation. The company must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities whenever the city requires such relocation.

Subd. 4. Relocation where public ground vacated. The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the city. If the vacation proceedings are initiated by the company, the company must pay the relocation costs. If the vacation proceedings are initiated by the city or other persons, the company must pay the relocation costs unless otherwise agreed to by the city,<sup>5</sup> company and other persons.

### SECTION 4. COMPANY DEFAULT.

Subdivision 1. Notice. If the company is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than 30 days after receiving written notice from the city of the default, the city may terminate the rights of the company under the permit. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to that address.

Subd. 2. City action on default. If the company is in default in the performance of the work authorized by the permit, the city may, after the above notice to the company and failure of the company to cure the default, take such action as may be reasonably necessary to abate the condition caused by the default. The company must reimburse the city for the city's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under Section 2, Subdivision 5 will be applied by the city first toward payment for such reimbursement.

### SECTION 5. INDEMNIFICATION.

Subdivision 1. Scope. The company will indemnify, keep and hold the city, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair,

removal, relocation or operation of the facilities affecting public ground, unless such injury or damage is the result of the negligence of the city, its elected officials, employees, officers, or agents. The city will notify the company of the claims or actions and provide a reasonable opportunity for the company to accept and undertake the defense.

Subdivision 2. Claim defense. If a claim or action is brought against the city under circumstances where indemnification applies, the company, at its sole expense, shall defend the city if written notice of the claim or action is given to the company within a period wherein the company is not prejudiced in the defense of such claim or action by lack of such notice. If the company undertakes the defense, the company shall have complete control of such claim or action, but it may not settle without the consent of the city, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense of immunity otherwise available to the city. In defending any action on behalf of the city, the company is entitled to assert in its own behalf.

## SECTION 6. OTHER CONDITIONS OF USE.

Subdivision 1. Use of public ground. Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established by the director including but not limited to (i) the right of inspection by the city at reasonable times and places; (ii) the obligation to relocate the facilities pursuant to Section 3, Subdivisions 3 and 4; and (iii) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission and other state and the federal law, including prompt compliance with the requirements of the Gopher State One Call program, Minnesota Statutes Chapter 216D.

Subd. 2. Location. The facilities must be placed in a location agreed to by the city. The company shall give the city forty-five (45) days advanced written notice of the company's proposed location of the facilities within the public ground. No later than 45 days after the city's receipt of the company's written notice the city will notify the company in writing of the city's acceptance or rejection of the proposed location. If the city rejects the company's proposed location, the city shall propose alternative locations. The city does not waive or forfeit its right to reject the location of facilities by failure to respond within 45 days.

Subd. 3. Emergency Work. A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event, may the company undertake such an activity which will result in the closing of a street or alley without prior notification to the city.

Subd. 4. Street improvements, paving or resurfacing. The city will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the city will start the work; and, (iv) if more than one street is involved, the sequence in which the work is to proceed.

Subd. 5. Company protection of facilities. The company must take reasonable measures to prevent the facilities from causing damage to persons or property. The company must take reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The company must take specific protective measures when the city performs work near the facilities.

Subd. 6. Prior service connections. In cases where the city is undertaking the paving or resurfacing of the streets and the facilities are located under such street, the company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five year period following the paving or resurfacing.

## SECTION 7. EFFECTIVE DATE AND APPLICABILITY TO EXISTING FACILITIES. 6 Companies with facilities, in,

on, over, under or along public ground on the effective date of this ordinance must take prompt action to comply with this ordinance and the permits authorized by this ordinance. A company, however, is not required to reapply for a permit obtained from the city prior to the effective date of this ordinance. A company is not required to pay the difference between the permit fee of a previously obtained permit and the equivalent newly obtained permit under this ordinance. All other provisions of this ordinance apply to existing facilities.

SECTION 8. ACCEPTANCE OF REQUIREMENTS. By receiving a permit pursuant to this ordinance, the company accepts and agrees to comply with all of the requirements of this ordinance.

SECTION 9. PUBLIC GROUND OTHER THAN RIGHT-OF-WAY. Nothing in this ordinance is intended to grant to the company authority beyond that given by Minnesota Statutes section 222.37 for use of the public right-of-ways for construction and operation of facilities. If the city allows the company to use its non-right-of-way public ground, the terms of this ordinance apply to the extent they are consistent with the contract, statutory and common law rights the city owns in such property.

SECTION 10. REGULATIONS; PERMIT SCHEDULES. The director is authorized and directed to prepare suitable regulations and schedules for the administration of permits issued under this ordinance.

SECTION 11. SEVERABILITY. If any provision of this ordinance is contrary to law and therefore unenforceable, such provision will be severed and will not affect the other provisions of this ordinance.

Passed and approved 7-24-95.

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Mayor Paul Setzepfandt

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Deb Lingl, Clerk

1. Enacting clauses are different in various charters. The statutory city enacting clause is use here.
2. "The director of public works, the city engineer, the street superintendent, etc." Some cities prefer to designate the city manager as the administrative authority in all cases relying on the manager to make the appropriate assignment.
3. Many cities set permit and license fees annually by resolution. If this is not done, the actual fee should be inserted here. The amount of the fee should not exceed the amount reasonably expected to cover all city costs of administration, inspection and enforcement.
4. The rate of interest could be the statutory rate of \_\_\_\_% or some recognized rate such as prime or a T-bill rate.
5. Vacation proceedings are often initiated by property owners and occasionally by the city itself. This provision authorizes cost sharing among the city, company and property owners if agreement can be reached.
6. Effective dates vary from charter to charter. In statutory cities, the ordinance is effective on publication. This section grandfathers fees already paid for an existing permit, but requires compliance with the new permit issued under this ordinance.