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48	GENERAL PROVISIONS

49 § 93.01 DEFINITION.

50 The term CURRENT SERVICE as used in this subchapter means 1 or more of the following: snow,
51 ice or rubbish removal from the sidewalks; weed elimination from street grass plots adjacent to
52 sidewalks or from private property; removal or elimination of public health or safety hazards from
53 private property, excluding any hazardous building included in M.S. §§ 463.15 to 463.26, as amended
54 from time to time; installation or repair of ~~water service~~municipal service lines; street sprinkling, street
55 flushing, ~~light street oiling~~ crack fill and seal coat, or other state approved dust treatment of streets;
56 repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected
57 trees from the public streets or private property; and the operation of a street lighting system.
58 (Prior Code, § 302.01)

59 ~~§ 93.02 SNOW, ICE, DIRT AND RUBBISH.~~

60 ~~———— (A) ——— Duty of owners and occupants. The owner and the occupant of any property adjacent to
61 a public sidewalk shall use diligence to keep such walk safe for pedestrians. No such owner or occupant
62 shall allow snow, ice, dirt, or rubbish to remain on the walk longer than 24 hours after its deposit
63 thereon.~~

64 ~~———— (B) ——— Removal by city. The City Maintenance Department shall remove from all public
65 sidewalks all snow, ice, dirt, and rubbish as soon as possible beginning 24 hours after any such matter
66 has been deposited thereon or after the snow has ceased to fall. He or she shall keep a record showing
67 the cost of such removal adjacent to each separate lot and parcel and shall deliver such information to
68 the City Clerk.~~

69 ~~(Prior Code, § 302.02) (Am. Ord. 2016-2-4, passed 2-23-2016; Am. Ord. 2019-5-4, passed 5-14-2019)~~

70 § 93.03 WEED ELIMINATION.

71 (A) Weeds as a nuisance. Any weeds, whether noxious, as defined by law, or not, growing
72 upon any lot or parcel of land outside the traveled portion of any street or alley in the city to a greater
73 height than 12 inches, or which have gone or are about to go to seed, are a nuisance. The owner and the
74 occupant shall abate or prevent such nuisance on such property and on land outside the traveled
75 portion of the street or alley abutting on such property.

76 (B) Notice.

77 (1) When a nuisance appears to exist in violation of division (A) of this section, the
78 city shall serve notice upon the owner and occupant of the property, or the agent of each, by certified
79 mail or by personal service, ordering such owner and occupant to have such weeds or grass cut and
80 removed within 10 days after the mailing of the notice, and also stating that in case of non-compliance
81 such work will be done by the city at the expense of the owner, and that if unpaid, the charge for such
82 work will be made a special assessment against the property concerned.

83 (2) When no owner, occupant, or agent of the owner or occupant can be found,
84 notice shall be posted on the property on which the nuisance exists 10 days before the city eliminates
85 the nuisance, which posting shall constitute mailed and published notice pursuant to this section.

86 (3) Lack of receipt of notice shall not constitute a defense to the requirements of
87 this section, provided good faith efforts to comply with this section are made.

88 (4) Representatives of the city are authorized to go upon property upon which a
89 nuisance appears to exist in order to measure vegetation height and take reasonable vegetative samples
90 in connection with such nuisance.

91 (C) Removal by city. If the owner or the occupant of any property in a city fails to comply
92 with the notice within 10 days after its mailing, the City Maintenance Department shall cut and remove
93 such weeds. The city shall keep a record showing the cost of such work attributable to each separate lot
94 and parcel and shall deliver such information to the City Clerk such cost to be assessed to the property
95 concerned.

96 (Ord. 2011-1-1, passed 1-11-2011; Am. Ord. 2019-5-4, passed 5-14-2019)

Commented [JM1]: The items originally listed in this section are taken from Minn. Stat. § 429.101 which provides for special assessment for certain unpaid special charges. The statute provides for special assessment for "installation or repair of water service lines". So keep the original language. Sanitary sewer service is not specifically listed in Minn. Stat. § 429.101 but installing/repairing sanitary sewer service lines may be "elimination of public health or safety hazards from private property."

Commented [JM2]: Do we want to say "water and sanitary sewer service lines" here?

Commented [D3]: Years ago people would seal coat gravel roads. Not many due that anymore. But we still crack fill and seal coat bituminous streets, so should we change "light street oiling" to "crack fill and seal coat". It seems "dust control" is covered by the end of the sentence "other dust treatment of streets", so maybe we do not need "dust control" added.

Commented [JM4]: Minn. Stat. § 429.101 provides for "street sprinkling and other dust treatments of streets." So keep "light street oiling". The statute does not provide for crack fill and seal coat.

Commented [SP5]: Does this meet criteria to assess?

Commented [SP6R5]: I would have the city attorney review

Commented [SP7R5]: I would review with the city attorney.

Commented [SP8]: "Weed elimination from streets and private property" is activity for which the City can assess a special charge under Minn. Stat. § 429.101.

Commented [SP9]: Does this meet criteria to assess?

Commented [SP10R9]: I would add the phase I suggested, but also have the city attorney review

Commented [SP11R9]: I would review with the city attorney.

Commented [JM12]: Yes. "Weed elimination from streets and private property" is activity for which the City can assess a special charge under Minn. Stat. § 429.101.

97 § 93.04 PUBLIC HEALTH AND SAFETY HAZARDS.

98 When the city removes or eliminates public health or safety hazards from private property
99 under city ordinance, the administrative officer responsible for doing the work shall keep a record of the
100 cost of such removal or elimination against each parcel of property affected and annually deliver such
101 information to the City Clerk, such cost to be assessed to the property concerned. This section does not
102 apply to hazardous buildings under the hazardous building law, M.S. §§ 463.15 to 463.26, as amended
103 from time to time.

104 (Prior Code, § 302.04)

105 § 93.05 INSTALLATION AND REPAIR OF WATER SERVICE LINES AND SANITARY SEWER SERVICE LINES

106 Whenever the city installs or repairs water service lines and sanitary sewer service lines serving
107 private property under this code, the City Maintenance Department shall keep a record of the total cost
108 of the installation or repair against the property and deliver such information to the City Clerk annually
109 by August 15 as to each parcel of property on which the cost has not been paid.

110 (Prior Code, § 302.05) (Am. Ord. 2019-5-4, passed 5-14-2019)

111 § 93.06 REPAIR OF SIDEWALKS AND ALLEYS.

112 ~~———— (A) ——— Duty of owner. The owner of any property within the city abutting a public sidewalk or
113 alley shall keep the sidewalk or alley in repair and safe for pedestrians. Repairs shall be made in
114 accordance with the standard specifications approved by the Council and on file in the office of the City
115 Clerk.~~

116 ~~———— (B) ——— Inspections; notice. The City Maintenance Department shall make such inspections as
117 are necessary to determine that public sidewalks and alleys within the city are kept in repair and safe for
118 pedestrians or vehicles. If he or she finds that any sidewalk or alley abutting on private property is
119 unsafe and in need of repairs, he or she shall report same to the City Council. If authorized by the City
120 Council, he or she shall cause a notice to be served, by registered or certified mail or by personal service,
121 upon the record owner of the property and the occupant. If the owner does not reside within the city or
122 cannot be found therein, ordering such owner to have the sidewalk or alley repaired and made safe
123 within 45 days and stating that if the owner fails to do so, the City Maintenance Department will do so
124 on behalf of the city, that the expense thereof must be paid by the owner, and that if unpaid it will be
125 made a special assessment against the property concerned.~~

126 ~~———— (C) ——— Repair by city. If the sidewalk or alley is not repaired within 5 days after receipt of the
127 notice, the City Maintenance Department shall report the facts to the Council and the Council shall, by
128 motion, order the City Maintenance Department to repair the sidewalk or alley and make it safe, or
129 order the work done by contract in accordance with law. The City Maintenance Department shall keep a
130 record of the total cost of the repair attributable to each lot or parcel of property and report such
131 information to the City Clerk.~~

132 (Prior Code, § 302.06) (Am. Ord. 2019 5 4, passed 5 14 2019)

133 § 93.07 STREET SPRINKLING, STREET FLUSHING, TREE CARE AND THE LIKE. PROJECTS, TREE CARE AND
134 THE LIKE

135 (A) Proposed projects. The Council shall each year determine by motion what street
136 projects and alleys shall be sprinkled or flushed, oiled, or given other dust treatment should occur during
137 the year and the kind of work to be done on each. The Council shall also determine by resolution from
138 time to time the streets on which trees shall be removed. Before any work is done pursuant to either of
139 these resolutions, the Clerk shall, under the Council's direction, publish notice that the Council will meet
140 to consider such projects. Such notice shall be published in the official newspaper at least once no less
141 than 2 weeks prior to such meeting of the Council and shall state the date, time, and place of such
142 meeting, the streets affected and the particular projects proposed, and the estimated cost of each
143 project, either in total or on the basis of the proposed assessment per front foot or otherwise.

Commented [JM13]: The City can assess for "removal or elimination of public health or safety hazards from private property" pursuant to Minn. Stat. § 429.101.

Commented [SP14]: Does this meet the criteria to assess?

Commented [SP15R14]: Same phrase added as above, also have city attorney review.

Commented [SP16R14]: I would review with the city attorney.

Commented [D17]: Are we leaving out sanitary sewer service lines for a reason or because they are covered in other areas of the code, or should the title and discussions below include sanitary sewer service lines too?

Commented [SP18]: Need clarification what this is for? When does this apply? What is it talking about? Ask the city engineer. Also clarify what can be assessed.

Commented [JM19]: Installation and repair of sanitary sewer lines is not specifically mentioned as work which can be assessed pursuant to Minn. Stat. § 429.101. However, installation and repair of sanitary sewer lines may be "removal or elimination of public health or safety hazards from private property" under Minn. Stat. § 429.101.

Commented [JM20]: Under Minn. Stat. § 429.101 only "street sprinkling or other dust treatment of streets" and "tree care" may be assessed as a special charge. Minn. Stat. § 429.101 is not the authority for specially assessing for street projects. The authority for assessing for street projects/improvements is Minn. Stat. § 429.051. Assessments for special charges under Minn. Stat. § 429.101 are different than assessments for road projects/improvements under Minn. Stat. § 429.051 in that cities do not have to establish a special benefit to the property assessed under Minn. Stat. § 429.101. See *American Bank v. City of Minneapolis*, 802 N.W.2d 781 (Minn. App. 2011). The only limitation on special charges under Minn. Stat. § 429.101 is that they must be reasonable. Special charges under Minn. Stat. § 429.101 are not for improvements, rather they are to pay for the cities' exercise of the police power to abate nuisances.

144 (B) Hearing; order. At such hearing or at any adjournment thereof, the Council shall hear
145 property owners with reference to the scope and desirability of the proposed projects. The Council shall
146 thereupon adopt a resolution confirming the original projects with such modifications as it considers
147 desirable and shall provide for the doing of the work by day labor through the City Maintenance
148 Department or by contract. The City Maintenance Department shall keep a record of the cost and the
149 portion of the cost properly attributable to each lot and parcel of property abutting on the street or
150 alley on which the work is done, and shall report such information to the City Clerk.
151 (Prior Code, § 302.08) (Am. Ord. 2019-5-4, passed 5-14-2019)

152 § 93.08 PERSONAL LIABILITY.

153 The owner of property on which or adjacent to which a current service has been performed shall
154 be personally liable for the cost of such service. As soon as the service has been completed and the cost
155 determined, the City Clerk, or other designated official, shall prepare a bill and mail it to the owner and
156 thereupon the amount shall be immediately due and payable at the office of the City Clerk.
157 (Prior Code, § 302.09)

158 § 93.09 ASSESSMENT.

159 On or before September 1 of each year, the Clerk shall list the total unpaid charges for each type
160 of current service against each separate lot or parcel to which they are attributable under this chapter.
161 The Council may then spread the charges against the property benefitted as a special assessment under
162 M.S. Ch. 429, as amended from time to time, and other pertinent statutes for certification to the County
163 Auditor and collection along with current taxes the following year or in annual installments, not
164 exceeding 10, as the Council may determine in each case.
165 (Prior Code, § 302.10)

166 STREET EXCAVATIONS

167 § 93.20 PERMIT REQUIRED.

168 No person, except an authorized city employee or a contractor performing work under a
169 contract with the city, shall make any excavation in a street, alley, sidewalk, or public ground without
170 first having secured a permit thereof from the City Clerk. The fee for such permit shall be as established
171 by the Council, but no fee shall be required for an excavation made pursuant to a permit for sewer or
172 water construction.

173 (Prior Code, § 301.01)

174 § 93.21 APPLICATION AND REGULATIONS.

175 Applications shall be submitted to the Council. The City Engineer shall prepare the necessary
176 application and permit forms required under § 93.20. He or she shall also prepare such rules and
177 regulations with respect to excavations as he or she finds necessary to protect the public from injury,
178 prevent damage to public or private property, and minimize interference with the public use of streets,
179 alleys, sidewalks, and public grounds. Any person making an excavation covered by this section shall
180 comply with such rules and regulations. In the event the Council requires inspection(s) of the work by
181 the City Engineer, the cost of such inspection(s) shall be borne by the permittee.

182 (Prior Code, § 301.02)

183 § 93.22 BOND.

184 (A) Any permittee except a public utility corporation or a bonded plumber shall file with the
185 City Clerk a corporate surety bond in the amount ~~of established \$3,000, per city fee schedule~~ or in such
186 other amount as may be established by the Council, conditioned that the permittee will:

187 (1) Perform all work in connection with the excavation in accordance with
188 applicable ordinances and regulations;

189 (2) Indemnify the city and hold it harmless from all damage caused in the execution
190 of such work; and

Commented [SP21]: Have city attorney review

Commented [SP22]: The authority that permits this is Minn. Stat. § 429.101.

Commented [SP23]: Have city attorney review

Commented [SP24]: The authority that permits this is Minn. Stat. § 429.101.

Commented [SP25]: Add to city fee schedule, have city engineer review IX ...

191 (3) Pay all costs and damages suffered by the city by reason of the failure of the
192 permittee to observe the terms of applicable ordinances and regulations or because of negligence in the
193 execution of the work.

194 (B) The bond shall be approved as to form and legality by the City Attorney prior to issuance
195 of the permit.

196 (C) Any permittee except a public utility corporation shall furnish proof that the permittee
197 has in existence an insurance policy protecting him from liability to the public, including the city, to an
198 amount equal to the maximum claim the city might be required to pay under M.S. Ch. 466, as amended
199 from time to time.

200 (Prior Code, § 301.03)

201 § 93.23 GENERAL REGULATIONS OR EXCAVATIONS.

202 Street openings shall be made in a manner that will cause the least inconvenience to the public.
203 Provision shall be made for the passage of surface water and at least one-half of the traveled portion of
204 the street shall be left open and in good condition for the safe passage of vehicles. Open excavations
205 shall be guarded with substantial barriers and marked with red flags and at night with red lights or
206 flashing devices. Pipes or mains exposed to freezing temperatures shall be protected so as to prevent
207 freezing. Any person responsible for exposing a city main or pipe so that it might be damaged by
208 freezing shall be liable to the city for all damages caused by such freezing and all damages sustained by
209 others by such freezing for which the city may be liable.

210 (Prior Code, § 301.04)

211 § 93.24 REFILLING EXCAVATIONS.

212 Every street excavation shall be refilled as soon as possible after the work is completed and
213 paving, sidewalks, and appurtenances shall be replaced in at least as good condition as before the
214 excavation to the satisfaction of the City Engineer. All dirt and debris shall be removed immediately. Any
215 person who fails to comply with these requirements within 24 hours after notice from the city shall be
216 liable to the city for the full cost incurred by the city in remedying the defect and restoring the street,
217 sidewalk, alley or public ground to its proper condition. The cost shall be an obligation of the surety on
218 the bond of the permittee.

219 (Prior Code, § 301.05)

220 § 93.25 MAP OF SUBSURFACE INSTALLATIONS.

221 The city shall maintain, to the extent such information is available, a map showing the location
222 of all city utility and other installations made beneath the surface of any public street, grounds or right-
223 of-way. The information on the map shall be sufficiently complete and accurate to permit anyone
224 making an excavation in a public place having any underground installation to avoid damage to any
225 existing underground installation and to properly locate any new underground facilities which shall be
226 recorded on the map as soon as practicable upon the issuance of an excavation permit or the
227 completion of a contract for the installation of city underground installations.

228 (Prior Code, § 301.06)

229 RIGHT-OF-WAY MANAGEMENT

230 § 93.40 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

231 In accordance with the authority granted to the city under state and federal statutory,
232 administrative and common law, the city hereby elects pursuant to this chapter to manage rights-of-way
233 within its jurisdiction.

234 (Ord. 2009-7-2, passed 8-11-2009)

235 § 93.41 DEFINITIONS.

236 The definitions included in M.S. § 237.162, Minn. Rules 7819.0100 subparts 1 through 23, and
237 Minn. Rules 7560.0100 subparts 1 through 12, as amended from time to time, are hereby adopted by
238 reference and are incorporated into this chapter as if set out in full.

239 (Ord. 2009-7-2, passed 8-11-2009; Am. Ord. 2017-11-1, passed 11-14-2017)

240 § 93.42 PERMIT REQUIREMENT.

241 (A) Permit required. Except as otherwise provided in this code, no person may obstruct or
242 excavate any right-of-way, install or place facilities in the right-of-way, or construct a driveway entrance
243 to a city street, without first having obtained the appropriate permit from the city.

244 (1) Excavation permit. An excavation permit is required to excavate that part of the
245 right-of-way described in such permit and to hinder free and open passage over the specified portion of
246 the right-of-way by placing facilities described therein, to the extent and for the duration specified
247 therein.

248 (2) Obstruction permit. An obstruction permit is required to hinder free and open
249 passage over the specified portion of right-of-way by placing equipment described therein on the right-
250 of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a
251 person already possesses a valid excavation permit for the same project.

252 (3) Driveway access and construction. A driveway access and construction permit is
253 required prior to constructing an access driveway to any city street located in the city.

254 (4) Small wireless facility permit. A small wireless facility permit is required by a
255 registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to
256 otherwise install a small wireless facility in the specified portion or the right of way, to the extent
257 specified therein, provided that such permit shall remain in effect for the length of time the facility is in
258 use, unless lawfully revoked.

259 (B) Permit extensions. No person may excavate or obstruct the right-of-way beyond the
260 date or dates specified in the permit unless such person:

261 (1) Makes a supplementary application for another permit before the expiration of
262 the initial permit; and

263 (2) A new permit or permit extension is granted.

264 (C) Delay penalty. In accordance with Minn. Rule 7819.1000 subpart 3, and notwithstanding
265 division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in
266 right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established
267 from time to time by City Council resolution.

268 (D) Permit display. Permits issued under this chapter shall be conspicuously displayed or
269 otherwise available at all times at the indicated work site and shall be available for inspection by the
270 city.

271 (E) Consolidated applications.

272 (1) An applicant may file a consolidated small wireless facility permit application
273 addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to
274 by a local government unit, provided that all small wireless facilities in the application:

275 (a) Are located within a 2-mile radius;

276 (b) Consist of substantially similar equipment; and

277 (c) Are to be placed on similar types of wireless support structures.

278 (2) In rendering a decision on a consolidated permit application, the city may
279 approve some small wireless facilities and deny others, but may not use denial of one or more permits
280 as a basis to deny all small wireless facilities in the application.

281 (F) Action on small wireless facility permit applications. The city shall ~~approve or deny~~
282 ~~review an application - small wireless facility permit for collocation of a small wireless facility using a~~
283 ~~preexisting structure within 60 days and an application for attachment of a small wireless facility using a~~
284 ~~new structure within 90 days after filing of such application.~~ The small wireless facility permit, and any
285 associated building permit application, shall be deemed approved if the city fails to approve or deny the

Commented [JM26]: I have reviewed the small wireless facility provisions for compliance with state and federal law and made changes where necessary.

Commented [JM27]: I know the League has given feedback to cities on small wireless facilities. Since small wireless is included in this section and a few others below, it would be good to review any League of MN Cities guidance to make sure this language takes into account that guidance.

3-16-21 Planning Commission Comment have city attorney review that we are in compliance regarding wireless services.

Have the attorney review this entire code.

286 application within ~~the review periods established in this section~~90 days after the date a small wireless
287 facility permit application is filed. The 90-day deadline may be tolled if:

288 (1) The city receives applications from one or more applicants seeking approval of
289 permits for more than 30 small wireless facilities within a 7-day period. In such case, the city may
290 extend the deadline for all such applications by 30 days by informing the affected applicants in writing of
291 such extension.

292 (2) The applicant fails to submit all required documents or information and the city
293 provides written notice of incompleteness to the applicant within 30 days of receipt the application.
294 Upon submission of additional documents or information, the city shall have ten days to notify the
295 applicant in writing of any still-missing information.

296 (3) The city and a small wireless facility applicant agree in writing to toll the review
297 period.

298 (Ord. 2009-7-2, passed 8-11-2009; Am. Ord. 2017-11-1, passed 11-14-2017)

299 § 93.43 PERMIT APPLICATIONS.

300 Application for an excavation, obstruction, or small wireless facility permit shall contain, and will
301 be considered complete only upon compliance with the requirements of the following provisions:

302 (A) Submission of a completed permit application form, including all required attachments,
303 scaled drawings showing the location and area of the proposed project and the location of all known
304 existing and proposed facilities, and the following information:

305 (1) Each permittee's name, Gopher One-Call registration certificate number,
306 address and e-mail address, if applicable, and telephone and facsimile numbers;

307 (2) The name, address and e-mail address, if applicable, and telephone and
308 facsimile numbers of a local representative. The local representative or designee shall be available at all
309 times. Current information regarding how to contact the local representative in an emergency shall be
310 provided at the time of registration;

311 (3) A certificate of insurance or self-insurance:

312 (a) Verifying that an insurance policy has been issued to the permittee by
313 an insurance company licensed to do business in the State of Minnesota, or a form of self insurance
314 acceptable to the City Clerk;

315 (b) Verifying that the permittee is insured against claims for personal injury,
316 including death, as well as claims for property damage arising out of the:

317 1. Use and occupancy of the right-of-way by the permittee, its
318 officers, agents, employees and permittees; and

319 2. Placement and use of facilities and equipment in the right-of-
320 way by the permittee, its officers, agents, employees and permittees, including, but not limited to,
321 protection against liability arising from completed operations, damage of underground facilities and
322 collapse of property;

323 (c) Naming the city as an additional insured as to whom the coverages
324 required herein are in force and applicable and for whom defense will be provided as to all such
325 coverages;

326 (d) Requiring that the city clerk be notified 30 days in advance of
327 cancellation of the policy or material modification of a coverage term;

328 (e) Indicating comprehensive liability coverage, automobile liability
329 coverage, workers compensation and umbrella coverage established by the city clerk in amounts
330 sufficient to protect the city and the public and to carry out the purposes and policies of this chapter;

331 (f) The city may require a copy of the actual insurance policies;

332 (g) If the person is a corporation, a copy of the certificate required to be
333 filed ~~under M.S. § 300.06~~ as recorded and certified to by the Secretary of State; and

Commented [JM28]: These changes were made to bring the ordinance into conformity with recent changes to federal rules.

Commented [JM29]: This statute has been repealed and its requirements placed elsewhere in state statutes. See Minn. Stat. § 47.16.

334 (h) A copy of the person's order granting a certificate of authority from the
335 Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is
336 lawfully required to have such certificate from said commission or other state or federal agency.

337 (B) Payment of money due the city for:

338 (1) Permit fees, estimated restoration costs and other management costs;

339 (2) Prior obstructions or excavations;

340 (3) Any undisputed loss, damage, or expense suffered by the city because of
341 applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the
342 city; and

343 (4) Franchise fees or other charges, if applicable.

344 (Ord. 2009-7-2, passed 8-11-2009; Am. Ord. 2017-11-1, passed 11-14-2017)

345 § 93.44 ISSUANCE OF PERMIT; CONDITIONS.

346 (A) Permit issuance. If the applicant has satisfied the requirements of this chapter, the city
347 shall issue a permit.

348 (B) Conditions. The city may impose reasonable conditions upon the issuance of the permit
349 and the performance of the applicant thereunder to protect the health, safety and welfare or when
350 necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all
351 requirements of local, state and federal laws, including but not limited to M.S. § 216D.01-.09 (Gopher
352 One Call Excavation Notice System) and Minnesota Rules Chapter.

353 (C) Trenchless excavation. As a condition of all applicable permits, permittees employing
354 trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all
355 requirements set forth in M.S. Ch. 216D and Minn. Rules Ch. 7560, and shall require potholing or open
356 cutting over existing underground utilities before excavating, as determined by the city.

357 (D) Driveway access. As a condition of the applicable permit, permittees must comply with
358 the most current engineering standards adopted by the city.

359 (E) Small wireless facility conditions. In addition to division (B), the erection or installation
360 of a wireless support structure, the collocation of a small wireless facility, or other installation of a small
361 wireless facility in the right-of-way, shall be subject to the following conditions:

362 (1) A small wireless facility shall only be collocated on the particular wireless
363 support structure, under those attachment specifications, and at the height indicated in the applicable
364 permit application.

365 (2) No new wireless support structure installed within the right-of-way shall exceed
366 50 feet in height without the city's written authorization, provided that the city may impose a lower
367 height limit in the applicable permit to protect the public health, safety and welfare or to protect the
368 right-of-way and its current use, and further provided that a registrant may replace an existing wireless
369 support structure exceeding 50 feet in height with a structure of the same height subject to such
370 conditions or requirements as may be imposed in the applicable permit.

371 (3) No wireless facility may extend more than 10 feet above its wireless support
372 structure.

373 (4) Where an applicant proposes to install a new wireless support structure in the
374 right-of-way, the city may impose separation requirements between such structure and any existing
375 wireless support structure or other facilities in and around the right-of-way.

376 (5) Where an applicant proposes collocation on a decorative wireless support
377 structure, sign or other structure not intended to support small wireless facilities, the city may impose
378 reasonable requirements to accommodate the particular design, appearance or intended purpose of
379 such structure.

380 (6) Where an applicant proposes to replace a wireless support structure, the city
381 may impose reasonable restocking, replacement, or relocation requirements on the replacement of
382 such structure.

383 (7) The permittee shall screen all aboveground facilities and make reasonable
384 accommodations for decorative wireless support structures or signs, as required by the city. Screening
385 methods shall include the use of shrubs, trees and/or with landscape rock or installation using stealth or
386 camouflaged forms of the facility.

387 (F) Small wireless facility agreement.

388 (1) A small wireless facility shall only be collocated on a small wireless support
389 structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant
390 has executed a standard small wireless facility collocation agreement with the city. The standard
391 collocation agreement may require payment of the following:

392 (a) Up to \$150 per year for rent to collocate on the city structure;

393 (b) \$25 per year for maintenance associated with the collocation;

394 (c) A monthly fee for electrical service as follows:

395 1. \$73 per radio node less than or equal to 100 maximum watts;

396 2. \$182 per radio node over 100 maximum watts; or

397 3. The actual costs of electricity, if the actual cost exceed the

398 foregoing.

399 (2) The standard collocation agreement shall be in addition to, and not in lieu of,
400 the required small wireless facility permit, provided, however, that the applicant shall not be
401 additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless
402 facility permit does not supersede, alter or affect any then-existing agreement between the city and
403 applicant.

404 (Ord. 2009-7-2, passed 8-11-2009; Am. Ord. 2017-11-1, passed 11-14-2017)

405 § 93.45 PERMIT FEES.

406 (A) Excavation and driveway access permit fees. The city shall impose an excavation and
407 driveway access permit fees in amounts set forth in the current city fee schedule sufficient to recover
408 the following costs:

409 (1) The city management costs; and

410 (2) Degradation costs, if applicable.

411 (B) Obstruction permit fee. The city shall impose the obstruction permit fee as set forth in
412 the current city fee schedule and shall be in an amount sufficient to recover the city management costs.

413 (C) Small wireless facility permit fee. The city shall impose a small wireless facility permit
414 fee in an amount set forth in the current city fee schedule sufficient to recover:

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416 (1) Management costs; and

417 (2) City engineering, make-ready, and construction costs associated with

418 collocation of small wireless facilities.

419 (D) Payment of permit fees. No excavation permit or obstruction permit, or driveway access
420 permit, shall be issued without payment of excavation or obstruction permit or driveway access fees.

421 The city may allow applicant to pay such fees within 30 days of billing.

422 (E) Non-refundable. Permit fees that were paid for a permit that the city has revoked for a
423 breach as stated in § 93.6053 are not refundable.

424 (F) Application to franchises. Unless otherwise agreed to in a franchise, management costs
425 may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in
426 the franchise.

Commented [JM30]: These amounts are set by Minn. Stat. § 237.163 subd. 6. The City cannot charge more (unless the state statute is amended in the future).

Commented [JM31]: Change to set as set in the city's fee schedule

Commented [JM32]: Pursuant to federal law the fee should not exceed \$500 for up to five small wireless facilities in an application and \$100 for each additional small wireless facility beyond five. The City may charge up to \$1,000 for an application for a new pole intended to support one or more small wireless facilities.

427 (G) All permit fees shall be established consistent with the provisions of Minn. Rule
428 7819.1000.
429 (Ord. 2009-7-2, passed 8-11-2009; Am. Ord. 2017-11-1, passed 11-14-2017)
430 § 93.46 RIGHT-OF-WAY PATCHING AND RESTORATION.

431 (A) Timing. The work to be done under the excavation permit, and the patching and
432 restoration of the right-of-way as required herein, must be completed within the dates specified in the
433 permit, increased by as many days as work could not be done because of circumstances beyond the
434 control of the permittee or when work was prohibited as unseasonable.

435 (B) Patch and restoration. Permittee shall patch its own work. The city may choose either to
436 have the permittee restore the right-of-way or to restore the right-of-way itself.

437 (1) City restoration. If the city restores the right-of-way, permittee shall pay the
438 costs thereof within 30 days of billing. If following such restoration, the pavement settles due to
439 permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs
440 associated with having to correct the defective work.

441 (2) Permittee restoration. If the permittee restores the right-of-way itself, it shall at
442 the time of application for an excavation permit post a construction performance bond in accordance
443 with the provisions of Minn. Rules 7819.3000.

444 (3) Degradation fee in lieu of restoration. In lieu of right-of-way restoration, a right-
445 of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible
446 for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

447 (C) Standards. The permittee shall perform patching and restoration according to the
448 standards and with the materials specified by the city and shall comply with Minn. Rules 7819.1100.

449 (D) Duty to correct defects. The permittee shall correct defects in patching, or restoration
450 performed by permittee or its agents. Permittee upon notification from the city, shall correct all
451 restoration work to the extent necessary, using the method required by the city. The work shall be
452 completed within 5 calendar days of the receipt of the notice from the city, not including days during
453 which work cannot be done because of circumstances constituting force majeure or days when work is
454 prohibited as unseasonable.

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

460 (Ord. 2009-7-2, passed 8-11-2009)

461 § 93.47 SUPPLEMENTARY APPLICATIONS.

462 (A) Limitation on area. A permit is valid only for the area of the right-of-way specified in the
463 permit. No permittee may do any work outside the area specified in the permit, except as provided
464 herein. Any permittee which determines that an area greater than that specified in the permit must be
465 obstructed or excavated shall before working in that greater area:

466 (1) Make application for a permit extension and pay any additional fees required
467 thereby; and

468 (2) Be granted a new permit or permit extension.

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

475 (Ord. 2009-7-2, passed 8-11-2009; Am. Ord. 2017-11-1, passed 11-14-2017)

476 § 93.48 DENIAL OF PERMIT.

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

480 (Ord. 2009-7-2, passed 8-11-2009)

481 § 93.49 INSTALLATION REQUIREMENTS.

482 The excavation, backfilling, patching and restoration, and all other work performed in the right-
483 of-way shall be done in conformance with Minn. Rules 7819.1100 and other applicable local
484 requirements, in so far as they are not inconsistent with the M.S. §§ 237.162 and 237.163.

485 (Ord. 2009-7-2, passed 8-11-2009)

486 § 93.50 INSPECTION.

487 (A) Notice of completion. When the work under any permit hereunder is completed, the
488 permittee shall furnish a completion certificate in accordance Minn. Rules 7819.1300.

489 (B) Site inspection. Permittee shall make the work-site available to city personnel and to all
490 others as authorized by law for inspection at all reasonable times during the execution of and upon
491 completion of the work.

492 (C) Authority of ~~maintenance supervisor~~Maintenance Department.

493 (1) At the time of inspection the ~~maintenance supervisor~~Maintenance Department
494 may order the immediate cessation of any work, which poses a serious threat to the life, health, safety,
495 or well being of the public.

496 (2) The ~~maintenance supervisor~~ Maintenance Department may issue an order to
497 the permittee for any work that does not conform to the terms of the permit or other applicable
498 standards, conditions, or codes. The order shall state that failure to correct the violation will be cause
499 for revocation of the permit. Within 10 days after issuance of the order, the permittee shall present
500 proof to the ~~maintenance supervisor~~Maintenance Department that the violation has been corrected. If
501 such proof has not been presented within the required time, the ~~maintenance supervisor~~Maintenance
502 Department may revoke the permit pursuant to § 93.53.

503 (Ord. 2009-7-2, passed 8-11-2009)

504 § 93.51 WORK DONE WITHOUT A PERMIT.

505 (A) Emergency situations. Each person with facilities in the right-of-way shall immediately
506 notify the city of any event regarding its facilities that it considers being an emergency. The owner of the
507 facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two
508 business days after the occurrence of the emergency the owner shall apply for the necessary permits,
509 pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into
510 compliance with this chapter for the actions it took in response to the emergency. If the city becomes
511 aware of an emergency regarding facilities, the city will attempt to contact the local representative of
512 each facility owner affected, or potentially affected, by the emergency. In any event, the city may take
513 whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by
514 the person whose facilities occasioned the emergency.

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

520 (Ord. 2009-7-2, passed 8-11-2009)

521 § 93.52 SUPPLEMENTARY NOTIFICATION.

522 If the obstruction or excavation of the right-of-way begins later or ends sooner than the date
523 given on the permit, permittee shall notify the city of the accurate information as soon as this
524 information is known.
525 (Ord. 2009-7-2, passed 8-11-2009)
526 § 93.53 REVOCATION OF PERMITS.
527 (A) Substantial breach. The city reserves its right, as provided herein, to revoke any permit,
528 without a fee refund, if there is a substantial breach of the terms and conditions of any statute,
529 ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee
530 shall include, but shall not be limited to, the following:
531 (1) The violation of any material provision of the permit;
532 (2) An evasion or attempt to evade any material provision of the permit, or the
533 perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
534 (3) Any material misrepresentation of fact in the application for a permit;
535 (4) The failure to complete the work in a timely manner; unless a permit extension
536 is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
537 (5) The failure to correct, in a timely manner, work that does not conform to a
538 condition indicated on an order issued pursuant to § 93.46.
539 (B) Written notice of breach. If the city determines that the permittee has committed a
540 substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of
541 the permit, the city shall make a written demand upon the permittee to remedy such violation. The
542 demand shall state that continued violations might be cause for revocation of the permit. A substantial
543 breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on
544 the permit to mitigate and remedy the breach.
545 (C) Response to notice of breach. Within 24 hours of receiving notification of the breach,
546 permittee shall provide the city with a plan, acceptable to the city, which will cure the breach.
547 Permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or
548 permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation
549 of the permit.
550 (D) Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse
551 the city for the city's reasonable costs, including restoration costs and the costs of collection and
552 reasonable attorney fees incurred in connection with such revocation.
553 (Ord. 2009-7-2, passed 8-11-2009; Am. Ord. 2017-11-1, passed 11-14-2017)
554 § 93.54 MAPPING DATA.
555 (A) Information required. Each permittee shall provide mapping information required by
556 the city in accordance with Minn. Rules 7819.4000 and 7819.4100.
557 (B) Service laterals. All permits issued for the installation or repair of service laterals, other
558 than minor repairs as defined in Minn. Rules 7560.0150 subpart 2, shall require the permittee's use of
559 appropriate means of establishing the horizontal locations of installed service laterals, and the service
560 lateral vertical locations in those cases where the city reasonably requires it. Permittees or their
561 subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance
562 with this division (B) and with applicable Gopher State One Call law and Minnesota Rules governing
563 service laterals install after December 31, 2005, shall be a condition of any city approval necessary for:
564 (1) Payments to contractors working on a public improvement project including
565 those under M.S. Ch. 429; and
566 (2) City approval of performance under development agreements, or other
567 subdivision or site plan approval under M.S. Ch. 462. The city shall reasonably determine the
568 appropriate method of providing such information. Failure to provide prompt and accurate information

569 on the service laterals installed may result in the revocation of the permit issued for the work or for
570 future permits to the offending permittee or its subcontractors.

571 (Ord. 2009-7-2, passed 8-11-2009)

572 § 93.55 LOCATION OF FACILITIES.

573 (A) Placement, location, and relocation of facilities must comply with the act, with other
574 applicable law, and with Minn. Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do
575 not limit authority otherwise available to cities.

576 (B) Corridors. The city may assign specific corridors within the right-of-way, or any
577 particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current
578 technology, the city expects will someday be located within the right-of-way. All excavation, obstruction,
579 or other permits issued by the city involving the installation or replacement of facilities shall designate
580 the proper corridor for the facilities at issue.

581 (C) Limitation of space. To protect health, safety, and welfare or when necessary to protect
582 the right-of-way and its current use, the city shall have the power to prohibit or city shall strive to the
583 extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided
584 primarily by considerations of the public interest, the public's needs for the particular utility service, the
585 condition of the right-of-way, the time of year with respect to essential utilities, the protection of
586 existing facilities in the right-of-way, and future city plans for public improvements and development
587 projects which have been determined to be in the public interest.

588 (Ord. 2009-7-2, passed 8-11-2009)

589 § 93.56 DAMAGE TO OTHER FACILITIES.

590 When the city does work in the right-of-way and finds it necessary to maintain, support, or
591 move facilities to protect it, the city shall notify the local representative as early as is reasonably possible
592 and placed as required. The costs associated therewith will be billed to that facility owner and must be
593 paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of
594 repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be
595 responsible for the cost of repairing any damage to the facilities of another caused during the city's
596 response to an emergency occasioned by that owner's facilities.

597 (Ord. 2009-7-2, passed 8-11-2009)

598 § 93.57 RIGHT-OF-WAY VACATION.

599 Reservation of right. If the city vacates a right-of-way that contains facilities, the facility owner's
600 rights in the vacated right-of-way are governed by Minn. Rules 7819.3200.

601 (Ord. 2009-7-2, passed 8-11-2009)

602 § 93.58 INDEMNIFICATION AND LIABILITY.

603 By applying for and accepting a permit under this chapter, a permittee agrees to defend and
604 indemnify the city in accordance with the provisions of Minn. Rules 7819.1250.

605 (Ord. 2009-7-2, passed 8-11-2009)

606 § 93.59 ABANDONED FACILITIES.

607 Removal of abandoned facilities. Any person who has abandoned facilities in any right-of-way
608 shall remove them from that right-of-way if required in conjunction with other right-of-way repair,
609 excavation, or construction, unless the city waives this requirement.

610 (Ord. 2009-7-2, passed 8-11-2009)

611 § 93.60 APPEAL.

612 A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has
613 had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the
614 city regarding § 93.47(A), may have the denial, revocation, fee imposition, or decision reviewed, upon
615 written request, by the City council. The city council shall act on a timely written request at its next
616 regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee

617 imposition will be in writing and supported by written findings establishing the reasonableness of the
618 decision.

619 (Ord. 2009-7-2, passed 8-11-2009)

620 § 93.61 RESERVATION OF REGULATORY AND POLICE POWERS.

621 A permittee's rights are subject to the regulatory and police powers of the city to adopt and
622 enforce general ordinances necessary to protect the health, safety and welfare of the public.

623 (Ord. 2009-7-2, passed 8-11-2009)

624 ASSESSMENT DEFERRAL

625 § 93.70 DEFERRAL OF SPECIAL ASSESSMENTS PROVIDED.

626 The Council may defer the payment of any special assessment on homestead property owned by
627 a person who is 65 years of age or older, or retired by reason of permanent and total disability, or a
628 member of the Minnesota National Guard (or other military reserves) ordered into active military
629 service, when payment of the assessment would create a hardship upon the property owner as defined
630 herein. Only special assessments for public improvements are eligible for deferment consideration. The
631 deferment shall be granted upon a certification by the owner on the form prescribed by the County
632 Auditor supplemented by the City Clerk to establish the qualification of the owner for such deferment.
633 The application shall be made within 30 days after the adoption of the assessment roll by the Council
634 and shall be renewed each following year upon the filing of a similar application not later than
635 September 30. The Council shall either grant or deny the deferment. Compounding interest at the
636 current rate for special assessments shall be included with all special assessment deferrals. If the
637 Council grants the deferment, the Clerk shall notify the County Auditor who shall, in accordance with
638 M.S. § 435.194, record a notice of the deferment with the county recorder setting forth the amount of
639 the assessment.

640 (Ord. 2018-3-1, passed 3-3-2018)

641 § 93.71 DETERMINATION OF HARDSHIP.

642 (A) A hardship shall be deemed prima facie to exist when the total annual special
643 assessment amount exceeds 1% of the annual adjusted gross income of the applicant and spouse
644 according to their most recent federal income tax return. If no such return was made, the Clerk shall
645 require the applicant to submit other pertinent information to show that this qualification is met.

646 (B) Notwithstanding the provisions of this section, the City Council may consider
647 exceptional and unusual circumstances pertaining to an applicant not covered by foregoing standards;
648 but any determination shall be made in a nondiscriminatory manner and shall not give the applicant an
649 unreasonable preference or advantage over other applicants.

650 (Ord. 2018-3-1, passed 3-3-2018)

651 § 93.72 DISABILITY DETERMINATION.

652 Retirement by reason of permanent and total disability shall be deemed prima facie to exist
653 when the applicant presents a sworn affidavit by a licensed medical doctor attesting that the applicant is
654 unable to be gainfully employed because of a permanent and total disability.

655 (Ord. 2018-3-1, passed 3-3-2018)

656 § 93.73 DEFERRAL TERMINATION.

657 (A) The option to defer the payment of special assessments shall terminate and all amounts
658 accumulated plus applicable interest shall become due upon the occurrence of any one of the following
659 events:

- 660 (1) The death of the owner when there is no spouse who is eligible for deferment;
- 661 (2) The sale, transfer or subdivision of all or any part of the property;
- 662 (3) Loss of homestead status on the property;
- 663 (4) The city determines the owner or owner's spouse no longer qualifies for the

664 deferral;

665 (5) The city determines that there would be no hardship to require immediate or
666 partial payment; or
667 (6) Failure to file a renewal application within the time prescribed by § 93.70.
668 (B) Upon the occurrence of 1 of the events specified in this section, the Council shall
669 terminate the deferment. Thereupon, the City Clerk shall notify the County Assessor and the County
670 Auditor of the termination, including the amounts accumulated on unpaid installments plus applicable
671 interest which shall become due and payable as a result of the termination.
672 (Ord. 2018-3-1, passed 3-3-2018)

