

## Claremont City Code – Chapter Eight

### Chapter 8: Streets and Sidewalks Generally

(this chapter contains provisions as to definitions, application and scope relating to chapters 9 and 10 as well as this chapter)

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## CHAPTER 8

### STREETS AND SIDEWALKS GENERALLY

(THIS CHAPTER CONTAINS PROVISIONS AS TO DEFINITIONS, APPLICATION AND SCOPE RELATING TO CHAPTERS 9 AND 10 AS WELL AS THIS CHAPTER)

#### SEC.8.01. DEFINITIONS.

Except as otherwise defined in the City Code, or where the context clearly indicates a contrary intent, the words and terms defined in Minnesota statutes, Chapter 169, shall be applicable to City Code, Chapters 8, 9, and 10.

#### SEC. 8.02. APPLICATION.

The provisions of city Code, Chapters 8, 9 and 10, are applicable to the drivers of all vehicles and animals upon streets, including, but not limited to, those owned or operated by the United states, the state of Minnesota, or any county, town, city, district, or other political subdivision.

#### SEC. 8.03. SCOPE AND ORDERS OF OFFICERS.

**Subd. 1. Scope.** The provisions of Chapters 8, 9 and 10, relate exclusively to the streets, alleys and private roads in the City, and the operation and parking of vehicles refer exclusively to the operation and parking of vehicles upon such streets, alleys and private roads.

**Subd. 2. Orders of an Officer.** It is a misdemeanor for any person to willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control or regulate traffic.

#### SEC. 8.04. TRAFFIC AND PARKING CONTROL.

**Subd. 1. Council Action.** No device, sign or signal shall be erected or maintained for traffic or parking control unless the Council shall first have approved and directed the same, except as otherwise provided in this section; provided, that when traffic and parking control is marked or sign-posted, such marking or sign-posting shall attest to Council action thereon.

**Subd: 2. Temporary Restrictions.** The City may temporarily restrict traffic or parking for any private, public or experimental purpose.

**Subd. 3. Traffic Restrictions and Prohibitions.** It is a misdemeanor for any person to drive a vehicle contrary to lane restrictions or prohibitions painted on any street, or contrary to sign-posted, fenced, or barricaded restrictions or prohibitions.

**Subd. 4. Parking Restrictions and Prohibitions.** It is unlawful for any person to park a vehicle, except an emergency vehicle, contrary to lane restrictions or prohibitions painted on any curb, or contrary to sign-posted, fenced, or barricaded restrictions or prohibitions.

**Subd. 5. Damaging or Moving Markings.** It is a misdemeanor for any person to deface, mar, damage, move, remove, or in any way tamper with any structure, work, material, equipment, tools, sign, signal, barricade, fence, painting or appurtenance in any street unless such person has written permission from the city or is an agent, employee or contractor for the city, or other authority having jurisdiction over a particular street, and acting within the authority or scope of a contract with the city or such other authority.

#### **SEC. 8.05. ICE AND SNOW ON PUBLIC SIDEWALKS.**

**Subd. 1. Ice and Snow a Nuisance.** All snow and ice remaining upon public sidewalks is hereby declared to constitute a public nuisance and shall be abated by the owner or tenant of the abutting private property within twelve (12) hours after such snow or ice has ceased to be deposited.

**Subd. 2. City to Remove Snow and Ice.** The City may cause to be removed from all public sidewalks, beginning twenty- four (24) hours after snow or ice has ceased to fall, all snow or ice which may be discovered thereon, and it shall keep a record of the cost of such removal and the private property adjacent to which such accumulations were found and removed.

**Subd. 3. Cost of Removal to be Assessed.** The Clerk Administrator shall, upon direction of the Council, and on receipt of the information provided for in the preceding Subdivision, extend the cost of such removal of snow or ice as a special assessment against the lots or parcel of ground abutting on walks which were cleared, and such special assessments shall at the time of certifying taxes to the county Auditor be certified for collection as other special assessments are certified and collected.

**Subd. 4. Civil Suit for Cost of Removal.** The Clerk Administrator shall, in the alternative, upon direction of the Council, bring suit in a court of competent jurisdiction to recover from the persons owning land adjacent to which sidewalks were cleared, as provided in Subdivision 2 hereof, the cost of such clearing and the cost and disbursement of a civil action therefore.

**Subd. 5. Clerk Administrator to Report Sidewalks Cleared.** The Clerk Administrator shall present to the Council at its first meeting after snow or ice has been cleared from the sidewalks as provided in Subdivision 2 hereof the report of the city thereon, and shall request the Council to determine by resolution the manner of collection to be used as provided in Subdivisions 3 or 4 of this section.

#### **SEC. 8.06. RIGHT-OF-WAY MANAGEMENT.**

**Subd. 1. Findings and Purpose.** The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public

entities have invested substantial dollars in public funds to build and maintain the rights-of-way. The City also recognizes that placing other utility equipment in the right-of-way for the purpose of delivering services to citizens of the City is a public use of this property for the public good. Although such services are necessary or convenient for the citizens, other persons or entities receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases a necessary and proper use of right-of-way, the City must regulate and manage such uses.

To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

This Section imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this Section provides for recovery of the City's costs associated with managing its rights-of-way.

**Subd. 2. Definitions.** The following words, terms and phrases, as used herein, have the following meanings:

- A. **City Cost.** The actual cost incurred by the City for public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; mapping of "as built" locations of facilities located in rights-of-way; revoking right-of-way permits and performing all other tasks required by this Section, including other costs the City may incur in managing the provisions of this Section.
- B. **Clerk/Administrator.** An individual employed by the City whose responsibilities include the day to day carrying on and management of the City's functions.
- C. **Degradation.** The accelerated depreciation of the right-of-way caused by excavation 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 did not occur.
- D. **Degradation Cost.** Money paid to the City to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation.

- E. Emergency. A condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.
- F. Equipment. Any tangible thing or asset used to install, repair or maintain facilities in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.
- G. Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- H. Permit. A permit issued pursuant to this Section.
- I. Permit Holder. Any person to whom a permit to excavate or place equipment in a right-of-way has been granted by the City under this Section.
- J. Registrant. Any person who has or seeks to have its facilities or equipment located in any right-of-way.
- K. Restore or Restoration. The process by which the right-of-way and surrounding area, including pavement and foundation, is returned to the condition that existed before the commencement of the work.
- L. Restoration Cost. Money paid to the City by a permittee to cover the cost of restoration.
- M. Right-of-Way. The surface and space above and below a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements owned by the City for utility purposes.
- N. Service or Utility Service. Includes but is not limited to (1) those services provided by a public utility; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minnesota Statute § 300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minnesota Statute Chapter 238.
- O. Telecommunication Rights-of-Way User. A person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minnesota Statute Chapter 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.

**Subd. 3. Fees.** Permit fees shall be assessed for work governed by this Code in accordance with a resolution of the City Council.

**Subd. 4. Registration.**

- A. Annual Registration Required. No person shall construct, install, repair, remove, relocate or perform any work within the right-of-way without first being registered pursuant to this subsection. Such registration shall be made on an application form provided by the City and shall be accompanied by the registration fee provided by Council resolution. A service or utility service operating under a franchise with the City shall register pursuant to this subsection but need not provide the registration information required by subsection (B) of this subsection if such information has been submitted pursuant to the franchise agreement. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from payment of a registration fee.
- B. Registration Information. The registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:
  - 1. Registrant's name, address, telephone number, facsimile number and Gopher One-Call registration certificate number if required by State law.
  - 2. Name, address, telephone number, and facsimile number of the person responsible for fulfilling the obligations of the registrant.
  - 3. A Certificate of Insurance from a company licensed to do business in the State of Minnesota providing coverage in the following amounts.
    - a. GENERAL LIABILITY: Public Liability including premises, products and complete operations. Bodily Injury Liability \$1,000,000 each person, \$3,000,000 each occurrence; Property Damage Liability \$3,000,000 each occurrence; and Bodily Injury and Property and Damage Combined \$3,000,000 single limit.
    - b. COMPREHENSIVE: Automobile Liability Insurance, including owned, non-owned and hired vehicles. Bodily Injury Liability \$1,000,000 each person, \$3,000,000 each occurrence; Property Damage Liability \$3,000,000 each occurrence; and In lieu of (a) and (b) Bodily Injury and Property Damage Combined \$3,000,000 single limit.
  - 4. Such certificate shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of equipment or facilities in the right-of-way by the

registrant its officers, agents, employees and permittees, including but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property. Such certificate shall also indicate the registrant's insurance is the primary coverage, shall name the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages. Such certificate shall require that the City be notified 30 days prior to cancellation or nonrenewal of the policy.

5. 24 hour emergency number.
6. An acknowledgment by the registrant of the indemnification provisions of this Section.
7. Such other information the City may require.

C. Exceptions. The following are not subject to the requirements of this subsection.

1. Persons planting or maintaining boulevard plantings or gardens.
2. Persons erecting fences, installing driveways, sidewalks, curb and gutter, or parking lots.
3. Persons engaged in snow removal activities.
4. Federal, State, County, and City agencies.
5. Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this subsection.

D. Term. Registrations issued pursuant to this Section shall expire on December 1 of each calendar year.

**Subd. 5. Permit Required, Bond; Exceptions.** No person shall excavate, dig, tunnel, trench, or install any facilities, equipment or improvements above, on, or beneath the surface of any right-of-way in the City or any property owned by the City without first obtaining a permit pursuant to this subsection. It is a misdemeanor for any person, except a City employee acting within the course and scope of his employment or a contractor acting within the course and scope of a contract with the City, to excavate, dig, tunnel, trench, or install any facilities, equipment or improvements above, on, or beneath the surface of any right-of-way in the City or any property owned by the City without first having obtained a written permit from the City as provided herein.

A. Application; Fee. An application for a Permit shall be made on forms provided by the City and shall be accompanied by the fees set forth by Council resolution which

are established to reimburse the City for City costs. If the work is to be performed by an agent, contractor or subcontractor on behalf of a registrant, such application shall be signed by the registrant. The application shall include or be accompanied by the following:

1. The name and address of the applicant.
  2. The place, purpose, and size of the excavation.
  3. Scaled drawings showing the location of all facilities and improvements proposed by the applicant.
  4. A description of the methods that will be used for installation.
  5. A proposed schedule for all work.
  6. The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work.
  7. The location of any public streets, sidewalks or alleys that will be disrupted by the work.
  8. A description of methods for restoring any public improvements disrupted by the work.
  9. Any other information reasonably required by the City Engineer.
- B. Security. For companies not operating under a franchise with the City, a surety bond, letter of credit or cash deposit in the amount determined by the City Engineer or City Clerk/Administrator but not less than \$5,000, shall be required from each applicant. A surety bond shall be from a corporate surety authorized to do business in the State. Security required pursuant to this subsection shall be conditioned that the holder will perform the work in accordance with this Section and applicable regulations, will pay to the City any costs incurred by the City in performing work pursuant to this Section; and will indemnify and hold the City and its officers, agents and employees harmless against any and all claims, judgment or other costs arising from any excavation and other work covered by the permit or for which the City, Councilor any City officer may be liable by reason of any accident or injury to persons or property through the fault of the permit holder, either in improperly guarding the excavation or for any other injury resulting from the negligence of the permit holder. The bond, letter of credit or cash deposit shall be released by the City upon completion of the work and compliance with all conditions imposed by the permit. For permits allowing excavations within public streets, such bond, letter of credit or cash deposit shall be held for a period of 36 months to guaranty the adequacy of all restoration work.



- C. Permit Issuance; Conditions. The permit shall be kept on the site of the work while it is in progress, in the custody of the individual in charge of the work. The permit shall be exhibited upon request made by any City official or police officer. The City Engineer or City Clerk/ Administrator may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare, to ensue the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public. No permit shall be issued to anyone who has failed to register in accordance with Subdivision 4 of this Section.
- D. Exceptions. No permit shall be required for the following:
1. Landscaping work permitted by the City pursuant to site improvement agreements.
  2. Driveways, sidewalks, curb and gutter, and other facilities permitted by the City pursuant to site improvement agreements.
  3. Snow removal activities.

**Subd. 6. Diligence in Performing Work.** Work shall progress in an expeditious manner as reasonably permitted by weather conditions until completion in order to avoid unnecessary inconvenience to traffic. In the event that the work is not performed in accordance with applicable regulations pertaining to excavations and utility connections, or the work is not done in an expeditious manner, or shall cease or be abandoned without due cause, the City may, after 48 hour notice to the permit holder, correct the work and fill the excavation or repair the street. The entire cost of such work shall be paid by the permit holder upon demand made by the City. The financial guarantees made per Subdivision 5(B) of this Code may be used by the City to reimburse itself for the City's incurred costs including its private engineering consulting fees and reasonable attorney fees to complete the work under this Section.

**Subd. 7. Standards During Construction or Installation.** The permit holder shall comply with the following standards when engaging in the work:

- A. Take such precautions as are necessary to avoid creating unsanitary conditions. Observe and comply with all laws, rules and regulations of the State and City.
- B. Conduct the operations and perform the work in a manner as to ensure the least obstruction and interference to traffic.
- C. Take adequate precautions to ensure the safety of the general public and those who require access to abutting property.

- D. If required by the City Engineer, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to such adjoining properties.
- E. In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford it restricted use of the area and comply with MUTCD traffic safety signing requirements.
- F. Exercise precaution at all times for the protection of persons, including employees and property.
- G. Protect and identify excavations and work operations with barricade flags, and if required, by flagmen in the daytime, and by warning lights at night.
- H. Provide property trench protection as required by O.S.H.A. when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation.
- I. Protect the root growth of trees and shrubbery.
- J. Installation of pipe (utility conductors) under Portland Cement Concrete, asphalt concrete, or other high-type bituminous pavements shall be done by jacking, auguring or tunneling as directed by the Engineer unless otherwise authorized. HDPE sleeving shall be an acceptable casing or sleeving material for telecommunications installations.
- K. When removing pavement of Portland Cement Concrete, asphalt concrete or high-type built-up bituminous surfacing, the pavement shall be removed on each side of the trench or excavation a distance of nine inches beyond the trench width and length in order to provide a shoulder and solid foundation for the surface restoration.
- L. To obtain a straight edge and neat-appearing opening in pavement surfaces, the following procedure is required:
  - 1. Portland Cement Concrete Pavement - The surface shall be saw-cut to  $\frac{1}{2}$  thickness of the concrete, and the concrete broken out by sledge or pneumatic hammer chisel.
  - 2. Asphalt Concrete - The surface shall be cut full depth by pneumatic hammer chisel.
- M. Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability, and as directed by the City.

- N. Excavations, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage.
- O. All backfilling must be placed in six inch layers at optimum moisture and compacted with the objective of attaining 100 percent of AASHTO density. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate.
- P. Backfill material shall be Class 5, or better at the judgment of the City Engineer. Backfilling with the material from the excavation may be permitted provided such material is granular in nature and acceptable to the City Engineer.
- Q. Compacted backfill shall be brought to street grade and crowned at the center not more than one inch. Backfill procedures shall provide for no settlements. Settlements which occur within a 3-year warranty period shall be repaired in a timely manner at the Applicant's cost. The City may authorize another contractor to make the repair if it is not done in a timely manner. Reimbursement will be made to the City for all repair costs by the Applicant.
- R. Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.
- S. No lugs damaging to the roadway surfaces may be used.
- T. Dirt or debris must be periodically removed during construction.
- U. Other reasonable standards and requirements of the City Engineer.

**Subd. 8. Repair and Restoration.**

- A. Schedule. The work to be done under the permit, and the repair 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 extraordinary circumstances beyond the control of the permit holder, when work was prohibited as unseasonal or unreasonable or when extended by the City Engineer. In addition to repairing its own work, the permit holder must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the condition that existed before the commencement of the work but only to the extent the permit holder disturbed such surrounding areas.
- B. General Standards. The permit holder shall perform repairs and restoration according to the standards and with the materials specified by the City Engineer. The City Engineer shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the City Engineer shall be guided by the following standards and conditions:

1. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
  2. The traffic volume carried by the right-of-way, and the character of the neighborhood surrounding the right-of-way;
  3. The pre-excavation condition of the right-of-way, and the remaining life-expectancy of the right-of-way affected by the excavation;
  4. Whether the relative cost of the method of restoration to the permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and
  5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.
- C. City Restoration. The City may at its sole discretion restore the right-of-way. If the City chooses to perform the work, the permit holder shall pay the City for repairs made at the established restoration costs. Notwithstanding this section, the City shall have no obligation to perform the restoration. In the event the City chooses to perform the restoration, the City may require prepayment before performing the work.
1. In the event the City performs or contracts for the work, the City Clerk/Administrator shall keep an accurate account of all actual costs incurred, including the cost of investigation, and shall furnish to the permit holder an itemized statement thereof and claim additional payment from, or make refund to, the permit holder, as the case may be.
  2. In lieu of the above provisions relating to cost and cost adjustment for street openings, the City may charge on the basis of surface area removed, excavated cubic feet, or a combination thereof, on an established unit price uniformly charged.
- D. Guarantees. The permit holder shall guarantee its work and shall maintain it for thirty-six (36) months following its completion. During this thirty-six month period, it shall, upon notification from the City Engineer, promptly correct all restoration work to the extent necessary, using the method required by the Engineer.

**Subd. 9. Permit Limitations.** Permits issued pursuant to this Section are valid only for the area of the right-of-way specified in the application and the permit and only for the dates so specified. No work shall be extended beyond the permitted area or dates without a new permit being procured therefore, provided the City Engineer may extend the

completion date of the work in a manner not inconsistent with Subdivision 8(A) of this Section.

**Subd. 10. Denial of Permit.** The City Engineer may deny a permit due to any of the following:

- A. Failure to register pursuant to Subdivision 4 of this Code.
- B. A proposed excavation within a street or sidewalk surface that has been constructed within the preceding five years unless the City Engineer or City Clerk/ Administrator determines that no other locations are feasible or when necessitated by an emergency.
- C. The applicant was subject to revocation of a prior permit issued pursuant to this Section or performed work without applying for a required permit.
- D. The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival or any other similar event.
- E. The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way as provided in Subdivision 14© of this Code.
- F. Businesses or residences in the vicinity will be unreasonably disrupted by the work.
- G. The proposed schedule conflicts with scheduled total or partial reconstruction of the right-of-way.
- H. The applicant fails to comply with the requirements of this Section or other Sections of this Code.

**Subd. 11. Emergency Work.** A registrant may proceed to take whatever actions are necessary to respond to an emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Section for the actions it took in response to the emergency.

If the City Engineer becomes aware of an emergency, the Engineer shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City Engineer may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities or equipment occasioned the emergency.

**Subd. 12. Revocation of Permits.** The City Engineer or City Clerk/ Administrator may revoke any permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, this Code, rule or regulation, or any condition of the permit

which substantial breach shall continue uncured for 10 calendar days after the issuance of a written order of the City Engineer. A substantial breach of a permit holder shall include, but shall not be limited to, the following:

- A. The violation of any material provision of the permit;
- B. An evasion or attempt to evade any material provision of the 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 permit;
- D. The failure to maintain the required bonds and insurance;
- E. The failure to complete the work in a timely manner; or
- F. The failure to correct a condition indicated on an order issued by the Engineer.

**Subd. 13. Appeal.**

- A. Filing of Appeal. Any person aggrieved by, i) The denial of a permit application, ii) the denial of a registration, iii) the revocation of a permit or, iv) the application of the fee schedule imposed by Subd. 3 of this Code may appeal to the Council by filing a written notice of appeal with the City Clerk/ Administrator. Said notice must be filed within 20 days of the action causing the appeal.
- B. Notice of Hearing. The Council shall hear the appeal not later than 30 days after the date the appeal is filed. Notice of the date, time, place, and purpose of the hearing shall be mailed to the appellant not less than 10 days before the date of the hearing.
- C. Hearing and Decision. The Council shall, at such hearing, hear and consider any evidence offered by the appellant, the City Engineer, and anyone else wishing to be heard. After hearing the oral and written views of all interested persons, the Council shall make its decision at the same meeting or at a specified future meeting.

**Subd. 14. Location of Facilities and Equipment.**

- A. Undergrounding by Telecommunications Right-of-Way Users. Any new construction and the installation of new equipment and replacement of old equipment of telecommunication right-of-way users shall be underground or contained within buildings or other structures in conformity with applicable codes; provided, telecommunications right-of-way users may attach equipment

and facilities to existing poles and structures maintained by a service or utility service.

- B. Corridors. The City Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment or for technology the City Engineer expects will someday be located within the right-of-way. All permits issued by the City Engineer involving the installation or replacement of equipment shall designate the proper corridor for the equipment at issue.
- C. Limitation of Space. To protect health and safety, the City Engineer shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the City Engineer 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 equipment 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.

#### **Subd. 15. Relocation.**

- A. Relocation for City Purposes. A registrant shall promptly but in no event more than 120 days of the City's request, permanently remove and relocate at no charge to the City, any facilities or equipment if and when made necessary by a change in the grade, alignment or width of any right-of-way, by the construction, maintenance or operation of any City facilities or to protect the public health, safety and welfare. The registrant shall restore any rights-of-way to the condition it was in prior to removal and relocation.
- B. Undergrounding of Relocated Telecommunications Facilities. A telecommunications right-of-way user shall relocate all above ground facilities and equipment to underground locations at its own cost and expense at the City's request when, i) the City requires the relocation of all telecommunications facilities and equipment to underground locations or ii) structures or poles to which the registrant's facilities or equipment is attached are abandoned or removed by the owner of such structures or poles.

#### **Subd. 16. Right-of-Way Vacation.**

- A. Reservation of Right. If the City vacates a right-of-way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant facilities and equipment, the City shall reserve, to and for itself and all registrants having facilities and equipment in the vacated right-of-way, the right

to install, maintain and operate any facilities and equipment in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.

- B. Relocation of Equipment. If the vacation requires the relocation of registrant facilities and equipment; and (a) if the vacation proceedings are initiated by the registrant, the registrant must pay the relocation costs, or (b) if the vacation proceedings are initiated by the City, the registrant must pay the relocation costs unless otherwise agreed to by the City and the registrant; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder or the City, such other person or persons must pay the relocation costs.

**Subd. 17. Abandoned and Unusable Equipment.**

- A. Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:
  - 1. Provide information satisfactory to the City Engineer that the registrant's obligations for its equipment in the right-of-way under this Section have been lawfully assumed by another registrant; or
  - 2. Submit to the City Engineer an action plan for the removal or abandonment of equipment and facilities. The City Engineer shall require removal of such facilities and equipment if the City Engineer determines such removal is necessary to protect the public health, safety and welfare. The City Engineer may require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and equipment.
- B. Abandoned Facilities Equipment. Facilities and equipment of a registrant located on the surface of or above a right-of-way or on City property which, for two years, remains unused shall be deemed to be abandoned. Such abandoned equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, i) abating the nuisance, or ii) requiring removal of the equipment or facilities by the registrant, or the registrant's successor in interest.
- C. Removal of Underground Equipment. Any registrant who has unusable and abandoned underground facilities or equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, to the extent such facilities or equipment is uncovered by such excavation unless this requirement is waived by the City Engineer or City Clerk/Administrator.

**Subd. 18. Indemnification and Liability.**



- A. **Limitation of Liability.** By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability (a) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.
- B. **Indemnification.** By registering with the City, a registrant shall agree in writing, or by accepting a permit under this Section, a permit holder shall agree in writing, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind including the City's reasonable attorney fees and costs arising out of the construction, presence, installation, maintenance, repair or operation of its equipment, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of this equipment, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf including but not limited to the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the City and the registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

**Subd. 19. Franchise Holders.** If there is a conflict in language between the franchise of a person holding a franchise agreement with the City and this Section, the terms of the franchise shall prevail.

**SEC. 8.06 WAS AMENDED AND ADOPTED BY THE CITY COUNCIL ON APRIL 12, 2005.**

**SEC. 8.07. OBSTRUCTIONS IN STREETS.**

**Subd. 1. Obstructions.** It is a misdemeanor for any person to place, deposit, display or offer for sale, any fence, goods or other obstructions upon, over, across or under any street without first having obtained a written permit from the Council, and then only in compliance in all respects with the terms and conditions of such 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 an obstruction.

**Subd. 2. Fires.** It is a misdemeanor for any person to build or maintain a fire upon a street.

**Subd. 3. Dumping in Streets.** It is a misdemeanor for any person to throw or deposit in any street any nails, dirt, glass or glassware, cans, discarded. cloth or clothing, metal scraps, garbage, leaves, grass or tree limbs, paper or paper products, shreds or rubbish, oil, grease or other petroleum products, or to empty any water containing salt or other injurious chemical thereon. It is a violation of this Section to haul any such material, inadequately enclosed or covered, thereby permitting the same to fall upon streets. It is also a violation of this section to place or store any building materials or waste resulting from building construction or demolition on any street without first having obtained a written permit from the Council.

**Subd. 4. Signs and Other Structures.** It is a misdemeanor for any person to place or maintain a sign, advertisement, or other structure in any street without first having obtained a written permit from the Council. In a district zoned for commercial or industrial enterprises special permission allowing an applicant to erect and maintain signs overhanging the street may be granted upon such terms and conditions as may be set forth in the zoning or construction provisions of the City Code.

**Subd. 5. Placing Snow or Ice in a Roadway or on a Sidewalk.**

- A. It is a misdemeanor for any person, not acting under a specific contract with the City or without special permission from the city, to remove snow or ice from private property and place the same in any roadway or on a sidewalk.
- B. Where permission is granted by the City, the person to whom such permission is granted shall be initially responsible for payment of all direct or indirect costs of removing the snow or ice from the street or sidewalk. If not paid, collection shall be by civil action or assessment against the benefited property as any other special assessment.

**Subd. 6. Continuing Violation.** Each day that any person continues in violation of this Section shall be a separate offense and punishable as such.

**Subd. 7. Condition.** Before granting any permit under any of the provisions of this section, the Council may impose such insurance or bonding conditions thereon as it, considering the projected danger to public or private property or to persons, deems proper for safeguarding such persons and property. Such insurance or bond shall also protect the City from any suit, action or cause of action arising by reason of such obstruction.

(Section 8.08 reserved for future expansion.)

**SEC. 8.09. LIMITING SPEED AND TIME OF RAILWAY-STREET CROSSING OBSTRUCTION.**

It is a misdemeanor for any person operating or in charge of a railroad train, car, engine, locomotive, or other railroad equipment, or combination thereof, to so operate, park or leave the same standing upon the railroad at its intersection with a street, so as to prevent unobstructed vehicular traffic on such street for a period longer than five (5) minutes, or to so operate it at a speed greater than fifteen (15) miles per hour.

**SEC. 8.10. REQUIREMENT OF SEWER AND WATER MAIN SERVICE LATERAL INSTALLATION.**

**Subd. 1. Requirement of Sewer and Water Laterals.** No petition for the improvement of a street shall be considered by the Council if such petition contemplates constructing therein any part of a pavement or stabilized base, or curb and gutter, unless all sewer and water main installations shall have been made therein, including the installation of service laterals to the curb, if the area along such street will be served by such utilities installed in the street.

**Subd. 2. Sewer system Service and Water Main Service Laterals.** No sewer system shall be hereafter constructed or extended unless service laterals to platted lots and frontage facing thereon shall be extended simultaneously with construction of mains.

**Subd. 3. Waiver.** The Council may waive the requirements of this section only if it finds the effects thereof are burdensome and upon such notice and hearing as the Council may deem necessary or proper.

**SEC. 8.11. CURB AND GUTTER, STREET AND SIDEWALK PAINTING OR COLORING.**

It is unlawful for any person to paint, letter or color any street, sidewalk or curb and gutter for advertising purposes, or to paint or color any street, sidewalk or curb and gutter for any purpose, except as the same may be done by City employees acting within the course or scope of their employment. Provided, however, that this provision shall not apply to uniformly coloring concrete or other surfacing, or uniformly painted house numbers, as such coloring may be approved by the City.

**SEC. 8.12. SIDEWALK MAINTENANCE AND REPAIR.**

**Subd. 1. Primary Responsibility.** It is the primary responsibility of the owner of property abutting any sidewalk to keep and maintain and serviceable condition.

**Subd. 2. Construction, Reconstruction and Repair Specifications.** All construction, reconstruction or repair of sidewalks shall be done in strict accordance with specifications on file in the office of the Clerk Administrator.

**Subd. 3. Notice - No Emergency.** Where, in the opinion of the Clerk Administrator, no emergency exists, notice of the required repair or reconstruction shall be given to the owner of the abutting property. Such notice shall require completion of the work within ninety (90) days, and shall be mailed to the owner or owners shown to be such on the records of the County Officer who mails tax statements.

**Subd. 4. Notice - Emergency.** Where, in the opinion of the Clerk Administrator, an emergency exists, notice of the required repair or reconstruction shall be given to the owner of the abutting property. Such notice shall require completion of the work within ten (10) days, and shall be mailed to the owner or owners shown to be such on the records of the County Officer who mails tax statements.

**Subd. 5. Failure of Owner to Reconstruct or Make Repairs.** If the owner of the abutting property fails to make repairs or accomplish reconstruction as herein required, the Clerk Administrator shall report such failure to the Council and the Council may order such work to be done under its direction and the cost thereof assessed to the abutting property owner as any other special assessment.

**Subd. 6. Duty to Inspect.** In order to accomplish the purpose of this Section, it shall be the duty of the Clerk Administrator to inspect sidewalks within the City, or cause the same to be inspected under his direction.

(Sections 8.13 through 8.98, inclusive, reserved for future expansion.)

**SEC. 8.99. VIOLATION A MISDEMEANOR OR PETTY MISDEMEANOR.**

Every person who violates a section, subdivision, paragraph or provision of this Chapter when he performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as follows:

**Subd. 1.** Where the specific section, subdivision, paragraph or provision specifically makes violation a misdemeanor, he shall be punished as for a misdemeanor; where a violation is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property, he shall be punished as for a misdemeanor; where he stands convicted of violation of any provision of this Chapter, exclusive of violations relating to the standing or parking of an unattended vehicle, within the immediate preceding 12-month period for the third or subsequent time, he shall be punished as for a misdemeanor.

**Subd. 2.** As to any violation not constituting a misdemeanor under the provisions of Subdivision 1 hereof, he shall be punished as for a petty misdemeanor.