

CHAPTER VIII
STREETS, ALLEYS, AND PUBLIC GROUNDS

Section 800 - Street Excavations; driveways; parking areas.

800.01. Streets, alleys, public ways and grounds. Subdivision 1. Definition. For purposes of this section the term "director" means the director of community services.

Subd. 2. General rule. No person may make an excavation in a street or alley within the city for the purpose of installing water mains, sewer mains, stream or gas mains, or telephone or electric conduits for any other purpose without having first obtained a permit for the excavation from the director of community services. A permit is not required for any street excavation made under a contract with the city or made by the city itself.

Subd. 3. Applications and regulations. The director shall prepare the necessary application forms for permits required by subdivision 2, and shall also prepare such rules and regulations with respect to excavations as are necessary to protect the public from injury, prevent damage to public or private property, and minimize interference with the public use of streets and alleys.

Subd. 4. Permits displayed. Permits for street excavations shall be in writing, and the permit shall be kept on the site of the work while it is in progress in the custody of the individual in charge. Permits shall be displayed upon request made by any city official or police officer.

Subd. 5. Permit fees. The permit fee for each location covered by the permit is set in appendix D. Each transverse excavation and each 300 feet or portion thereof of longitudinal excavation is a location.

800.03. Completion and abandonment of work. Work on any excavation shall proceed in an expeditious manner in order to avoid unnecessary inconvenience to the public. If work on any excavation is not performed in accordance with applicable regulations, or is abandoned, the city may, after six hours notice to the permittee, fill the excavation and repair the street or alley, and in event the cost of the work by the city shall be the liability of and shall be paid by the permittee.

800.05. Bond requirements. Subdivision 1. Bond required. Permittees shall file with the director a corporate surety bond approved by the city attorney as to form in the amount of \$5,000 conditioned that the permittee will:

(a) perform work in connection with the excavation in accordance with applicable ordinances and regulations;

(b) indemnify and hold harmless the city from all damage caused in the execution of such work; and

(c) pay any and all costs and damages suffered by the city by reason of the failure of the permittee to observe the terms of this section or because of negligence in the execution of the work.

Subd. 2. Exception: bond requirements. The bond prescribed by this subsection is not required of (i) licensed and bonded plumbers, (ii) gas or heating contractors, or (iii) public utility corporations.

800.07. Other permits. The permits required in this section are in addition to utility connection permits required by other sections of this code.

800.09. Excavations. Subdivision 1. General regulations. Street openings must be made in a manner that will cause the least inconvenience to the public. Provisions must be made for passage of surface water along the gutters and one-half of the traveled portion of the street must be at all times in good and safe condition for passage of vehicles. Open excavations must be plainly marked at all times with red flags and protected when work is not actually in progress with barricades or railings, and at night by lanterns or electric flashing devices. Pipes or mains exposed to frost or freezing temperatures must be protected in such manner as will prevent freezing of water therein. In addition to the penalties prescribed herein, a person responsible for exposing a city main which is damaged by freezing, whether freezing temperature is foreseen or not, is liable to the city for all damages caused by freezing, and shall indemnify the city for any and all damages sustained by others on account thereof for which the city may be liable.

Subd. 2. Refilling excavations. Street openings must be refilled promptly after completion of tapping or other work, and all the earth must be replaced in the trench and thoroughly puddled or tramped, and the surface of the street shall be restored to and maintained in as good order as it was before excavation, to the satisfaction of the director. Dirt and debris from the work must be removed immediately from the public street. A person who neglects to comply with the requirements of this section within 24 hours after notice from the city is liable to the city for the full cost incurred by the city in restoring the excavated portions of the street to proper condition. If the excavation was made by a licensed plumber, the cost is an obligation collectible from the surety on the plumber's bond.

Subd. 3. Hazardous excavations. If an excavation for building purposes is left open for more than six months without any activity towards the completion of the building, or if any excavation or basement is not filled to grade or otherwise protected after a building is destroyed, demolished or removed, the council may order the filling, satisfactory protection of the excavation or, in the alternative, the immediate initiation or resumption of the erection of a building thereon.

Subd. 4. Service of order. An order issued by the council shall be served upon the owner or the owner's agent in the manner provided for the service of a civil summons, or in lieu thereof, if the owner or suitable agent cannot be found, by posting the order on the excavation site and by four weeks' publication in the official newspaper of the city.

Subd. 5. Non-compliance. If upon valid service of an order, the owner fails to comply within 15 days of service of the order, the city shall cause the excavation to be filled to grade or protected and charge the cost of the work against the real estate as a special assessment in the manner provided by Minnesota Statutes, section 463.21.

800.11. Construction of driveways, sidewalks, curb and gutter. Subdivision 1. Permit required. No person may construct, remove or repair any driveway, sidewalk curb, or curb and gutter within a public street or a way in the city without first having obtained a permit from the director. A permit is not required for work done under contract with the city or done by the city itself.

Subd. 2. Application for permit. Application for a permit shall be made in writing to the director. The application shall contain the following information:

- (a) name of the owner of the adjacent property in whose name the application is made;
- (b) location of the sidewalk, curb, curb and gutter, or driveway proposed to be constructed, removed or repaired; and
- (c) name of the person who is to perform the work.

Subd. 3. Permit fee. The permit fee, including instances where a survey and a setting of grade stakes must be performed by the city, is as provided in appendix D. Permits expire one year after issuance.

Subd. 4. Bond requirements. Permittees shall file with the director a corporate surety bond in the amount of \$5,000 conditioned that the permittee will:

- (a) perform work under the permit in accordance with applicable ordinances and regulations;
- (b) indemnify and hold harmless the city from damage caused in the execution of such work;
- (c) pay any and all costs and damages suffered by the city by reason of negligence in the performance of the work; and
- (d) maintain said driveway, curb, curb and gutter, or sidewalk free from all defects resulting from improper materials or workmanship for a period of two years from completion of the work.

Subd. 5. Contractors: bond requirement. A person engaged in the business of constructing driveways, sidewalk, curb and gutter shall file with the manager a corporate surety bond in the amount of \$10,000 conditioned as provided in subdivision 4. While such a bond is in effect, the principal shall be deemed to have complied with subdivision 4.

Subd. 6. Insurance requirements. Permittees must file with the director a policy or certificate of insurance insuring the city in the amount of \$100,000 against liability for any personal injury resulting from work performed under the permit.

Subd. 7. Issuance of permit. Upon compliance with this subsection and payment of the required fee, the director shall issue the permit requested.

800.13. Driveways: special regulations. Subdivision 1. Width: commercial, industrial or multi-family. No driveway from private property serving a commercial, multifamily or industrial use entering a public street may be less than 26 feet nor more than 32 feet in width. Upon a showing of necessity and public convenience, the public works director may authorize a greater or lesser width. (Amended, Bill No. 1998-8)

Subd. 2. Over sidewalk. Where a driveway is constructed over a public sidewalk, that portion of the driveway falling between the building side of the sidewalk and the street curb must be paved with concrete in accordance with city specifications for sidewalk construction. (Amended, Bill No. 1998-8)

Subd. 3. Curb cut. Where an existing curb is cut for driveway construction, the curb must be returned to the sidewalk line in accordance with city specifications for curb construction. (Amended, Bill No. 1998-8)

Subd. 4. Surfacing: commercial. Driveways on private property within the city serving a commercial, multifamily, or industrial use must be surfaced with portland cement concrete, asphaltic cement concrete, or paver block. (Amended, Bill No. 1998-8)

Subd. 5. Residential driveways. All residential driveways must meet the requirements specified by the applicable section of the zoning ordinance. (Amended, Bill No. 1998-8; Bill No. 2008-1)

800.15. Duties of public works director. Subdivision 1. Specifications. The public works director shall prepare and have available for inspection standard specifications for the construction, removal and repair of driveways, curbs, and curb and gutter. Work must be performed in accordance with these specifications. (Amended, Bill No. 1998-8)

Subd. 2. Inspection. The director may require periodic inspection of any work being performed under this section to insure compliance. (Amended, Bill No. 1998-8)

800.17. Parking areas. Subdivision 1. Parking area: site plan approval. No person may establish or make available any lot, tract, or parcel of land or portion thereof as a parking area in any zoning district as defined in the zoning code or permit land to be so used for other than single family or two family residence parking in any zone without first having obtained site plan approval. No building permit may be issued pursuant to the zoning code for the construction of any industrial, commercial, business, trade, institutional, multiple residence, or similar building or structure unless adequate provision has been made for off-street parking, unloading and for the safe accommodation of vehicular and pedestrian traffic. (Amended, Bill No. 1998-8; Bill No. 2008-1)

Subd. 2. Application for site plan review. Application for site plan review shall be made to the community development director on forms provided by the City as detailed in Subsection 547.13 of the Zoning Ordinance. (Amended, Bill No. 1998-8; Bill No. 2008-1)

(Subd. 3, 4, and 5 Repealed, Bill No. 2008-1)

800.19. Repealed, Bill No. 2008-1

800.21. Operation of parking areas. No person holding a permit for a parking area may use the area or permit the area to be used in any manner contrary to the approved site plan or contrary to the provisions of subsection 800.23 or any other applicable provisions of the City Code. Off-street parking areas shall be kept free of snow so that all of the designated off-street parking spaces and driveways giving access thereto are available for off-street parking throughout the year. No longer than 48 hours after each snowfall exceeding four inches in depth all the parking spaces and driveways shall be cleared of snow and available for use.

800.23. Subdivision 1 Repealed, Bill No. 2008-1.

Subd. 2. Surface. Parking areas and all driveways and approaches thereto shall be surfaced with concrete, blacktop, or paver block. Sidewalks shall be of concrete. Areas not used for driving, parking or pedestrian traffic shall be landscaped and kept free of mud, dust and refuse. (Amended, Bill No. 1998-8)

Subd. 3. Barrier curb. A full concrete curb shall be constructed on the perimeter of each such area. Concrete perimeter curb shall be of MnDOT Type B-612. (Amended, Bill No. 1998-8)

Subd. 4. Curbing. Concrete curb and gutter, with curb returns, shall be constructed at all intersections and approach entrances. (Amended, Bill No. 1998-8)

Subd. 5. Aisle and stall width. Parking stalls shall be clearly marked and distinguished from driving lanes. Parking stalls and aisles shall be designed, installed and maintained according to the standards on file with the public works department. (Amended, Bill No. 1998-8)

Subd. 6. Signs. Traffic signs and devices shall be installed, directing traffic within the area and traffic entering or leaving the area per the Minnesota Manual on Uniform Traffic Control Devices. (Amended, Bill No. 1998-8)

Subd. 7. Drainage. The area shall be so graded and drained as to dispose of all surface water. Parcels greater than 1/2 acre shall be required to provide proper on-site stormwater collection per the city's stormwater management plan, except where it is determined by the public works director that on-site collection is impractical or creates an undue hardship. (Amended, Bill No. 1998-8)

Subd. 8. Boulevards. Parking shall be on private property only. Boulevards shall be crossed by driveways or approaches only at approved points. Where necessary to prevent traffic from crossing at other than such approved points, barriers or barricades of an approved type shall be erected on or near the boulevard area. A curb opening permit must be obtained for work in the boulevard area, per subsection 800.11. (Amended, Bill No. 1998-8)

Subd. 9. Completion. Certificates of occupancy shall not be issued for any building until all perimeter curb and gutter and at least one lift of blacktop has been installed. (Added, Bill No. 1998-8)

800.25. Duties of director. The public works director shall prepare standard specifications for the construction, marking and equipping of parking areas. In the preparation of specifications relating to traffic flow and traffic control signs and devices the director shall consult with the director of public safety. The specifications prepared under this subsection shall be available for use by applicants. (Amended, Bill No. 1998-8)

Section 802 - Right-Of-Way Management
(Added, Bill No. 2003-11)

802.01 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 enacts this new Section of this code relating to right-of-way permits and administration. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the city's rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This Section shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This Section shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent that any provision of this Section cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended.

802.03 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 elects pursuant Minnesota Statutes, section 237.163 subdivision 2(b), to manage rights-of-way within its jurisdiction.

802.05 Definitions. The following definitions apply in this Section of this code. References to "subdivisions" are unless otherwise specified references to subdivisions in this Section. Subdivision 1. Abandoned Facility. "Abandoned Facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

Subd. 2. Applicant. "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

Subd. 3. City. "City" means the city of Richfield, Minnesota. For purposes of Section 802.57, city means its elected officials, officers, employees and agents.

Subd. 4. Commission. "Commission" means the Minnesota Public Utilities Commission.

Subd. 5. Congested Right-of-Way. "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.

Subd. 6. Construction Performance Bond. “Construction Performance Bond” means any of the following forms of security provided at permittee’s option:

- (a) Individual project bond, including a “license and permit” bond;
- (b) Cash deposit;
- (c) Security of a form listed or approved under Minnesota Statutes, section. 15.73, subdivision;
- (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.

Subd. 7. Degradation. “Degradation” means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Subd. 8. Degradation Cost. “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.

Subd. 9. Degradation Fee. “Degradation Fee” means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

Subd. 10. Department. “Department” means the department of public works of the city.

Subd. 11. Department Inspector. “Department Inspector” means any person authorized by the city to carry out inspections related to the provisions of this Section.

Subd. 12. Director. “Director” means the Director of the department of public works of the city, or her or his designee.

Subd. 13. Delay Penalty. “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.

Subd. 14. Emergency. “Emergency” means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Subd. 15. Equipment. “Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Subd. 16. Excavate. “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Subd. 17. Excavation permit. “Excavation permit” means the permit which, pursuant to this Section, 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.

Subd. 18. Excavation permit fee. “Excavation permit fee” means money paid to the city by an applicant to cover the costs as provided in Section 802.23.

Subd. 19. Facility or Facilities. “Facility or Facilities” means tangible asset in the public right-of-way required to provide utility service. The term does not include Facilities to the extent the location and relocation of such Facilities are preempted by Minnesota Statutes, section 161.45, governing utility facility placement in state trunk highways.

Subd. 20. Five-year project plan. “Five-year project plan” shows projects adopted by the city for construction within the next five years.

Subd. 21. High Density Corridor. “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.

Subd. 22. Hole. “Hole” means an excavation in the right-of-way, with the excavation having a length less than the width of the pavement or adjacent pavement.

Subd. 23. Local Representative. “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 Section.

Subd. 24. Management Costs. “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 802.61.

Subd. 25. Obstruct. “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.

Subd. 26. Obstruction Permit. “Obstruction Permit” means the permit which, pursuant to this Section, 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, including a blanket permit for a period of time and for types of work specified by the Director, if deemed appropriate in his discretion.

Subd. 27. Obstruction Permit Fee. “Obstruction Permit Fee” means money paid to the city by a permittee to cover the costs as provided in Section 802.23.

Subd. 28. Patch or Patching. “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.

Subd. 29. Pavement. “Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with paver blocks, bituminous, concrete, aggregate, or gravel.

Subd. 30. Permit. “Permit” has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.

Subd. 31. Permittee. “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this Section.

Subd. 32. Person. “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.

Subd. 33. Public right-of-way. “Public right-of-way” has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

Subd. 34. Registrant. “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

Subd. 35. Restore or Restoration. “Restore or Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Subd. 36. Right-of-Way Permit. “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Section.

Subd. 37. Right-of-Way User. “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.

Subd. 38. Service or Utility Service. “Service or Utility Service” means and includes (1) services provided by a public utility as defined in Minnesota Statutes 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 system as defined in Minnesota Statutes, chapter. 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling or heating services.

Subd. 39. Service or Utility Service. “Service or Utility Service” 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.

Subd. 40. Temporary Surface. “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.

Subd. 41. Trench. “Trench” means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement or adjacent pavement.

Subd. 42. Telecommunication right-of-way User. “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 Section, a cable communication system defined and regulated under Minn. Stat. Chap. 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 Section.

Subd. 43. Two Year Project Plan. “Two Year Project Plan” shows projects adopted by the city for construction within the next two years.

802.07 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.

802.09 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.

802.11 Registration and Right-of-Way Occupancy. Subdivision 1. Registration. Each person who occupies, 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 in this Section shall be construed to repeal or amend the provisions of a city ordinance establishing the rights of and limitations placed on 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 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 under this Section for the following:

- (a) Planting or maintaining boulevard plantings or gardens (City Code 811.07);
- (b) Other surface landscaping works (City Code 811.07);
- (c) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots, except repairs or restoration necessitated by utility cuts or other work (City Code 800.11);
- (d) Construction or maintenance of street furnishings, bus stop benches, shelters, or posts and pillars (City Code 805.07);
- (e) Snow removal activities (City Code 930.17);
- (f) Construction and maintenance of irrigation systems provided that the system does not connect directly to water mains in the right-of-way (City Code 811.07).

Subd. 4. Gopher One Call. Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

802.13 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 facility owner code number or other One-Call identifier, address and e-mail address, 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 accessible for consultation 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:
- (1) Verifying that an insurance policy has been issued to the registrant by an insurance company authorized to do business in the State of Minnesota, or a form of self insurance acceptable to the city;
 - (2) 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;
 - (3) Either 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 or otherwise providing evidence satisfactory to the Director that the city is fully covered and will be defended through registrant's insurance for all actions included in Minnesota Rule part 7819.1250;
 - (4) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - (5) 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 Section.
- (d) The city may require a copy of the actual insurance policies if necessary to ensure the Director that the policy provides adequate third party claim coverage and city indemnity and defense coverage for all actions included in the indemnity required by Minnesota Rule part 7819.1250.
- (e) Such evidence as the Director may require that the person is authorized to do business in Minnesota.

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 fifteen (15) days following the date on which the registrant has knowledge of any change.

802.15 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. If by December 1 the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the city thereafter as soon as it is developed.

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 and subject to the Minnesota Data Practices Act 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 March 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.

802.17 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 the 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.

- (c) Permits for installation, repair or otherwise work on above-ground facilities within the meaning of Minn. Stat. § 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand dug for the purpose of placing a pole type structure.

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 Rule 7819.1000 subp. 3, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

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

Subd. 5. Routine Obstruction and Excavation. The Director may approve a permit plan which, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that last less than eight hours in duration may be included in such a plan.

802.19 Permit Applications. Subdivision 1. Content of Permit. 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 Section;
- (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 owned or operated by the applicant.
- (c) Payment of money due the city for:
 - (1) permit fees, estimated restoration costs and other management costs;
 - (2) prior obstructions or excavations;
 - (3) 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;
- (d) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

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.

802.21 Issuance of Permit; Conditions. Subdivision 1. Permit Issuance. If the Applicant has satisfied the requirements of this Section, the city shall issue a permit within five (5) business days of receiving a completed application.

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.

Subd. 3. Screening. The Permittee shall screen all above-ground facilities as required by the Director. Screening methods shall include the use of shrubs, trees and/or landscape rock or installation using stilt or camouflaged forms of the facility.

802.23 Permit Fees. Subdivision 1. Fee Schedule and Fee Allocation. The city's permit fee schedule shall be available to the public and established in advance where reasonably possible. The permit fees shall be designed to recover the city's actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the city.

Subd. 2. Excavation Permit Fee. The city shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

- (a) City management costs.
- (b) degradation costs, if applicable.

Subd. 3. 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. 4. 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 thirty (30) days of billing, or on some other payment plan agreed to by the Director at his discretion.

Subd. 5. Non Refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Subdivision 22 are not refundable.

Subd. 6. 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.

802.25 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 Subdivision 16.

Subd. 2. Patch and Restoration. Permittee must patch its own work. The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or to restore the surface portion of right-of-way itself.

- (a) City Restoration. If the city restores the surface portion of right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such Restoration, the pavement settles due to permittee's improper work, the permittee shall pay to the city, within thirty (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 Rule 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 replacing and compacting the subgrade and aggregate based material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.

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

Subd. 4. Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Upon notification from the city, permittee shall correct all restoration work to the extent necessary, using the method required by the city. Unless otherwise agreed to by the Director, said work shall be completed within fourteen (14) calendar days of 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 unseasonal or unreasonable under Subdivision 16.

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 shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee ten (10) days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the Director. In the event the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

802.27 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.

802.29 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.

802.31 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 Minn. Stat. 216D.01-.09 (Gopher One Call Excavation Notice System). 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, or 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, unless otherwise approved by the Director. 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. Traffic Control. A permittee shall implement traffic control measures in the area of the work and shall use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the State of Minnesota.

802.33 Denial of Permit. The city may deny a permit for failure to meet the requirements and conditions of this Section 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.

802.35 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, 78.19.5000 and 7819.5100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes sections 237.162 and 237.163.

802.37 Inspection. Subdivision 1. 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. 2. 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 to correct any work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a “substantial breach” within the meaning of Minn. Stat. § 237.163 subd. 4(c), the order shall state that failure to correct the violation will be cause for revocation of the permit after a specified period determined by the Director. The permittee shall present proof to the Director that the violation has been corrected within the time period set forth by the Director in the order. Such proof shall be provided no later than the next business day following the day of completion. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 802.43.

802.39 Work Done Without a Permit. Subdivision 1. Emergency Situations. Each registrant shall immediately notify the Director of any event regarding its facilities that the registrant considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency, unless the Director allows a longer time, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Section for the actions it took in response to the Emergency. If the Director concludes that a registrant is required to perform work at the facility solely because of an emergency created by another registrant and the work is performed in the immediate area of the emergency work, the Director may waive the permit otherwise required by the registrant(s) called to the emergency created by another party.

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, pay an unauthorized work permit fee in an amount established from time to time by the city council, 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 Section.

802.41 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.

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

- (a) The violation of any material provision of the right-of-way permit;
- (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; 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 19B-19.

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 to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach. Within a time established by the Director following permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

Subd. 4. 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.

802.45 Mapping Data. Subdivision 1. Rule. Each registrant and permittee shall provide mapping information in a form required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

802.47 Undergrounding. Subdivision 1. Purpose. The purpose of this Section 802.47 is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the city. Location and relocation, installation and reinstallation of Facilities in the right-of-way or in or on other public ground must be made in accordance with this Subdivision. This Subdivision is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to Minnesota Statutes, Sections 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, U.S.C. section 253.

Subd. 2. Undergrounding of Facilities. Facilities newly installed, constructed or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. The requirements of this Subdivision shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

Subd. 3. Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities. If the city finds that one or more of the purposes set forth in Section 802.47, Subd. 1. would be promoted, the city may require a permanent replacement, relocation or reconstruction of a Facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing Facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the Facilities, or by the city in connection with (1) the present or future use by the city or other local government unit of the right-of-way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way.

Subd. 4. Exceptions to Undergrounding. The following exceptions to the strict application of this Subdivision shall be allowed upon the conditions stated:

- (a) Transmission Lines. Above-ground installation, construction, or placement of those Facilities commonly referred to as "high voltage transmission lines" shall be allowed unless the council requires undergrounding of the Facilities after providing the right-of-way user notice and an opportunity to be heard. This provision shall not be construed as waiving the requirements of any other ordinance or regulation of the city as the same may apply to any such proposed project.

- (b) Technical/Economic Feasibility; Promotion of Policy. Above-ground installation, construction, or placement of Facilities shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:
- (1) Underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights; or,
 - (2) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground Facilities placement.
 - (3) Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under Section 802.47, Subd. 1 would be advanced by underground placement of Facilities on the project in question, or the city determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.
- (c) Temporary Service. Above-ground installation, construction, or placement of temporary service lines shall only be allowed:
- (1) During new construction of any project for a period not to exceed twenty-four (24) months;
 - (2) During an emergency in order to safeguard lives or property within the city;
 - (3) For a period of not more than seven (7) months when soil conditions make excavation impractical.

Subd. 5. Retirement of Overhead Facilities. The city council may determine whether it is in the public interest that all Facilities within the city, or Facilities within certain districts designated by the city, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to Section 802.47, Subd. 2. of this Code (new Facilities) and subdivision 802.47, Subd. 3. (Replacement Facilities). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected. (Two weeks published: 30 days written.) At the hearing the council must consider items (1) – (4) in Section 802.47, Subd. 5.B. of this Section and make findings. Undergrounding may not take place until city council has, after hearing and notice, adopted a plan containing items (1) – (6) of Section 802.47, Subd. 5.C. of this Section.

- (a) Public Hearings. A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether Facilities in the right-of-way in the city, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under Subdivisions 24.B. and D. of this Section.

- (b) Public Hearing Issues. The issues to be addressed at the public hearings include but are not limited to:
- (1) The costs and benefits to the public of requiring the undergrounding of all Facilities in the right-of-way.
 - (2) The feasibility and cost of undergrounding all Facilities by a date certain as determined by the city and the affected utilities.
 - (3) The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the city.
 - (4) Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

Upon completion of the hearing or hearings, the city council must make written findings on whether it is in the public interest to establish a plan under which all Facilities will be underground, either citywide or within districts designated by the city.

- (c) Undergrounding Plan. If the council finds that it is in the public interest to underground all or substantially all Facilities in the public right of way or in non-right-of-way public ground, the council must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:
- (1) Timetable for the undergrounding.
 - (2) Designation of districts for the undergrounding unless the undergrounding plan is citywide.
 - (3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions.
 - (4) Procedures for the undergrounding process, including but not limited to coordination with city projects and provisions to ensure compliance with non-discrimination requirements under the law.
 - (5) A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility.
 - (6) Penalties or other remedies for failure to comply with the undergrounding.

Subd. 6. Developer Responsibility. All owners, platters, or developers are responsible for complying with the requirements of this Subdivision, and prior to final approval of any plat or development plan, shall submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such Facilities have been made.

802.49 Location and Relocation of Facilities. Subdivision 1. Rule. 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.

- (a) Relocation Notification Procedure: The Director shall notify the utility owner at least three months in advance of the need to relocate existing facilities so the owner can determine if relocation or replacement is required and plan any required work. The Director shall provide a second notification to the owner one month before the owner needs to begin the relocation. The utility owner shall begin relocation of the facilities within one month of the second notification. To the extent technically feasible, all utilities shall be relocated within one month or in a time frame determined by the Director. The Director may allow a different schedule if it does not interfere with the city's project. The utility owner shall diligently work to relocate the facilities within the above schedule.
- (b) Delay to City Project: The Director shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner fails to meet the relocation schedule due to circumstances within its control, the city may charge the utility owner for all costs incurred and requested by a contractor working for the city who is delayed because the relocation is not completed in the scheduled timeframe and for all costs incurred by the city due to the delay.
- (c) Joint Trenching: All Facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground Facilities. When technically appropriate and no safety hazards are created, all utilities shall be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in conformance with Minnesota Rules pt. 7819.5100, subd. 2, governing safety standards.

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 are or, pursuant to current technology, the city expects will 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. A typical crossing section of the location for utilities may be on file at the Director's office. This section is not intended to establish "high density corridors".

Any Registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city may remain at that location until the city requires Facilities relocation to the corridor pursuant to relocation authority granted under Minnesota Rules part 7819.3100 or other applicable law.

Subd. 3. Limitation of Space. To protect the public 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.

802.51 Pre-excavation Facilities Location. In addition to complying with the requirements of Minn. Stat. 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 be responsible to mark the horizontal placement of all said facilities, to the extent technically feasible. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of their facilities to excavators upon request. Nothing in this subsection is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in Minnesota Statutes, Section 216D.01-.09.

802.53 Interference By Other Facilities. When the city does work in the right-of-way in its governmental right-of-way management function and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging registrant's facilities, the city shall notify the local representative as early as is reasonably possible. The city costs associated therewith will be billed to that registrant and must be paid within thirty (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 damages.

802.55 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.

802.57 Indemnification and Liability. By registering with the city, or by accepting a permit under this Section, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

802.59 Abandoned Facilities. Subdivision 1. Discontinued Operations. A registrant who has decided 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 Section have been lawfully assumed by another registrant.

Subd. 2. Removal. Any registrant who has abandoned facilities in any right-of-way shall remove them from that right-of-way pursuant to Minnesota Rule Part 7819.3300, unless the requirement is waived by the Director.

802.61 Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6 may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

802.63 Reservation of Regulatory and Police Powers. A permittee's or registrant's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

802.65 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Section is for any reason held invalid or unconstitutional by any court or administrative agency 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. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Section or any portions of this Section is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this Section precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Section 805 - Benches, shelters and telephone booths

805.01. Benches, shelters and outdoor telephone booths on public walks and places. Subdivision 1. Purpose. The purpose of this section is to regulate the placing and maintenance of courtesy benches, shelters and outdoor telephone booths upon the public streets.

805.03. Definitions. Subdivision 1. "Courtesy bench" means a bench placed upon a public street by a person other than the city designed for the convenience of the general public and constructed and used as an advertising device.

Subd. 2. "Director" means the director of community services.

805.05. General rule. It is unlawful for a person to place a courtesy bench, shelter or outdoor telephone booth upon a public street or other public way subject to the control of the city without first having been granted a permit as provided in this section.

805.07. Permits and application. Application for permits shall be made to the director. The application shall contain the following information:

- (a) location of the bench, shelter or outdoor telephone booth;
- (b) name and address of applicant;
- (c) detailed plans and specifications of each proposed bench, shelter or booth including the general nature of advertising matter to be posted thereon; and
- (d) such other information the director may reasonably require.

805.09. Consent of owners and lessees. The application must be accompanied by written consent, in a form prescribed by the director, of the owners or lessees of the property abutting the street where the bench is to be located.

805.11. Conditions governing issuance of permits. Subdivision 1. Application. This subsection governs the issuance of a permit for a courtesy bench.

Subd. 2. Permit for each bench. A separate permit is required for each bench, shelter or booth to be constructed, but permits may be granted for more than one location on the basis of a single application provided the director is satisfied that all the information required by subsection 805.07 has been obtained for each proposed bench, shelter or booth.

Subd. 3. Transfer: new permit. If a bench, shelter or booth for which a permit has been issued is sold or title or control thereof is transferred or assigned, a new permit shall be required for its maintenance. Permits expire, unless renewed, on the first day of January next following the date of issuance.

Subd. 4. Location. No permit may be issued for the installation of benches, shelters or booths in the following places:

(a) in an alley;

(b) at any location where the distance from the face of the curb to the inside sidewalk line is less than eight feet; or

(c) at any location distant more than 50 feet from the nearest point of intersection with a street unless the director directs a change of location.

Subd. 5. Permit fees. The permit fee and renewal fee shall be as provided in appendix D.

805.13. Bond requirements. Subdivision 1. Form. Applicants for permits shall post or maintain with the council a bond or policy of public liability insurance approved by the city attorney conditioned as follows: That the permit holder will indemnify and save harmless the city, its agents, officers and employees from any and all loss, costs, damages, expenses or liability which may result from or arise out of the granting of the permit or the installation or maintenance of the bench or benches, shelters or booths for which a permit is issued regardless of the point to which the bench or benches, shelters or booths may be moved within the city with or without the consent of the permit holder, and further that the permit holder will pay any and all loss or damage that may be sustained by any person as a result or which may be caused by or arise out of the installation or maintenance. The bond or insurance shall be maintained in its original amount by the permit holder at his expense at all times during the period for which the permit is in effect. When two or more permits are issued to one person one bond or insurance policy may be furnished to cover two or more benches, shelters or booths, and the bond or policy shall be of a type in which coverage is automatically restored upon occurrence of any accident or loss from which liability may thereafter accrue.

Subd. 2. Liability limits. The limit of liability upon the bond or policy of insurance required by this subsection is \$25,000 for a loss, bodily injury to or death occurring to any one person or arising out of any one accident.

805.15. Permits: approval and issuance. If the director is satisfied that all of the conditions enumerated in this section have been met and that the erection and maintenance of the bench, shelter or booth at the proposed location will not restrict pedestrian traffic or otherwise be detrimental to public safety, he shall approve the application and forward it to the manager.

805.17. Review by city manager. If upon review of the application the manager is satisfied that all of the conditions enumerated in this section have been complied with and that erection of the bench, shelter or booth will not violate any of the provisions of this code or endanger the health, safety, order, convenience or general welfare of the city, the manager shall approve the application. Upon approval of the application by the manager and payment of the required fees, the director shall issue the permit.

805.19. Renewal of permits. At least 30 days prior to the expiration of a permit, the permittee may apply for renewal of the permit. If there is no change in the construction location or advertising content and if consent of abutting owners or lessees has not been withdrawn, the applicant shall so certify and the permit may be reissued by the director upon payment of the required renewal fee. If there is a change in any of the information required for the original application for the permit, the application for renewal shall be approved and issued as an original permit. The director shall promptly notify the permittee of a withdrawal of consent filed with him by any abutting owner or lessee.

805.21. Revocation of permit. The manager may revoke or deny renewal of any permit for failure to comply with the provisions of this code, for misrepresentation of material facts in the original application, or for any reason which would have been grounds for denial of the original application.

805.23. Installation and maintenance of benches, shelters and booths. Subdivision 1. Size and location. Courtesy benches shall be installed parallel with the curb and set back at least 18 inches from the face of the curb. Size limitations on courtesy benches are as follows:

- (a) height - 42 inches maximum;
- (b) width - 30 inches maximum; and
- (c) length - Seven feet maximum.

Subd. 2. Permit display. Each bench, shelter or booth shall display the permit number in a conspicuous place.

Subd. 3. Conditions. It is the responsibility of the permittee to maintain each bench, shelter or booth in a safe condition and to keep benches, shelters and booths in a neat, clean and usable condition. The permittee shall insure that the bench, shelter or booth is kept free of ice and snow and is kept accessible at all times.

Subd. 4. Advertising matter. Advertising matter may be displayed only on the front and rear surfaces of the backrest of a bench. Advertisements for liquor or beer, political advertisements and obscene, immoral or indecent advertising matter is prohibited on all benches, shelters or booths. Advertising matter is subject to the approval of the city council. No advertising matter on any bench, shelter or booth may display the words "Stop", "Look", "Drive In", "Danger" or any other word, phrase or symbol which might interfere with, mislead or distract traffic.

805.25. Removal of benches, shelters or booths. Subdivision 1. Notice: costs. Upon the revocation or expiration of any permit without renewal, the permittee shall remove the bench, shelter or booth promptly. The director may remove the bench, shelter or booth after ten days mailed notice to the permittee and the cost of removal shall be paid by the permittee. If the permittee fails to pay the costs within 60 days after receiving notice from the director, the bench, shelter or booth shall become the property of the city, but the permittee shall remain liable for the cost of removal and storage of the bench, storage or booth.

Subd. 2. Summary removal. A bench, shelter or booth placed upon a public street in the city contrary to the provisions of this section may be summarily removed by the director, pursuant to Minnesota Statutes, section 160.27, subdivision 6.

805.27. Registration of permits obtained from other road authorities. When a courtesy bench, shelter, or outdoor telephone booth is placed the city within the limits of a street or roadway subject to the control of a road authority other than the city as defined in Minnesota Statutes, section 160.02, the person placing the bench, shelter or booth shall file proof of the procurement of a permit from the other road authority with the director.

Section 810 - Streets and boulevard trees

810.01. Planting, maintenance, care and removal of trees on public property. The city has determined that the planting, maintenance, care and removal of trees located within the municipal street right-of-way areas and other public grounds are matters of important concern to the city and influence the public health, safety and welfare of its citizens in numerous ways including the effect upon the public right of passage, the effect upon the value, use and enjoyment of properties within the area, and the impact which such matters have upon municipal services such as street cleaning and sewer maintenance.

810.03. Definition. For purposes of this section the term "director" means the director of community services.

810.05. Permit required. No person may trim, cut, remove or plant any tree on any public property, including street rights-of-way, without having a valid and current permit as provided in this section.

810.07. Permit application and permit fee. Subdivision 1. Procedure. A person desiring to obtain a permit required by shall make application to the director. The application must be accompanied by the fee established in appendix D.

Subd. 2. Review by shade tree commission. The director shall refer appeals on any application to the city shade tree commission, if such a commission exists, for its review and recommendation.

Subd. 3. Standards governing issuance. The director shall issue the permit if, in the director's judgment, the proposed work is desirable, and the proposed method and workmanship are of a satisfactory nature. In the case of requests for removal permits, the director will consider such factors as the tree species, its general condition and form, its location and by whom it was planted. The director may establish conditions to be met by the applicant. The conditions may include a requirement that the tree to be removed be replaced by the applicant by a suitable species placed on a suitable location within the right-of-way. The director may not issue a removal permit based only on a claim of sewerline blockage by tree roots.

Subd. 4. Tree planting permits: additional conditions. In determining whether to issue a permit to allow tree planting the director may also consider the species of the tree, its proposed location and spacing, size, grade, method of planting and support.

Subd. 5. Permit duration. All permits issued under this section shall be for a specified period of time unless earlier suspended or revoked.

810.09. Protection of trees on public ground. Subdivision 1. Fire damage. Unless done pursuant to a permit issued under this section, no person may intentionally damage, cut, carve, transplant or remove any tree, or allow any harmful substance to come in contact with them; or set fire or permit any fire to burn when the fire or the heat from the fire will injure any portion of any tree.

Subd. 2. Excavation. Reasonable care shall be exercised by persons excavating, trenching, tunneling, or constructing near any tree to avoid injury or damage to the tree. Reasonable care may include the erection of a guard or barrier to protect the tree from machinery, debris or dirt. All tunnels, trenches and construction shall be located as far from a tree as practicable under the circumstances of the project.

810.11. Director: duties. The director may cause the planting of trees on public grounds and may direct the trimming, removal, treatment or other care of any tree in order to preserve or restore its condition or to protect the public from damage or injury. The cost of the work may be assessed against the property on which the tree is located.

810.13. Tree planting plan. Subdivision 1. Director to prepare. The director shall prepare a comprehensive tree plan regarding the planting of trees on public grounds within the city. When approved by resolution of the city council, the comprehensive tree plan, and any modifications thereto, will be the official plan of the city. Thereafter, no tree planting permit will be issued which does not conform to the tree planting plan.

Subd. 2. Tree planting plan: contents. The tree planting and maintenance plan shall address the following matters, together with any other matters deemed appropriate by the director:

- (a) list of acceptable varieties; the list may provide for the planting of certain varieties or mixes of varieties in certain locations;
- (b) minimum size;
- (c) grade;
- (d) location and spacing;
- (e) method of planting and support; and
- (f) maintenance.

Section 811 - Private Use of Boulevards
(Added, Bill No. 1996-1)

811.01. Boulevard defined. For the purposes of this section, a boulevard means that area within the public right-of-way, located between the back of street curb and the nearest lot line of privately owned land.

811.03. Maintenance responsibility. A private property owner is responsible for maintenance of the boulevard directly abutting the owner's property. Such maintenance includes, but is not limited to, mowing grass and removing weeds.

811.05. Private use of boulevards. With a boulevard, nothing shall be erected, placed, planted, or allowed to grow except the following:

- (a) grass and/or flowers (non-noxious varieties only);
- (b) trees authorized under section 810 of this code;
- (c) excavations for installation of essential services, driveways, and curb cuts (or related improvements) authorized under section 800 of this code;
- (d) those features authorized under section 811.07 of this code; and
- (e) those improvements erected, placed, or planted on the boulevard by, or under contract with:
 - (1) the city;
 - (2) Hennepin county along county owned roads; or
 - (3) Minnesota department of transportation along state owned roads.

811.07. Certain features. Subdivision 1. The city realizes that in certain instances a private property owner may wish to erect, place, or plant certain features within the boulevard abutting their land. Such features include, but are not limited to, fences, retaining walls, privacy walls, hedges, berms, sidewalks, pavement, planters, statues, irrigation systems, rock and landscaping (hereinafter "feature").

Subd. 2. Permit required. No person shall erect, place, or plant any feature within a boulevard abutting their private property without first obtaining a permit from the community services director. In addition, any existing feature which does not hold a valid permit shall require a permit at the time of any reconstruction or repair, or earlier if required by the city. If the abutting boulevard is owned by Hennepin county or the Minnesota department of transportation, a permit may also be required by such jurisdiction.

Subd. 3. Application and fee. A person requesting a permit under this subsection shall submit an application on forms provided by the city, together with the fee established in appendix D. The application shall be accompanied with scale drawings of the boulevard and proposed feature, as well as a written description of the materials and construction methods to be used.

Subd. 4. Review of application. The director may deny any application if the director determines that the feature would cause, or could cause in the future, any inconvenience to the public. In review of an application, the director considers factors including, but not limited to, the following:

- (a) effect of the feature on snow plowing and snow storage;
- (b) effect of the feature on public safety, including traffic visibility and pedestrian safety;
- (c) effect of the feature on public land and public or private utilities; and
- (d) the public necessity and utility of the feature and the availability of alternate locations for the feature.

To appeal the denial of a permit application, the aggrieved applicant must submit a written request for hearing to the city manager within seven days following receipt of the decision of denial. Appeals will be heard within 30 days after receipt of the written request by a panel consisting of the city manager, the director of public safety, and the director of community development, or their designates. The decision of the appeal panel is final.

Subd. 5. Permit revocation. The city reserves the right to revoke any permit at any time.

Subd. 6. Maintenance of feature. The abutting landowner shall be responsible for the maintenance of any feature located within the boulevard.

Subd. 7. Damage to or by feature. The city will assume no responsibility and the abutting landowner shall assume all responsibility for any damage caused to or by any feature located within the boulevard.

Subd. 8. Removal requirement. Any feature not holding a valid permit is deemed to be a public nuisance and is subject to abatement according to subsection 925.07 of this code. The city may bill the property owner for the cost of abatement or assess the cost of abatement against the abutting property in accordance with Minnesota Statutes, chapter 429 or other applicable law.

Section 815 - Use of streets

815.01. Seasonal load regulations. Subdivision 1. Restrictions imposed by resolution. As authorized by Minnesota Statutes, section 169.87, the council may by resolution adopt seasonal load restrictions prohibiting the operation of vehicles over streets and roadways over which the city has jurisdiction whenever any street, alley or public highway in the city by reason of deterioration, rain, snow or other climatic conditions, will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or permissible weights thereon reduced.

Subd. 2. Definition. For purposes of this section the term "director" means the director of community services.

Subd. 3. Notice of restrictions. Notice of prohibition or any restriction imposed under subdivision 1 shall be made by posting plainly visible printed signs at each end of such restricted streets and such other places as the director deems advisable.

Subd. 4. Seasonal restriction. In addition to any streets or roadways restricted, pursuant to subdivision 1 and 3 and except as provided in subdivision 5, no person may operate any vehicle or combination of vehicles upon any city street, alley, or public highway other than roadways constructed of portland cement concrete during the period, designated by the state for weight restrictions on state highways in the tri-city metropolitan area, where the gross weight of any single axle exceeds 8,000 pounds. The provisions of subdivision 3 requiring notice shall be observed for all restrictions imposed in accordance with this subdivision.

Subd. 5. Exceptions. The restrictions contained in subdivision 4 do not apply to:

- (a) emergency vehicles;
- (b) vehicles of a public utility used in making repairs to its plant and equipment;
- (c) any county or state highway within the city; or
- (d) vehicles operated by solid waste collectors and recyclers being at the time used by the operator for the purpose of collecting solid waste and recyclable materials. (Added, Bill No. 1994-12)

Subd. 6. Special authorization: bond. If a person desires to use an alley, street or public highway of the city in a manner not authorized by reason of the prohibitions or restrictions imposed by this section, the director may, in the director's discretion, grant permission upon such conditions as the director may prescribe, provided that the person shall request a seasonal load limit exemption from the director and pay a fee in amount established by the city council. (Amended, Bill No. 1994-12)

Subd. 7. Duties of public safety department. Police officers shall enforce this section as provided in Minnesota Statutes, section 169.85.

815.03. Prevention of obstruction of culverts, gutters, drains and sewers: prohibition. A person who fills up, obstructs, or in any manner interferes with any culvert, ditch, drain, gutter, or sewer within the city, endorsed or accepted by the council, or who fills up or obstructs any culvert, gutter, ditch, or drain in or along any street, road, cartway or alley within the city, with any earth, stone, brush, roots, hay, straw, or any rubbish or material whatever, shall be guilty of a misdemeanor.

815.05. General regulations on the use of streets and roadways: adoption of state law by reference. The regulations contained in Minnesota Statutes, section 160.26, subdivision 5, are hereby adopted by reference as if fully set forth herein. References to road authorities therein shall be construed to mean the council.

815.07. Registration of parades and marches in public places. Subdivision 1. Permit required. No person or persons may use the public streets, public grounds, ways or places for the purpose of parading or marching thereon until and unless a permit has been secured as hereinafter provided.

Subd. 2. Application. Any person or persons desiring to use the public streets, public grounds, ways or places for the purpose of parading or marching thereon must make written application for permission therefore to the manager at least 48 hours (not including Sundays) before the day set for such parade or march. The application shall state the name of the person desiring to use the public streets, public grounds, ways or places for the purpose of parading or marching, the hour at which the same will start, and the route or routes over which it is to travel.

Subd. 3. Action on application. In determining whether or not to grant the application the manager shall consider the degree of obstruction to the traffic, the reasonability of the hours and routes proposed in the application, whether or not the march or parade will be dangerous to the public peace or safety, and other relevant factors. The manager shall then either grant or deny the application based upon the above considerations and other relevant factors, provided that the manager may upon granting the applicant impose such conditions as he may deem advisable and may further vary the terms of the grant from the terms of the application if it appears to be advisable; and provided further that upon denial the manager shall furnish an applicant with a written statement of the reasons for denial upon due request.

Subd. 4. Appeal to council. If the applicant is denied a permit, the applicant may appeal to the council from the order denying his application. The council shall review the order of the manager and shall consider those factors enumerated in subdivision 3 before rendering its decision. The council shall then affirm or reverse the determination of the manager, and upon a granting of the application may impose conditions it deems advisable.

Subd. 5. Exclusion of funeral processions. This subsection does not apply to funeral processions.

Section 820 - Street vacation

820.01. Street vacation procedure. This section is adopted pursuant to section 13.05 of the charter. The procedures for the vacation of streets within the city are as delineated in the remaining subsections of this section and are applicable to street vacation proceedings in the city.

820.03. Council authority: petition. The council may by ordinance vacate a street, alley, public grounds, or a part thereof, on its own motion or upon the petition of the owners of half of the land abutting on the street, alley, public grounds, or part thereof to be vacated.

820.05. Receipt of petition: notice of hearing. The council shall by resolution acknowledge receipt of any petition. The council shall also set the date for a public hearing on any proposed street vacation. No vacation may be made unless it appears in the interest of the public to do so. Not less than 10 days prior to the public hearing, a notice shall be published once in the official newspaper and sent by mail to the affected owners and residents. For the purpose of giving mailed notice, the zoning administrator may use any appropriate records to determine the names and addresses of owners and residents. The failure to give mailed notice to individual property owners and residents, or defects in the mailed notice, will not invalidate the proceedings. (Amended, Bill No. 2003-6)

820.07. Effect of vacation upon other easements. The ordinance vacating a public street or portion thereof must specify whether there are easements within the area of the street right-of-way, and the extent to which the vacation affects the authority of any person owning or controlling electric or telephone poles and lines, gas and sewer lines, or water pipes, mains and hydrants, thereupon or thereunder, to continue maintaining the same or to enter upon such street or portion thereof vacated to maintain, repair, replace or otherwise attend thereto.

820.09. Petition: fee. The petition for vacation of a street, alley, public grounds or part thereof must be accompanied by the fee fixed in appendix D.

Section 825 - Current services

825.01. Purpose. The purpose of this section is to provide for the special assessment of benefited properties for all or part of the costs of certain current services provided by the city.

825.03. Definition of current services. The term "current services" as used in this section means one or more of the following:

- (a) snow, ice, or rubbish removal from sidewalks;
- (b) weed elimination from streets or private property;
- (c) removal or elimination of public health or safety hazards from private property, excluding and structure included under the provisions of Minnesota Statutes, sections 463.15 to 463.26;
- (d) installation or repair of water service lines;
- (e) street sprinkling, sweeping, or other dust treatment of streets;
- (f) the trimming and care of trees and the removal of unsound trees from any street;
- (g) the treatment and removal of insect-infested or diseased trees on private property;
- (h) the repair of sidewalks and alleys;
- (i) the operation of a street lighting system;
- (j) the maintenance of landscaped areas, decorative parks and other public amenities on or adjacent to street right-of-way; and
- (k) snow removal and other maintenance of streets in commercial redevelopment areas.

825.05. Proposal to assess current services. Subdivision 1. Council resolution. The city council may by resolution propose that some or all of the current services described in this section be undertaken by the city and that the cost or some portion thereof be specially assessed against benefited property. The resolution as to a proposed project must describe the current services proposed to be undertaken and specially assessed and the properties proposed to be specially assessed for the services.

Subd. 2. Notice of hearing. The clerk, under the council's direction, shall publish notice that the council will meet to consider the undertaking of current services and the levying of special assessments to pay costs thereof. The notice shall be published in the official newspaper at least once, two weeks

prior to a meeting of the council at which the providing of such current services on a special assessment basis is to be considered. The notice shall state (i) the date, time and place of the council meeting, (ii) the streets affected, (iii) the current services proposed and (iv) the estimated cost of providing the proposed current services in the area proposed to be specially assessed.

Subd. 3. Hearing: ordering project. At the hearing or any adjournment thereof the council shall hear property owners on to the scope and desirability of the proposed current services projects. The council shall thereafter adopt a resolution determining the extent to which the proposed current services projects shall be undertaken by the city. The resolution shall provide the manner of accomplishing any project which is ordered, which may be by day labor, by city force, by contract or by any combination of these.

825.07. Recording costs. The director of community services shall keep a record of the costs of the project and shall report the information to the city clerk. A project may consist of the costs of current services for a specified period of 12 months or less. At the end of the designated period of the project, the total cost of the project shall be determined.

825.09. Billing. The owner of property on which or adjacent to which the current services have been performed shall be personally liable for the cost of the services. When the costs of the services have been determined, the city clerk, or other designated official of the city, shall prepare a bill and mail it to each owner in the project area. Thereupon, the amount of the charges shall be immediately due and payable at the office of the city clerk.

825.11. Assessment of unpaid bills. On or before September 1 of each year, the clerk shall list the total unpaid charges for current services against each separate lot or parcel to which they are attributable under this section. After notice and hearing as required by law the council may spread the charges against the properties benefited, as a special assessment for certification to the county director of property taxation and collection along with current taxes. The certification may provide for the payment of the special assessments the following year or in annual installments, not exceeding ten, as the council may determine in each case.

Section 830 - Littering

830.01. Regulation of littering. Subdivision 1. Definitions. The terms defined in this subsection have the means given them.

Subd. 2. "Aircraft" means any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air. The term includes helicopters and lighter-than-air dirigibles and balloons.

Subd. 3. "Authorized private receptacle" means a litter storage and collection receptacle as required and authorized by subsection 830.03.

Subd. 4. "Commercial handbill" means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper booklet, or any other printed or otherwise reproduced original or copy of any matter of literature:

- (a) which advertises for sale any merchandise, produce, commodity, or thing; or
- (b) which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or
- (c) which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause do not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to the meeting, theatrical performance, exhibition, or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided however that nothing contained in this sub-paragraph authorizes the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind, without a license, where a license is or may be required by any law of this state, or this code; or
- (d) which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

Subd. 5. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Subd. 6. "Litter" means garbage, refuse and rubbish as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

Subd. 7. "Newspaper" means any newspaper of general circulation as defined by general law and any newspaper duly entered with the post office department of the United States, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, does mean and include any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

Subd. 8. "Non-commercial handbill" means any printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copy of any type of literature not included in the definitions of a commercial handbill or newspaper contained in this section.

Subd. 9. "Park" means a park, reservation, playground, beach recreation center or any other public area in the city owned or used by the city and devoted to active or passive recreation.

Subd. 10. "Private premises" means any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and includes any yard, grounds, walk, driveway, porch, steps vestibule or mailbox belonging or appurtenant to such dwelling, house, building, or other structure.

Subd. 11. "Public place" means streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, square, spaces, grounds and buildings.

Subd. 12. "Refuse" means all putrescible and non-putrescible solid wastes (except body wastes), including garbage, rubbish, trash, ashes, street cleanings, dead animals, junk, abandoned automobiles and solid market and industrial wastes.

Subd. 13. "Rubbish" means non-putrescible solid wastes consisting of both combustible and non-combustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, wood, glass, bedding, crockery and similar materials.

Subd. 14. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

830.03. Litter in public places. No person may throw or deposit litter in or upon any street, sidewalk or other public place within the city except in public receptacles or in authorized private receptacles for collection.

830.05. Placement of litter in receptacles. Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

830.07. Sweeping litter into gutters prohibited. No person may sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

830.09. Merchants duty to keep sidewalks free of litter. No person owning or occupying a place of business may sweep into or deposit in a gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the city shall keep the sidewalk in front of their business premises free of litter.

830.11. Litter thrown by persons in vehicles. No person, while a driver or passenger in a vehicle, may throw or deposit litter upon a street or other public place within the city or upon private property.

830.13. Truck loads causing litter. No person may drive or move any truck or other vehicle within the city unless the vehicle is equipped with covers or is so constructed as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. No person may drive or move any vehicle or truck within the city, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

830.15. Litter in parks. No person may throw or deposit litter in a park within the city except in public receptacles and in a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided herein.

830.17. Litter in lakes and fountains. No person may throw or deposit litter in a fountain, pond, lake, stream, bay or other body of water in a park or elsewhere within the city.

830.19. Throwing or distributing commercial handbills in public places. No person may throw or deposit a commercial or non-commercial handbill in or upon a public place, nor shall any person hand out or distribute or sell any commercial handbill in a public place; provided, however, that it is not unlawful in a sidewalk, street or other public place within the city for a person to hand out or distribute, without charge to the receiver thereof, non-commercial handbill to persons willing to accept it.

830.21. Placing commercial and non-commercial handbills on vehicles. No person may throw or deposit commercial or non-commercial handbills in or upon any vehicle, provided, however, that it is not unlawful in a public place for a person to hand out or distribute without charge to the receiver thereof, a non-commercial handbill to occupants of vehicles who are willing to accept it.

830.23. Depositing commercial and non-commercial handbills on uninhabited or vacant premises. No person may throw or deposit a commercial or non-commercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

830.25. Prohibiting distribution of handbills where properly posted. No person may throw, deposit or distribute a commercial or non-commercial handbill upon private premises, if requested by anyone thereon not to do so; or if there is placed on the premises, in a conspicuous position near the entrance thereof, a sign bearing the words "No Trespassing", "No Peddlers or Agents", "No Advertisement", or similar notice, indicating in any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed, or to have handbills left upon such premises.

830.27. Distributing commercial and non-commercial handbills at inhabited private premises. No person may throw, deposit or distribute a commercial or non-commercial handbill in or upon private premises which are inhabited, except by handing or transmitting the handbill directly to the owner, occupant, or other person then present in or upon the private premises; provided, however, that in case of inhabited private premises which are not posted, the person, unless requested by anyone upon the premises not to do so, may place or deposit the handbill in or upon the inhabited private premises, if the handbill is so placed or deposited as to secure or prevent the handbill from being blown about the premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when prohibited by federal postal law or regulations. The provisions of this section do not apply to the distribution of mail by the United States, nor to newspapers as defined in this section. Newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon the street, sidewalk or other public place or upon private property.

830.29. Dropping litter from aircraft. No person in an aircraft may throw out, drop or deposit within the city any litter, handbill, or any other object.

830.31. Posting notices prohibited. No person may post or affix any notice, poster, written symbols or markings, or other paper or device, calculated to attract the attention of the public, to a lamp post, public utility pole or shade tree, or upon any public or private structure or building, without the prior written consent of the owner, except as may be authorized or required by law. (Amended, Bill No. 1987-20)

830.33. Litter on occupied private property. No person may throw or deposit litter on occupied private property within the city, whether owned by such person or not. The owner or person in control of private property may maintain thereon private receptacles for collection in a manner that litter will be prevented from being carried or deposited by the elements upon a street, sidewalk or other public place or upon any private property.

830.35. Owner to maintain premises free of litter or notices. The owner or person in control of any private property, whether occupied or vacant, shall maintain the premises free of litter or any condition which constitutes a public nuisance as described in subsection 925.01, subdivision 4, clause (p) of this code. This section does not prohibit the storage of litter in authorized private receptacles for collection. (Amended, Bill No. 1987-20)

830.37. Litter of vacant lots. No person may throw or deposit litter on an open or vacant private property within the city whether owned by the person or not.

830.39. Liability of merchant. A merchant who advertises goods, wares or merchandise by causing advertising material to be thrown or deposited in violation of the provisions of this section is guilty of violating this section as is the person throwing or depositing the material.

830.41. Snow and ice. No owner or person in control of private property may shovel, plow or cast or permit to be shoveled, plowed or cast snow or ice from such private property onto a public street, alley, sidewalk, boulevard or public parking lot. This subsection does not prohibit an owner or person from removing snow or ice from a private driveway or walkway and depositing the snow or ice on the portion of the boulevard immediately adjacent to such private property. (Amended, Bill No. 1997-17)

830.43. Prohibited acts constitute nuisances. The acts prohibited in this section are declared to be public nuisances. The proper city officers and employees are authorized to proceed to abate such nuisances in accordance with the procedures provided in section 925.

Section 835 - Bodies of water

835.01. Regulating of the placing of obstructions in bodies of water. Subdivision 1. Policy. It is the policy of the city to preserve its water resources for the use and benefit of its citizens by:

- (a) preventing pollution of such waters by indiscriminate fill practices and dumping;
- (b) encouraging the conservation of water resources of the community; and
- (c) maintaining the ecological balance and environmental quality of its water resources by regulations which recognize public and private rights in the use and enjoyment of such waters.

Subd. 2. Purpose. The purpose of this section is to regulate those practices which prevent the implementation of this policy.

835.03. Definitions. Subdivision 1. The terms defined in this subsection have the meanings given them.

Subd. 2. "Bodies of water" means Richfield Lake, Wood Lake, Legion Lake, Mother's Lake, and all other lakes, streams, ponds, wetlands, marshes, water courses, and bodies of water situated in whole or in part within the city, and any lands immediately adjacent to or abutting the bodies of water, including the 100-year flood plain of the bodies of water. (Amended, Bill No. 1998-2)

Subd. 3. "Obstruction" means any fill, sand, gravel, soil, or other material, or any structure which, when placed within or projecting into the body of water for any purpose, does, or tends to, encroach upon the natural boundary of the body of water.

Subd. 4. "Property owner" or "owner" means the fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment in contemplation of ultimate ownership. The term includes, but is not limited to, vendees under a contract for deed and mortgagors.

835.05. General rule. Subd. 1. Obstructions. Except as otherwise provided in this section, no person may place, or cause to be placed, an obstruction within a body of water within the city.

Subd. 2. Exceptions. This section does not apply to the following:

- (a) the placing of any obstruction as part of a planned development which has been authorized in accordance with this code; provided such obstruction is not inconsistent with the city's comprehensive surface water management plan or has received a variance from appropriate water management organization as necessary; (Amended, Bill No. 1998-2)

(b) an obstruction made in accordance with a permit issued by the department of natural resources of the state of Minnesota for the dredging, excavation, or lake level or shore line change of a body of water provided such obstruction is not inconsistent with the city's comprehensive surface water management plan or has received a variance from the appropriate water management organization as necessary; or (Amended, Bill No. 1998-2)

(c) an obstruction in which the 100-year flood plain storage volume lost is compensated for within the same 100-year flood plain by expanding the existing 100-year flood plain volume in another location; or (Added, Bill No. 1998-2)

(d) an obstruction placed pursuant to a variance granted in the case of unique hardship to property by the Council acting as the board of adjustments and appeals pursuant to the zoning code, provided such obstruction is not inconsistent with the city's comprehensive surface water management plan or has received a variance from the appropriate water management organization as necessary. (Amended, Bill No. 1998-2)

835.07. Obstructions permitted in certain cases. Subdivision 1. Application. An obstruction in the nature of grading, diking, rip rapping or other accepted and usual technique for the preservation of shoreline and prevention of erosion or reliction, may be placed in a body of water by following the procedure in this subsection. A person desiring to place such an obstruction shall make application to the director of public safety. The director shall investigate the request, insure compliance with all pertinent ordinances, and may require such supporting data as is, in his judgment, required. Upon submission of the appropriate application, and the finding by the director that the permit request is for an obstruction of the type defined in this subdivision the director shall issue the permit. No fee shall be required for the permit. A permit authorized by this subsection expires one year after its issuance.

Subd. 2. Effect of permit or variance. The granting of a permit or variance under this subsection does not affect the responsibility of a person to obtain the approval for the proposed obstruction from any other agency of the city, the State of Minnesota, or any other governmental agency.

Subd. 3. Removal of obstructions. An obstruction placed in a body of water may be removed by the city in the manner provided by this subdivision. The director shall, after ten days mailed notice thereof, issue an order to the owner of the property affected requiring the removal of the obstruction within a reasonable time. The owner or other person having an interest in the land affected may request, within the ten-day period, a hearing before the city council on the proposed order. If the owner fails to remove the obstruction, within the time specified in the order, or if he cannot be found or determined, the city may remove the obstruction and assess the cost of such removal as a special charge against the property in the manner prescribed for collection of special charges for current services by Minnesota Statutes, chapter 429, or the city may recover such charges in a civil action.

835.09. Regulating activities on bodies of water within the city. Subdivision 1. Definitions. For purposes of this subsection, the term "bodies of water" means Richfield Lake, Wood Lake, Legion Lake, Mother's Lake and all other lakes, streams, ponds, wetlands, marshes, water courses and ponding areas situated in whole or in part within the city.

Subd. 2. Activities prohibited. Subject to the exceptions contained in subdivision 3, the following activities are prohibited on bodies of water within the city:

(a) swimming or bathing except at areas officially designated as swimming beaches and signed as such;

(b) the use of any boat, raft or any other device or object designed to support or buoy up any individual, in, upon, or attached to such device or object;

(c) the placement or occupancy of ice fishing houses or enclosures or other similar structures regardless of their size or construction; and

(d) snowmobiling.

Subd. 3. Exceptions. The activities described in subdivision 2 may be conducted on bodies of water if:

(a) the activity is done by or at the direction of city personnel for rescue, law enforcement or maintenance purposes;

(b) the activity is city sponsored or supervised and cannot reasonably be carried out in other areas of the city where such activity is not prohibited; or

(c) the activity is sponsored by a group, association or organization which applied for and received a permit for such activity pursuant to subdivision 4.

Subd. 4. Permits. A group, association or organization wishing to sponsor or conduct an activity permitted by this subsection may apply to the manager not less than ten days before such planned activity for a permit to conduct the activity. The application shall be on forms prepared by the manager. No permit shall be issued unless the manager determines that the proposed activity:

(a) could not reasonably be conducted in areas of the city where such activity is not prohibited;

(b) will not be likely to disturb the residents of property in the area of the planned activity;

(c) will not be likely to create or cause crowd control or traffic or maintenance problems;

(d) will not interfere with other activities previously scheduled for the area; and

(e) is proposed for an area which is designed to facilitate such activity.

The manager may limit the time of the activity, the area where the activity will occur and may impose other conditions upon the conduct of the activity. The manager may also require as a condition for issuance of the permit an indemnity bond holding the city harmless from liability of any kind or character and reimbursing the city for any property damage or clean up costs.

Subd. 5. Cancellation of activity. The manager may cancel or terminate any activity permitted under this section for such a period as he shall deem necessary for public health or safety reasons or to terminate or prevent breaches of the peace or order. No person may commence or continue any activity which is the subject of the manager's order during the period the order is in effect.

Section 840 - Public parks

840.01. Regulating closing of public parks. Public parks of the city will close at 10:00 p.m. each day and shall remain closed to the public until 5:00 a.m. on the next day, except that the following parks will remain open until 11:00 p.m.:

- Augsburg Park
- Donaldson Park
- Taft Park
- Veterans Memorial Park
- Washington Park
- Wood Lake Nature Center

Except as provided in subsection 840.03, no person may be in, remain in or enter any public park between the park's closing time and 5:00 a.m. and no person may drive into or remain in a public parking area within or immediately adjacent to a public park during the hours when the park is closed. For the purposes of this section that area of Augsburg Park belonging to and occupied by the Hennepin County branch library is included as a public park. (Amended, Bill No. 2000-4)

840.03. Activities permitted after closing. The following activities may continue in the public parks after the parks have closed:

- (a) use of the indoor ice arena and use of the miniature golf course; (Amended, Bill No. 1993-8)
- (b) city sponsored and supervised activities, which because of the nature of the activity, cannot be held during the time when the parks are open;
- (c) activities sponsored by any other group, association or organization which has applied for and received a permit for such activity pursuant to subsection 840.05; and
- (d) custodial or maintenance city and Hennepin County authorized personnel who must perform their services during the times when the parks are closed.

840.05. (Amended, Bill No. 1993-8) Permits. Subdivision 1. Prohibition. No person may engage in an organized activity in a public park unless the group, association or organization sponsoring the activity has obtained a permit as provided in this subsection. For purposes of this subsection, an "organized activity" means a planned recreational or sporting activity involving more than 10 persons that is sponsored by a group, association or organization, the time and location of which are advertised in advance of the activity to the group, association or organization members, and which activity makes exclusive use of a portion or all of a public park. Examples of organized activities include, without limitation, class reunions, sporting tournaments or league sporting events.

Subd. 1a. Procedure. A group, association or organization wishing to sponsor any organized activity shall apply to the city manager or the manager's designee not less than two weeks before such organized activity for a permit to conduct the activity. The application shall be on forms prepared by the manager. Fees will be determined annually during the budget process. No permit may be issued unless the city manager determines:

(a) if the organized activity is proposed to use the park between the hours of 11:00 p.m. and 5:00 a.m., that the proposed activity could not be conducted during hours when the park is open to the public;

(b) if the organized activity is proposed to use the park between the hours of 11:00 p.m. and 5:00 a.m., that the proposed activity will not be likely to disturb the residents of property surrounding the park;

(c) that the proposed activity will not be likely to cause or create crowd control or traffic or park maintenance problems; and

(d) that the proposed activity will not interfere with any other activities previously scheduled for the park.

Subd. 2. Activity: bond. The manager may limit the time of the organized activity, the area in the park where the organized activity will occur and may impose other conditions upon the conduct of the proposed activity. The manager may also require as a condition for issuance of the permit an indemnity bond holding the city harmless from liability of any kind or character and reimbursing the city for any property damage or cleanup cost. (Amended, Bill No. 1993-8)

840.07. Closing of parks by city manager. The manager may close any public park and any parking area within or immediately adjacent to such park, for such period as he shall deem necessary in order to protect or restore or terminate or prevent breaches of the peace and order. The order to close shall apply without exception to all activities conducted in the park. No person having been informed of an order closing the area may remain in the area longer than is reasonably necessary to leave.

840.09. Golf in public parks. Subdivision 1. Definitions. For purposes of this subsection, the term "golf ball" means a ball which is of the type used to play the game of golf and shall also include any projectile of solid construction capable of being struck or propelled by a golf club; and the term practice golf ball means a ball which is not of the type used to play the game of golf and is composed of a thin hollow sphere of plastic or other similar light weight material.

Subd. 2. Hitting of golf balls prohibited. No person may hit, drive, stroke or otherwise propel a golf ball upon, in, over or across any street, avenue, alley or other public place including public parks except within areas of public parks which have been designated for that activity.

Subd. 3. Hitting of practice golf balls prohibited. No person may hit, drive, stroke or otherwise propel a practice golf ball upon, in, over or across any street, avenue, alley or other public place except public parks.

Subd. 4. Hitting of practice golf balls in public parks. Unless the hitting of practice golf balls is specifically prohibited in a public park, any person may hit, drive, stroke, or otherwise propel such practice golf balls in accordance with the following restrictions:

(a) the ball may not be hit from or to any location closer than 100 feet from the park boundary;

(b) the ball may not be hit from or to any location closer than 100 feet from any area actually being used for any organized recreational activity such as softball, baseball, football or tennis;

(c) the ball may not be hit from or into any location closer than 100 feet from any playground, tot lot, picnic area, walking or biking trail, parking lot, building, structure or lake within the park; and

(d) balls may not be hit from or into the Woodlake Nature Center.

Subd. 5. Violations: penalties. A person who violates any of the provisions of this subsection is guilty of a petty misdemeanor for the first violation. A second or subsequent violation without limitation as to time is a misdemeanor.

840.11. Sale and consumption of beer in parks. Subdivision 1. Definitions. For purposes of this subsection, terms defined in the subdivision have the meanings given them.

(a) "Sale" means all means of furnishing and includes but is not limited to the furnishing for money or other consideration.

(b) "Beer" means any beverage which is produced wholly or in part from the brewing of any grains or malt or malt substitute and containing more than one-half of one percent alcohol by volume.

(c) "Organization" means any entity having religious, veteran, charitable or business activities as its principal purpose and which qualifies in all respects for the issuance of a license to sell the type of beer to be furnished at the activity or event for which the permit is being sought.

Subd. 2. Sale and consumption prohibited. The sale, possession with intent to consume, or consumption of alcoholic beverages is prohibited in the public parks of the city, except as expressly permitted by subdivision 3 of this subsection. (Amended, Bill No. 1999-6)

(Subd. 3, 4 and 5 Repealed, Bill No. 1988-12)

Subd. 3. Community Celebration. A nonprofit corporation that has obtained a community celebration license in accordance with subsection 850.09 of this code may sell 3.2 percent malt liquor in Veteran's Memorial Park in connection with the licensed community celebration, provided that the corporation also obtains a license under subsection 1210.07, subdivision 3 of this code and applicable state law. The community celebration license and temporary on-sale license must designate the area(s) of Veteran's Memorial Park where sales may be made. A person of legal age may possess with intent to consume or consume alcohol purchased pursuant to this subdivision within the areas designated in those licenses. (Added, Bill No. 1999-6)

840.13 Use of Tobacco Products Prohibited. No person may use tobacco products on city-owned parks, conservation areas, open spaces, or recreational facilities, including without limitation: trails within parks used for walking and biking, picnic shelters, athletic fields, and play areas. This subsection does not apply to the use of tobacco products inside motor vehicles parked on the premises of city-owned parks, conservation areas, open spaces or recreational facilities.

840.15 Selling Food, Products or Services Prohibited. No person may sell or offer for sale any product, food or service in any public park without the prior written approval of the recreation services director.

840.17 Feeding of Wild Animals or Birds Prohibited. No person may feed non-domesticated animals or birds or deposit a food source for non-domesticated animals or birds within City-owned parks, conservation areas, open spaces or recreational facilities with the exception of authorized City officials.

840.19 Regulations on Public Bodies of Water in Parks. The following activities are prohibited on bodies of water in city parks, except as authorized by subsection 835.09 of this code: swimming, bathing, placing ice fishing houses or similar enclosures, snowmobiling, and the use of any boat, raft or any other device or object designed to support or buoy up any individual in, upon or attached to

such device or object, with the exception of authorized City officials. Portable ice houses are permitted on Taft Lake during daylight hours only.

840.21 Dogs and Animals in Parks. All dogs must be leashed in public parks. An animal owner or person having custody or control of an animal shall immediately clean up and sanitarly dispose of any feces of the animal, except that this provision does not apply to blind persons with respect to their ownership and use of a seeing-eye dog.

840.23 Damaging Vegetation in Parks. No person may damage or disturb any flower bed, planting area, or ornamental landscaped area within a city-owned park, conservation area, open space or recreational facility. No person may cut, trim or remove any wild flower, tree, shrub, plant, branch or portion thereof, or any soil or other material from a city-owned park, conservation area, open space or recreational facility with the exception of authorized City officials.

Section 845 - Moving buildings

845.01. Moving of buildings over streets, alleys and public highways. Subdivision 1. Building defined. The term "building" means a structure of at least 16 feet by 20 square feet designed, built or occupied as a shelter or roofed enclosure for persons, animals, or property and used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes.

Subd. 2. Permit required. No person may move a building on or across any highway, street or alley without first obtaining a permit from the building official regardless of the point of origin or destination of the building or structure. No person shall, while in the process of moving a building, park the building on any property in the city without the prior approval of the building official.

Subd. 3. Definition. For purposes of this section the term "director" means the director of community services.

845.03. Permit. Subdivision 1. Filing application. Persons seeking issuance of a permit pursuant to subsection 845.01 shall file an application for the permit with the building official.

Subd. 2. Contents of application. The application shall be made in writing upon forms provided by the building official and shall contain such information as the building official finds necessary to a determination of whether a permit should be issued. The following items shall accompany the application:

(a) the owner of the building to be moved shall file with the application sufficient evidence that all real estate taxes and special assessments against the building and lot from which it is to be removed are paid in full;

(b) the applicant, if other than the owner, shall file with the application sufficient written evidence that the applicant is entitled to move the building;

(c) the applicant shall file with the application prior to issuance of permit, written evidence of arrangement with all public utility companies whose wires, lamps or poles are required to be removed, for the removal thereof by the company;

(d) the applicant shall furnish proof satisfactory to the building official that an approved site is ready for the building to be moved there; and

(e) except for manufactured or modular homes, or a building owned by a farmer, or a building less than 16 feet by 20 feet in size, the applicant shall furnish proof satisfactory to the building official that the building mover is fully licensed under all applicable laws of the State of Minnesota, including Minnesota Statutes, section 221.81, and rules and regulations promulgated thereunder.

Subd. 3. Permit fee. The application shall be accompanied by a nonrefundable permit fee fixed in appendix D.

845.05. Duties of director of public safety. The director of public safety shall ensure inspection of the building by the building official to determine whether the standards required in this section for the issuance of a permit have been met.

845.07. Standards for issuance. The building official may not issue a permit if:

- (a) the mover is not licensed by the state of Minnesota;
- (b) the building is too large to move without endangering persons or property in the city;
- (c) the building is in such a state of deterioration or disrepair or is otherwise so structurally unsafe that it could not be moved without endangering persons and property in the city;
- (d) the building is structurally unsafe or unfit for the purpose for which moved, if the location to which the building is to be moved is in the city;
- (e) the zoning or building code provisions or any other provisions of this code would be violated by the building in its new location;
- (f) if the building is being moved from a location within the city, outstanding charges for water and sewer service have not been paid; or
- (g) for any other reason persons or property in the city would be endangered by the moving of the building.

845.09. Compliance with building, structural and mechanical regulations. If construction, alteration or repair work on the building or structure will be necessary to make it conform to the building, structural and mechanical regulations, permits for the work shall be obtained before such building or structure is moved into or within this city. The permits shall specify that the work be completed within 90 days after such building or structure is located in the city. The building official may authorize additional time for compliance. Failure to make the building or structure conform to the construction regulations within the 90 day period constitutes a violation of this subsection.

845.11. Compliance with zoning regulations. No building or structure may be moved to a location within the city unless in the opinion of the building official it will conform to the zoning regulations of the city, including, but not limited to, all setback and lot size regulations, and will be a building or structure of the same general character and appearance of those buildings or structures in the vicinity of the proposed location. Upon receipt of the application the building official shall forward a copy to the director of community development for review. The director of community development shall determine whether such building or structure will conform to the character and appearance of the neighborhood into which it is proposed to be moved.

845.13. Designation of streets for removal. The director shall designate streets over which the building may be moved. The director shall have the list approved by the director of public safety and shall reproduce the list upon the permit in writing. In making their determinations, the director and the director of public safety shall endeavor to insure maximum safety to persons and property in the city and to minimize congestion and traffic hazards on public streets. The director may also designate the hours, movement, parking, or speed limit of the building mover.

845.15. Duties of permittee. Permittees under this section shall:

- (a) move a building only over streets designated for such use in the written permit;
- (b) notify the director in writing of any and all damages done to property belonging to the city or any public utility or private property within 24 hours after the damage or injury has occurred;
- (c) cause red lights to be displayed on every side of the building, while on a street at any time from sunset to sunrise and at any other time when visibility is impaired by weather, smoke, fog or other conditions or there is not sufficient light to render persons and vehicles at a distance of 500 feet clearly discernable, and shall at all times erect and maintain barricades across the streets to protect the public from damage or injury by reason of the removal of the building; warning lights with open flame shall not be used;
- (d) remove the building from the city streets after two days of such occupancy, unless an extension is granted by the building official;
- (e) comply with all applicable provisions of this code and other laws upon relocating the building in the city;
- (f) pay the expense of a traffic officer ordered by the city to accompany the movement of the building;
- (g) remove all rubbish and materials and fill all excavations to existing grade at the original building site if within the city so that the premises are left in a safe and sanitary condition;
- (h) remove all structural remains such as foundations, footings, stoops, stairways, posts, etc., or any other item which, if left on the property, would constitute a hazard;
- (i) provide for the displacement of all overhead wires and furnish proof to the city in advance of the day upon which moving operations shall be commenced that satisfactory arrangements have been made;
- (j) ensure that the sewer line is cut off by a licensed plumber, the water cut off by a licensed plumber, and the meter returned to the city, if the original building site is within the city; permittee shall also notify the gas and electric services companies to remove their services;

(k) ensure that any wells on the site have been sealed by a licensed well contractor; and

(l) complete within 90 days after removing the building all remodeling, additions or repairs as shown on the plans accompanying the application.

845.17. Liability of permittee to city. The permittee shall be liable for any expense, damages or costs in excess of deposited amounts or securities.

845.19. Revocation. Refusal by the permit holder or a person acting on the holder's behalf to comply with the terms or provisions of this section or to adopt any safety or precautionary device or method imposed upon the moving operation is a violation of this section and is cause for immediate revocation of the permit.

845.21. Appeal. The applicant or permittee may appeal any decision by the building official denying the requested permit or revoking an issued permit. The council may sustain or overrule the building official's decision and may grant a permit upon the terms and conditions it deems appropriate.

Section 850 - Community celebrations.

850.01. Community celebrations. Subdivision 1. Definitions. For purposes of this section the terms defined in this subsection have the meanings given them.

Subd. 2. "Community celebration" or "celebration" means Independence Day and any other event designated by resolution of the city council as a community celebration.

Subd. 3. "Celebration site" means a public area designated by resolution of the council or in a license granted under this section as an area in which the celebration will be conducted: the term includes public parks, parking areas and streets adjacent thereto, and in events in which a parade or march is to be conducted as part of the celebration, the term includes the parade or march route.

Subd. 4. "Celebration activities" means the events and programs designated by resolution of the council or in a license granted under this section to be conducted by the city or licensee on the celebration site: the term includes the sale or other furnishing of concessions.

Subd. 5. "Concession" means food, beverages or souvenirs furnished for monetary consideration as part of the celebration.

Subd. 6. "Nonprofit corporation" means a domestic corporation organized and existing pursuant to Minnesota Statutes, chapter 317.

Subd. 7. "Family and individual activity" means an activity involving a group of individuals or a family which has no more than 25 participants.

Subd. 8. "Group sponsored activity" means an activity sponsored by any group or entity which has more than 25 participants: the term includes any family or individual activity having more than 25 participants.

850.03. Findings. The city makes the findings set forth in this subsection as the basis for the regulations contained in this section.

(a) The city owns certain lands which are available for various purposes including recreation, athletic, cultural and civic activities, contests, celebrations and events.

(b) The celebration of certain events such as Independence Day forms a vital and valid part of the city's program of public recreation and it is desirable and appropriate to designate city lands and other public areas to be used in connection with such community celebrations.

(c) In recognizing the appropriateness of using public lands and areas for community celebrations, it is necessary also to recognize the need for planning and orderly conduct of those events so as to maximize the public recreational benefit to be derived from such celebrations.

(d) It is equally important in planning for such events that limitations be placed upon the use of the celebration site so as not to adversely impact on the orderly conduct of the community celebration. Such limitations must include restriction of the sale of concessions by individuals who are not involved in financing the costs of conducting the community celebration.

850.05. Use of celebration sites. The use of a celebration site during a community celebration will be based on the order of the following priorities:

- (a) celebration conducted by the city;
- (b) celebration conducted by a nonprofit corporation pursuant to a license;
- (c) family and individual activities;
- (d) group sponsored activities.

850.07. Group sponsored activities. Subdivision 1. Approval. Group sponsored activities may not be conducted within a community celebration site during the community celebration without prior written approval by the city manager. The request for approval shall be in writing and contain the following information together with any other information required by the manager:

- (a) the date and place of the activity;
- (b) the times the activity will begin and end;
- (c) the areas within the celebration site which will be used;
- (d) the activities planned; and
- (e) the maximum number of persons expected to attend.

Subd. 2. Findings. The manager will approve the group sponsored activity if the manager finds:

- (a) that the activity will not interfere with the orderly conduct of the community celebration;
- (b) that the maximum number of persons expected to attend the activity when added to the number of persons expected to attend the community celebration and other group sponsored activities previously approved would not overcrowd the celebration site.

Subd. 3. Restrictions. The manager in approving a group sponsored activity may place limits upon the number of participants, the areas of the celebration site involved and the time for beginning or ending the activity.

850.09. Community celebration: license. Subdivision 1. General rule. It is a violation of this section for any individual or entity, other than the city, to conduct a community celebration or any of the celebration activities without having first obtained a license to do so. The city may license nonprofit corporations to conduct community celebration activities.

Subd. 2. Application. A nonprofit corporation wishing to conduct celebration activities in connection with a designated community celebration shall make application to the city manager. The application shall contain the following information together with any additional information required by the city manager:

- (a) name of corporation;
- (b) copy of articles and bylaws;
- (c) detailed activity plan (DAP) describing completely time, location and nature of all proposed activities;
- (d) if the DAP includes the sale of concessions, a statement of the uses to which the proceeds will be put.

Subd. 3. Review of application. The manager shall review the application and may refer it to any department for review and comment. Following review, the city manager shall make a report and recommendation to the city council.

Subd. 4. Council action. The city council shall consider the application, the recommendation of the city manager and may consider any other information it deems appropriate. Following its review, the council may either grant or deny the license. In granting the license, the council may modify the DAP and place such terms and conditions upon the license as it determines advisable.

Subd. 5. License fee. The license fee shall be \$5,000 which must be paid prior to the issuance of the license. The council may, in its discretion waive all or part of the fee.

850.11. License: precondition. No license which has been granted shall be issued until the licensee executes an agreement containing the following provisions:

- (a) indemnifying and holding harmless the city, its officers, agents and employees from any claim for personal injury, property damage or death, occasioned by or arising out of the conduct of the licensed activities;
- (b) agreeing to remove all rubbish and litter from the celebration site and to restore the areas to their prior condition and appearance not later than 24 hours following the conclusion of the licensed activities; and
- (c) releasing and discharging the city, its officers, agents and employees from any claim or cause of action occasioned by or arising out of any action taken by the city to close all or part of the celebration site and terminate all or part of the celebration activities in order to protect or restore order or end or prevent breaches of the peace or public order.

850.13. Effect of issuance of license. The issuance of the license shall confer upon the licensee the exclusive right to conduct the activities contained in the DAP as approved by the council within the celebration site for the period of the community celebration. Except as provided in subsection 850.15, it shall be a violation of this section for any other individual or entity to conduct any activity contained in the approved DAP within the celebration site during the celebration.

850.15. Licensee may designate others. The licensee, in the exercise of its sole discretion, may designate other individuals or entities to perform or assist in the performance of any licensed activity; provided, however, that such designation will not be construed as a transfer of all or part of the license nor shall it relieve the licensee of any of its obligations under this section or the license.

850.17. Other ordinance provisions applicable. The activities licensed under this section are subject to all other provisions of the code relating to the conduct of such activities.