

CHAPTER VIII

STREETS, ALLEYS, PUBLIC WAYS

SECTION 800 – CONSTRUCTION AND RECONSTRUCTION OF
ROADWAY SURFACING, SIDEWALK, CURB AND GUTTER

800.01. Procedure. Abutting or affected property owners may contract for, construct or reconstruct roadway surfacing, sidewalk or curb and gutter in accordance with this section if adequate advance payment is made to the city.

800.03. Permit required. It is unlawful to construct or reconstruct a sidewalk, curb and gutter, driveway, or roadway surfacing in a street or other public property in the city without a permit from the city. Application for a permit is made on a form approved and provided by the city and must sufficiently describe the contemplated improvements, the contemplated date of beginning of work, and the length of time required to complete the work. A permit is not required for an improvement ordered installed by the council. Applications will be referred by the city administrator to the public works director. A permit will not be issued until the work has been approved by the public works director. The application must contain an agreement by the applicant to be bound by this section and plans and specifications consistent with the provisions of this section and good engineering practices. A permit from the city does not relieve the holder from damages to the person or property of another caused by such work.

800.05. Specifications and standards. The construction and reconstruction of roadway surfacing, sidewalk and curb and gutter improvements, including curb cuts, must be strictly in accordance with specifications and standards on file in the office of the city administrator and open to inspection and copying. The specifications and standards may be amended from time to time by the city, but will be uniformly enforced.

800.07. Inspection. The public works director must inspect the improvements. Work not done according to the applicable specifications and standards will be removed and corrected at the expense of the permit holder. Work done may be stopped by the public works superintendent if found to be unsatisfactory or not in accordance with the approved specifications and standards.

800.09. Fees. Permit fees are set by appendix I.

SECTION 805 – OBSTRUCTIONS IN STREETS

805.01. Obstructions. It is unlawful to place, deposit, display or offer for sale, a fence, goods or other obstructions upon, over, across or under a street without first having obtained a permit from the council. An electrical cord or device of any kind is an obstruction.

805.03. Fires. It is unlawful to build or maintain a fire in a street.

805.05. Dumping in streets. It is unlawful to throw or deposit in a street 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 water containing salt or other injurious chemical thereon. It is unlawful to haul any such material, inadequately enclosed or covered, thereby permitting the same to fall upon streets. It is unlawful to place or store building materials or waste resulting from building construction or demolition on a street without a permit from the council.

805.07. Signs and other structures. It is unlawful to place or maintain a sign, advertisement, or other structure in a street without first having obtained a permit. In a district zoned for commercial or industrial uses, 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 this code.

805.09. Placing snow or ice in a roadway or on a sidewalk. Subdivision 1. General rule. It is unlawful to remove snow or ice from private property and place the same in a roadway or on a sidewalk.

Subd. 2. Where permission is granted by the city administrator, the person to whom such permission is granted is 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 will be by assessment against the benefited property as any other special assessment.

Subd. 3. Condition. Before granting a permit under the provisions of this section, the council may impose such insurance or bonding conditions thereon as it deems proper for safeguarding persons and property. The insurance or bond must also protect the city from any suit, action or cause of action arising by reason of the obstruction.

SECTION 810 – STREET OPENINGS OR EXCAVATIONS

810.01. Unlawful act. It is a misdemeanor for a person, except a city employee acting within the course and scope of employment or a contractor acting within the course and scope of a contract with the city, to make an excavation, opening or tunnel in, over, across, or upon or under a street or other public property without a written permit from the city administrator.

810.03. Application and investigation. Subdivision 1. Application for a permit must describe with reasonable particularity the name and address of the applicant, the place, purpose and size of the excavation, and such other information as may be necessary or desirable. The application must be filed with the administrator, together with the applicable permit fee.

Subd. 2. Permit fees. Fees for permits are set by appendix I. An excavation made before a permit has been issued will be subject to a penalty equal to twice the fee for the excavation.

Subd. 3. Investigation. Upon receipt of the application, the administrator may make such investigation as may be necessary to approve the proposed excavation and to determine any conditions that may be placed upon the permit as to the time of commencement of work, manner of procedure and time limitation upon the excavation.

810.05. Protection of the city and the public. Subdivision 1. Non-completion or abandonment. Work must progress expeditiously to completion in accordance with a time limitation placed thereon so as to avoid unnecessary inconvenience to the public. In the event that work is not performed in accordance with the permit, or is abandoned without due cause, the city administrator may, after six hours notice in writing to the holder of the permit, correct the work, fill the excavation and repair the public property, and the cost thereof must be paid by the person holding the permit.

Subd. 2. Insurance. Prior to commencement of the work described in the application, the applicant must furnish the city satisfactory evidence in writing that the applicant will keep in effect public liability insurance of not less than \$100,000 for any person, \$300,000 for any occurrence and property damage insurance of not less than \$25,000, issued by an insurance company authorized to do business in the state of Minnesota in which the city is named as an additional insured.

Subd. 3. Indemnification. The applicant must agree in writing to indemnify and hold the city harmless from any liability for injury or damage arising out of the action of the applicant or the applicant's agents, employees or subcontractors in performance of the work, and for any expense whatsoever incurred by the city incident to a claim or action brought or commenced by any person arising therefrom.

Subd. 4. Issuance of permit. The city administrator must issue such permit after (1) completion of the investigation, if any, (2) payment by the applicant in advance of the applicable permit fee, (3) agreement in writing by the applicant to the conditions of the permit, (4) agreement in writing by the applicant to pay all actual costs of the proposed excavation and all necessary repairs, including the cost of the investigation, and (5) agreement in writing by the applicant to be bound by all of the provisions of this section.

810.07. Repairs. Temporary and permanent repairs, including backfilling, compacting and resurfacing will be made, or contracted for, in a manner prescribed by the public works superintendent at the expense of the permit holder.

810.09. Responsibility to protect subsurface installations. The permit holder must use the Minnesota Gopher State One Call system and for locating and protecting all utility and other installations made beneath the surface of any public streets, grounds or right-of-way. Any interference with or damage to such underground installation is the responsibility and expense of the permit holder.

810.11. Correction or completion of work by city. If a part of the excavation or repair work is not done at the time or in the manner prescribed by the administrator, the city may correct or complete the work or contract to have the work corrected or completed, and the cost thereof will be charged to and paid by the permit holder, together with interest and any costs of collection, including attorneys' fees.

SECTION 815 – PARADES

815.01. Definition. The term “parade” means a movement of vehicles, persons or animals, or a combination thereof, which either moves together and as a body so as to in some way impede or affect the free and unobstructed flow of vehicular or pedestrian traffic, or which moves so that some part thereof is in violation of one or more traffic laws or regulations, if such movement is without a permit under this section.

815.03. Permit required. It is unlawful to sponsor or participate in a parade without a permit and it is unlawful to obtain a parade permit and not conduct the same in accordance with the permit granted by the city. Application for a permit is made to the city administrator at least 30 days in advance of the date on which the parade is to occur and will state the sponsoring organization or individual, the route, the length, the estimated time of commencement and termination, and its general composition. The application must be executed by the individuals applying therefor or the duly authorized agent or representative of the sponsoring organization.

815.05. Investigation. The city administrator must refer applications for parades to the city law enforcement agency for consideration which must take no longer than ten days. If any state trunk highways are in the route the city law enforcement agency must make all necessary arrangements with the Minnesota department of public safety for alternate routes or whatever may be necessary. If the city law enforcement agency finds that the parade will not cause a hazard to persons or property, and will cause no great inconvenience to the public, and if the city law enforcement agency is able to make arrangements for necessary direction and control of traffic, the city law enforcement agency will endorse the application and return it to the city administrator. If the city law enforcement agency finds the parade described in the application to be a hazard, a substantial inconvenience, or if the city law enforcement agency is unable to make adequate arrangements for direction or control of traffic, the city law enforcement agency must return the same to the administrator with those findings.

815.07. Council action. The city administrator must refer the application and results of investigation to the council at its next regular meeting. The council may either (i) deny the permit, (ii) grant the permit, or (iii) grant the permit on condition that a date, time or route are acceptable to applicant which differ from such as stated in the application. The applicant must accept the terms of the permit within three days.

815.09. Unlawful acts. Subdivision 1. Obstruction. It is unlawful to hamper, obstruct, or impede or interfere with any parade, parade assembly or any person, animal or vehicle participating in the parade.

Subd. 2. Driving in parade. It is unlawful to drive a vehicle between the vehicles or persons comprising a parade when the parade is in motion.

Subd. 3. Entrance. It is unlawful to enter into a parade without prior authorization from the person in charge of the parade.

Subd. 4. Exception. This section does not apply to (i) funeral processions, or (ii) a governmental agency acting within the scope of its functions.

SECTION 820 – CURB SET-BACK

820.01. Permit required. It is unlawful to remove, or cause to be removed, a curb from its position abutting upon the roadway to another position without a permit.

820.03. Agreement required. A permit will not be issued until the applicant, and abutting landowner if someone other than the applicant, has entered into a written agreement with the city agreeing to pay all costs of constructing and maintaining such set-back area in at least as good condition as the abutting roadway, and further agreeing to demolish and remove such set-back and reconstruct the area as was at the expense of the landowner if the area, in the council's opinion, becomes a public hazard. The agreement must be recorded in the office of the county recorder, and runs with the adjoining land.

820.05. Sign-posting. Angle parking only signs must be purchased from the city and erected and maintained at the expense of the adjoining landowner in all such set-back areas now in use or hereafter constructed. It is unlawful for any person to park other than at an angle in such set-back areas.

820.07. Public rights preserved. Set-back parking areas must be kept open for public parking. The abutting landowner may not acquire any special interest or control of such areas.

SECTION 825 – MISCELLANEOUS

825.01. Load limits. The city administrator, upon the recommendation of the chief of police, may from time to time impose upon vehicular traffic on a part or all of the streets, such load limits as may be necessary or desirable. The limits, and the specific extent or weight to which loads are limited, must be clearly and legibly sign-posted thereon. It is unlawful to operate a vehicle on any street in violation of a limitation so posted.

825.03. Limiting speed and time of railway-street crossing obstruction. It is unlawful 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 minutes, or to so operate it at a speed greater than 15 miles per hour.

825.05. Requirement of sewer and water main service lateral installation. Subdivision 1. Requirement of sewer and water laterals. A petition for the improvement of a street will not be considered by the council if the petition contemplates constructing therein any part of a pavement or stabilized base, or curb and gutter, unless all sewer and water main installations 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. A sewer system may not be constructed or extended unless service laterals to platted lots and frontage facing thereon have been extended simultaneously with construction of mains.

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

825.07. Private use of public streets and parking lots. Subdivision 1. Authority, permission and procedure. Upon an application made to the city administrator and reviewed and recommended by the public works superintendent, the council may grant special permission under which on-street parking or the use of city-owned parking lots or ramps or public sidewalks may be temporarily or permanently prohibited or restricted for private reasons and purposes (including, but not limited to, establishment of private or "leased" parking, "loading zones", or benches) at such places, on such terms and for such consideration as the council may deem just and equitable. In establishing the amount of such consideration to be paid to the city, the council may consider the amount of space, location thereof, if any, public inconvenience, and hazards to persons or property. Upon complaint of any aggrieved person and by reason of any specific special permission so granted, the council may at its next regular meeting after receipt of such complaint, call a hearing thereon to be held after ten days' notice in writing to applicant and complainant and published notice at least ten days prior to the hearing. After the hearing the council must by resolution decide whether to terminate, continue or redefine the terms of the permission, and its decision will be final and binding on all persons directly or indirectly interested therein.

Subd. 2. Public vehicles. Free and reserved on-street parking is limited to city-owned and operated vehicles.

Subd. 3. Violations. It is unlawful to park or otherwise infringe upon any area permitted by this section, when the area is clearly and distinctly marked or sign-posted. It is unlawful for any person not granted such right to assert the same, or for any grantee of such right to exceed the same under claim thereto.

Subd. 4. Condition. Before granting a permit, 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 persons and property. The insurance or bond must also protect the city from any suit, action or cause of action arising by reason thereof and naming the city as an additional insured.

825.09. Curb and gutter, street and sidewalk painting or coloring. It is unlawful to paint, letter or color a street, sidewalk or curb and gutter for advertising purposes, or to paint or color a street, sidewalk or curb and gutter for any purpose, except when done by city employees acting within the course or scope of the employment. This subsection does not apply to uniformly coloring concrete or other surfacing, or uniformly painted house numbers, if coloring may be approved by the city administrator.

825.11. Motorized vehicles prohibited on sidewalks. It is unlawful to drive or operate a motorized vehicle on a public sidewalk or public property designated for use as a pedestrian walkway or bicycle trail, except when crossing the same for ingress or egress to private property lying on the other side thereof.

SECTION 830 – SIDEWALKS

830.01. Declaration of policy. The city council declares that the retention, repair and replacement of existing sidewalks within the city of Kenyon is in the public interest and that the existing sidewalk system should be maintained, repaired and replaced, except in such circumstances where the city council determines that it is unnecessary, unfair or not in the public interest to continue the sidewalk system, and that new sidewalks should be constructed in those locations where the city council deems it necessary for the safety and convenience of the public. The city council declares that the cost of constructing, repairing or replacing sidewalks in the city may be cost prohibitive. To achieve the intended goal, the city council will determine the extent to which the city can perform the construction, repair or replacement of sidewalks in any given year. Sidewalks not able to be constructed, repaired or replaced during the year due to monetary constraints will be planned for subsequent years.

830.03. Construction and removal. A sidewalk may not be constructed or removed within the city without first obtaining a permit. The city may refuse the granting of a permit if it is determined by the city council not to be in the best interest of the public. Sidewalks must be constructed to the specifications established by the city.

830.05. Inventory of existing sidewalks. The public works director must, prior to May 1 of each year, make an inventory of all the existing sidewalks within the city and report to the city administrator the findings. The city administrator must provide the findings of the report to the city council along with a recommendation based upon the estimated cost of construction, repair and replacement and the amount available in that year's budget for such work. The findings of the street superintendent must contain the following:

- a) The location of all existing sidewalks.
- b) Locations where the construction of new sidewalks may be necessary for the public interest and safety.
- c) A deteriorated condition upon a particular portion of a sidewalk causing it to be unsafe or otherwise unusable.

Sidewalks unable to be constructed, repaired or replaced due to monetary constraints will be planned for subsequent years.

830.07. Maintenance and repair. Sidewalks within the city determined by the city council to be deteriorated or otherwise in a condition unsafe or unfit for use will be remedied by replacement or repair according to the specifications provided for in this section, and new sidewalks determined by the city council to be necessary for the public interest and safety will likewise be constructed in accordance with specifications established by the city.

830.09. Cost and special assessment. The city may require the abutting property owner to bear part or all of the cost of the construction, removal, repair or replacement of sidewalks and to expend city funds for those purposes. The construction, removal, repair or replacement may be undertaken by such property privately or through privately retained contractors, provided such construction, removal, repair or replacement will be in strict conformity with the specifications adopted by the city council. During the course of such construction, removal, repair or replacement the street superintendent must inspect or supervise such construction to insure conformity with the specifications. The city council may install, repair or remove sidewalks and assess the cost to the benefitted property owner in the manner provided by Minnesota Statutes, section 429.101. Costs associated with the implementation of a sidewalk system that is in excess of the normal and customary cost of the installation of sidewalks is an appropriate expenditure of city funds.

830.11. Notification. A sidewalk in need of construction, removal, repair or replacement must be reported to the abutting property owner by letter mailed to the owner's last known address, or by personal service upon the owner. The owner has 30 days from mailing or delivery of the notice to arrange for the said work. If the owner fails to comply within 30 days the city will conduct the repairs and assess the cost to the abutting property in accordance with Minnesota Statutes, section 429.101.

830.13. Grants and awards. Under special circumstances, such as the awarding of grants to the city for the purpose, or for projects of benefit to the city as a whole, or in other special cases in the discretion of the city council, the city may share in the cost of creation or repair of sidewalks. Cost sharing by the city council does not obligate the city to maintain or repair said sidewalks at any future time.

830.15. Use of sidewalks. It is unlawful to use a sidewalk for any purpose other than pedestrian traffic. The use of motorscooters, motorcycles or other motor vehicles on sidewalks is prohibited.

830.17. Responsibility for personal injuries – hold harmless clause. The abutting property owner of any sidewalk within the city upon which any person is injured by reason of a defect in or upon the sidewalk, any object whatsoever left upon the sidewalk, or any unauthorized use of a sidewalk by the property owner or property owner’s licensee or lessee or others residing within, or upon the property owner’s premises, is responsible for any damages that result, and is deemed to hold the city of Kenyon harmless and indemnify the city for such losses that the city may be required to pay to any third person.

830.19 Vending machines. It is unlawful to sell or dispense soft drinks or any other product from vending machines on public sidewalks.

SECTION 835 – SIDEWALK OBSTRUCTIONS

(Added, Ord. No. 8, Third Series)

835.01. Definition. For purposes of this section 835, the term “sidewalk obstruction” shall mean: courtesy sidewalk obstructions with up to four related chairs; freestanding chairs and benches; street carts vending food, floral, and similar consumer goods; signboards providing information about the business abutting the portion of sidewalk on which such a signboard is placed; and other items of a similar nature.

835.03. License requirements. Any person, firm or corporation desiring to place and maintain one or more sidewalk obstructions upon the public streets, sidewalks, or other right-of-way within the city, may be granted a license therefor upon the following conditions:

- a) The person, firm or corporation desiring such license, or licenses, shall make written application to the city administrator showing the requested location and detailed plans and specifications of each proposed sidewalk obstruction, the name and address of the applicant, and such other information as may be required in an application form to be prepared by the city administrator, city engineer and city attorney.

- b) The consent of the abutting property owner or lessees shall be required where the proposed location of a sidewalk obstruction is in an area where the abutting property is zoned residential or multiple dwelling; in such cases each application shall be accompanied by a writing in such form as the city attorney shall require, signed by the residents of the residential property abutting the street upon which each sidewalk obstruction is proposed to be located, giving consent by such residents to the installation and maintenance of such sidewalk obstruction at the proposed location. The applicant shall furnish therewith such evidence of residence as shall be required by the city attorney.
- c) Each application shall be accompanied by an inspection fee, as set forth by city council resolution, payable to the city of Kenyon for each such sidewalk obstruction.
- d) If the application is granted, an additional license fee, as set forth by city council resolution, shall be paid to the city of Kenyon for each sidewalk obstruction at the time the license is issued.
- e) All licenses shall expire as of the 1st day of January next following the date of issuance thereof, unless renewed. At least 30 days prior to the expiration of any license, the holder may make written application for renewal thereof, accompanied by the license fee in an amount as set forth by city council resolution. If plans and specifications of the sidewalk obstruction, or location of the sidewalk obstruction, are not to be changed, the application for renewal shall be sufficient if the applicants give their name and address, and the location of the sidewalk obstruction for which the renewal license is desired.
- f) Whenever ownership of a sidewalk obstruction for which a license has been issued is sold or title or control thereof transferred or assigned, a new license shall be required.
- g) If the application is for licenses for more than one sidewalk obstruction at the same or different locations, a separate number and license shall, when issued, be assigned and granted for each sidewalk obstruction authorized to be installed, but each such license issued shall be valid only for the particular location designated therein.

835.05. No license issued for installation. No license shall be issued for the installation or maintenance of any such sidewalk obstruction:

- a) without the approval of the city engineer;
- b) in any alley;
- c) at any location where the distance from the face of the curb to the inside sidewalk line is less than eight feet; or

- d) if the city council determines in its sole discretion that such sidewalk obstruction will unreasonably interfere with normal use of the right-of-way or pose a hazard to the public health, safety, welfare, or morals.

835.07. Revocation.

- a) The license for any sidewalk obstruction may be revoked, or the application for renewal thereof denied, if the city council determines in its sole discretion that such sidewalk obstruction will unreasonably interfere with normal use of the right-of-way or pose a hazard to the public health, safety, welfare, or morals.
- b) The license for any sidewalk obstruction may be revoked, or the application for renewal thereof denied, for failure to comply with the provisions of this section or for misrepresentation of any material facts in the application, or for any reason which would have been grounds for denial of the original application, or where in the judgment of the city council or the city engineer, maintenance has become inappropriate. No revocation or denial shall be made arbitrarily or inequitably as between different applicants.
- c) If the owner, or lessee, shall by writing filed with the city engineer on or before the first day of April preceding the expiration of any license, withdraw consent to the renewal thereof after such expiration, the city engineer shall promptly notify the licensee of the filing of such writing and shall deny the renewal of such license unless and until such owner, or person in possession or control, shall in writing consent to such renewal license being issued.

835.09. Location and maintenance.

- a) When a license is issued, each such sidewalk obstruction shall be installed and set back not less than 30 inches from the face of the curb.
- b) Each sidewalk obstruction shall have displayed thereon, in a conspicuous place, the license number.
- c) It shall be the duty of the licensee to maintain each sidewalk obstruction at all times in a safe condition at its proper location and to inspect each sidewalk obstruction periodically in order that it may be properly maintained. Sidewalk obstructions shall be kept at all times in a neat, clean and usable condition. Debris, ice, and snow shall be removed from the sidewalk obstructions and the vicinity thereof in such a manner that each sidewalk obstruction shall be accessible at all times. The licensee shall move sidewalk obstructions immediately upon request of the city should temporary removal be made necessary by construction or repair work in the vicinity of the sidewalk obstruction.

835.11. Advertisement on sidewalk obstruction.

- a) No advertising matter or sign shall be displayed upon any sidewalk obstruction except only upon the front and rear surfaces of the backrest of a chair accompanying a table. No liquor, beer, or obscene, immoral or indecent advertising, sign, or other material shall be permitted.
- b) No advertising matter, sign, or other material on or about any sidewalk obstruction shall display the words "STOP", "LOOK", "DRIVE IN", "DANGER", or any other word, phrase or symbol which might interfere with, mislead, or distract traffic.

835.13. Removal of sidewalk obstruction.

- a) Upon the revocation or expiration of any license without renewal, if the licensee fails promptly to remove a sidewalk obstruction, the city engineer may do so within 10 days after written notice given by mail directed to the address of the licensee on file, and if the licensee shall fail to pay the cost of removal and storage thereof within a period of 60 days after the giving of such notice, the licensee's rights in said sidewalk obstruction shall be forfeited, but such forfeiture shall not excuse the licensee from the payment of the cost of removal and storage of said sidewalk obstruction.

835.15. Insurance.

- a) Before a license shall be issued, the applicant shall post or maintain with the city administrator, a bond or policy of public liability insurance approved by the city attorney and conditioned substantially as follows: That the licensee will indemnify and save harmless the city of Kenyon, its officers, agents and employees from any and all loss, costs, damages, expenses, or liability which may result from or arise out of the granting of such permit, or the installation or maintenance of such sidewalk obstruction for which a permit is issued, regardless of the point to which such sidewalk obstruction or sidewalk obstructions may be moved within the city of Kenyon with or without the consent of the licensee, and that the licensee will pay any and all loss or damage that may be sustained by any person as a result of, or which may be caused by, or arise out of, such installation or maintenance. The bond or policy of insurance shall be maintained in its original amount by the licensee at the licensee's expense at all times during the period for which the license is in effect. In the event that two or more licenses are issued to one licensee, one such bond or policy of insurance may be furnished to cover two or more sidewalk obstructions, and each bond or policy shall be of a type which coverage shall automatically be restored immediately after the occurrence of any accident or loss from which liability may thereafter accrue.

- b) The limit of liability upon any bond or policy of insurance so posted shall in no case be less than \$100,000 for any person, \$300,000 for any occurrence and property damage insurance of not less than \$25,000, issued by an insurance company authorized to do business in the state of Minnesota in which the city of Kenyon is named as an additional insured.

835.17. City council approval. All applications for licenses, when approved by the city engineer, shall be presented to the city council, which may grant or deny any one or more of the applications made.

SECTION 840 – ICE AND SNOW ON PUBLIC SIDEWALKS AND STREETS

(Added, Ord. No. 20, Third Series)

840.01. Ice and snow on public sidewalks. Subdivision 1. Ice and snow a nuisance. All snow and ice remaining upon public sidewalks is hereby declared to constitute a public nuisance and the owner of such property shall cause said nuisance to be abated within the time specified on a Notice of Snow Removal which shall be in the form of a red tag citing this section and affixed prominently to the premises. If the abutting property is without the central business district, such snow and ice shall be removed within 24 hours after it has ceased to be deposited. If such snow or ice is in the central business district, it shall be removed by the hours of 8:30 A.M. following the time when it ceased to be deposited.

840.03. City to remove snow and ice. The city may cause to be removed from all public sidewalks, all snow or ice which may be discovered thereon after it should have been removed therefrom in accordance with subsection 840.01, 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.

840.05. Cost of removal to be assessed. The city administrator shall bill the property owner the actual expenses incurred by the city, such expenses to include the inspection, labor, and clerical not to exceed \$35.00 for the first hour and additional hours at \$25.00. If payment is not received within 45 days, upon direction of the council, the cost of such removal of snow or ice shall be collected as a special assessment against the lots or parcels of ground abutting the sidewalks which were cleared, and such special assessments shall be certified for collection as other special assessments are certified and collected.

840.07. Placing snow or ice in public street or on other city property. It is a misdemeanor for any person, not acting under a specific contract with the city, to remove snow from private property or alleys and place the same on a public street in such quantity, or in such manner, as to obstruct vision or cause a hazard to travel, without adequate arrangements for the immediate removal thereof; and it is also a misdemeanor for any person not acting under a contract with the city to dump snow on other city property.

SECTION 845 – REGULATION OF TREES, GRASS AND WEEDS IN
PUBLIC STREETS AND PUBLIC PROPERTY
(Added, Ord. No. 21, Third Series)

845.01. Regulation of trees, grass and weeds in public streets and public property. Subdivision.
1. City to control tree planting. The city shall have control and supervision of planting shrubs and trees upon, or overhanging, all streets and other public property. The city may establish and enforce uniform standards relating to the species and types of trees to be planted, placement and the maintenance and removal thereof.

Subd. 2. Definitions. As used in this section, the following words and terms shall have the meanings stated:

- a) public tree - A tree, shrub, bush or other woody vegetation growing on any public property owned and/or managed by the city.
- b) private tree - A tree, shrub, bush or other woody vegetation growing on private property within the city.
- c) street tree - A tree, shrub, bush or other woody vegetation growing on land lying between property lines on either side of all streets, avenues and boulevards within the city.
- d) park tree - A tree, shrub, bush or other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.
- e) small tree - Any plant material that will grow to a height of no more than 30 feet.
- f) medium tree - Any plant material that will grow to a height of no more than 50 feet.
- g) large tree - Any plant material that will grow to a height of over 50 feet.
- h) public utility - Any public private or cooperatively owned line, facility of system for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil products, water, waste or stormwater, which directly or indirectly serves the public or any part thereof within the corporate limits of the city.

Subd. 3. Tree planting requirements; species; location.

- a) Landscaping plan review. In conjunction with issuing a building permit for a new dwelling, or when the development of a new subdivision or commercial property occurs, the city will review landscaping plans and may require trees to be planted in any of the streets, parking lots, parks and other public places abutting the lands developed and/or subdivided, in accordance with guidelines established by the city.
- b) Tree species. The city shall develop and maintain a list of desirable trees for planting along streets in three size classes: small, medium and large. A list of trees not suitable for planting will also be created and enforced by the city.
- c) Spacing between trees. The spacing of street trees will be in accordance with the three species and size classes listed in this section, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by the city.
- d) Planting near utilities. No street trees other than those species listed herein as small trees may be planted under or within 10 lateral feet of any overhead utility wire.
- e) Planting near curbs and sidewalks. The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes listed in this section, and no trees may be planted closer to any curb or sidewalk than the following: small trees, two feet; medium trees, three feet; and large trees, four feet.
- f) Distance from corners, fire hydrants and driveways. No street tree shall be planted closer than 35 feet to any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than 15 feet to any fire hydrant, nor five feet from any driveway.
- g) Special planting arrangements. The city may grant a permit for special planting arrangements that deviate from the requirements of this subdivision, when special circumstances exist.

Subd. 4. Public trees; planting, care and removal.

- a) Care of public trees. The city shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares, and public grounds as may be necessary to insure the public safety or to preserve or enhance the symmetry and beauty of public grounds. No other planting may be done without consent of the city.

- b) Removal of trees endangering utilities or other public improvements. The city may remove or cause to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to any public utility or public improvement, or is affected with any injurious fungus, insect, or other pest. Every tree overhanging any street or right-of-way within the city shall be pruned so that the branches will not obstruct the light from any street lamp or obstruct the view of any street intersection, and so that there is a clear space of at least eight feet above the sidewalk and 13 feet above the road surface.
- c) Protection of public trees near construction activities. Any tree located on city property in the immediate vicinity of any excavation, demolition or construction site of any building, structure, street or utilities work which has potential for injury, shall be protected from such injury.
- d) Tree topping prohibited. It is unlawful for any person to top any street tree, park tree, or other tree on public property. "Topping" is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section, as determined by the city.
- e) Permits relating to public trees. It is unlawful for any person to plant, remove, cut above the ground, or disturb any tree on any street, park, or other public place without first filing an application and procuring a permit from the city. The person receiving the permit shall abide by the standards set forth in this section.
- f) Adjacent landowner responsibility. Owners of property adjacent to street trees shall maintain the trees by periodic watering and fertilization of street trees as necessary to maintain good health and vigor and protect the trees against damage caused by lawnmowers, weed trimmers, snowblowers and similar equipment.
 - (i) Public trees - private property owner requests - financial responsibility. In cases where an owner of private real property abutting city property requests city actions on street trees or public trees, the requesting owner shall be financially responsible for the following:
 - (1) Removal of trees, limbs, or roots preventing house moving or other construction activities;
 - (2) Removal of trees, limbs, or roots for the alteration of tree or abutting property appearance where no hazard or nuisance exists;
 - (3) Spraying, fertilizing, or treatment other than may be regularly conducted on a city-wide basis by the city.

- (ii) Financial responsibility. Financial responsibility does not eliminate the requirement of obtaining necessary permits required by this section.

Subd. 5. Duty of property owners to cut grass and weeds and maintain trees and shrubs. Every owner of property abutting on any street shall cause the grass and weeds to be cut from the line of such property nearest to such street to the center of such street. If the grass or weeds in such a place attain a height in excess of eight inches it shall be prima facie evidence of a failure to comply with this subdivision. Every owner of property abutting on any street shall, subject to the provisions herein requiring a permit therefor, trim, cut and otherwise maintain all trees and shrubs in an unshazardous and healthy condition, from the line of such property nearest to such street to the center thereof.

Subd. 6. City may order work done. The city may, in cases of failure to comply with this section, perform such work with employees of the city, keeping an accurate account of the cost thereof for each lot, piece or parcel of land abutting upon such street.

Subd. 7. Assessment. If maintenance work described in the foregoing subdivision is performed by the city, the city administrator shall forthwith upon completion thereof ascertain the cost attributable to each lot, piece or parcel of abutting land. The city administrator shall present such certificate to the council and obtain its approval thereof. When such certificate has been approved it shall be extended as to the cost therein stated as a special assessment against such abutting land and such special assessment shall be certified for collection as other special assessments are certified and collected.

SECTION 850 – RIGHT-OF-WAY MANAGEMENT

(Added, Ord. No. 51, Third Series)

850.01. 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 new chapter of this code relating to right-of-way permits and administration. This chapter 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 chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with 1997 Session Laws, chapter 123, substantially codified in Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 - 7819.9950 where possible. To the extent any provision of this chapter 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 chapter 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.

850.03. 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, subdivision 2(b), to manage rights-of-way within its jurisdiction.

850.05. Definitions. The following definitions apply in this chapter of this code. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms, whether or not capitalized.

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

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

"City" means the city of Kenyon, Minnesota. For purposes of section 850.55, "city" means its elected officials, officers, employees and agents.

"Commission" means the state public utilities commission.

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

"Construction performance bond" means any of the following forms of security provided at permittee's option:

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

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

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

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

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

"Department" means the department of public works of the city.

"Department inspector" means any person authorized by the city to carry out inspections related to the provisions of this chapter.

"Director" means the director of the department of public works of the city, or their designee.

"Emergency" means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

"Equipment" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

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

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

"Excavation permit fee" means money paid to the city by an applicant to cover the costs as provided in section 850.23.

"Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.

"Five-year project plan" shows projects adopted by the city for construction within the next five years.

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

"Hole" means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

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

"Management costs" means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes, sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to section 850.59 of this chapter.

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

"Obstruction permit" means the permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

"Obstruction permit fee" means money paid to the city by a permittee to cover the costs as provided in section 850.23.

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

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

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

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

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

"Probation" means the status of a person that has not complied with the conditions of this chapter.

"Probationary period" means one year from the date that a person has been notified in writing that they have been put on probation.

"Public right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

"Registrant" means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

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

"Restoration cost" means the amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota public utilities commission rules.

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

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

"Service" or "utility service" includes (1) those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minnesota Statutes, chapter 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, and sewer, including service laterals, steam, cooling or heating services.

"Service lateral" means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

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

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

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

"Trench" means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

"Two-year project plan" shows projects adopted by the city for construction within the next two years.

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

850.09. Utility coordination committee. The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and, by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

850.11. Registration and right-of-way occupancy. Subdivision 1. Registration. Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

Subd. 2. Registration prior to work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

850.13. Registration information. Subdivision 1. Information required. The information provided to the city at the time of registration shall include, but not be limited to:

- a) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
- b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- c) A certificate of insurance or self-insurance:
 - (i) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the city;
 - (ii) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - (iii) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (iv) Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and
 - (v) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- d) The city may require a copy of the actual insurance policies.
- e) If the person is a corporation, a copy of the certificate is required to be filed under Minnesota Statutes, section 300.06 as recorded and certified to by the secretary of state.

- f) A copy of the person's order granting a certificate of authority from the Minnesota public utilities commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

Subd. 2. Notice of changes. The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

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

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

- a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
- b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

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

By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

Subd. 2. Additional next-year projects. Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

850.17. Permit requirement. Subdivision 1. Permit required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.

- a) Excavation permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- b) Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

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

Subd. 3. Delay penalty. In accordance with Minnesota Rules 7819.1000 subpart 3 and notwithstanding subdivision 2 of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.

Subd. 4. Permit display. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

850.19. Permit applications. Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

- a) Registration with the city pursuant to this chapter;
- b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- c) Payment of money due the city for:
 - (i) permit fees, estimated restoration costs and other management costs;
 - (ii) prior obstructions or excavations;
 - (iii) any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;

- (iv) franchise fees or other charges, if applicable.
- d) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- e) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

850.21. Issuance of permit; conditions. Subdivision 1. Permit issuance. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

Subd. 2. Conditions. The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

850.23. Permit fees. Subdivision 1. Excavation permit fee. The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

- a) the city management costs;
- b) degradation costs, if applicable.

Subd. 2. Obstruction permit fee. The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

Subd. 3. Payment of permit fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within 30 days of billing.

Subd. 4. Non refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in section 850.43 are not refundable.

Subd. 5. Application to franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

850.25. Right-of-way patching and restoration. Subdivision 1. Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under section 850.31.

Subd. 2. Patch and restoration. Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

- a) City restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.
- b) Permittee restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
- c) Degradation fee in lieu of restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

Subd. 3. Standards. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rules 7819.1100.

Subd. 4. Duty to correct defects. 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 five calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under section 850.31.

Subd. 5. Failure to restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

850.27. Joint applications. Subdivision 1. Joint application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subd. 2. Shared fees. Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. With city projects. Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

850.29. Supplementary applications. Subdivision 1. Limitation on area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

Subd. 2. Limitation on dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

850.31. Other obligations. Subdivision 1. Compliance with other laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules, chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

Subd. 2. Prohibited work. Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. Interference with right-of-way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Subd. 4. Trenchless excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, chapter 216D and Minnesota Rules, chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

850.33. Denial of permit. The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

850.35. Installation requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules, chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in section 850.45, subdivision 2 of this section.

850.37. Inspection. Subdivision 1. Notice of completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minnesota Rules 7819.1300.

Subd. 2. Site inspection. Permittee shall make the work-site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd 3. Authority of director.

- a) At the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- b) The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to section 850.43.

850.39. Work done without a permit. Subdivision 1. Emergency situations. Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the 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 chapter for the actions it took in response to the emergency.

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

Subd. 2. Non-emergency situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the city code, deposit with the city the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter.

850.41. Supplementary notification. If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

850.43. Revocation of permits. Subdivision 1. Substantial breach. The city reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- 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; or
- e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 850.37.

Subd. 2. Written notice of breach. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to notice of breach. Within 24 hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one full year.

Subd. 4. Cause for probation. From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

Subd. 5. Automatic revocation. If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

Subd. 6. Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

850.45. Mapping data. Subdivision 1. Information required. Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

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

850.47. Location and relocation of facilities. Subdivision 1. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

Subd. 2. Corridors. The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

Subd. 3. Nuisance. One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be 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, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

Subd. 4. Limitation of space. To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

850.49. Pre-excavation facilities location. In addition to complying with the requirements of Minnesota Statutes, section 216D.01-.09 ("one call excavation notice system") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

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

850.53. Right-of-way vacation.

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

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

850.57. Abandoned and unusable facilities. Subdivision 1. Discontinued operations. A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

Subd. 2. Removal. Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

850.59. Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minnesota Statutes, section 237.163, subdivision 6; or (5) disputes a determination of the director regarding section 850.45, subdivision 2 of this section may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

850.61. Severability. If any portion of this chapter 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 chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.