

## CHAPTER 3

### PUBLIC PROPERTY AND SERVICE ASSESSMENTS

#### **SECTION 301.01 RIGHT-OF-WAY MANAGEMENT.**

**Subd. 1. Findings, Purpose and Intent.** To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Section of the Code relating to right-of-way permits and administration. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within 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 excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this Section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This Section shall be interpreted consistently with 1997 Session Laws, Chapter 123, as amended from time-to-time, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the City and users of the right-of-way. This Section shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this Section cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This Section shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

**Subd. 2. Election to Manage the Public Rights-Of-Way.** Pursuant to the authority granted to the City under State and Federal statutory, administrative and common law, the City hereby elects pursuant to Minnesota Statutes Section 237.163, Subd. 2(b), to manage rights-of-way within its jurisdiction.

**Subd. 3. Administration.** The Public Works Director is the principal City official responsible for the administration of the right-of-way, right-of-way permits, and the other ordinances related thereto. The Public Works Director may delegate any or all of the duties hereunder.

#### **Subd. 4. Excavation Permit Required.**

A. **Permit Required.** It shall be unlawful for any person, other than authorized City employees to dig up, break, excavate, tunnel, drill, bore, undermine or in any manner break up any right-of-way or to make or cause to be made any excavation in or under the surface of any right-of-way, or to place, deposit or leave upon any street any earth or excavated material obstructing or tending to interfere with the free use of the right-of-

way unless such person shall first have obtained an excavation permit therefor from the Public Works Director as herein provided.

B. Exception. A permit is not required for the following exceptions. These exceptions do not relieve the property owner from fully complying with all provisions of this Code relating to driveway use and construction in City boulevards.

1. No permit is required of the owner for gardening or sodding otherwise allowed in the boulevard area adjacent to the paved portion of the public streets, or for gardening or sodding in boulevard areas where a public easement exists for underground purposes. Trees and shrubbery and any structures placed in the boulevard by the property owner are permitted at sufferance only, and shall be removed promptly by the owner at the owner's expense upon a finding by the Public Works Director that the existence of such encroachment upon the boulevard interferes with maintenance or replacement of a utility or right-of-way improvement, or constitutes a safety hazard.
2. No permit is required of the owner for driveway replacement or repair that does not involve any of the following in the boulevard area:
  - a. Enlargement or reduction of the driveway area.
  - b. Any relocation of the driveway from its existing location.
  - c. Any change to the driveway grade.
  - d. Any repair to or change of the driveway curb, gutter or apron.

**Subd. 5. Application for Permit.** No excavation permit shall be issued unless a written application for the issuance of an excavation permit, on forms provided for that purpose, is submitted to the Public Works Director. The written application and supporting documentation shall include:

- A. Name and address of applicant.
- B. Emergency contact person, phone numbers.
- C. Nature, location and purpose of excavation.
- D. Date of commencement.
- E. Date of completion.
- F. Right-of-way restoration plan.

- G. Security deposit, letter of credit, or corporate bond.
- H. Evidence of public liability insurance.
- I. Plans showing the extent of the proposed excavation work, dimensions and elevations of both existing ground prior to excavation and the proposed restored excavation surfaces.
- J. Location of any utilities within the excavation site.
- K. All information referred to in Subdivision 11 herein, as well as any other information that may be necessary to evaluate the excavation permit.

**Subd. 6.      Permit Fee.** Upon submission of the application for the excavation permit, the applicant shall pay a fee as prescribed by City ordinance to the Public Works Director to cover reasonable costs for the review, issuance and enforcement of the excavation permit.

**Subd. 7.      Issuance of Permit.** The Public Works Director shall issue such permit within 10 days after receipt of a complete application provided:

- A. The proposed excavation project appears to comply with the applicable law.
- B. The City has received the deposit of cash, irrevocable letter of credit, or corporate bond in a form which complies with Subdivision 10.
- C. The City has received an agreement in writing by the applicant to pay all actual costs of repairs, including those costs that exceed the estimate.
- D. Agreement in writing by the applicant to be bound by all of the provisions of this Section.
- E. The Public Works Director may advance or delay the commencement date of an excavation permit to coordinate excavation work within a City right-of-way with other utility or right-of-way improvement projects.

**Subd. 8.      Posting Excavation Permit.** Upon receipt of the excavation permit, the permit shall be posted at the excavation site identifying the permittee's name, permit number, and date of expiration. It shall be the duty of any permittee hereunder to keep the permit posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such permit at or about any excavation not covered by such permit or to misrepresent the permit number or the date of expiration.

**Subd. 9.      Term of Permit.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless, before the expiration date of the initial permit, the following requirements are completed:

- A. The permittee makes a supplementary application for a right-of-way excavation permit.
- B. A new permit or permit extension is approved.

In accordance with Minnesota Rule 7819.1000, Subp. 3, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by Council resolution.

#### **Subd. 10. Financial Security.**

- A. Requirement of Security. Before an excavation permit is issued, the applicant shall deposit cash, submit an irrevocable letter of credit, or corporate bond in an amount sufficient to cover expenses of excavation restoration, permit administration, and enforcement in favor of the City. The Public Works Director may require additional security in the amount necessary to assure the City that the street and base are restored to a condition comparable to that in existence when the excavation commenced. The required financial security must be:
  1. Attorney Approval. The financial security must be satisfactory to the City Attorney in form and substance.
  2. Conditions of Security. Conditioned that the applicant will faithfully comply with all the terms and conditions of this Code; all rules, regulations and requirements pursuant thereto and as required by the Public Works Director, including payment of the charge for street restoration work as set forth in the rules and regulations.
  3. Hold Harmless. Conditioned that the applicant will secure and hold the City, its elected and appointed officials, employees and agents, and its officers harmless against any and all claims, judgments, or other costs arising from the excavation permit or for which the City, its elected and appointed officials, employees, and agents may be made liable by reason of any accident or injury to persons or property through the fault of the permittee.
- B. Future Recovery. Recovery on such financial security for any injury, accident or City-incurred cost shall not exhaust the security, but it shall in its entirety cover any or all future accidents, injuries and City-incurred costs for the excavation work for which it is given. In the event there is a claim and draw down on the security, the City may require the permittee to re-establish the security to the amount of the remaining project costs.
- C. Suit Against City. In the event of any suit or claim against the City by reason of the negligence or default of the permittee, upon the City giving written notice to the permittee of such suit or claim, any final judgment against the City requiring it to pay for such damage shall be conclusive upon the permittee and his security.

**Subd. 11. Excavation Regulations.** All work done pursuant to an excavation permit issued under the provisions of this Section shall be performed under the direction and to the satisfaction of the Public Works Director or his/her duly authorized agent. The permittee shall provide the following information and plans for the review and approval by the Public Works Director or his/her duly authorized agent prior to issuance of a permit:

- A. Notification of Public Utilities. All public utilities shall be notified by the permittee of permittee's intent to make a street excavation giving notice of time, place and purpose of such excavation.
- B. Determination of Underground Facilities. The permittee shall have the duty of determining the location and depth of all existing underground facilities.
- C. Backfilling. The permittee shall describe the manner and method of backfilling street excavation and the procedure to be followed in compacting backfilled material.
- D. Material Specifications. The permittee shall describe the specifications as to material to be used in backfilling street excavation.
- E. Safeguards of Properties – Facilities. The permittee shall describe the manner and method of making street excavation including procedure to safeguard and protect adjoining and adjacent property and existing underground and above ground facilities.

The street restoration must be reviewed and approved by the Public Works Director.

**Subd. 12. Right-of-Way Restoration.** The permittee shall be responsible for restoration of right-of-way excavation in accordance with the following standards:

- A. Restoration shall be completed within the dates specified in the permit.
- B. Restoration shall be according to the standards and materials specified by the City.
- C. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. The permittee, upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within 5 calendar days of the receipt of the notice from the City, unless another period of time is approved by the Public Works Director.
- D. If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City, at its option, may do such work. In that event, the permittee shall pay to the City, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the financial security.

**Subd. 13. Emergency Action.** In the event of any emergency in which a main, conduit, or utility facility in or under the street breaks, bursts, or otherwise is in such condition as to immediately endanger the property, life, health, or safety of any individual, the person owning or controlling such main, conduit, or utility facility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit no later than the end of the next succeeding day during which the City offices are open for business, and shall not proceed with permanent repairs without first obtaining an excavation permit hereunder.

**Subd. 14. Non-Completion or Abandonment.** Work shall progress in an expeditious manner until completion in order to avoid unnecessary inconvenience to the general public. In the event that the work shall not be performed in accordance with the applicable regulations of the City or the provisions of this Section, or shall cease or be abandoned without due cause, the City may, after 5 days' notice in writing to the holder of said permit, correct said work or fill the excavation, and repair the street, and in such event the entire cost to the City of such work shall be a liability of and shall be paid by the person to whom the permit was issued and his financial security.

**Subd. 15. Indemnification.** The permittee shall indemnify, keep and hold the City, its agents, elected officials and employees free and harmless from liability on account of injury or damage to persons or property arising or growing out of the permittee's negligence or other wrongful act in making any street excavation. In the event that suit shall be brought against the City, its agents, elected officials and employees either independently or jointly with the permittee on account thereof, the permittee, upon notice to it by the City, shall defend the City its agents, elected officials and employees in any suit at the cost of the permittee, and in the event of a final judgment being obtained against the City, its agents, elected officials and employees either independently or jointly with the permittee, the permittee shall pay such judgment with all costs and hold the City its agents, elected officials and employees harmless therefrom.

**Subd. 17. Refusal of Permits.** If any person shall fail, refuse or neglect to comply with the provisions of this Section, or any rules or regulations of the City, or any reasonable orders or directions of the Public Works Director in reference thereto, the Public Works Director may refuse to issue further permits to such person until such conditions or orders are complied with, may order such person to immediately stop all work within the right-of-way, and may revoke any permit already issued.

**Subd. 18. Penalty.** Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor. In the event that any person shall make an excavation in any street of the City without obtaining a permit therefor, the fee for such permit shall be doubled, in addition to the other penalties provided in this Code.

**Subd. 19. Appeal.** A right-of-way user that (1) has been denied a permit; (2) has had a permit revoked; or (3) believes that the fees imposed are invalid, may have the denial,

revocation, or fee imposition reviewed, upon written request, by the Council. A decision by the Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

**Subd. 20. Severability.** If any portion of this Section is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this Section precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

## **SECTION 302.01 CURRENT SERVICES ASSESSMENTS.**

**Subd. 1. Definition of “Current Service Work”.** The term “Current Service Work” includes the following:

- A. Snow, ice or rubbish removal from any sidewalk or other area within the public right-of-way or adjacent to a public street.
- B. Weed elimination from the right-of-way or from private property. For purposes of this Section, “weeds” shall mean any plant vegetation that is noxious, as defined by law or not, any vegetation that reaches a height greater than 10 inches, and any other vegetation that constitutes a nuisance as defined in City Code Chapter 8.
- C. Removal or elimination of public health or safety hazards from private property, excluding any hazardous or substandard building included under the provisions of Minn. Stat. §§463.15 to 463.26.
- D. Installation and repair of water service lines, street sprinkling, and other dust treatment of streets.
- E. The trimming and care of trees and the removal of unsound trees from any right-of-way.
- F. The treatment and removal of insect infested or diseased trees on private property.
- G. The repair of sidewalks and alleys.
- H. The operation of a street lighting system
- I. The operation and maintenance of a fire protection system.

**Subd. 2. Primary Duty of Owners and Occupants.** Primary responsibility for all Current Service Work shall be the responsibility of the property owner and occupant (except in the case of street sprinkling or other street dust treatment, alley repair, public right-of-way tree trimming and the maintenance, removal or operation of a street lighting system).