

**OPEN YOUR PDF READER BOOKMARKS FOR CHAPTER LINKS**

**CHAPTER 3. STREET, PARK, AND PUBLIC PROPERTY AND IMPROVEMENTS**

**Part 1. Right of Way Management (10-2016) (12-2018 Small Wireless Facilities)**

**301.01 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY**

In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to Minnesota Statutes § 237.163 to manage rights-of-way within its jurisdiction.

**301.02 DEFINITIONS**

The definitions included in Minnesota Statute Section 237.162, Minnesota Rules 7819.0100 subps. 1 through 23, and Minnesota Rules 7560. 0100 subps. 1 through 12 are hereby adopted by reference and are incorporated into this chapter as if set out in full.

**301.03 PERMIT REQUIREMENT**

**A. *Permit Required.*** Except as otherwise provided in this code, no person may obstruct, excavate, install or place any facilities in any right-of-way, or construct a driveway entrance to a city street, without first having obtained the appropriate permit from the city.

- (1) *Excavation Permit.* An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (2) *Obstruction Permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- (3) *Driveway Access and Construction.* A driveway access and construction permit is required prior to constructing an access driveway to any city street located in the city.

(4) *Small Wireless Facility Permit.* A small wireless facility permit is required to erect or install a wireless support structure or collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use unless lawfully revoked.

**B. Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) 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 Rule 7819.1000 subp. 3, and notwithstanding subd. 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.

**D. Permit Display.** Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

#### 301.04 PERMIT APPLICATIONS

Application for an excavation or obstruction permit or a small wireless facility permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

- (1) Each permittee's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance:
  - (a) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the city clerk;
  - (b) Verifying that the permittee is insured against claims for personal injury, including

death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

- (c) Naming the city or designated representative as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
- (d) Requiring that the city clerk be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city clerk in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- (f) The city may require a copy of the actual insurance policies.
- (g) If the person is a corporation, a copy of the certificate required to be filed with the Secretary of State as recorded and certified to by the Secretary of State.
- (h) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

**(B) Payment of money due the city for**

- (1) permit fees, estimated restoration costs and other management costs,
- (2) prior obstructions or excavations and installations and placements of wireless support structures and small wireless facilities;
- (3) any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way, installation of wireless support structures or collocation of small wireless facilities, or any emergency actions taken by the city;
- (4) franchise fees or other charges, if applicable.

**301.05 ISSUANCE OF PERMIT; CONDITIONS**

**A. Permit Issuance.** If the applicant has satisfied the requirements of this chapter, 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. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01- .09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

**C. Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

**D. Driveway Access.** As a condition of the applicable permit, permittees must comply with the most current engineering standards adopted by the city.

**E. Small Wireless Facility Conditions.** In addition to subsections B-D, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way shall be subject to the following conditions:

- (1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- (2) No new wireless support structure installed within the right-of-way shall exceed fifty (50) feet above ground level in height without the city's written authorization, provided that a wireless support structure in the public right-of-way that is greater than fifty (50) feet above ground level in height may be placed at the height of the existing wireless support structure, subject to such conditions or requirements as may be imposed in the applicable permit.
- (3) No wireless facility may extend more than ten (10) feet above its wireless support structure.
- (4) New wireless support structures shall be separated from existing wireless support structures by a minimum distance of six hundred (600) feet.
- (5) Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance, or intended

purpose of such structure.

- (6) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

**F. *Small Wireless Facility Collocation Agreement.*** A small wireless facility shall only be collocated on a wireless support structure owned or controlled by the City, or any other city asset in the right-of-way, after applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:

- (1) Management costs;
- (2) Up to \$150 per year for rent on the city structure;
- (3) \$25 per year for maintenance associated with the collocation;
- (4) A monthly fee for electrical service as follows:
  - a. \$73 per radio node less than or equal to 100 maximum watts;
  - b. \$182 per radio node over 100 maximum watts;
  - c. The actual cost of electricity, if the actual costs exceeds the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

**G. *Deadline for Action.*** The city shall approve or deny a small wireless facility permit application within ninety (90) days after receiving a complete application unless the ninety (90) day period is tolled as provided by subpart I of this section. The small wireless facility permit and any associated encroachment or building permit shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

**H. *Consolidated Applications.*** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to fifteen (15) small wireless facilities, or a greater number if agreed by the city, provided that all small wireless facilities in an application:

- (1) are located within a two-mile radius;
- (2) consist of substantially similar equipment;
- (3) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

**I. Tolling of Deadline for Action.** The ninety (90) day deadline for action may be tolled if:

- (1) The city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than thirty (30) small wireless facilities. In such case, the city may extend the ninety (90) day deadline for all such applications by an additional thirty (30) days by informing the affected applicants in writing of such extension;
- (2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within thirty (30) business days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the city's determination whether the proposed equipment falls within the definition of small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon applicant's submittal of additional information in response to a notice of incompleteness, the city has ten (10) days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the ninety (90) day deadline for action.
- (3) The city and applicant may agree in writing to toll the review period.

### 301.06 PERMIT FEES

**A. Excavation and Driveway Access Permit Fees.** The city shall establish an Excavation and Driveway Access permit fees in amounts set forth in the current city fee schedule sufficient to recover the following costs:

- (1) the city management costs;
- (2) degradation costs, if applicable.

**B. Obstruction Permit Fee.** The city shall establish the obstruction permit fee as set forth in the current city fee schedule and shall be in an amount sufficient to recover the city management costs.

**C. Small Wireless Facility Permit Fee.** The city shall establish a small wireless facility permit fee as set forth in the current city fee schedule for the placement of small wireless facilities and wireless support structures in the public right-of-way in an amount sufficient to recover:

- (1) the city management costs;
- (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

**D. Cost of Initial Engineering Survey and Preparatory Construction Work Associated with Collocation.** Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge to recover costs associated with a proposed attachment.

**Payment of Permit Fees.** No excavation permit, obstruction permit, driveway access permit, or small wireless facility permit shall be issued without payment of excavation, obstruction, driveway access, or small wireless facility permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

**D. Non refundable.** Permit fees that were paid for a permit that the city has revoked for failure to comply with any regulation and/or permit under this section are not refundable.

**E. 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.

**F.** All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.1000.

### 301.07 **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 unseasonable.

**B. Patch and Restoration.** Permittee shall restore all disturbed areas to existing conditions to the satisfaction of the City Public Works Director or City Engineer.

- (1) **Performance Bond.** The permittee shall, at the time of application for an excavation permit, post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
- (2) **Patching.** All pavement patching shall be performed in multiple lifts under the supervision of the Public Works Director or designee in kind with existing material. All patching work shall be completed within five (5) calendar days of pavement removal unless provided written authorization from the Public Works Director.
- (3) **Restoration:** All boulevard restoration shall be completed within five (5) calendar days of the completion of land disturbance activities. The permittee shall be responsible for watering vegetated areas for a minimum of twenty-one (21) calendar days after restoration work or until 75% coverage has been achieved.
- (4) **City Restoration.** If the permittee fails to restore the disturbed areas within the timelines identified, the city may elect to restore the areas themselves or by direct hire. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (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 thirty (30) days of billing, all costs associated with having to correct the defective work.

**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 Rule 7819.1100

**D. Duty to correct defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the 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 unseasonable.

**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 at its option may do such work. In that event the permittee shall pay to the city, within thirty (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.

### 301.08 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 shall 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.

### 301.09 DENIAL OF PERMIT

The city may deny a permit for failure to meet the requirements and conditions of this chapter 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. Any denial of a right-of-way or small wireless facility permit shall be in writing and must document the basis for the denial. The city must notify the telecommunications right-of-way user within three (3) business days of the decision to deny the permit. If the permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the city and resubmit its application. If the telecommunications right-of-way user resubmits the application within thirty (30) days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The city must approve or deny the revised application within thirty (30) days after the revised application is submitted.

### 301.10 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 Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Secs. 237.162 and 237.163, including any requirements of the city engineer and/or public works department. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in applicable permits and/or agreements referenced in Sec. 301.15(B).

### 301.11 INSPECTION

**A. *Notice of Completion.*** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.

**B. Site Inspection.** Permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

**C. Notification.** The permittee shall notify the Public Works Director a minimum of 48 hours prior to the start of and land disturbance activities, unless work is done under emergency situations. Failure to provide required notification shall be considered “work done without a permit” (see 301.12.B).

**D. Authority of Public Works Department.**

- (1) At the time of inspection, the Public Works Director or designee 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 Public Works Director or designee may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the maintenance supervisor that the violation has been corrected. If such proof has not been presented within the required time, the city public works department may revoke the permit pursuant to Sec. 301.14.

**301.12 WORK DONE WITHOUT A PERMIT**

**A. Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Excavators’ notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

**B. Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit,

pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

### 301.13 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.

### 301.14 REVOCATION OF PERMITS

**A. Substantial Breach.** The city reserves its right, as provided herein, 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 permittees 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 Sec. 301.11.

**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 might be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**C. Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, which

will cure the breach. Permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

**D. *Revocation.*** Revocation of a right-of-way permit or small wireless facility permit shall be made in writing within three (3) business days of the decision to revoke the permit and shall document the basis for the revocation.

**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.

### 301.15 MAPPING DATA

**A. *Information Required.*** Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

**B. *Service Laterals.*** All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any city approval necessary for: 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429; and 2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

### 301.16 LOCATION OF FACILITIES

**A.** Placement, location, and relocation of facilities must comply with the act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

**B. *Corridors.*** The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities

at issue.

**C. *Limitation of Space.*** To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

### **301.17 DAMAGE TO OTHER FACILITIES**

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the city shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the city's response to an emergency occasioned by that owner's facilities.

### **301.18 RIGHT-OF-WAY VACATION**

***Reservation of right.*** If the city vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

### **301.19 INDEMNIFICATION AND LIABILITY**

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

### **301.20 ABANDONED FACILITIES**

***Removal of Abandoned Facilities.*** Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the city waives this requirement.

### **301.21 APPEAL**

A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; (3) believes that the fees imposed are invalid; or (4) disputes any determination of the city

under this ordinance, may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

### **301.22 RESERVATION OF REGULATORY AND POLICE POWERS**

A permittee'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.

### **Part 2. Assessable Current Services;**

## **Obligation of Property Owners and Occupants**

302.01

### **DEFINITION OF CURRENT SERVICES**

The term "current service" as used in this part of the code means one or more of the following: snow, ice, or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in Minn. Stat. 463.15-463.26; installation or repair of water service lines; street sprinkling, street flushing, light street oiling, or other dust treatment of streets; repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.

302.02

### **SNOW, ICE, DIRT AND RUBBISH (04-2004)**

Subd. 1. Duty of Owners and Occupants. The owner and the occupant of any property adjacent to a public sidewalk or fire hydrant shall use diligence to keep such sidewalk safe for pedestrians and the fire hydrant clear for access by the fire department, regardless of whether the sidewalk or fire hydrant is located in front of a boulevard, directly in front of the property, or within the street right of way. No such owner or occupant shall allow snow, ice, dirt, or rubbish to remain on the sidewalk or around the fire hydrant longer than twenty-four (24) hours after its deposit thereon. The owner or occupant shall clear a two (2) foot radius around the fire hydrant. Failure to comply with this section shall constitute a violation.

Subd. 2. Snow, Ice, Dirt and Rubbish. It shall be unlawful for any person or entity other than a road authority, their agents, employees, contractors and/or utilities in carrying out their duties to place, obstruct or deposit, or to cross or plow across with any snow or ice over or upon any city street, alley, sidewalk or roadway. **(03-2009)**

Subd. 3. Removal by City. The city maintenance person may cause removal from a public sidewalk or a fire hydrant all snow, ice, dirt, and rubbish as soon as possible beginning twenty-four (24) hours after any such matter has been deposited thereon or after the snow has ceased to fall. The maintenance person shall keep a record showing the cost of such removal adjacent to each separate lot and parcel.

302.03

### **WEED ELIMINATION**

Subd. 1. Weeds as a Nuisance. Any weeds, whether noxious as defined by law or not, growing upon any lot or parcel of land outside the traveled portion of any street or alley in the city to a greater height than twelve inches or which have gone or are about to go to seed are a nuisance. The owner and the occupant shall abate

or prevent such nuisance on such property and on land outside the traveled portion of the street or alley abutting on such property. Whenever a prairie or wild flower restoration plan is on file with the city, native prairie grasses and wildflowers shall be allowed to grow to full height.

Subd. 2. Notice. On or before June 1 of each year and at such other times as ordered by resolution of the council, the city clerk shall publish once in the official newspaper a notice directing owners and occupants of property within the city to destroy all weeds declared by Subdivision 1 to be a nuisance and stating that if not so destroyed within 10 days after publication of the notice, the weeds will be destroyed by city employees at the expense of the owner and that if not paid, the charge for such work will be made a special assessment against the property concerned.

Subd. 3. Removal by City. If the owner or occupant of any property in the city fails to comply with the notice within 10 days after its publication, city employees may cut and remove such weeds. The clerk shall keep a record showing the cost of such work attributable to each separate lot and parcel.

302.04

**PUBLIC HEALTH AND SAFETY HAZARDS**

When the city removes or eliminates public health or safety hazards from private property under city ordinance, the administrative officer responsible for doing the work shall keep a record of the cost of such removal or elimination against each parcel of property affected and annually deliver such information to the city clerk. The cost of fire and rescue services provided to city residents shall be included in this section.

302.05

**INSTALLATION AND REPAIR OF WATER SERVICE LINES**

Whenever the city installs or repairs water service lines serving private property under Chapter IV of this code, the clerk shall keep a record of the total cost of the installation or repair against the property.

302.06

**REPAIR OF SIDEWALKS AND ALLEYS**

Subd. 1. Duty of Owner. The owner of any property within the city abutting a public sidewalk or alley shall keep the sidewalk or alley in repair and safe for pedestrians.

Subd. 2. Inspections; Notice. The council or its designee shall make such inspections as are necessary to determine that public sidewalks and alleys within



the city are kept in repair and safe for pedestrians or vehicles. If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the council shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering such owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so. The expense thereof must be paid by the owner, and if unpaid, it will be made a special assessment against the property concerned.

Subd. 3. Repairs by City. If the sidewalk or alley is not repaired within 30 days after receipt of the notice, the clerk shall report the facts to the council and the Council shall by resolution order the work done by contract in accordance with law. The clerk shall keep a record of the total cost of the repair attributable to each lot or parcel of property and report such information to the city clerk.

302.07

### **PERSONAL LIABILITY**

The owner of property on which or adjacent to which a current service has been performed shall be personally liable for the cost of such service. As soon as the service has been completed and the cost determined, the city clerk, or other designated official, shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the city clerk.

302.08

### **DAMAGE TO PUBLIC PROPERTY**

Any person driving any vehicle, equipment, object, or contrivance upon any street, road, highway, or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of such vehicle, equipment, or object or contrivance; or as a result of operating, driving, or moving any vehicle, equipment, object, or contrivance weighing in excess of the maximum weight permitted by statute or this code. When such driver is not the owner of such vehicle, equipment, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who, willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under Minn. Stat. 514.67.

302.09

### **ASSESSMENT**

Prior to the time the County Auditor calculates real estate taxes payable on property within the City, the clerk shall list the total unpaid charges for each type of current service and charges under sections 302.01 through 302.08 against each separate lot or parcel to which they are attributable under this ordinance. The council may then spread the charges against property benefited as a special assessment under Minn. Stat. 429.01 and other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the council may determine in each case.

### **Part 3. Local Improvement Policy**

303.01

#### **CUT-OFF DATE FOR PETITIONS**

Petitions for construction of curb and gutter asphalt surfacing, and sewer or water conduit shall be filed with the city clerk on or before April 1 of the year of requested construction.

303.02

#### **CLASSIFICATION OF PROJECTS**

Subd. 1. In General. Public improvements are divided into the three classes specified in the following subdivisions according to their respective benefit to the whole city and to property specially served by the improvement and taking into account past city practice consistent with an equitable system of paying and collecting for the costs of improvements.

Subd. 2. Class A. Class A improvements are those which are of general benefit to the city at large, including: 1) public buildings, except a building which is part of an improvement described in one of the following subdivisions; 2) any public park, playground, or recreational facility; 3) the installation and maintenance of street lighting systems; and 4) any improvement not described in Minn. Stat. 429.21, Subd. 1. Any such improvement shall be financed from general city funds and not from special assessments.

Subd. 3. Class B. Class B improvements are those which are of both general benefit and special benefit to abutting or nearby property. Class B improvements include: 1) trunk water mains six inches or larger; 2) trunk sanitary sewer mains eight inches or larger; 3) permanently surfacing arterial streets; 4) storm sewers; 5) the construction of off-street parking facilities.

Subd. 4. Class C. Class C improvements are those which are primarily if not exclusively of benefit to property abutting or in the area of the improvement, including: 1) the construction of sidewalks; 2) the construction of water mains no larger than six inches in diameter; 3) the construction of sanitary sewer mains no larger than eight inches in diameter; 4) the construction of curbs and gutters; 5) permanently surfacing residential streets; 6) the abatement of nuisances and the draining of swamps, marshes, and ponds on public or private property and filling the same.

303.03

#### **FINANCING CLASS B AND C IMPROVEMENTS**

It is the policy of the city to finance Class B and C improvements by the methods prescribed in Sections 303.02, Subd. 3 & 4. The apportionment of the cost between benefited property and the city at large and the method of levying assessments prescribed in those sections shall be followed in each case unless the council, by resolution, finds that because of special circumstances stated in the resolution, a different policy is necessary or desirable in the particular case. Any local improvement described in Minn. Stat. 429.02 and not placed in Class A, B, or C by Section 303.02 shall be financed as the council determines to be most feasible and equitable in each case. In each case, the council shall examine the assessment role before approval and adjust any assessments, which exceed the benefit received by the property assessed.

303.04

### **ASSESSMENT REGULATIONS FOR CLASS B IMPROVEMENTS**

Subd. 1. Trunk Water Mains and Sanitary Sewers. When a water or sewer main is laid across or adjacent to unplatted property, the city shall not defer the assessment against the unplatted property if the assessment would be made for such an improvement in the case of platted property, but the city shall make the assessment at the time the assessment against other property is made, apportioning the assessment against the unplatted property on the basis of area or other equitable method. When a trunk sewer or water main is constructed and is to serve also as a lateral sewer or water main for abutting property, the abutting property shall be assessed for the cost of a lateral sewer of eight inches or water main of six inches plus its proportionate share of the cost of the excess capacity. Other property benefited by the trunk sewer or water main but unable to utilize it until a lateral connected to the trunk sewer or water main has been built to serve the property shall not be assessed for its share of the cost of the trunk sewer or water main until the lateral is built. The assessment for the lateral shall then include the property's share of the trunk sewer or water main. The cost of the trunk sewer or water main in excess of the lateral assessment shall be assessed on the basis of area against all properties benefited. The cost of a lift station shall be assessed on the basis of area against that property actually benefited by the lift station.

Subd. 2. Arterial Street Surfacing. When an arterial street is paved with concrete, bituminous mat, or other permanent surface, the cost of the payment on a 32-foot roadway shall be assessed against the benefited property on the basis of frontage on the abutting street. When the standards for such paving are higher than those the city would use for a residential street, the cost to be assessed shall be based on the cost of paving residential street of the same width. The rest of the cost shall be paid from general funds.

Subd. 3. Storm Sewers. The cost of constructing storm sewers shall be assessed

against the property in the area served by the sewer on the basis of the square footage of the property, or such other basis as the council shall determine to be equitable. The area to be assessed shall be determined on the basis of topographic maps and other pertinent data.

303.05

### **ASSESSMENT RULES FOR CLASS C IMPROVEMENTS**

Subd. 1. Sidewalks. The cost of the construction of sidewalks shall be assessed on the basis of frontage against property abutting the side of the street on which the sidewalk is located, or on such other basis as the council shall determine to be equitable.

Subd. 2. Water and Sewer. The cost of lateral water mains not exceeding six inches in diameter and of lateral sanitary sewer mains not exceeding eight inches in diameter shall be assessed against abutting property on the basis of frontage. The cost of water mains to be assessed includes the service lines if furnished, hydrants, and valves. The cost of sewer mains includes lines, if furnished.

Subd. 3. Streets. The cost of construction of curbs and gutters on any street, or of applying permanent surfaces to residential streets shall be assessed on the basis of frontage.

Subd. 4. Nuisances. The cost of abating nuisances and draining of swamps, marshes, and ponds on public or private property and filling the same shall be assessed in a manner determined by the council in each case to measure most equitably the benefit received by property to be assessed. The assessment in any such case may be made against non-abutting property to the extent the property is benefited by the improvement.

303.06

### **SPECIAL RULES**

Subd. 1. Corner Lots. In any assessment made on the basis of frontage, except one for water or sanitary sewer, corner lots shall be assessed for footage along the front of the lot plus one-third of the side footage; the other two-thirds of the side footage shall be spread among all other assessed properties. In the case of an assessment for a lateral water or sewer main, Class C, corner lots shall be assessed for the footage along the front side of the lot and for the footage along the side of the lot if the lot is large enough to accommodate another building, which would be benefited by construction of the second main.

Subd. 2. Intersections. The cost of improvements in street intersections shall be included as part of the total assessable cost.

Subd. 3. Adjusted frontage. When the amount of an assessment is determined by frontage, an equivalent front footage shall be determined according to the following rules when an irregular lot requires such an adjustment to maintain fairness in the assessment:

- a. Front footage shall be measured at setback on cul-de-sacs and sharply curved streets and irregularly shaped lots.
- b. Equivalent front footage shall be determined by dividing the square footage of the lot by the general lot depth of the subdivision for pie-shaped lots and irregular shaped lots where other rules do not apply.
- c. Where frontage curves so greatly as to give a general appearance of a corner, the lot shall be considered a corner lot and equivalent front footage, as well as side footage where required, determined on the basis of an irregularly shaped lot.
- d. Where a lot consists of a combination of rectangular and pie-shaped or irregular portions, the equivalent front footage shall be determined as the sum of the straight front footage plus the remainder in accordance with applicable rules.

303.07

#### **FEDERAL, STATE AND COUNTY AID USE**

If the city receives financial assistance from the federal government, the state, or the county to defray a portion of the cost of a street improvement project, such aid shall be used first to reduce the share of the project cost which would be met from general city funds according to the assessment formula contained in this ordinance. If such aid is more than the amount of the improvement cost to be borne by the city, the remainder shall be used to reduce each individual assessment proportionately.

303.08

#### **BRANCH SERVICE LINES**

Water and sewer lines shall be installed from the main to the front property line of property to be served before any permanent street surfacing is constructed in the street. If any property owner fails to put in such water and sewer service lines within 30 days after notice from the clerk, the city council shall proceed to have water and sewer service installed and to assess the cost against the property.

303.09

#### **PARTIAL PREPAYMENT**

After the adoption by the city council of the assessment roll in any local improvement proceeding, the owner of any property specially assessed in the proceeding may, prior to the certification of the assessment or the first installment to the county auditor, pay to the city treasurer any portion of the assessment not less than \$500. The remaining unpaid balance shall be spread over the period of time established by the council for installment payment of the assessment.

303.10

### **CERTIFICATION OF ASSESSMENTS**

After the adoption of any special assessment by the council, the clerk shall transmit a certified duplicate of the assessment roll with each installment, including interest, set forth separately to the county auditor to be extended on the proper tax lists of the county.

303.11

### **PERMANENT IMPROVEMENT REVOLVING FUND**

Subd. 1. Establishment. There is hereby established a permanent improvement revolving fund of the city to be held and administered by the treasurer, separate and apart from all other funds of the city, for the purpose of financing local improvements.

Subd. 2. Source of Funds. The fund shall be a permanent fund of the city and the monies necessary for its maintenance shall be provided by taxation, by the appropriation of available monies from other funds of the city, and/or by the issuance and sale of permanent improvement revolving fund bonds of the city as deemed necessary from time to time by the council.

Subd. 3. Disposition of Funds. Monies in the fund shall be used only as directed by resolution of the council for the purpose of advancing to local improvement funds the cost of improvements for which assessments are to be levied. All such monies so advanced to an improvement fund shall be restored as soon as sufficient monies are received in the improvement fund.

Subd. 4. Investment. Whenever there are monies in the fund not immediately needed for local improvements, such monies shall be invested by the treasurer under the direction of the council in any securities authorized for investment of municipal sinking funds by law.

Subd. 5. Transfer of Surplus. When the fund accumulates encumbered monies in excess of any amounts reasonably anticipated to be needed for local improvement fund advances, the council may, by resolution adopted by a four-fifths vote, declare any part of such excess to be surplus and transfer it to the general fund.