

Regulating City Rights of Way

Learn why cities should manage their streets and sidewalks, boulevards, and ditches by enacting a right-of-way ordinance. Understand the powers in state law cities can use by adopting an ordinance, including the authority to regulate utilities and others using rights of way and the ability to better meet utility service lateral locate responsibilities.

RELEVANT LINKS:

[Minn. Stat. § 237.162, subd. 3.](#)

[Minn. Stat. § 237.163, subd. 2 \(b\). Minn. R. 7819.0050](#)

[Right of Way Regulation, LMC Model Ordinance. See Section 1.02.](#)

[Right of Way Regulation, LMC Model Ordinance: §1.09 subd. 3 §1.10 \(c\) §1.13 subd. 6 §1.18](#)

[§1.20 subd. 3\(a\)](#)

[Minn. Stat. §§. 237.162-.163. U.S. West Communications v. Redwood Falls, 558 N.W.2d 512 \(Minn. App. 1997\).](#)

I. Why manage your rights-of-way

The right-of-way (ROW) includes the street and area on either side of the street used to support the use of the street (for example, the sidewalks, shoulders, and ditches) and by statute includes cartways, bicycle lanes, other dedicated rights-of-way for travel purposes, and utility easements of local governments. It also includes the area below and above the roadway.

Cities hold rights-of-way as an asset in trust for its citizens. In order to properly care for and manage that important public asset, cities should adopt ordinances regulating the use of and access to the ROW. Adopting a comprehensive right-of-way management ordinance gives cities full authority to take advantage of powers granted to cities under state law (Minnesota ROW law). Many of the rights available to cities do not apply automatically. Cities must “opt in” by exercising the authority given to them in state law. A recital in the preamble of the ordinance is necessary, and is included in the model right-of-way ordinances provided.

The adoption of a ROW ordinance affords cities significant ROW management rights, for instance:

- Imposing delay penalties for utility failure to meet deadlines.
- Listing the range of fees chargeable.
- Allowing both permit fees and franchise fees (see also Minn. Stat. § 216B.36).
- Allowing the denial of a permit.
- Ordering the immediate cessation of ROW work, in most instances.

II. State statute and state agency rules

Following litigation between U.S. West and the City of Redwood Falls in 1997, related to the authority of cities to regulate telecommunication companies using a city’s right-of-way, the Minnesota Legislature adopted comprehensive authority for cities to manage their ROWs (MN ROW law).

RELEVANT LINKS:

[Minn. R. ch.7819.](#)

[Minn. Stat. § 237.162.](#)
[Minn. Stat. § 237.163.](#)

[LMC information memo,
Cell Towers, Small Cell
Technologies & Distributed
Antenna Systems.](#)

[U.S. West Communications v.
Redwood Falls](#), 558 N.W.2d
512 (Minn. Ct. App. 1997).

[Right of Way Regulation,
LMC Model Ordinance](#)

[Minn. Stat. § 237.162.](#)
[Minn. Stat. § 237.163.](#)

[In the Matter of Accelerating
Wireless Broadband
Deployment by Removing
Barriers to Infrastructure
Investment, Declaratory
Ruling and Third Report and
Order](#), WT Docket No. 17-
79, WC Docket No. 17-84,
2018 WL 4678555, (rel.
September 27, 2018).

[Right of Way Regulation –
Summary Publication](#), LMC
Model Ordinance.
[Minn. Stat. § 412.191, subd.
4.](#)

That legislation resulted from extensive negotiations and discussion between the League of Minnesota Cities and representatives of the public utilities industry.

One of the key elements of the legislation was a requirement for the Minnesota Public Utilities Commission (MPUC) to adopt ROW rules to help implement aspects of the legislation. The MPUC adopted those rules in 1998 and the model ordinances provided incorporate many key provisions of those rules.

The Minnesota Legislature, in the 2017 regular session, amended Minnesota's ROW law. The amendments made it clear that wireless providers fall within the definition of "telecommunications right-of-way users" entitled to access the right-of-way. The 2017 amendments also created a separate permitting structure for deployment of small wireless technology.

III. Features and use of models

A. Model ROW ordinance

A model ordinance originally was developed in 1996 as a cooperative effort between the League and the City Engineers Association of Minnesota. It was adopted, in part, in response to litigation arising from pressures being placed on ROWs by an increasing set of municipal utilities.

The model imposed comprehensive reasonable regulations on the placement and maintenance of equipment currently within the ROW or to be placed there in the future. Under the regulatory scheme, persons disturbing and obstructing the ROW bear a fair share of the financial responsibility for its ongoing integrity. After the 2017 amendments, the ordinance underwent additional modifications to accommodate wireless providers and created a streamlined deployment process for the collocations of small wireless facilities on most structures deemed wireless support structures located within the ROW (an exemption exists for structures owned, operated or served by a municipal electric). Finally, the ordinance was amended an additional time to remain consistent with current FCC rulings.

Because of the complexities of the Minnesota ROW law, and the specific exemption for collocations on structures owned, operated or served by municipal electrics, cities should work with their city attorneys in amending or drafting a ROW management ordinance, or a separate Telecom ROW user ordinance.

The model ordinance is quite lengthy. The League and its partners also developed a summary form of the ordinance, which can be used when following statutory guidelines for summary publication.

RELEVANT LINKS:

[Minn. R. 7560.0375.](#)

[Right of Way Regulation,](#)
LMC Model Ordinance, §§
1.09 - .12.

[Minn. R. 7819.1000.](#)
[Minn. Stat. §. 237.163, subd.](#)
[6.](#)
[City of Roseville sample,](#)
[Right of Way Permit](#)
[Applications and Fee](#)
[Schedule.](#)
[City of LeSeuer sample,](#)
[Right of Way Permit](#)
[Application](#) (general ROW
permit).

[City of Bloomington sample,](#)
[Small Cell Pole Attachment](#)
[Application and Permit.](#)

[In the Matter of Accelerating](#)
[Wireless Broadband](#)
[Deployment by Removing](#)
[Barriers to Infrastructure](#)
[Investment, Declaratory](#)
[Ruling and Third Report and](#)
[Order, WT Docket No. 17-](#)
[79, WC Docket No. 17-84,](#)
[2018 WL 4678555, \(rel.](#)
[September 27, 2018\).](#)

[Right of Way Regulation,](#)
LMC Model Ordinance,
Section 1.25.

B. Mark and locate

The model ROW ordinance also complies with the rules, adopted in 2005, that require the locating and marking of utility service laterals located within a ROW. The Minnesota Office of Pipeline Safety adopted these rules in response to an increased use of “trenchless excavation” by utility installers. The combination of unmarked utility service laterals, combined with trenchless excavation technology, was thought to increase public safety risks.

The adopted rules place a heightened burden on cities to make sure that new installations of sewer, water, and other municipal utilities are locatable. The rules further provide additional incentives for cities to adopt more rigorous regulation of contractors undertaking trenchless excavation in the ROW.

C. Permits and fees

The model ordinance requires a permit to obstruct or excavate in any right-of-way. A city adopting this requirement also has to make its permit fee schedule available to the public. Cities must establish its fee schedule in advance and these fees allow for recovery of the city’s actual costs incurred in managing the public right-of-way. Other requirements exist concerning allocation of permit fees among users and the use of delay penalties. Additionally, before the 2017 legislative session, the law previously did not address or limit cities’ ability to charge rights-of-way users rent for placing equipment (called collocation) on city owned structures. Common practice involved cities charging rent at a negotiated rate.

With the 2017 amendments, cities can continue to charge rent; however, statutory caps now limit the amount of rent allowed for placing small wireless facilities on city owned “wireless support structures” (as defined in statute). In addition, recent FCC rulings have placed additional restrictions on rent and fees related to wireless communication permits.

Again, if a municipal utility owns, operates or serves the structure upon which the requested collocation will go, a statutory exemption applies allowing rent to be negotiated and not capped.

D. Undergrounding

The League recommends cities discuss with their city attorneys how to best regulate the underground placement of facilities (amenable to undergrounding).

RELEVANT LINKS:

[Minn. Stat. § 237.162.](#)
[Minn. Stat. § 237.163.](#)

[Undergrounding of Utility
Facilities in the Right of Way,](#)
LMC Model Ordinance.

[Minn. R. 7819.0200.](#)

[Right of Way Regulation,](#)
LMC Model Ordinance. See
Section 1.18.

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Most often, undergrounding ordinances, if separate, assume that the city already has adopted a right-of-way ordinance, so definitions and introductory language from the right-of-way ordinance often are omitted. Much of the wireless providers' equipment does not work underground, which could create issues in light of the 2017 Minnesota Right-of-Way law amendments that require access to and use of the right-of-way by wireless providers. As a result, cities should seek advice of its city attorney on how to approach small cell deployment in light of other undergrounding requirements.

One undergrounding ordinance option, in light of the changes to state law, generally requires undergrounding, but allows for exceptions, such as when the circumstances cause undergrounding to be impractical. This type of ordinance best accommodates small cell deployment in primarily undergrounded cities.

E. High density corridor designation

The only provision in the ROW ordinance that has a record of non-use by any municipality is the "high density corridor" designation defined in the ROW ordinance. Because a Minnesota Rule requires an extensive hearing process before a ROW area can be designated as a high-density corridor, there has been no use of the rule to date.

With the anticipated significant demand for ROW space for redundant telecommunication, overcrowding may arise. Cities should first attempt to address overcrowding issues under a city's general ROW management powers in a ROW or a Telecommunications ROW ordinance, if possible.

IV. Further assistance

If explanation is needed for any provision, or if there are any questions on any of the provisions of these model ordinances, please contact the League of Minnesota Cities.