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SECTION 600.00 STREET EXCAVATION

- 600.01 Permit Required
- 600.02 Application and Regulations.
- 600.03 Certificate of Insurance and/or Performance Bond.
- 600.04 General Regulations for Excavations.
- 600.05 Refilling Excavations.

600.01 PERMIT REQUIRED.

No person, except an authorized City employee or a contractor performing work under a contract with the City, shall make any excavation in a street, alley, sidewalk, or public ground without first having secured a permit from the City Administrator. The fee for such the permit shall be set by Council resolution together with a certification of insurance for each location covered by the permit. A deposit shall be required for an excavation made pursuant to a permit for sewer or water construction. The amount of the deposit shall be set by Council resolution and refunded upon approval of the work by the Public Works Superintendent. If work is not satisfactorily completed within ten (10) days, the deposit shall be used for the improvements.

600.02 APPLICATION AND REGULATIONS.

The City Administrator shall prepare the necessary application forms and permits required under Section 600.01. The City Administrator shall also prepare such rules and regulations with respect to excavations as he or she finds necessary to protect the public from injury, prevent damage to public or private property, and minimize interference with the public use of streets, alleys, sidewalks, and public grounds. Any person making an excavation covered by this Section shall comply with such the rules and regulations of this Section.

600.03 CERTIFICATE OF INSURANCE AND/OR PERFORMANCE BOND.

Any person or contractor who makes any excavation in a street, alley, sidewalk or public ground shall furnish proof that the person or contractor has in existence an insurance policy protecting him or her from liability to the public, including the City, and shall provide proof of liability limits no less than \$500,000 single limit liability and an umbrella insurance policy no less than one million dollars. The City shall be named as an additionally insured party in an amount equal to the maximum claim the City might be required to pay under Minnesota Statutes, Chapter 466. The City shall require at least ten (10) days notice of cancellation of insurance policy. A performance bond for the amount of the contract shall be required, if the amount of the contract exceeds \$10,000. The person or contractor shall:

- A. Perform work in connection with the excavation in accordance with applicable ordinances and regulations;
- B. Defend, indemnify, and hold the City harmless from all damage caused in the execution of the work; and

C. Pay all costs and damages suffered by the City by reason of the failure of the person or contractor to observe the terms of applicable ordinances and regulations or because of negligence in the execution of the work.

The bond shall be approved as to form and legality by the City Attorney.

#### 600.04 GENERAL REGULATIONS FOR EXCAVATIONS.

Street openings shall be made in a manner that will cause the least inconvenience to the public. Provision shall be made for the passage of water along the gutters, and at least one half of the traveled portion of the street shall be left open and in good condition for the safe passage of vehicles. Open excavations shall be guarded with substantial barriers and marked with red flags and at night with red lights or flashing devices. Pipes or mains exposed to freezing temperatures shall be protected so as to prevent freezing. Any person responsible for exposing a City main or pipe so that it might be damaged by freezing shall be liable to the City for all damages caused by the freezing and all damages sustained by others by the freezing for which the City may be liable. No opening shall be made prior to contacting the Gopher State One Call system to determine if underground utilities are present and prior to approval by the Superintendent of Public Works.

#### 600.05 REFILLING EXCAVATIONS.

Every street excavation shall be refilled as soon as possible after the work is completed and paving, sidewalks and appurtenances shall be replaced in at least as good condition as before the excavation to the satisfaction of the Superintendent of Public Works. All dirt and debris shall be removed immediately. Any person who fails to comply with these requirements within 24 hours after notice from the City shall be liable to the City for the full cost incurred by the City in remedying the defect and restoring the street, sidewalk, alley or public ground to its proper condition. The cost shall be an obligation of the surety on the bond of the permittee. All backfill shall be suitable for use considering weather and other conditions and shall be approved by the City Engineer or the Superintendent of Public Works. Selected backfill material shall be used if required by the Superintendent of Public Works or the City Engineer.

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SECTION 601.00 ASSESSABLE CURRENT SERVICES.

- 601.01 Definitions
- 601.02 Snow, Ice, Dirt, and Rubbish.
- 601.03 Weed Elimination.
- 601.04 Public Health and Safety Hazards.
- 601.05 Obstructions, Fire, Dumping, Signs, and Other Structures.
- 601.06 Repair of Sidewalks and Alleys.
- 601.07 Street Maintenance, Tree Care.
- 601.08 Installation and Repair of Water Service Lines.
- 601.09 Control and Removal of Diseased or Unsound Trees.
- 601.10 Personal Liability.
- 601.11 Assessment.

601.01 DEFINITIONS.

The term "current service" as used in this Section shall mean 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 Minnesota Statutes, Section 463.15 to 463.261; 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-infested trees from the public streets or private property; and the operation of street lighting system.

601.02 SNOW, ICE, DIRT, AND RUBBISH.

Subd. 1. Duty of Owners and Occupants. The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep such the walk safe for pedestrians. No such owner or occupant shall allow snow, ice, dirt or rubbish to remain on the walk longer than twelve (12) hours after it deposits thereon.

Subd. 2. Removal by City. The Superintendent of Public Works may remove from all public sidewalks all snow, ice, dirt and rubbish as soon, as possible beginning 24 hours after any such matter has been deposited thereon or after the snow has ceased to fall. The Superintendent shall keep a record showing the cost of the removal adjacent to each separate lot and parcel and shall deliver the information to the City Administrator for assessment against the property following general assessment procedures as set by State law.

601.03 WEED ELIMINATION.

Subd. 1. Weeds As a Nuisance. Any weed 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 of Belle Plaine to a height greater than twelve (12) inches or which have has gone or about to go to seed shall be a nuisance. The owner and the occupant shall abate or prevent the nuisance on the property and on land outside the traveled portion of the street or alley abutting on the property.

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 Administrator 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 ten days after publication of the notice, the weeds shall be destroyed by the Superintendent of Public Works, or his/her designee, at the expense of the owner and that if not paid, the charge for the work shall be made a special assessment against the property concerned. Whenever an owner and occupant shall permit a weed nuisance to exist in violation of Subdivision 1, the Superintendent of Public Works or other designated official shall serve notice upon the owner of the property if he or she resides in the municipality and can be found, or upon the occupant in other cases, by registered or certified mail or by personal service, ordering the owner or occupant to have the weeds cut and removed within ten days after receipt of the notice and also stating that in case of non-compliance such the work will be done by the Superintendent of Public Works or other designated official at the expense of the owner. If unpaid, the charge for the work will be made a special assessment upon the property concerned. When no owner, occupant, or agent of the owner or occupant can be found, the provisions of notice shall not apply.

Subd. 3. Removal by City. If the owner or occupant of any property in the City fails to comply with the notice within ten days after its publication, or within ten days after personal service or service by registered or certified mail, or if no owner, occupant or agent of the owner or occupant can be found, the Superintendent of Public Works or other designated official shall cut and remove the weeds. The Superintendent of Public Works shall keep a record showing the cost of the work attributable to each separate lot and parcel and shall deliver the information to the City Administrator. The cost shall include administrative costs incurred by the Superintendent of Public Works and by the City Administrator's Office. The cost shall be billed to the property owner and, if not paid within thirty (30) days, filed with the County as an assessment against the property.

#### 601.04 PUBLIC HEALTH AND SAFETY HAZARDS.

When the City removes or eliminates public health or safety hazards from private property under City ordinance, the Superintendent of Public Works shall keep a record of the costs of the removal or elimination against each parcel of property affected and annually deliver the information to the City Administrator. This Section does not apply to hazardous buildings under the hazardous building law, Minnesota Statutes, Sections 463.15 to 463.261.

#### 601.05 OBSTRUCTIONS, FIRE, DUMPING, SIGNS, AND OTHER STRUCTURES.

Subd. 1. Obstructions. It shall be unlawful for any person to place, deposit, display or offer for sale, any fence, goods or other obstructions upon, over, across or under any street or other public property without first having obtained a written permit from the Council and then only in compliance with the terms and conditions of such the permit, and taking precautionary measures for the protection of the public. An electrical cord or device of any kind is hereby included, but not by way of limitation, within the definition of any obstruction. The City shall require the applicant to present proof of insurance for their property and execute a hold harmless agreement.

Subd. 2. Fire. It shall be unlawful for any person to build or maintain a fire upon a roadway.

Subd. 3. **Dumping in Streets.** It shall be unlawful for any person to throw or deposit in any street or any other public place including, but not limited to, nails, dirt, glass, tin cans, metal scraps, garbage, leaves, grass or tree limbs, shreds or rubbish, or to empty any water containing salt or other injurious chemicals thereon; the affect of this Subdivision shall extend but not by way of limitation, to depositing grease, oil and other fuel or lubricants in such places, and to place motor vehicle with the central parts (as defined in Minnesota Statutes) removed, except such vehicles as are temporarily disabled for a period not in excess of 12 hours. It shall be unlawful for any person, not acting under a specific contract with the City, to remove snow from public property or alleys and place the snow on a public street in such quantity or in such manner, as to cause a hazard to travel, without adequate arrangements for the immediate removal thereof; and it shall also be unlawful for any person not acting under contract with the City to dump snow on other City property.

Subd. 4. **Signs and Other Structures.** It shall be unlawful for any person to place or maintain a sign or other structure in the traveled or untraveled portion of any street or other public property without first having obtained a written permit from the City.

Subd. 5. **Continuing Violations.** Each day that any person continues in violation of this Subsection shall be a separate offense and punishable as such.

#### 601.06 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. Repairs shall be made in accordance with the standard specifications approved by the Council and on file in the office of the City Administrator.

Subd. 2. **Inspections; Notice.** The Superintendent of Public Works or other designated official 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 the Superintendent of Public Works finds that any sidewalk or alley abutting on private property is unsafe and in need of repairs, he or she shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property and the occupant if the owner does not reside within the City or cannot be found therein ordering the owner to have the sidewalk or alley repaired and made safe within ten (10) days and stating that if the owner fails to do so, the Superintendent of Public Works or other designated official shall do so on behalf of the City, that the expense thereof must be paid by the owner, and that if unpaid it shall be made a special assessment against the property concerned.

Subd. 3. **Repair by City.** If the sidewalk or alley is not repaired within ten days after receipt of the notice, the Superintendent of Public Works or other designated official shall report the facts to the Council and the Council shall by resolution order the Superintendent of Public Works or other designated official to repair the sidewalk or alley and make it safe or order the work done by contract in accordance with law. The Superintendent of Public Works shall keep a record of the total cost of the repair attributable for each lot or parcel of property and report the information to the City Administrator who shall cause the expense to be assessed against the property.

#### 601.07 STREET MAINTENANCE AND TREE CARE.

Subd. 1. Proposed Projects. Upon recommendation by the Public Works Superintendent, the Council shall each year determine by resolution what streets and alleys shall be oiled, seal coated, overlaid, patched or other required maintenance. The Council shall determine by resolution from time to time the streets on which trees shall be trimmed and cared for and the kind of work to be done. Before any work is done pursuant to either of these resolutions, the City Administrator shall, under the Council's direction, publish notice that the Council will meet to consider the projects. The notice shall be published in the official newspaper, at least once no less than two weeks prior to such the meeting of the Council and shall state the date, time, and place of the meeting, the streets affected and the particular projects proposed, and the estimated cost of each project, either in total or on the basis of the proposed assessment per front foot or otherwise. However, such the notice shall not be required if the Council determines that no assessment under this part shall be levied.

Subd. 2. Hearing; Order. At the hearing, or at any adjournment thereof, the Council shall hear property owners with reference to the scope and desirability of the proposed projects. The Council shall thereupon adopt a resolution confirming the original projects with the modifications which it considers desirable and shall provide for the doing of the work by day labor through the Superintendent of Public Works or other designated official or by contract.

The Superintendent of Public Works shall keep a record of costs and the portion of the cost properly attributable to each lot and parcel of property abutting on the street or alley on which the work is done and shall report the information to the City Administrator.

#### 601.08 INSTALLATION AND REPAIR OF WATER SERVICE LINES.

Whenever the City installs or repairs water service lines serving private property under Chapter 7 of this Code, the Superintendent of Public Works or other designated official shall keep a record of the total cost of the installation or repair against the property and deliver the information to the City Administrator annually by August 15 as to each parcel of property on which the cost has not been paid.

#### 601.09 CONTROL AND REMOVAL OF DISEASED OR UNSOUND TREES.

Subd. 1. Diseased or Unsound Trees as a Nuisance. Any diseased or unsound trees as defined by law or not, growing, standing, or stored upon any lot or parcel of land in the City shall be deemed a nuisance. The owner and occupant shall abate or prevent such a nuisance on the property in the manner prescribed in this Section.

Subd. 2. Inspections; Notice. The Superintendent of Public Works or other designated official shall make such inspections as shall be necessary to determine that trees within the City are healthy, free of disease, and not infestation sites for insects or organisms capable of infecting healthy and sound trees. If the Superintendent finds that any trees diseased or unsound, or that storage of wood presents a danger of infestation, the Superintendent shall cause a notice to be served by registered or certified mail, or by personal service, upon the record owner of the property and the occupant ordering the abatement of the nuisance within ten (10) days. If the owner does not reside within the City or cannot be found therein ordering the owner to abate the nuisance within ten days and stating if the owner fails to do so, the Superintendent of Public

Works or other designated official do so on behalf of the City, that the expense thereof shall be paid by the owner, and that if unpaid, it shall be made a special assessment against the property concerned.

Subd. 3. Abatement. In abating the nuisance defined in this Section, the Superintendent of Public Works or other designated official or owner of the property on which the nuisance exists, shall cause the infected, diseased or unsound tree or wood to be sprayed, removed, burned or otherwise effectively treated so as to cause the removal of the nuisance and stop the spread of any disease or further infestation by insects or organisms capable of spreading the disease. Any such abatement procedures performed by the owner of the property shall be carried out under the direction and supervision of the Superintendent of Public Works.

Subd. 4. Entry on Private Premises. The Superintendent of Public Works or other designated official may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him or her under this Section.

Subd. 5. Spraying of and Healthy Trees. Whenever the Superintendent of Public Works or other designated official determines that any tree or wood pile within the City is infected with any disease which may reasonably be expected to spread to healthy trees, the Superintendent may spray or treat all trees in the vicinity which may be infected, with an effective chemical designed to control or limit the spread of the disease. Activities authorized by this Subsection shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commissioner of Agriculture, or his or her agents, whenever possible. The notice provisions as set forth in Subsection 2 shall apply to this Subsection.

Subd. 6. Transporting Diseased Trees or Wood. It shall be unlawful for any person to transport disease-bearing wood without having obtained a permit from the Superintendent of Public Works, unless the disease-bearing wood is being transported directly to a sanitary landfill or other lawful place of disposition. The Superintendent of Public Works shall grant the permits only when the purposes of this Section will be served thereby.

Subd. 7. Interference Prohibited. It shall be unlawful for any person to prevent, delay or interfere with the Superintendent of Public Works or other designated official while they are engaged in the performance of duties imposed by this Section.

Subd. 8. Costs. The Superintendent of Public Works shall keep a record of the costs and the portion of the costs properly attributable to each lot and parcel of property abutting on the street or alley on which the work is done and shall report such the information to the City Administrator shall cause the expense to be assessed against the property.

601.10 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 the service. As soon as the service has been completed and the cost determined, the City Administrator, 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 Administrator.

601.11 ASSESSMENT.

On or before November 30 of each year, the City Administrator shall list the total unpaid charges for each type of current service against each separate lot or parcel to which they are attributable under this Chapter. The Council may then spread the charges against property benefited as a special assessment under Minnesota Statutes, Section 429.101 and other pertinent statutes for certification to the County Auditor and collection alone, with the current taxes the following year or in annual installments, not exceeding ten, as the Council may determine in each case.

SECTION 602.00 SPECIAL ASSESSMENT AND TRUNK AREA POLICIES AND  
PROCEDURES FOR PUBLIC IMPROVEMENTS AND  
MAINTENANCE COSTS.

602.01 General Policy Statement.

602.02 Intent.

602.03 Prepayment.

602.01 GENERAL POLICY STATEMENT. The City Council may, by resolution, adopt from time to time, amend, or repeal policies and procedures related to assessment for certain public improvements. The policy shall be known as “Special Assessment and Trunk Area Policies and Procedures for Public Improvements and Maintenance Costs.”

602.02 INTENT. It is the intent of the City Council to set forth policies for assessment of local improvements within the City. No such policy, however, can be all encompassing and recognize every conceivable situation. The Council, may, therefore, with respect to any particular public improvement project vary such policies to obtain a just and equitable result. The policies are meant to be guides only.

602.03 PREPAYMENT. As provided in Minnesota Statutes, Section 429.061, subd. 3, the City Council hereby authorizes the partial prepayment of assessments prior to certification of the assessment, or the first installment thereof, to the County Auditor, in the manner provided in the City’s assessment policies.

SECTION 603.00 RAILROAD CROSSINGS

- 603.01 Streets Intersected by Railroads.
- 603.02 Railroad Grades.

603.01 STREETS INTERSECTED BY RAILROADS.

At all intersections of streets and railroads, the owner of the railroad shall be responsible for planking or otherwise surfacing the space between tracks of the railroad in such a way as to place it on the same grade or level as the abutting grade or level of the street and to the full width of the street.

603.02 RAILROAD GRADES.

No railroad grades shall, whether it be by raising or lowering the same, be changed without a permit in writing from the City Administrator

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SECTION 604.00 REIMBURSEMENT OF LOCAL IMPROVEMENT COSTS FOR  
VACATED STREETS, ALLEYS AND PUBLIC AREAS.

- 604.01 Reimbursement.
- 604.02 Time Limitation.
- 604.03 Costs.
- 604.04 Notice.
- 604.05 Consent and Approval.
- 604.06 Payment.
- 604.07 Violations.

604.01 REIMBURSEMENT.

The City shall be allowed reimbursement for the cost of local improvements made to streets, alleys and public areas which may be vacated by Council action upon the request of any adjoining property owner, provided, however, that consent of all affected property owners shall be required before a petition for vacation may be submitted.

604.02 TIME LIMITATION.

This Section shall apply only to the cost of all local improvements levied at any time prior to the date of vacation in which a portion of the local improvement project was assessable under Chapter 429 of Minnesota Statutes.

604.03 COSTS.

The cost to be reimbursed to the City shall be determined by the Council prior to the vacation of any street, alley or public area and shall be related to the benefit received by the property because of the local improvement and the cost of similar improvements at the time of vacation.

604.04 NOTICE.

Whenever vacation of public areas involves reimbursement of the cost of local improvements pursuant to this Section, the City shall give written notice by certified mail to all owners who may be affected by such the vacation. The notice shall state the amount of the reimbursement and shall provide for a public hearing prior to, or simultaneously with, the public hearing for vacation of the street, alley or public area. The notice shall be given not less than ten days before the hearing.

604.05 CONSENT AND APPROVAL.

Not less than five days before the public hearing required under Section 604.04 above, the property owner requesting the vacation shall provide the City Administrator with a verified statement of consent executed by all affected property owners. This consent shall be on a form authorized by the Council and shall set for the following:

- A. Name and address of fee owner of property.
- B. Legal description of affected property.
- C. Amount of reimbursement of local improvement cost.
- D. Agreement by affected property owner to pay the amount of reimbursement together with consent for the county auditor to add this amount to the property taxes for the affected parcel.
- E. Verified signature of fee owner and spouse, if any.

604.06 PAYMENT.

The Council shall determine the method and schedule for payment of any reimbursement amount.

604.07 VIOLATIONS.

It shall be a misdemeanor for any person to violate any of the provisions of this Chapter.

**SECTION 605.00 RIGHT-OF WAY REGULATION**

- 605.01 Purpose and Intent.
- 605.02 Definitions.
- 605.03 Registration requirements.
- 605.04 Permit requirements.
- 605.05 Permit applications.
- 605.06 Permit fees.
- 605.07 Restoration of Right-of-Way.
- 605.08 Emergency Situations.
- 605.09 Revocation of Permits.
- 605.10 Indemnification and Liability.
- 605.11 Appeal.

**605.01 PURPOSE AND INTENT.**

In order to provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and 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.

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. This Section shall not be construed to supercede rules or regulations of other governmental entities controlling rights-of-way within the City.

**605.02 DEFINITIONS..**

The following definitions apply in Section of the City Code. The following words, terms and phrases, as used herein, shall have the following meanings:

**ABANDONED FACILITY** – “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 deemed so by the owner of the facility.

**APPLICANT** – “Applicant” means any public right-of-way user required to obtain a permit under this Section.

**CITY** – “City” means the City of Belle Plaine, Minnesota.

**CITY MANAGEMENT COSTS** – “City Management Costs” means the actual costs incurred by the City for public rights-of-way management, including, but not limited to, costs incurred in connection with the registration process, the permit process, the inspection of project work and restoration and enforcement and correction of non-complying project work, mapping of public right-of-way users and maintenance and regulation of public rights-of-way occupied by public right-of-way users.

**CONSTRUCTION PERFORMANCE BOND** – “Construction Performance Bond” means any of the following forms of security provided at the permittee's option:

- a. Cash deposit;
- b. Individual project bond;
- c. Letter of Credit, in a form acceptable to the City; or
- d. 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** – “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** – “Degradation Cost” subject to Minnesota Rules 7819.1100 means the cost to achieve the level of restoration as determine 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** – “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** – “Department” means the Public Works Department of the City.

**EMERGENCY** – “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** – “Equipment” means any tangible asset used to install, repair or maintain facilities in any right-of-way.

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

**EXCAVATION PERMIT** – “Excavation Permit” means the permit which, pursuant to this Section, must be obtained before a person may excavate in a public right-of-way, as specifically described in the permit.

**FACILITY OR FACILITIES** – “Facility or Facilities” means tangible asset in the public right-of-way required to provide utility service.

**HOLE** – “Hole” means an excavation having a length that is equal to, or less than, the width of the public right-of-way.

**LOCAL REPRESENTATIVE** – “Local Representative” means a person or designee of such person authorized by a public right-of-way user to accept service and to act and make decisions regarding matters within the scope of this Section on behalf of the public right-of-way user.

**OBSTRUCT** – “Obstruct” means 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.

**OBSTRUCTION PERMIT** – “Obstruction Permit” means a permit which is issued by the City authorizing the permittee to obstruct a public right-of-way as specifically described in the permit.

**PATCH OR PATCHING** – “Patch” or “Patching” means a method of pavement replacement or restoration that consists of; (1) the compaction of sub-base and aggregate base; (2) the replacement, in kind, of the existing roadway surface for a minimum of two (2) feet beyond the edges of the excavation in all directions.

**PAVEMENT** – “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** – “Permit” means “right-of-way permit”, per Minnesota Statutes, Section 237.162.

**PERMITTEE** – “Permittee” means any person to whom an excavation or obstruction permit has been issued by the City under this Section.

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

**PUBLIC RIGHT-OF-WAY** – “Public Right-of-Way” means the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, trail, avenue, boulevard, drive, court, park, parkway, easement, or similar property or waters within the City owned by or under control of the City, or dedicated or otherwise conveyed to the City for general public use, including, but not limited to, any riparian right which, consistent with

the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining utility service facilities. No reference herein to a “public right-of-way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining utility service facilities.

**PUBLIC RIGHT-OF-WAY USER** – “Public Right-of-Way User” means any person or entity which owns or controls a utility service that is located, or intended to be located, in a public right-of-way including persons who have installation and maintenance responsibilities by contract, lease, sublease or assignment.

**RESTORE OR RESTORATION** – “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.

**RIGHT-OF-WAY PERMIT** – “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Section.

**SERVICE OR UTILITY SERVICE-** “Service” or “Utility Service” means services provided by: (1) a public utility as defined in Minnesota Statutes; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services; (3) a corporation organized for the purposes set forth in Minnesota Statutes; (4) a district heating or cooling system; or (5) a cable communication system as defined in Minnesota Statutes.

**SUPERINTENDENT** – “Superintendent” means Public Works Superintendent, or his or her designee.

**TRENCH** – “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.

#### 605.03 REGISTRATION REQUIREMENTS.

Any public right-of-way user, which owns or controls a utility service within any public right-of-way, or any portion thereof, shall register with the City. Registration shall be deemed completed upon the public right-of-way user submitting to the City a completed registration form, furnished by the City, and payment of the registration fee, as set by the City Council.

Whenever any public right-of-way user transfers, sell, assigns or otherwise conveys ownership or interest in facilities or equipment to another person, the registered public right-of-way user shall notify the City of the date of conveyance and the name of the transferee within thirty (30) days of the conveyance.

#### 605.04 PERMIT REQUIREMENTS.

Except as otherwise provided in the City Code, no person or public right-of-way user may obstruct or excavate any public right-of-way without first having obtained the appropriate permit from the City, unless another reporting process is approved by the Superintendent.

An excavation permit is required for any excavation, unless otherwise noted in this Section. An obstruction permit is required for any obstruction in connection with the installation, relocation, operation or maintenance of a utility service. An obstruction permit is not required if a person or right-of-way user already possesses a valid excavation permit for the same project.

#### 605.05 PERMIT APPLICATIONS.

An application for a permit shall be on a form furnished by the City and submitted to the City with payment of the permit fee, as set by City Council. 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.

No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless; (1) such person makes a supplementary application for another permit before the expiration of the initial permit, and (2) a new permit or permit extension is granted.

The Superintendent may approve a permit which, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that are less than eight (8) hours in duration may be included in this permit.

The City may deny a permit for the following reasons:

- a. The applicant failed to fully comply with the application requirements herein.
- b. The City has initiated revocation of a prior permit by the applicant issued under this Section.
- c. The applicant has violated any requirements of this Section within the past two (2) years.
- d. The time schedule for the project will conflict or interfere with a community exhibition, celebration, festival or any other similar community event in the area of the project.
- e. The time schedule for the project conflicts with scheduled public improvement of the public right-of-way.
- f. The proposed project violates a provision of this Code.
- g. The proposed project is adverse to the public health, safety and welfare, by interfering with the safety and convenience of ordinary travel over the public right-of-way, or endangers the public right-of-way and its users.

The City may impose 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.

#### 605.06 PERMIT FEES.

The City Council shall annually set the permit fee required. 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. The excavation permit fee shall also include an amount sufficient to recover degradation costs, if applicable.

No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. Permit fees that were paid for a permit that the City has revoked are not refundable.

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.

#### 605.07 RESTORATION OF RIGHT-OF-WAY.

All project work under a permit shall be completed within the dates specified in the permit, unless the project work could not be completed due to circumstances beyond the permittee's control, including seasonal weather prohibitions or inclement weather.

The permittee shall restore the public right-of-way and assume all costs therefore, unless otherwise agreed upon. The right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate base material in excavation. The City, at its option, may choose to perform its own restoration, including any paving. If the City performs the restoration pursuant to this Section, the permittee shall reimburse to the City all costs thereof, within thirty (30) days of billing. If following such restoration, the roadway surface, boulevard, sidewalk,

curb or related infrastructure settles due to the permittee's improper back-filling; the permittee shall, at the City's option, either correct the defect or pay the City all costs associated with correcting the defective work. If the permittee restores the public right-of-way, the City may require, and the permittee shall provide at the time of application, a City specified type of security, to cover the cost of repair and restoration. If, within twenty-four (24) months after completion of restoration of the right-of-way, the posted security will be released.

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. The permittee shall guarantee the restoration of the public right-of-way for twenty-four (24) months following its completion and twelve (12) months for turf establishment. During the guarantee period, the permittee shall, upon written notification from the City, correct all non-complying restoration work, using the method required by the City. The correction work shall be completed within ten (10) business days of the receipt of notice from the City, unless a longer period of time is required due to unseasonable or inclement weather.

#### 605.08 EMERGENCY SITUATIONS.

In an emergency situation, work may be done without a permit, if approved by the Director. All persons with facilities in the public right-of-way shall include the City in its list of those to be notified immediately of any event regarding its utility services that may be considered as an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after that occurrence of the emergency, the registrant shall apply for the necessary permits, pay the required fees and fulfill the rest of the requirements necessary to be in compliance with this Section. These permitting requirements shall not apply if the repair is made within the hole of the permitted excavator.

If the City becomes aware of an emergency regarding utility services, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. 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.

#### 605.09 REVOCATION OF PERMITS.

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:

- a. The violation of any material provision of the right-of-way permit;
- b. 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;
- c. Any material misrepresentation of fact in the application for a right-of-way permit;
- d. 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;
- e. The failure to correct, in a timely manner, work that does not conform with the conditions imposed by this Section.

If the City determines that the permittee has committed a substantial breach of a term or condition of the permit, the City shall make a written demand upon 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.

Within a timeframe established by the Director, following the permittee's receipt of notification of the breach, the 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 a permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

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 attorney fees incurred in connection with such revocation.

#### 605.10 INDEMNIFICATION AND LIABILITY.

Upon the issuance of a public right-of-way permit, the City does not assume the liability; (1) for persons, damage to property or loss of service claims by parties other than the registrant or the City, or (2) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or utility services by the registrants or permittees or activities of registrants or permittees.

A registrant or permittee shall indemnify, keep and hold the City, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, whether or not any act or omission complaint is authorized, allowed or prohibited by a public right-of-way permit.

#### 605.11 APPEAL.

A public right-of-way user who; (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation or fee imposition reviewed by the City Council upon written request. The City Council shall act on a written request at its next regularly scheduled meeting. The decision by the City Council shall be in writing and supported by written findings establishing the reasonableness of the decision.

*(Ord 04-15, Section 605, Adopted December 20, 2004.)*