

CHAPTER VIII

STREETS, ALLEYS AND PUBLIC WAYS

Section 800 - Street Excavations

800.01. Definitions. Subdivision 1. For purposes of this section the terms defined in this subsection have the meanings given them.

Subd. 2. "Applicant" means a person making written application to the city engineer for an excavation permit who is not a right-of-way user as defined in section 850 of this code. Right-of-way users as defined in section 850 must apply for permit pursuant to that section. (Amended, Ord. No. 01-01)

Subd. 3. "Excavation work" means excavation and other work permitted under an excavation permit issued pursuant to section 850 of this code. (Amended, Ord. 01-01).

Subd. 4. "Permittee" means a person who has been granted an excavation permit under this section. (Amended, Ord. No. 01-01)

Subd. 5. "Street" means a street, highway, sidewalk, alley, avenue, or other public way or grounds or public easement in the city.

800.03. Permit. It is unlawful for a person to dig up, break, excavate, tunnel, drill, bore, undermine or in any manner break up a street or to make or cause to be made an excavation in street earth or excavated material obstructing or tending to interfere with the free use of the street without an excavation permit. Augering or boring for purposes of placing fence poles is not an excavation.

800.05. Application. An application for the issuance of an excavation permit is made to the director of public works/engineer (referred to in this section as the "director"). The application must state the name and address of the applicant, the nature, location and purpose of the excavation, and other data as may reasonably be required by the director. If required by the engineer, the application must be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to the excavation and of the proposed excavated surfaces, the location of the excavation work, and other information required by the director.

800.07. Surety bond. Subdivision 1. Conditions. Before an excavation permit is issued the applicant must deposit with the city clerk a performance bond in the amount of \$4,000 in favor of the city. The required performance bond must be: (Amended, Ord. No. 09-01)

- (a) with good and sufficient bond by an insurance company authorized to do business in the state of Minnesota; (Amended, Ord. No. 09-01)
- (b) satisfactory to the city attorney in form and substance;
- (c) conditioned that the applicant will faithfully comply with the terms and conditions of this section and the rules, regulations and requirements required by the engineer; and
- (d) conditioned that the applicant will secure and hold the city and its officers harmless against all claims judgments, or other costs arising from the excavation permit or for which the city, the City Council or any city officer may be liable by reason of any accident or injury to persons or property through the fault of the permittee.

Subd. 2. Coverage. Recovery on the performance bond will not exhaust the bond but it must in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. (Amended, Ord. No. 09-01)

Subd. 3. Future claims. If a suit or claim is brought against the city by reason of the negligence or default of the permittee, a final judgment against the city requiring it to pay for such damage will be conclusive on the permittee and the surety if the city has notified the permittee of the claim.

Subd. 4. Blanket bond. A permittee may annually supply a single surety bond in the amount and conditioned as required by subdivision 1, covering all work done by the permittee in the one year period covered by the bond.

Subd. 5. Exemption. The bond provisions of this section do not apply to a duly licensed and bonded plumber or to a public utility permitted to operate within the city by franchise or otherwise, for the purpose of supplying gas, electric, or telephone service, or for any excavation made under a city contract or by the city. (Amended, Ord. No. 09-01)

800.09. Engineer: rules. Work done pursuant to an excavation permit must be performed under the direction of the director. The engineer is directed to prepare regulations with respect to excavations and modify them with respect to particular work to protect the public from injury, to prevent damage to public or private property, and to minimize interference with the public use of streets. A copy of the regulations will be given to a permittee upon issuance of the excavation permit. Permit and street repair fees are established by the council resolution. Special provisions will be made for simplifying procedures and supervision in respect to excavations by franchised utilities.

800.11. Emergency action. If a main, conduit, or utility facility breaks, bursts, or otherwise is in such condition as to endanger property, health or safety, the person owning or controlling the facility must take emergency measures to cure or remedy the dangerous conditions. That person must apply for an excavation permit not later than the end of the next succeeding city business day and may not proceed with permanent repairs without first obtaining an excavation permit.

800.13. Non-completion: abandonment. Work on the excavation must progress in an expeditious manner until completion. If the work is not performed in accordance with this section or ceases or is abandoned without due cause, the city may, after six hours' notice in writing to the holder of the permit correct the work or fill the excavation and repair the street. The cost to the city of the work must be paid by the person to whom the permit was issued and a permittee takes a permit subject to this condition.

800.15. Insurance. Prior to the commencement of excavation work the applicant must provide a certificate of insurance with the city with public liability insurance of not less than \$1,000,000 combined single limit issued by an insurance company authorized to do business in the state of Minnesota. The insurance to remain in force, during the performance of the excavation work and during the period of the excavation permit. The city must be named as an additional insured. (Amended, Ord. No. 03-22)

800.17. Indemnification. The permittee must indemnify, keep and hold the city free and harmless from liability on account of injury or damage to persons or property arising or growing out of the permittee's negligence in making a street excavation. If a suit is brought against the city, either independently or jointly with the permittee on account thereof, the permittee, upon notice to it by the city must defend the city in any suit at the cost of the permittee. If a final judgment is obtained against the city, either independently or jointly with the permittee, the permittee must pay such judgment with costs and hold the city harmless therefrom.

800.19. (Deleted, Ord. No. 01-01)

800.21. Refusal of permits. If a person fails to comply with the provisions of this section, the director may refuse to issue further permits to that person until compliance is assured.

800.23. Other activities in right-of-way. Subdivision 1. Permit required. It is unlawful to make an excavation, build or construct a fence, sidewalk, or building or structure, or to plant a tree or shrub in or upon a street, road, avenue, lane, alley or public grounds in the city, or remove any earth or soil therefrom unless authorized to do so by a written permit from the city. The excavation or construction must be made in accordance with the conditions, provisions, limitations and specifications contained in the permit. The permittee must erect a guard or fence about the excavation or building, sufficient to prevent persons or animals from being injured by the excavation or construction or by articles falling from such construction. A person making the excavation or construction, when it is completed, or at any time when ordered by the city, must fill or remove the same so that the public grounds or thoroughfares are in a condition equally as good as the condition that existed prior to the excavation or construction. (Amended, Ord. No. 03-21)

Subd. 2. Prohibited practices. It is unlawful to mark, injure, deface, destroy or place or cause to be placed any sign, poster, advertising device or representation of any kind or nature including political signs, posters and representations, upon a fence, tree, guide post, public utility pole or post, street sign or other object upon or in any public street, roadway, avenue, alley, right-of-way, or in any public park or other public property in the city, without a written permit therefore from the council.

Subd. 3. Use of streets and grounds restricted. It is unlawful to use a portion of a public street or public grounds for the purpose of maintaining, constructing or parking a wagon, vehicle, pump or other vending device without first obtaining a written permit therefore from the council.

Subd. 4. Cutting of trees and foliage restricted. It is unlawful to cut down, injure or destroy trees or shrubbery or any flowers, bushes or other vegetation planted by the city for the beautification of such areas, growing or being in any public street, alley, park, parkway or other public grounds in the city without first obtaining a permit therefore from the council.

Subd. 5. Application for permit. A person desiring a permit must make written application therefor to the city for filing the application with the clerk. The permit fee is set by Appendix B. The city engineer shall maintain a list of structures and other features that may be allowed within a street or alley right-of-way. The city may require an agreement for the said structure or feature. If the city engineer denies a listed item, the person can appeal to the City Council. The City Council may request the planning commission to schedule and hold a public hearing regarding the requested structure or feature, the cost of which shall be borne by the applicant. The fee shall be set by Appendix B. The applicant shall record said agreement. (Amended, Ordinance No. 04-01)

800.25. Street closure for neighborhood/community events. The City Council may authorize closure of a city street (not county or state) for the purpose of a neighborhood gathering, community celebration, or other event. All requests must be made in writing on forms provided by the city and indicate the names of those in charge. The City Council may adopt and/or amend guidelines for such events by resolution. (Added, Ord. No. 09-04)

In making its determination of whether a street may be closed the City Council will consider bus routes, traffic patterns, alternate location options, and impact on adjacent properties. (Added, Ord. No. 09-04)

Section 805 - Ice and Snow Removal

805.01. Removal. It is unlawful for the owner or occupant of a building fronting on or adjacent to a sidewalk to allow an unreasonable accumulation of snow or ice to remain upon the sidewalk longer than reasonably necessary or to fail to remove the snow or ice depending on the severity of weather conditions.

805.03. Nuisance. Snow and ice remaining upon public sidewalks is declared a public nuisance. Persons owning vacant property adjacent to public walks are required to abate the nuisance or cause the same to be abated within 12 hours after the snow or ice has ceased to be deposited on the sidewalk.

805.05. Cost assessed. If city forces are utilized to remove snow or ice the cost of removal may be assessed against the property abutting the walks. The special assessment shall at the time of certifying taxes to the county auditor be certified for collection as other special charges are certified and collected.

Section 810 - Improvements on Public Property

810.01. General provisions. It is unlawful to construct, repair, remove or improve a street, sidewalk, curb, gutter, sewer or sewer system, or other improvement upon public property in the city without a permit to do so.

810.03. Permit: bond. Before any work described in this section is begun, a permit must be obtained. Before a permit is issued, complete plans and specifications for the work must be presented to and approved by the director of public works/engineer. Application for a permit is made to the city engineer.

810.05. Bond. The permit application must be accompanied by a bond with a sufficient corporate surety running in favor of the city for damage done to existing streets, sidewalks, curbs, gutters, sewer or sewer system or other public property. The bond must be in the principal amount of \$500 if the cost of the work to be done is less than \$500, \$2,000 if the cost of the work to be done is \$500 or more but less than \$2,000, and \$5,000 if the cost of the work to be done exceeds \$2,000.

810.07. Insurance. Prior to commencement of work the permittee must furnish the engineer with satisfactory evidence of the insurance in the form, amount and conditions specified in subsection 800.15.

Section 815 - Parks and Recreation Areas

815.01. Definitions. Subdivision 1. For the purposes of this section the terms defined in this subsection have the meanings given them.

Subd. 2. "Park" means an area reserved, designated or used for active or passive recreation and owned, operated or controlled by the city or which is located within the city but owned, operated or controlled by another governmental unit.

Subd. 3. "Intoxicating liquor" and "non-intoxicating malt liquor" or "beer" have the meanings given by chapter XII.

Subd. 4. "Director" means the director of parks, recreation and forestry.

815.03. Prohibitions. It is unlawful to:

- (a) willfully mark, deface and disfigure, injure, tamper with, or displace or remove property or facilities in a park, or break, cut, mutilate, injure, remove or carry away a tree, plant, flower, shrub, rock, soil, sand, fence, bench, sign, table or other property or facilities in a park;
- (b) fail to cooperate in maintaining rest rooms and wash rooms in a neat and sanitary manner;
- (c) throw, discharge or otherwise place or cause to be placed in the waters of a fountain, pond, lake, stream or other body of water in or adjacent to a park or tributary, stream, storm sewer or drain flowing into such water, any substance, matter or object, liquid or solid, which may result in the pollution of said water;
- (d) have brought in or dump, deposit or leave any bottles, broken glass, ashes, paper boxes, cans, dirt, leaves, grass clippings, rubbish, waste, garbage or refuse or other trash. Such material may not be left on the grounds of a park, but must be placed in the proper receptacles where these are provided; where receptacles are not so provided, the material must be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere;
- (e) bring into a park, or possess, display, consume or use intoxicating liquor or beer. Permits for the consumption of beer may be issued by the director. The permit will be limited to duly organized non-profit local civic organizations operating under a constitution and by-laws and which have been in existence for at least one year. A deposit of \$25 is required to obtain a permit, the deposit to be returned when the director determines that the person obtaining the permit has fulfilled the obligations stated in the permit;
- (f) display or offer for sale any article in a park unless specifically authorized by the director;

- (g) paste or affix or inscribe a handbill or poster or sign on a structure or property in a park;
- (h) engage in golfing practice in a park except with light, plastic, hollow balls: regulation golf balls may not be used;
- (i) ignite a fire in a park except in places provided for that purpose: persons igniting a fire in a provided place must completely extinguish the fire prior to departing from the park.

815.05. Reservations. If a person wishes to reserve a park facility for a particular purpose the person may obtain a permit from the director. Permits will be issued in compliance with the procedures in the city's administrative procedures manual, chapter 01-3, "use of public facilities".

815.06. (Added, Ord. No. 98-11) Parks and recreation areas. Subdivision 1. Closing hours. Except as otherwise provided, parks shall be closed between the hours of 10:00 p.m. and 6:00 a.m. of the following day, no person shall be upon city park property during these hours. The fact that any person not engaged in official city business as authorized or delegated by the city manager is present in a posted park and open space during said hours shall be prima facie evidence that said person is there unlawfully.

Subd. 2. Violations. It shall not be a violation to be in a city park under the following circumstances:

- (a) Persons shall be allowed upon city park property after closing hours if they have a permit from the parks and recreation department.
- (b) If a person is in Lakeview Terrace Parks between 10:00 p.m. and 11:00 p.m.
- (c) If the City Council has by resolution modified the closing hours and directed posting of such modified hours.
- (d) City personnel may be in the parks at any time if acting in the course of their official duties.
- (e) City personnel may assign special hours of use by posting at park site.
- (f) If a person is walking through city park property on park pathways after closing hours.

Subd. 3. A person violating the provisions of this subsection or a resolution enacted in accordance with subsection 815.06, subdivision 2(c) is guilty of a misdemeanor.

815.07. General rule. Subdivision 1. Application. It is unlawful to navigate, operate, dock or anchor a boat, motor boat, or watercraft (excluding canoes) on Crystal Lake, Twin Lakes or Ryan Lake (the lakes) except in accordance with the provisions of this subsection. This subsection applies to the operation of boats, motorboats and watercraft in the lakes.

Subd. 2. Mufflers required. It is unlawful to use a boat propelled in whole or in part by gas, gasoline or naphtha unless the same is provided with a stock factory muffler, underwater exhaust or other modern device capable of adequately muffling the sound of the exhaust of the engine. The phrase "adequately muffling" means that the motor's exhaust must be so muffled or suppressed as not to create excessive or unusual noise. The discharge of cooling water through the exhaust of an inboard engine is considered an adequate muffling device. Motorboats may be operated with cut-outs or mufflers open while actually competing in a race licensed to be held by the city.

Subd. 3. Speed and operation of motorboats. The operator of a motorboat must navigate the same in a careful and prudent manner and at a safe speed and along a safe course. It is unlawful to operate a motorboat at a rate of speed greater than that which will permit the motorboat to be brought to a stop within the assured clear distance ahead. It is unlawful to operate a motorboat in a careless or reckless manner. Reckless navigation of a motorboat includes operating the same in a manner which unnecessarily interferes with the free and proper use of the navigable waters of the state or unnecessarily endangers other boats therein, or the life, limb or property of any person. It is unlawful to exceed the speed limit of five miles per hour while going under bridges or through channels.

Subd. 4. Operating distances. It is unlawful to run, operate, navigate or direct a boat, motorboat or watercraft within 75 feet of an area in which a person is fishing or within 100 feet of an area in which a person is swimming or within 200 feet of any area designated as a public swimming beach or within 150 feet of a shoreline, except when the craft is entering or leaving the lake. An area designated as a public swimming beach will be clearly marked with buoys.

Subd. 5. Time.

- (a) Crystal and Ryan Lakes. A mechanical powered boat, motorboat, or watercraft may not be operated from sunset to sunrise the following day.
- (b) South Twin Lake: Gasoline-powered watercraft. Watercraft which is powered by means of an internal combustion engine may not be operated: (a) between the hours of 12:00 (noon) and 6 o'clock P.M. on any day: unless such watercraft is operated for the limited purpose of traveling on South Twin Lake to or from Middle or Upper Twin Lake, and at a no wake speed (not greater than five miles per hour); or (b) from sunset to sunrise of the following day. (Amended, Ord. No. 90-14, Sec. 1)

Subd. 6. Channels. It is unlawful to obstruct a channel. It is unlawful for a person to swim or dive from a bridge that crosses a channel.

Subd. 7. Water skiing. For the purpose of this section, the term "other similar devices" means any device such as knee boards or inner tubes which are towed or dragged behind a watercraft and upon or in which a person can be carried. The term does not include watercraft which is being towed.

- (a) Crystal and Ryan Lakes. Water skiing and the use of other similar devices are prohibited in the primary harbor, which is defined as 150 feet from shoreline. Water skiing and the use of other similar devices are permitted from the hours 10 o'clock A.M. to 7:30 o'clock P.M., and it is unlawful to ski or use other similar devices at any other time.
- (b) South Twin Lake. Water skiing and the use of other similar devices are prohibited in the primary harbor which is defined as 150 feet from shoreline. Water skiing and the use of other similar devices are prohibited from the hours of 12 noon to 6 o'clock P.M., and from sunset to sunrise of the following day. (Amended, Ord. No. 90-14, Sec. 2)

Subd. 8. (Repealed, Ord. No. 90-14, Sec. 3)

Subd. 8. Duties of operator in case of accident. The operator of a boat involved in an accident resulting in injury or death to a person or in damage to property must immediately stop the boat at the scene of the accident and give to the person struck or the operator or occupants of the boat collided with, the person's name and address and full identification of the boat, together with the name and address of the owner and render to any person injured in such an accident reasonable assistance, and report such accident to the nearest or most convenient law enforcement agency or office. (Renumbered, Ord. No. 90-14, Sec. 4)

Subd. 10. (Repealed, Ord. No. 90-14, Sec. 3)

Subd. 11. (Repealed, Ord. No. 90-14, Sec. 3)

Subd. 9. Docks. It is unlawful to have floating docks away from the shore, except during the boating hours set forth in subdivision 6. It is unlawful to have docks at public or private easements, or to have docks extending more than 30 feet from shore, unless the water is less than two feet deep at that distance, in which case said dock may be extended to a point at which the water is at least two feet deep at the extremity of the dock. (Renumbered, Ord. No. 90-14, Sec. 4)

Subd. 10. Enforcement. In addition to the provision in section 120.01 of this code to the contrary, the provisions of this subsection may be enforced by personnel employed by the following:

- (a) Hennepin County Sheriff's Department; and
- (b) Conservation officers of the Department of Natural Resources of the State of Minnesota.

Provided, however, that all such enforcement activities shall be deemed to be under the exclusive supervision and control of the agency employing such personnel and the city shall have no responsibility or control over such activities. (Added, Ord. No. 90-14, Sec. 5)

Subd. 11. Exemption. All authorized resource management, emergency and enforcement personnel, while acting in the performance of their assigned duties are exempt from the foregoing restrictions. (Added, Ord. No. 90-14, Sec. 6)

Subd. 12. Signs. The city shall erect and maintain signs at each public launching facility on South Twin Lake, and at other locations if deemed necessary by the city, notifying the public of the essential requirements of subsections 815.07, subd. 5(b) and 815.07, subd. 7(b). (Added, Ord. No. 90-14, Sec. 7)

Section 820 – Public and Right of Way Trees: Vegetation

820.01. Purpose. It is the purpose of this section to protect and promote the public health, safety and general welfare of the people of the city by regulating the planting and maintenance of trees in order to protect trees and to prevent and abate hazardous and nuisance conditions in the city.

820.03. Permitted street trees. The Forester shall maintain a list of permitted street trees to be planted within the right-of-way of public streets. (Amended, Ord. No. 03-21)

820.05. Prohibited trees. The following trees, vines and shrubs may not be planted on city rights-of-way:

<u>Genus</u>	<u>Species</u>	<u>Common Name</u>
<u>Acer</u>	<u>freemanii</u>	Freeman Maple
<u>Acer</u>	<u>negundo</u>	Boxelder (Ash-leaved Maple)
<u>Acer</u>	<u>saccharinum</u>	Silver Maple
<u>Celastrus</u>	<u>orbiculatus</u>	Oriental Bittersweet
<u>Frangula</u>	<u>alnus</u>	Glossy Buckthorn
<u>Fraxinus</u>	<u>spp.</u>	Ash (Black, Green, White)
<u>Ginkgo</u>	<u>biloba</u>	Ginkgo (Maidenhair Tree - female only)
<u>Populus</u>	<u>deltiodes</u>	Eastern Cottonwood
<u>Populus</u>	<u>nigra italica</u>	Lombardy Poplar
<u>Rhamnus</u>	<u>cathartica</u>	European Buckthorn

(Amended, Ord. No. 03-21, Ord. No. 15-02, Ord. No. 17-02)

820.07. Order to treat or remove. The Forester may order the pruning, treatment or removal of trees or plants upon public or private property if the Forester determines that the action is necessary to public safety or necessary to prevent the spread of disease or of insects harmful to trees and shrubs. (Amended, Ord. No. 17-02)

820.09. Order. Subdivision 1. Procedure. When the Forester determines that it is necessary to order the pruning, treatment or removal of trees or plants, a written order to correct the condition must be served upon the owner, occupant, operator or other person responsible for such tree or plant. (Amended, Ord. No. 17-02)

Subd. 2. Notice. In cases where summary abatement of a public nuisance is required, the city will serve notice on the owner as described below. The notice shall contain the following information.

- (a) The address the property upon which the condition exists.
- (b) The nature of the violation and appropriate ordinance citation.
- (c) The necessary action needed to correct the violation.
- (d) The date by which the corrections must be made before the city will seek abatement.
- (e) The right of and the manner for the alleged violator to request a hearing before the City Council unless it is an emergency case.
- (f) A description of the penalties if the violation is not corrected.
- (g) A statement that all unreimbursed costs, including staff time and administrative costs incurred by the city in abating the nuisance shall be assessed against the property unless payment is received within 30 days of the original billing to the property owner. An administrative charge will apply for all assessed property, as noted in Appendix B. (Added, Ord. No. 03-32)

Subd. 3. Method of service. The order shall be served in one of the following ways:

- (a) by first class mail to the person responsible; (Amended, Ord. No. 17-02)
- (b) by personal delivery to the person responsible;
- (c) by leaving with a person of suitable age and discretion residing at the premises;
- (d) if no person residing at the premises can be found, by affixing a copy of the order to the front door of the premises; or
- (e) by publishing in the official paper once a week, for two successive weeks. (Amended, Ord. No. 03-32)

Subd. 4. Time limit. The order must establish a time limit for compliance dependent upon the hazard and danger created by the violation. In cases of extreme danger, immediate compliance upon service of the order is authorized. (Amended, Ord. No. 03-32)

Subd. 5. Appeal. A person receiving an order hereunder may, within ten days of the service of such order, appeal to the city manager, who must review the order within seven days. (Amended, Ord. No. 03-32)

Subd. 6. Special assessment. On or before September 30 of each year, the city clerk shall list the total unpaid charges against each separate lot or parcel to which they are attributable under this subsection. The cost shall be levied as a special assessment against the property upon which the condition was remedied in the manner provided by Minnesota Statutes, section 429.101. The levying of such assessment does not affect the liability of the owner for any other penalty that may be imposed. The special assessment will be certified and thereupon be a lien upon such property, and will be included in

the next tax bill on such property unless paid before and collected in the same manner as other taxes against such property. The certification shall provide for the payment of the special assessments the following year. (Amended, Ord. No. 03-32)

Subd. 7. City work. The order procedure need not be followed with reference to trees or plants located on public property when the costs of plantings, pruning, treatment or removal are done at the cost of the city. (Amended, Ord. No. 17-02)

820.11. Other regulations. Subdivision 1. Traffic hazard. No tree may be planted, placed or allowed to remain in a position which the engineer determines to be a traffic hazard.

Subd. 2. Rights-of-way. On arterial or collector street right-of-way as shown on the major street plan, the location of trees will be determined by the engineer. It is unlawful to plant a tree in the right-of-way of an arterial or collector street in a location that does not conform to generally accepted engineering standards or utility placement constraints. (Amended, Ord. No. 17-02)

Subd. 3. Permits.

- (a) It is unlawful to plant, prune, tap, cut, wound or remove trees or shrubs in public places, including street rights of way, without a permit from the Forester. Planting, pruning, tapping, cutting, wounding or removal must be performed in accordance with conditions stated in the permit. (Amended, Ord. No. 17-02)
- (b) The following provisions apply to the issuance of permits where required for planting in public places.
 - (1) Application data. The application must state the address, number of trees or plants to be planted, the location, name of planter(s) and specific species name of each tree or plant. (Amended, Ord. No. 17-02)
 - (2) Standards for issuance. A permit will be issued if it is found that the proposed plantings conform to the requirements of this section.

820.13. Abuse or mutilation. It is unlawful to (i) damage, cut, carve, kill or injure the bark of any tree or plant on public property; (ii) attach any rope, wire or other contrivance to any tree or plant on public property; (iii) dig in or otherwise disturb public grass areas, or in any other way injure or impair the natural beauty or usefulness of any area of public property; (iv) cause or permit a wire charged with electricity or any gaseous, liquid or solid substance harmful to tree or plants to come into contact with them.

820.15. Weed and grass cutting. Subdivision 1. General rule. The owner of property abutting on any public street or alley must maintain the property and abutting public property to the center of such platted street or alley. Weeds, including tall grass, that exceed eight inches in height, must be cut, destroyed or otherwise eradicated by the owner of the property. Perennial native prairie vegetation including grasses and/or wildflowers as identified by the city Forester, installed as a primary component of an approved raingarden or a restored prairie, is excluded from this rule on a case-by-case basis. (Amended, Ord. No. 91-05, Sec. 2; Ord. No. 03-32; Ord. No. 17-02)

Subd. 2. Weed and grass cutting by the city. The weed inspector shall cause the weeds to be cut and destroyed by city crews or private contractors as the inspector shall determine, including tall grass, that exceed eight inches in height that are growing on the property or within the platted limits of an abutting public street or alley when the vegetation is not cut by the property owners. Grasses and/or wildflowers identified by the city Forester as native prairie species that exceed eight inches in height are exempt from this requirement. The cost, including staff time and administrative costs, will be reported to

the city clerk and may be charged to abutting property owners. An administrative charge will apply for all assessed property, as noted in Appendix B. (Amended, Ord. No. 03-32; Ord. No. 17-02)

Subd. 3. Notice. When the weed inspector determines there is a violation a compliance order to the owner of the property shall be issued. The compliance order shall contain the following information:

- (a) Notice that if the nuisance is not abated within seven calendar days that the city will abate the nuisance at the owner's cost;
- (b) The hourly cost of abating the nuisance and any additional costs, including staff time;
- (c) Upon city completion of the abatement, an invoice shall be sent to the property owner for the cost of the abatement, any additional costs, and staff time. (Added, Ord. No. 03-32)

Subd. 4. Method of service. The order shall be served in one of the following ways:

- (a) by first class mail to the person responsible; (Amended, Ord. No. 17-02)
- (b) by personal delivery to the person responsible;
- (c) by leaving with a person of suitable age and discretion residing at the premises;
- (d) if no person residing at the premises can be found, by affixing a copy of the order to the front door of the premises; or
- (e) by publishing in the official paper once a week, for two successive weeks. (Added, Ord. No. 03-32)

Subd. 5. Assessment. On or before September 30 of each year, the city clerk shall list the total unpaid charges for weed cutting services against each separate lot or parcel to which they are attributable under this subsection. The council may then assess the charges against the properties benefited as a special assessment under Minnesota Statutes, section 429.101, for certification to the county auditor and collection along with current taxes. The certification shall provide for the payment of the special assessments the following year. (Amended, Ord. No. 03-32)

Section 825 - Tree Pruning and Chemical Treatments

825.01. Tree pruning, chemical treatments, licenses. It is unlawful to engage in the business of tree pruning, chemical treating, or removal unless a license to do such work is first obtained from the city. Application for the license is made to the clerk. The license will be granted by the clerk after approval by the city Forester and upon proof of the applicant's qualifications. The annual fee for a license is set by council resolution from time to time. The license expires annually on December 31. Licenses are not transferable. The license fee must be paid to the clerk at the time of filing on the application. The license fee will not be prorated.

825.03. Insurance. The applicant must provide a certificate of insurance with the city with public liability insurance of not less than \$1,500,000 combined single limit issued by an insurance company authorized to do business in the state of Minnesota. The policy must provide that it may not be cancelled by the issuer except upon ten days' written notice to the city. If the insurance is cancelled the license will be automatically suspended until the insurance is replaced. The city must be a named insured on the insurance policy. (Amended, Ord. No. 03-22, Ord. No. 13-01)

825.05. Standards. Tree pruning, chemical treatments and other tree care practices are governed by the ANSI A300 Standards for Tree Care Practices manual.

(Amended, Ord. No. 17-02)

Section 830 - Vacation of Streets

830.01. Petition. The council must, upon petition of a majority of the owners of the land abutting on a street or alley, or any part thereof to be vacated, consider the same and if it appears to be in the interest of the public to vacate the street or alley or any portion thereof, the council will adopt a resolution designating a time and place for a public hearing for the consideration of the petition. The council may initiate such action without a petition. The council may, from time to time by resolution, establish appropriate fees to cover some or all of the city's costs of processing the petition.

830.03. Notice. Notice of the public hearing for street vacation setting out (i) the time and place of the hearing and the matter to be considered and (ii) the public street or alley or any part thereof that is proposed to be vacated, must be in accordance with State law. (Amended, Ord. No. 14-07)

830.05. Ordinance vacating. If the council determines after public hearing that it is in the best interest of the public to vacate a public street or alley or any part thereof, the council may by a vote of four members adopt an ordinance vacating the street or alley or any part thereof. A certified copy of the ordinance must be filed in the office of the registrar of deeds of Hennepin county, or if the property is registered, with the registrar of titles, or with both as necessary.

Section 835 - Tree Disease & Insect Program

835.01. Policy. The City Council has determined that the health of the trees within the city limits is threatened by contagious and fatal diseases and certain destructive insect pests. The council has further determined that the loss of trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the council to control and prevent the spread of serious tree diseases and insect infestations and this ordinance is enacted for that purpose. (Amended, Ord. No. 06-04)

835.03. Forester. The powers and duties as set forth in this section are conferred upon the Forester. It is the duty of the Forester to coordinate, under the direction and control of the council, activities of the city relating to the management of serious tree diseases, insect infestations and other threats to tree health. (Amended, Ord. No. 06-04)

835.04. Tree inspector. A person possessing a tree inspector license as administered by the Minnesota Department of Natural Resources. (Added, Ord. No. 06-04; Amended, Ord. No. 17-02)

835.05. Program. It is the intention of the City Council to conduct a program of plant pest management pursuant to the authority granted by Minnesota Statutes to control certain diseases and insects detrimental to public and private trees. (Amended, Ord. No. 06-04; Ord. No. 17-02)

835.07. Nuisances. The following are declared public nuisances whenever they may be found within the city:

- (a) any living or standing elm tree or part thereof infected and showing signs or symptoms of Dutch elm disease fungus *Ophiostoma ulmi* (Buisman) or *Ophiostoma nova-ulmi* Moreau or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hylurgopinus Rufipes* (Marsh); and (Amended, Ord. Nos. 06-04, No. 15-02; Ord. No. 17-02)
- (b) any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or destroyed; and (Amended, Ord. No. 06-04, Ord. No. 15-02; Ord. No. 17-02)
- (c) any living or standing oak tree or part thereof, infected to any degree with the oak wilt fungus *Ceratocystis fagacearum*; and (Added, Ord. No. 06-04, Amended, Ord. No. 15-02; Ord. No. 17-02)
- (d) any living or standing ash tree or part thereof of the *Fraxinus* genus infested to any degree with the emerald ash borer beetle *Agrilus planipennis* as confirmed by the Minnesota Department of Agriculture; and (Added, Ord. No. 15-02; Ord. No. 17-02)
- (e) any dead or dying ash tree of the *Fraxinus* genus or part thereof including logs, branches, stumps, firewood or other material confirmed to have been infested with emerald ash borer from which the outer 1" of bark/wood has not been removed or destroyed; and (Added, Ord. No. 15-02; Ord. No. 17-02)
- (f) any tree or shrub that the Forester has determined has become, or may become a hazard or a significant threat to public safety and/or forest health. (Added, Ord. No. 06-04, Amended, Ord. No. 15-02; Ord. No. 17-02)

835.09. Abatement. It is unlawful for a person to permit a public nuisance as defined in section 835.07 to remain on any premises owned or controlled by that person within the city. The nuisances may be abated in the manner prescribed by city code. (Amended, Ord. No. 06-04)

835.11. Inspection and investigation. Subdivision 1. Inspection. The Forester must inspect all premises and places in the city as often as practicable to determine whether any condition described in section 835.07 exists thereon. The Forester shall investigate all reported incidents of disease or infestation. (Amended, Ord. No. 06-04)

Subd. 2. Entry on private premises. The Forester may enter private premises, excepting only a private home, at reasonable times for the purpose of carrying out any of the duties assigned under this section.

Subd. 3. Diagnosis. The Forester or Forester's designated tree inspector shall identify diseased elms and/or oaks according to generally accepted field diagnosis procedures such as wilting, yellowing of leaves, staining of cambial wood under the tree bark and/or detection of fungal spore mats on oaks. Confirmation of field diagnosis, when ordered by the Forester on an as-needed basis, shall be completed by the University of Minnesota Plant Disease Clinic. The city Forester or tree inspector shall assess potentially hazardous trees based upon the presence of structural defect(s) in a tree making that tree, or part thereof, likely to fail, adversely affecting the public or public property. (Amended, Ord. No. 06-04; Ord. No. 17-02)

835.13. Abatement of tree nuisances. In abating or ordering the abatement of the nuisances defined in ordinance section 835.07, the Forester may cause or order the infected or infested tree or wood to be sprayed, removed, burned, chipped, ground, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of the disease fungus/infestation and its vectors. The abatement procedures must be selected and carried out in accordance with current technical and expert opinions. (Amended, Ord. No. 06-04; Ord. No. 17-02)

835.15. Procedure. Subdivision 1. Notice. If the Forester finds with reasonable certainty that the infection or infestation defined in section 835.07 exists in any tree or wood in any public or private place in the city, the Forester will proceed as follows: (Amended, Ord. No. 06-04)

- (a) If the Forester finds that danger of infection/infestation of other trees is imminent, or a potentially hazardous condition is identified, the Forester shall notify the property owner by first class mail and posted notice on the property that the nuisance will be abated within a specified time, not more than 30 days from the date of the mailing of such notice, or such time as determined in writing by the Forester or City Engineer/Public Works Director. After the expiration of the time limited by the notice, the city may abate the nuisance, the costs of which will be assessed against the benefiting property. (Amended, Ord. No. 06-04, Ord. No. 15-02)

Subd. 2. Records. The Forester must keep a record of the costs of abatements done under this subsection and report monthly to the clerk work done for which assessments are to be made stating and certifying the description of the lands, lots, parcels involved and the amount chargeable to each.

Subd. 3. Assessment. On or before September 1 of each year the clerk must list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable. The council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes, section 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

835.17. Treating trees. If the Forester determines that the treatment of a tree or of wood within the city is necessary, the Forester may treat said trees with an appropriate material. Such treatment activities must be conducted in accordance with technical and expert opinions generally accepted or established in the field of arboriculture whenever possible. The notice provisions section 835.15 apply to treatment operations conducted under this subsection. (Amended, Ord. No. 06-04; Ord. No. 17-02)

835.19. Transporting wood. It is unlawful to transport within the city any bark-bearing elm wood, bark-bearing ash wood or any other wood determined by the Forester to imminently threaten community trees, without a permit or written approval from the Forester. The Forester will grant permits or written approvals when the purpose of this section will be served thereby. (Amended, Ord. No. 06-04, Ord. No. 15-02; Ord. No. 17-02)

835.21. Interference prohibited. It is unlawful to prevent, delay or interfere with the Forester while engaged in the performance of the Forester's duties.

Section 839 – Newspaper Racks
(Added, Ord. No. 10-02)

839.01. Purpose. The purpose of this section is to prescribe time, place and manner licensing requirements for the placement of newspaper racks upon any public right-of-way within the City of Robbinsdale, which protect and promote the public health, safety and welfare by:

- (a) eliminating potential hazards to motorists and pedestrians using the public streets, sidewalks and rights-of-way;
- (b) safeguarding and enhancing property values;
- (c) protecting government investments in public buildings, streets, sidewalks, traffic control and utility devices, parks and public facilities already in place on or near the rights-of-way;
- (d) protecting the City from unnecessary exposure to personal injury and property damage claims;
- (e) preserving and improving the appearance of the City through adherence to aesthetic principles, in order to create a community that is attractive to residents and non-residents who come to live, visit, work or trade;
- (f) eliminating clutter along the streets, roadways and rights-of-way within the City;
- (g) to encourage newspaper racks which by their design are integrated with and harmonious to the surrounding environment and the buildings and sites they occupy; and
- (h) to avoid arbitrary and unnecessary curtailment of freedom of speech and press.

839.02. Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

- (a) Newspaper rack any type of unattended device placed upon or abutting any public right-of-way for the vending, display, or free distribution of, newspapers, news periodicals, or other written materials.
- (b) Obstruct to place any tangible object in a public right-of-way so as to hinder free and open passage over that or any part of the right-of-way for an aggregate period of eight hours or more.
- (c) Public Ground land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

839.03. License required. Subdivision 1. General rule. No person shall place, erect, install, service, stock or maintain any newspaper rack which obstructs or intrudes upon, in whole or in part, any public right-of-way or public ground in the City without first obtaining a license pursuant to this section. One license may be issued to include a number of newspaper racks. Unlicensed newspaper racks are subject to removal and impoundment. The owner of the unlicensed newspaper rack, if the owner's identify and address can be reasonably ascertained, shall be served by the City by regular mail with a Notice of Intent to Impound stating that the newspaper rack will be removed and impounded ten days after mailing of the Notice unless a completed license application has been filed with the City Clerk. Newspaper racks may only be reclaimed upon payment of an impoundment fee as set forth in Appendix B. Any impounded newspaper rack that remains unclaimed ten days after its impoundment shall be considered abandoned property subject to destruction.

Subd. 2. Application. The owner of any existing newspaper rack to which this section applies prior to the effective date of this section shall have until June 1, 2010 to submit a license application. However, no license shall issue for any existing newspaper rack that has not been demonstrated by the applicant to be in compliance with the standards set out in this section of the City code. The person desiring a license must make written application to the City Clerk which shall include:

- (a) the full name of the applicant, who must be the owner and principal in charge of the newspaper rack.
- (b) the name and address of the applicant, the street address, e-mail address, and telephone number of the applicant and a responsible person whom the City may contact at any time regarding the applicant's newspaper rack.
- (c) a site plan that is minimally sufficient to ascertain compliance with the placement standards of this section and showing the exact requested location of each proposed newspaper rack, its relationship to each curb, fixture, building or bus stop, right-of-way or property line with an illustration and description of its supporting or enclosing structure, as well as a dimensional drawing. A comprehensive list of all the applicant's desired placement locations including the nearest street addresses of each newspaper rack, its distance from the nearest intersection, and its distance from the curb must also accompany the license application. The applicant shall also provide such photographs of each proposed location to ascertain compliance with the placement standards set forth in section 839.05. Where the applicant fails to provide adequate photographic evidence of compliance, the City Engineer, at the option of the applicant, upon payment of an inspection fee, conduct a field inspection of the placement as an alternative method of determining compliance with the placement standards of this section.
- (d) A notarized statement by the applicant that the applicant will, in consideration of being issued a license for the use of public space, agree to fully indemnify, defend and hold harmless the City, its officers, Council members, employees and agents from any and all claims, suits, actions, liability and judgments for damages including, but not limited to, expenses for reasonable legal fees, costs and disbursements assumed by the City in connection therewith:
 - (1) For injury or death to any person or persons or damage to property arising from or in connection with the acts or failure to act of the applicant, its officers, agents or employees in the construction, operation, maintenance, location, placement or removal of any newspaper rack of the applicant; or
 - (2) For injury or death to any person or persons or damage to property arising out of the placement or display of any written or graphic materials, advertisements, notices, signs or posters on any newspaper rack; or
 - (3) For any injuries or damage arising out of the exercise of any other right or privilege under the license, provided, however, that the applicant shall have no obligation as to any such claim arising from the City's gross negligence or willful misconduct.

Included in that statement, the applicant shall additionally agree to reimburse the City for its cost of removal and storage of its licensed newspaper racks under the terms of this section and for the cost of restoration of the right-of-way or public ground and the adjacent area.

- (e) A statement by the applicant certifying that the applicant has ascertained that each of the applicant's newspaper racks meets the operational standards, location requirements, installation and maintenance standards set forth in this section and is in compliance with the applicable county and state laws and regulations governing use of the public streets and rights-of-way. The applicant must also agree in that statement, as a condition of licensing to regularly monitor and maintain each of the applicant's newspaper racks in conformity with these standards and limitations. The statement shall also acknowledge that any newspaper rack found to be in violation of the applicable standards and limitations will be subject to corrective orders and possible removal and may subject the applicant to possible licensing sanctions pursuant to section 839.06.
- (f) The signature of the applicant.

Licensees may relocate licensed newspaper racks by filing an application for a relocation permit and payment of a relocation fee as set forth in Appendix B. The relocation application shall contain the information required by subsections (c), (d), (e), and (f) of this section and will be considered pursuant to the procedures set forth in section 839.05.

Subd. 3. Fees. The application must be accompanied by a license fee set by Appendix B.

Subd. 4. Term. Licenses expire annually on December 31.

Subd. 5. Renewal. If plans and specifications of the newspaper rack or location of the newspaper rack are not to be changed, the application for renewal need contain only the name and address of the applicant, and the location and number of the newspaper rack, along with the applicable fee, for which renewal license is desired. If the location is in a residential area, consent of the owner of the adjacent land is required. Failure to renew a license will, ten days after the license expires, be deemed abandonment of the newspaper rack and consent to the City's removal and forfeiture thereof at the owner's expense.

Subd. 6. Multiple locations. If the application for licenses for more than one newspaper rack at the same or different locations, a separate number and license will, when issued, be assigned and granted for each newspaper rack authorized to be installed, but each license issued is valid only for the location designated in the license.

839.04. License application verification and consideration.

- (a) Verification. An application shall be submitted to the City Clerk who shall verify the information on the application form. The City Clerk shall then route the application to the City Engineer for review and approval. The City Engineer must review and approve each proposed newspaper rack based upon and consistent with the regulations set forth in this section, 510.25, subdivision 2 (f) and (g) and applicable county and state laws or regulations relating to the use of the public streets and rights-of-way before the City Clerk shall forward the license to the City Council for consideration.
- (b) Denial. If the application is recommended for denial, in whole or in part, the City Clerk shall notify the applicant of the determination in writing setting forth the specific reason therefore. The notice shall be mailed to the applicant at the address provided in the application and shall inform the applicant of the applicant's right, within 20 days after the date the notice was mailed, to request an administrative review of the City Clerk determination to the City Manager.
- (c) City Council action. Initial applications for licenses are considered by the Council, and, if approved by the Council, are issued by the Clerk. Licenses are not transferable. License renewal is subject to the license provisions described in section 1005 Licensing Procedure.

839.05. Standards for location and operation.

- (a) Location of newspaper racks. No newspaper rack shall be located in whole or in part on private or public property without the express written consent of the property owner or the owner's representative and in no case shall a newspaper rack be located:
- (1) within five feet of a pedestrian crosswalk, fire hydrant, standpipe, semaphore standard, public mailbox or within five feet of the curb return of any unmarked crosswalk, driveway or alley;
 - (2) within three feet of the back edge of the curb or the traveled portion of any public street, road or highway including public parking lots;
 - (3) within five feet of any traffic control sign or sign marking a designated bus stop or designated loading space, public trash receptacle, bicycle rack, tree grate, manhole cover, meter and/or valve box cover, or vent cover for underground utilities or other permitted right-of-way obstruction or appurtenant feature, except as hereinafter provided;
 - (4) at any location where it would restrict the clear, continuous space for pedestrian traffic to five feet or less;
 - (5) within the traveled portion of any street, alley, lane or passageway intended for regular use by motor vehicle traffic;
 - (6) at any location so as to obstruct the clear-view triangle of street intersections or street and driveway intersections, as defined and regulated by section 510.25, subdivision 2 (f) or as to otherwise interfere with the clear and unobstructed vision and cross view of motorists at street intersections, driveways or alleys;
 - (7) within one foot of the edge of any public sidewalk or at any location where it would interfere with the cleaning of or snow removal from any public sidewalk by use of mechanical equipment;
 - (8) at any location where it would interfere with ingress or egress from busses or the use of transit shelters or benches;
 - (9) at any location where it would interfere with the ingress or egress from a vehicle parked in a stall reserved by proper signage for handicapped person or any handicap access ramp;
 - (10) at any location where it would interfere with the normal use or facilitate the misuse of any other permitted right-of-way obstruction, or appurtenant feature; or
 - (11) at any other location where it would interfere with or impede the flow of pedestrian or vehicular traffic including access to legally parked or stopped vehicles, or where it would interfere with the use of the property for public utility purposes, public transportation purposes or other governmental use.

(b) Installation and maintenance.

- (1) Installation. When a location is approved for a newspaper rack, the newspaper rack shall be installed parallel with the street. Every newspaper rack shall be installed so as to open toward the sidewalk or public pedestrian area, as opposed to abutting public roadway or private property. In no case shall a newspaper rack be attached in any manner to any lighting system, street lamp post, hydrant, tree stake or guard, electric light or power pole, sign post, telephone pole or wire appurtenance thereof, semaphore standard, traffic control device, tree, shrub, rock, sidewalk or other natural feature or any other permitted right-of-way obstruction, other than permissively to another licensed newspaper rack. A newspaper rack may be weighted down, as long as the weight or anchor is an integral and attached component of the main structure and not separately accessible or removable.
 - (2) Relocation. Once installed at an approved location, no newspaper rack may be moved to a new location without an approved relocation permit as set forth in section 839.03, subdivision 2 and payment of the relocation fee. Failure to obtain an approved relocation permit will void the license upon relocation of that newspaper rack, subjecting that structure to removal and impoundment pursuant to section 839.06, subdivision (c).
 - (3) Number at one location. Newspaper racks may be clustered together in groups of two or more so long as the units are situated side-by-side with no more than a two foot separation between each individual unit in a line parallel to the street with that line extending no further than 15 feet, including the separation space between units. Each cluster must be separated by a distance of not less than 100 feet. However, no newspaper racks shall be clustered together within 15 feet of any street intersection or street and driveway intersection in a manner that obstructs the visibility triangle as defined and regulated by section 510.25, subdivision 2 (f) and (g) of the City code or otherwise interferes with the clear and unobstructed vision and cross view of motorists at street intersections, driveways or alleys.
 - (4) Identification. Each newspaper rack must permanently display the name, address, and telephone number of the licensee.
 - (5) Maintenance. It shall be the duty of the licensee to maintain each newspaper rack at all times in a safe condition at its proper location. The licensee shall periodically inspect each newspaper rack in order that it is properly maintained. Newspaper racks shall be kept at all times in a neat, clean and usable condition. Snow and ice shall be removed from the newspaper racks and in the vicinity thereof during the winter so as to be accessible at all times during the year. Newspaper racks shall be maintained in good working order at all times, freshly painted, and with unbroken hoods free of graffiti, posted bills and debris.
 - (6) Location of advertising. Newspaper racks shall display no advertising except a logo or other identification of the newspaper being dispensed on the front of the newspaper rack. No newspaper rack shall display the words "stop," "look," "danger" or any other word, phrase or symbol that might interfere with or distract traffic.
- (c) Dimension and design. No newspaper rack shall be more than four and one-half feet in height, as measured from the surface of the sidewalk or ground upon which it is mounted, nor more than two feet deep or two and one-half feet long. In no case shall a newspaper rack contain an element or device designed to emanate artificial light either internally or externally.

839.06. Sanctions for license violations.

- (a) Suspension or revocation. The City Council may suspend or revoke a license issued pursuant to this section pursuant to section 1005.21.
- (b) Notice and hearing.
 - (1) Notice to correct conditions relating to a specific newspaper rack. Where the basis for a potential license revocation or suspension is a violation of section 839.05 and does not go to all of the licensee's listed structures, the City Engineer shall mail to the licensee at the address provided in the application by regular mail an order to correct the conditions underlying the violation. The order to correct conditions shall specifically describe the offending conditions, the actions necessary to correct the conditions, establish a date for compliance and inform the licensee of its right to demand administrative review of the order to correct conditions. If the licensee fails to either correct conditions in the manner directed, as verified by the City, or request a hearing within ten days of the date the notice was mailed, such will be deemed an admission that the licensee has substantially breached the terms of the license and consented to the City's removal and impoundment of the newspaper rack which is the subject of the order to correct conditions at the owner's expense. An impoundment fee shall be assessed against each impounded newspaper rack. Any impounded newspaper rack that remains unclaimed after ten days shall be considered abandoned property and subject to destruction. If the licensee attempts to comply with the order to correct conditions, it shall notify the City Clerk within ten days of the date the notice was mailed.
 - (2) Notice of right to a hearing. In all other cases, the City Clerk shall provide at least eight day's notice to the licensee of the basis of the potential license suspension or revocation by regular mail to the address provided on the license application and of the time and place of the hearing before the City Council.
- (c) Removal.
 - (1) Upon revocation of any license, if the licensee fails to promptly remove a newspaper rack and restore the public right-of-way or public ground, such will be deemed abandonment and consent to the City's removal and forfeiture of the newspaper rack. However, such forfeiture shall not excuse licensee from the payment of the cost of removal and storage of said newspaper rack, as well as restoration of the right-of-way.
 - (2) Upon expiration of any license issued under this section, the City Clerk shall send written notice of its intent to remove and impound the licensee's newspaper racks to the licensee, by regular mail to the address provided in the application, demanding that the licensee remove the newspaper rack and restore the public right-of-way or public ground within ten days after mailing of the notice. The licensee's failure, within ten days, either to remove the newspaper rack or file an application renewing the license will be deemed abandonment and consent to the City's removal and forfeiture of the newspaper rack. However, such forfeiture shall not excuse the owner or principal in charge of the newspaper rack from reimbursing the City for its cost of removal, storage, and restoration of the right-of-way.

- (3) Any newspaper rack may be ordered removed by the City Engineer when necessary to accommodate a private or public construction or repair project. Failure to comply with the order to remove within ten days will be deemed consent to the City's removal or forfeiture of the rack at the owner's expense.
- (4) Any newspaper rack may be summarily removed by the City where its placement creates a danger to the health, safety or welfare of the public. All such racks or benches shall be stored in a secure location by the City. Written notice of the removal shall be sent to the licensee by regular mail. A reasonable time after the danger of the emergency threat to public health, safety and welfare ceases to exist, the City shall replace the newspaper rack in its original location at no additional cost to the licensee where the location meets the standards and limitations set forth in this section and other applicable laws or regulations. Where the location does not meet applicable standards, an impoundment fee shall be assessed against the newspaper rack. Failure to reclaim the newspaper rack within ten days from the date of mailing of notice of removal, will be deemed abandonment and consent to its destruction.
- (5) The City Clerk shall send a written order to remove any newspaper rack that has remained empty for a period of 30 continuous days or more. Failure to comply with the order to remove within ten days of mailing will be deemed to consent to the City's removal and forfeiture of the newspaper rack at the owner's expense. An impoundment fee shall be assessed against each impounded newspaper rack. Any impounded newspaper rack that remains unclaimed after ten days shall be considered abandoned property subject to destruction.

Section 840 - Courtesy Benches

840.01. License required. Subdivision 1. General rule. A person desiring to place and maintain one or more courtesy benches for the convenience of persons waiting for buses upon public property of the city, may be granted a license therefor upon compliance with this section.

Subd. 2. Application. The person desiring a license must make written application to the city clerk, showing the requested location and detailed plans and specifications of each proposed bench, the name and address of the applicant, and such other information as may be required by the clerk.

Subd. 3. Consent. The consent of the abutting property owners or lessees is required where the proposed location of a bench is in an area where the abutting property is zoned residential or multiple dwelling. In such cases each application must be accompanied by a writing signed by the owners or lessees of the property abutting the proposed location of the bench, showing the owners' or lessees' consent to the installation and maintenance of such bench.

Subd. 4. Fees. The application must be accompanied by a license fee set by Appendix B.

Subd. 5. Term. Licenses expire annually on December 31. Applications for licenses are considered by the council, and, if approved by the council, are issued by the clerk. Licenses are not transferable. License renewal is subject to the license provisions described in section 1005 Licensing Procedure. (Amended, Ord. No. 02-05)

Subd. 6. Renewal. If plans and specifications of the bench, or advertising matter, or location of the bench, are not to be changed, the application for renewal need contain only the name and address of the applicant, and the location and number of the bench for which renewal license is desired. If the original consent of the owner of the land or lessee upon the premises abutting that portion of the street where the bench is located granted to the license holder the continuing right to maintain such bench, the application may so state, and renewed consent will not be required.

Subd. 7. Change of ownership or control. If a bench for which a license has been issued is sold or title or control thereof transferred or assigned, a new license is required.

Subd. 8. Multiple locations. If the application is for licenses for more than one bench at the same or different locations, a separate number and license will, when issued, be assigned and granted for each bench authorized to be installed, but each license issued is valid only for the location designated in the license.

840.03. Approval of application. A license will not be issued for the installation or maintenance of a bench until approved by the clerk, the engineer, and the council.

840.05. Denial or revocation of license. Subdivision 1. Denial. The application for installation or maintenance of a bench will be denied if it would tend unduly to obstruct passage along any public sidewalk or public way or to create a hazard, or otherwise to be detrimental to the public safety, convenience, welfare, or aesthetics, or if any alternate bench has been provided by the city. (Amended, Ord. No. 93-14)

Subd. 2. Revocation. A license may be revoked, or the application for renewal thereof denied, for failure to comply with the provisions of this section, or for misrepresentation of any material facts in the application, or for any reason which would have been grounds for denial of the original application, or where in the judgment of the City Council, maintenance has become inappropriate.

Subd. 3. Consent withdrawn. If the abutting owner, or lessee, by writing filed with the city clerk on or before the first day of April preceding the expiration of any license, withdraws consent to the renewal thereof after such expiration, the clerk must promptly notify the licensee of the filing of such writing and the renewal of the license will be denied unless and until such owner, or person in possession or control, consents in writing to the renewal.

840.07. Specifications and maintenance. Subdivision 1. Set back. A courtesy bench must be installed parallel with the curb and set back behind the far edge of the sidewalk away from the curb.

Subd. 2. Dimensions. A bench may not be more than 42 inches high nor more than 30 inches wide or seven feet long.

Subd. 3. Display. Each bench must have the license number displayed thereon, in a conspicuous place.

Subd. 4. Maintenance. The licensee must maintain each bench in a safe condition at its proper location and to inspect each bench periodically in order that it may be properly maintained. Benches must be kept in a neat, clean and usable condition. Ice and snow must be removed from the benches and the immediate vicinity thereof so that each bench is accessible at all times.

840.09. Advertising. Subdivision 1. Location. Advertising matter or signs may not be displayed upon a bench except only upon the front and rear surfaces of the backrest. Liquor, beer, or obscene, immoral or indecent advertising, or political advertising is not permitted. Advertising is subject to the approval of the City Council.

Subd. 2. Traffic. Advertising matter or signs on a bench may not display the words, "STOP", "LOOK", "DRIVE IN", or any other word, phrase or symbol which might interfere with, mislead or distract traffic.

840.11. Bench removal. Upon the revocation or expiration of a license without renewal, if the licensee fails promptly to remove a bench, the city engineer may do so within ten days after written notice given by mail directed to the address of the licensee of file. If the licensee fails to pay the cost of removal and storage thereof within a period of 60 days after the giving of such notice, the licensee's rights in the bench shall be forfeited, but such forfeiture does not excuse the licensee from the payment of the cost of removal and storage of the bench.

840.13. Insurance. Subdivision 1. Type. Before a license is issued, the applicant must post or maintain with the clerk a policy of public liability insurance conditioned substantially as follows: that the licensee will indemnify and save harmless the city, its officers, agents and employees from any and all loss, costs, including defense costs, damages, expenses, or liability which may result from or arise out of the granting of the license, or the installation or maintenance of the bench for which a license is issued, regardless of the point to which such bench or benches may be moved within the city with or without the consent of the licensee, and that the licensee will pay any and all loss or damage that may be sustained by any person as a result of, or which may be caused by, or arise out of, the installation or maintenance. The policy of insurance must be maintained in its original amount by the licensee during the period for which the license is in effect. If two or more licenses are issued to one licensee, one such bond or policy of insurance may be furnished to cover two or more benches. (Amended, Ord. No. 96-03, Sec. 2; Ord. No. 03-22)

Subd. 2. Limits. The limit of liability upon any policy of insurance may not be less than \$1,000,000 combined single limit issued by an insurance company authorized to do business in the state of Minnesota. (Amended, Ord. No. 96-03, Sec. 2; Ord. No. 03-22)

840.15. Council action. Applications for licenses, when approved by the city clerk and the director of public works/engineer are presented to the council, which may grant or deny any one or more of the applications made.

Section 841 – Off-site Directional Sign (Religious Institutions)
(Added, Ord. No. 01-06)

841.01. License required. Subdivision 1. General rule. An organization desiring to place and maintain one or more off-site directional signs for the convenience of visitors to religious institutions upon public or private property of the city, may be granted a license therefor upon compliance with this section.

Subd. 2. Application. The organization desiring a license must make written application to the city clerk, showing the requested location and detailed plans and specifications of each proposed sign, the name and address of the applicant, and such other information as may be required by the clerk.

Subd. 3. Notice. Notice to the abutting property owners is required where the proposed location of a sign is in an area where the abutting property is zoned R-1 or R-2. The abutting property owner will be given notice by certified mail about the proposed sign installation and be allowed 30 days to request a hearing prior to installation. If such request is received, the City Council will hold the hearing and consider the adjacent property owner's objection prior to approving the sign location. The applicant shall be responsible for the maintenance of the sign. If the sign is not adequately maintained the city will maintain or remove the sign. If the sign is not adequately maintained the city will maintain or remove the sign at its discretion and the applicant shall bear all associated costs. (Amended, Ord. No. 03-23)

Subd. 4. Fees. Each application must be accompanied by a license fee as set forth in appendix B. (Amended, Ord. No. 02-12)

Subd. 5. Term. Licenses expire annually on December 31. Applications for licenses are considered by the council, and, if approved by the council, are issued by the clerk. Licenses are not transferable. An annual renewal is subject to the provisions of section 1005.11. (Amended, Ord. No. 02-12)

Subd. 6. Renewal. If plans and specifications of the sign or location of the sign are not to be changed, the application for renewal need contain only the name and address of the applicant, and the location and number of the signs for which renewal license is desired. If the original consent of the owner of the land or lessee upon the premises abutting that portion of the street where the sign is located granted to the license holder the continuing right to maintain such sign, the application may so state, and renewed consent will not be required. Otherwise renewed consent shall be required.

Subd. 7. Change of ownership or control. A new license is required for the sign if the religious institution or its Robbinsdale real estate is sold or title or control thereof transferred or assigned.

Subd. 8. Multiple locations. Each license will, when issued, be assigned and granted for one sign or one double-sided sign per location and valid only for the location designated in the license. A maximum of two locations may be issued per licensee. There is a limit of two sites per institution. (Amended, Ord. No. 02-12)

841.03. Approval of application. A license will not be issued for the installation, review or maintenance of a sign until reviewed by the clerk, the engineer, and zoning administrator and approved by the council. (Amended, Ord. No. 02-12)

841.05. Denial or revocation of license. Subdivision 1. Denial. The application for installation or maintenance of a sign will be denied if it would tend unduly to obstruct passage along any public sidewalk or public way or to create a hazard, or otherwise to be detrimental to the public safety, convenience, welfare, or aesthetics, or if an alternate sign can be installed to accomplish the same objective.

Subd. 2. Revocation. A license may be revoked, or the application for renewal therefore denied, for failure to comply with the provisions of this section, or for misrepresentation of any material fact in the application, or for any reason, which would have been grounds for denial of the original application, or where, in the judgment of the City Council, maintenance has become inappropriate.

841.07. Specifications and maintenance. Subdivision 1. Design. All signs must be consistent with the Minnesota Manual Uniform Traffic Control Devices except as specifically set forth in this subsection.

Subd. 2. Set back. A sign must be installed as determined by the city or other applicable governing jurisdiction.

Subd. 3. Dimensions. All signs shall be 18 inches wide and 24 inches long (height). No part of a sign may be less than seven or more than ten feet from the ground unless otherwise approved by the city. All letters shall be upper case and a minimum of three inches in height.

Subd. 4. Maintenance. The city will install and maintain each sign in a safe condition at its proper location and pass all costs onto the owner of the sign. The licensee may inspect each sign periodically and inform the city of any maintenance needs. (Amended, Ord. No. 02-12)

841.09. Sign content. Advertising matter, logos or implication of a logo may not be displayed upon a sign. The name of the church and directional arrows and distance to the church are permitted. The font shall be as described in the Minnesota Manual Uniform Traffic Control Devices manual.

Subd. 2. Traffic. Signs may not display the words, "STOP", "LOOK", "DRIVE IN", or any other word, phrase, color or symbol which might interfere with, mislead or distract traffic.

841.11. Sign removal. Upon the revocation or expiration of a license without renewal, the city shall remove the sign within ten days after written notice given by mail directed to the address of the licensee on file. If the licensee fails to pay the cost of removal and storage thereof within a period of 60 days after the giving of such notice, the licensee's rights in the sign shall be forfeited, but such forfeiture does not excuse the licensee from the payment of the costs of removal and storage of the sign. (Amended, Ord. No. 02-12)

841.13. Insurance. Subdivision 1. Type. Before a license is issued, the applicant must post and maintain with the clerk a policy of public liability insurance conditioned substantially as follows: that the licensee will indemnify and save harmless the city, its officers, agents and employees from any and all loss, costs, including defense costs, damages, expenses, or liability which may result from or arise out of the granting of the license, or the installation or maintenance of the sign for which a license is issued, regardless of the point to which sign or signs may be moved within the city with or without the consent of the licensee, and that the licensee will pay any and all loss or damage that may be sustained by any person as a result of, or which may be caused by, or arise out of, license granting, the installation or maintenance. The policy of insurance must be maintained in its original amount by the licensee during the period for which the license is in effect. If two licenses are issued to one licensee, one such policy of insurance may be furnished to cover two signs. The city shall be named as additional insured as their interest may appear. (Amended, Ord. No. 03-22)

Subd. 2. Limits. The limit of liability for any policy of insurance may not be less than \$1,000,000 for a loss, bodily injuries to or death occurring to one person or arising out of one accident.

841.15. Council action. Applications for licenses, after review by the city clerk, the city engineer, and the zoning administrator shall be presented to the council, which may grant or deny any of the applications made. (Amended, Ord. No. 02-12)

Section 845 - Permits for Temporary Placement of Containers
(Added, Ord. No. 96-04, Sec. 1)

845.01. Definition. For purposes of this section, "container" means a dumpster, collection bin, collection box, tub, roll-off box, roll-off container, portable storage container or any other receptacle used to store construction, remodeling or demolition debris or any goods or materials being temporarily or permanently stored. (Amended, Ord. No. 03-08)

845.03. Permit procedure. No person shall place a container on any public right-of-way without first obtaining a permit from the city engineer.

845.05. Permit application. An applicant for a permit shall provide the following information:

- (a) the name and address of the applicant;
- (b) the location of the project to be undertaken;
- (c) the length of time for which the permit is needed;
- (d) the type of debris that will be deposited in the container;
- (e) proof that the applicant has all necessary licenses required to perform the project; and
- (f) any other information deemed necessary by the city engineer.

845.07. Insurance. A permit holder shall maintain or cause to be maintained the following insurance with respect to the container:

- (a) public liability insurance in an amount of not less than \$1,000,000 for injuries including accidental death to any one person, subject to the same limit for each occurrence; and
- (b) property damage insurance in an amount of not less than \$500,000 for each accident and not less than \$1,000,000 aggregate.

The insurance required by this subsection shall protect the city from defense costs and claims for damage for bodily injury, personal injury, including accidental death, and claims for property damage.

845.09. Condition of container. Containers must be well-maintained and in good working condition, display the name and telephone number of the owner of the container, and be suitably supported at each contact point to prevent damage to paved surfaces. Containers must be covered when not in use if the material inside is easily airborne, poses a hazard, gives off odors or is otherwise offensive. Debris generated by the project must be placed inside the container and may not be placed on the public right-of-way or in any place in which such debris interferes with use of the public right-of-way.

845.11. Warnings required. The container shall be properly reflectorized at all times. (Amended, Ord. No. 02-07)

845.13. Duration of permit. No permit shall be issued for a period of more than seven days.

845.15. Permit fee. The permit fee shall be in such amount as the City Council may from time to time establish by resolution and list in Appendix B.

845.17. Denied and conditional permits. The city engineer may deny a permit or place conditions upon issuance of a permit if the denial or conditions are required due to traffic, width, public health or safety, or other considerations.

845.19. Revocation of permits. The city engineer may revoke a permit if the permit holder violates any provision of this section or any other applicable law, ordinance, rule, or regulation.

845.21. Applicability of other law. The owner of the container and the person placing it in the public right-of-way shall comply with all other laws, ordinances, rules, and regulations governing its use and maintenance.

845.23. Violation of this section. The city may remove any container placed in a public right-of-way in violation of this section. The owner of the container or the person placing it in the public right-of-way shall pay to the city all costs, fees, penalties, or other expenses incurred by the city in removing the container, and storing and disposing of the container and its contents. In addition, the city shall charge daily storage fees in such amount as the City Council may from time to time establish by resolution and list in Appendix B. If the container is not claimed within 30 days by its owner or the person responsible for placing it in the public right-of-way, it may be disposed of as abandoned property, but such disposal shall not diminish the responsibility of the owner or the person responsible for placing it in the public right-of-way to pay all amounts due under this subsection. A container shall not be released from storage by the city until all amounts due under this subsection have been paid. The provisions of this subsection are in addition to any other penalty provided for in this code.

Section 850 - Right-of-way Management
(Added, Ord. No. 00-11)

850.01. Right-of-way management. Subdivision 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.

Accordingly, the city enacts this new section of this code relating to right-of-way permits and administration. This section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the city's rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this section persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This section shall be interpreted consistently with 1997 Session Laws, chapter 123, substantially codified in Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This section shall also be interpreted consistent with Minnesota Rules, parts 7819.0050 – 7819.9950 where possible. To the extent that any provision of this section cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended.

Subd. 2. Election to manage the public rights-of-way. Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city elects pursuant to Minnesota Statutes, section 237.163, subdivision 2(b), to manage rights-of-way within its jurisdiction.

Subd. 3. Definitions. The following definitions apply in this section of this code. References to "subdivisions" are unless otherwise specified references to subdivisions in this section.

"Abandoned facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

"Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

"City" means the city of Robbinsdale, Minnesota. For purposes of subdivision 26, city means its elected officials, officers, employees and agents.

"Commission" means the Minnesota Public Utilities Commission.

"Congested right-of-way" means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, section 216D.04, subdivision 3, over a continuous length in excess of 500 feet.

“Construction performance bond” means any of the following forms of security provided at permittee’s option:

- (a) Individual project bond;
- (b) Cash deposit;
- (c) Security of a form listed or approved under Minnesota Statutes, section 15.73, subdivision 3;
- (d) Letter of credit, in a form acceptable to the city;
- (e) Self-insurance, in a form acceptable to the city;
- (f) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

“Degradation” means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

“Degradation cost” subject to Minnesota Rules, part 7819.1100 means the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules, parts 7819.9900 to 7819.9950.

“Degradation fee” means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

“Department” means the engineering department of the city.

“Department inspector” means any person authorized by the city to carry out inspections related to the provisions of this section.

“Director” means the director of the department of public works of the city, or director's designee.

“Delay penalty” is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

“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.

“Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

“Excavation permit” means the permit which, pursuant to this section, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

“Excavation subdivision permit fee” means money paid to the city by an applicant to cover the costs as provided in subdivision 11.

“Facility or facilities” means tangible asset in the public right-of-way required to provide utility service. The term does not include facilities to the extent the location and relocation of such facilities are preempted by Minnesota Statutes, section 161.45, governing utility facility placement in state trunk highways.

“Five-year capital improvement plan” shows projects adopted by the city for construction within the next five years.

“High density corridor” means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

“Hole” means an excavation in the right-of-way, with the excavation having a length less than the width of the pavement or adjacent pavement.

“Local representative” means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this section.

“Management costs” means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, chapter 123; Minnesota Statutes, sections 237.162 or 237.163 or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to subdivision 28 of this section.

“Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

“Obstruction permit” means the permit which, pursuant to this section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein, including a blanket permit for a period of time and for types of work specified by the director, if deemed appropriate in director's discretion.

“Obstruction permit fee” means money paid to the city by a permittee to cover the costs as provided in subdivision 11.

“Patch or patching” means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five year capital improvement plan.

“Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

“Permit” has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.

“Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this section.

“Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

“Probation” means the status of a person that has not complied with the conditions of this section.

“Probationary period” means one year from the date the permittee has been notified in writing that it has been placed on probation.

“Public right-of-way” has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

“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.

“Restore or restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

“Restoration cost” means the amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Rules, part 7819.1100, subpart 1, on file with the director.

“Right-of-way permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by this section.

“Right-of-way user” means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

“Service or utility service” means and includes (1) services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling or heating services.

“Supplementary application” means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

“Temporary surface” means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city’s two-year capital improvement plan, in which case it is considered full restoration.

“Trench” means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement or adjacent pavement.

“Telecommunication right-of-way user” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this section, a cable communication system defined and regulated under Minnesota Statutes, chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, chapter 308A, are not telecommunications right-of-way users for purposes of this section.

“Two year capital improvement plan” shows projects adopted by the city for construction within the next two years.

Subd. 4. Administration. The director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

Subd. 5. Registration and right-of-way occupancy.

- (a) Registration. Each person who occupies, 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 and paying a registration fee.
- (b) Registration prior to work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.
- (c) Exceptions. Nothing in this section shall be construed to repeal or amend the provisions of a city ordinance establishing the rights of and limitations placed on persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons 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 under this section for the following:
 - (1) Planting or maintaining boulevard plantings or gardens;
 - (2) Other surface landscaping works;
 - (3) Maintenance of driveways and parking lots unless such maintenance requires excavation work in the right-of-way.

- (4) Construction or maintenance of street furnishings, bus stop benches, shelters, or posts and pillars;
- (5) Snow removal activities.
- (6) Construction and maintenance of irrigation systems provided that the system does not connect directly to water mains in the right-of-way.

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

Subd. 6. Registration information.

- (a) Information required. The information provided to the city at the time of registration shall include, but not be limited to:
 - (1) Each registrant'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 a local representative. The local representative or designee shall be accessible for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - (3) A certificate of insurance or self-insurance:
 - (i) Verifying that an insurance policy has been issued to the registrant by an insurance company authorized 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 coverage for all actions included in Minnesota Rules, part 7819.1250;
 - (iv) Requiring that the city be notified 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 established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this section.
 - (4) The city may require a copy of the actual insurance policies if necessary to ensure the director that the policy provides adequate third party claim coverage and city indemnity and defense coverage for all actions included in the indemnity required by Minnesota Rules, part 7819.1250.
 - (5) Such evidence as the director may require that the person is authorized to do business in Minnesota.
- (b) 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 15 days following the date on which the registrant has knowledge of any change.

Subd. 7. Reporting obligations.

- (a) Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

The plan shall include, but not be limited to, the following information:

- (1) 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) 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”).

The term “project” in this section shall include both next-year projects and five-year projects.

By January 1 of each year the city will have available for inspection in the city’s office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

- (b) Additional next-year projects. Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Subd. 8. Permit requirement.

- (a) 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 right-of-way permit from the city to do so.
 - (1) 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.
 - (2) Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of the 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.
- (b) Permit extensions. No person may excavate 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.
- (c) Delay penalty. In accordance with Minnesota Rules, part 7819.1000, subpart 3 and notwithstanding subdivision 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. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.
- (d) Permit display. Permits issued under this section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

Subd. 9. Permit applications. 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 requirements of the following provisions:

- (a) Registration with the city pursuant to this section;
- (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) 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;
- (4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

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. 10. Issuance of permit; conditions.

- (a) Permit issuance. If the applicant has satisfied the requirements of this section, the city shall issue a permit.
- (b) Conditions. 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.

Subd. 11. Permit fees.

- (a) Fee schedule and fee allocation. The city's permit fee schedule shall be available to the public and established in advance where reasonably possible. The permit fees shall be designed to recover the city's actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the city.
- (b) Excavation permit fee. The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:
 - (1) city management costs;
 - (2) degradation costs, if applicable.
- (c) Obstruction permit fee. The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.
- (d) Payment of permit fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within 30 days of billing, or on some other payment plan agreed to by the director at director's discretion.
- (e) Non refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Subdivision 21 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.

Subd. 12. Right-of-way patching and restoration.

- (a) Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, 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 as unseasonal or unreasonable under subdivision 15.
- (b) Patch and restoration. Permittee must patch its own work. The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or to restore the surface portion of right-of-way itself.
- (1) City restoration. If the city restores the surface portion of right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.
- (2) 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 Rules, part 7819.3000.
- (3) Degradation fee in lieu of restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate based material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.
- (c) Standards. The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rules, part 7819.1100.
- (d) Duty to correct defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Upon notification from the city, permittee shall correct all restoration work to the extent necessary, using the method required by the city. Unless otherwise agreed to by the director, said work shall be completed within five calendar days of 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 unseasonal or unreasonable under subdivision 15.
- (e) 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 shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee ten days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the director. In the event the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Subd. 13. Joint applications.

- (a) Joint application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) Shared fees. 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 order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- (c) With 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.

Subd. 14. Supplementary applications.

- (a) Limitation on area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.
- (b) Limitation on dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

Subd. 15. Other obligations.

- (a) 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 applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including Minnesota Statutes, section 216D.01-.09 (Gopher One Call Excavation Notice System). 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.
- (b) Prohibited work. Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

- (c) Interference with right-of-way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with, unless otherwise approved by the director. 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.
- (d) Traffic control. A permittee shall implement traffic control measures in the area of the work and shall use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the state of Minnesota.

Subd. 16. Denial of permit. The city may deny a permit for failure to meet the requirements and conditions of this section 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. 17. Installation requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rule 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163.

Subd. 18. Inspection.

- (a) Notice of completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.
- (b) Site inspection. Permittee shall make the work-site available to the city 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 director.
 - (1) 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.
 - (2) The director may issue an order to the permittee to correct any work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a “substantial breach” within the meaning of Minnesota Statutes, section 237.163, subdivision 4(c), the order shall state that failure to correct the violation will be cause for revocation of the permit after a specified period determined by the director. The permittee shall present proof to the director that the violation has been corrected within the time period set forth by the director in the order. Such proof shall be provided no later than the next business day following the day of completion. If such proof has not been presented within the required time, the director may revoke the permit pursuant to subdivision 21.

Subd. 19. Work done without a permit.

- (a) Emergency situations. Each registrant shall immediately notify the director of any event regarding its facilities that the registrant considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two 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 section 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 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, pay an unauthorized work permit fee in an amount established from time to time by the City Council, 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 section.

Subd. 20. Supplementary 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.

Subd. 21. Revocation of permits.

- (a) Substantial breach. The city reserves its right to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
- (1) The violation of any material provision of the right-of-way permit;
 - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
 - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
 - (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
 - (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to subdivision 18(b).

- (b) Written notice of breach. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city to place additional or revised conditions on the permit to mitigate and remedy the breach.
- (c) Response to notice of breach. Within a time established by the director following permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, may result in probation for up to one full year.
- (d) Cause for probation. The city may establish a list of conditions of the permit that if breached will be grounds to place the permittee on probation. The city shall not enforce a probation program unless and until it has established such conditions, which it may amend from time to time.
- (e) 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.

Subd. 22. Mapping data. Each registrant and permittee shall provide mapping information in a form required by the city in accordance with Minnesota Rules, parts 7819.4000 and 7819.4100.

Subd. 23. Undergrounding.

- (a) Purpose. The purpose of this subdivision 23 is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the city. Location and relocation, installation and reinstallation of facilities in the right-of-way must be made in accordance with this subdivision. This subdivision is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to Minnesota Statutes, sections 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, U.S.C. section 253.
- (b) Undergrounding of facilities. Facilities newly installed, constructed or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. The requirements of this subdivision shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

- (c) Exceptions to undergrounding. The following exceptions to the strict application of this subdivision shall be allowed upon the conditions stated:
- (1) Transmission lines. Above-ground installation, construction, or placement of those facilities commonly referred to as “high voltage transmission lines” upon which a conductor’s normal operating voltage equals or exceeds 23,000 volts (phase to phase) shall be allowed only by prior approval of the council; provided, however, that 60 days prior to commencement of construction of such a project, the city shall be furnished notice of the proposed project and, upon request, the right-of-way user involved shall furnish all relevant information regarding such project to the city. This provision shall not be construed as waiving the requirements of any other ordinance or regulation of the city as the same may apply to any such proposed project.
 - (2) Technical and economic feasibility. Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:
 - (i) Underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights; or,
 - (ii) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground facilities placement.
 - (3) Temporary service. Above-ground installation, construction, or placement of temporary service lines shall only be allowed:
 - (i) During new construction of any project for a period not to exceed 24 months;
 - (ii) During an emergency in order to safeguard lives or property within the city;
 - (iii) For a period of not more than seven months when soil conditions make excavation impractical.

- (d) Undergrounding of permanent replacement, relocated or reconstructed facilities. If the city finds that one or more of the purposes set forth in subdivision 23(a) would be promoted, the city may require a permanent replacement, relocation or reconstruction of a facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the city in connection with (1) the present or future use by the city or other local government unit of the right-of-way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way.
- (e) Retirement of overhead facilities. The City Council may determine whether it is in the public interest that all facilities within the city, or facilities within certain districts designated by the city, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to section 23(b) of this code (new facilities) and subdivision 23(d) (replacement facilities). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected. (Two weeks published: 30 days written.) At the hearing the council must consider items (1) – (4) in subdivision 23(g) of this section and make findings. Undergrounding may not take place until City Council has, after hearing and notice, adopted a plan containing items (1) – (6) of subdivision 23(h) of this section.
- (f) Public hearings. A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether facilities in the right-of-way in the city, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under subdivisions 23(b) and (d) of this section.
- (g) Public hearing issues. The issues to be addressed at the public hearings include but are not limited to:
- (1) The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way.
 - (2) The feasibility and cost of undergrounding all facilities by a date certain as determined by the city and the affected utilities.
 - (3) The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the city.

- (4) Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either citywide or within districts designated by the city.

- (h) Undergrounding plan. If the council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way or in non-right-of-way public ground, the council must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

- (1) Timetable for the undergrounding.
- (2) Designation of districts for the undergrounding unless the undergrounding plan is citywide.
- (3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions.
- (4) Procedures for the undergrounding process, including but not limited to coordination with city projects and provisions to ensure compliance with non-discrimination requirements under the law.
- (5) A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility.
- (6) Penalties or other remedies for failure to comply with the undergrounding.

- (i) Facilities location.

- (1) In addition to complying with the requirements of Minnesota Statutes, sections 216D.01-.09 (One Call Excavation Notice System”), before the start date of any right-of-way excavation, each registrant who has facilities located in the area to be excavated shall mark the horizontal placement of all said facilities. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of its facilities to excavators upon request. Nothing in this subsection is meant to limit the rights, duties, and obligations of facility owners or excavators as set forth in Minnesota Statutes, sections 216D.01-09. Any right-of-way user whose facility is less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish and mark the exact horizontal and vertical location of its facility and the best procedure for excavation.

- (2) All facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate, all utilities shall be installed, constructed or placed within the same trench.
- (j) Developer responsibility. All owners, platters, or developers are responsible for complying with the requirements of this subdivision, and prior to final approval of any plat or development plan, shall submit to the director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such facilities have been made.

Subd. 24. Relocation of facilities. A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection with: (1) a present or future city use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

Subd. 25. Interference by other facilities. When the city does work in the right-of-way in its governmental right-of-way management function and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging registrant's facilities, the city shall notify the local representative as early as is reasonably possible. The city costs associated therewith will be billed to that registrant and must be paid within 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 damages.

Subd. 26. Right-of-way vacation – reservation of right. If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules, part 7819.3200.

Subd. 27. Indemnification and liability. By registering with the city, or by accepting a permit under this section, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rules, part 7819.1250.

Subd. 28. Abandoned and unusable facilities.

- (a) Discontinued operations. A registrant who has determined to discontinue 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 section have been lawfully assumed by another registrant.
- (b) Removal. 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.

Subd. 30. Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are not in conformity with Minnesota Statutes, section 237.163, subdivision 6 may have the denial, revocation, or fee imposition 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 the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Subd. 31. Reservation of regulatory and police powers. A permittee's or registrant's rights are subject to 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.

Subd. 32. Severability. If any section, subsection, sentence, clause, phrase, or portion of this section is for any reason held invalid or unconstitutional by any court or administrative agency 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. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this section or any portions of this section is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this section precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.