

TITLE 7

PUBLIC WAYS AND PROPERTY

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CHAPTER 1

LOCAL IMPROVEMENTS AND ASSESSMENTS

SECTION:

- 7-1-1 : Compliance With Statute
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7-1-1: **COMPLIANCE WITH STATUTE:** Local improvements and special assessments shall conform to Minnesota Statutes chapter 429, as amended. (1981 Code § 304.01)

7-1-2: **PARTIAL PAYMENT OF ASSESSMENT:** Prior to certification of a special assessment for any local improvement, the owner of any property specially assessed may pay to the Clerk-Treasurer any portion of the assessment, but not less than one hundred dollars (\$100.00). The remaining unpaid balance shall be spread over the period of time established in the resolution passed by the Council for installment payments of the assessment. (Ord. 81-3, 10-13-1981)

CHAPTER 2

CHAPTER 2 RIGHT-OF-WAY ORDINANCE

SECTION:

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7-2-1: **FINDINGS AND PURPOSE**

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

Right-of-way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel or shopping

plans because of them and has a detrimental effect on commerce. Persons whose equipment is within the right-of-way are the primary cause of these frequent obstructions.

The City holds the rights of way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property.

In response to the foregoing facts, the City hereby enacts this new Chapter 1 of this Code relating to right-of-way permits and administration, together with an ordinance making necessary revisions to other Code provisions. This Chapter imposes reasonable regulations on the placement and maintenance of equipment currently within its right-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Chapter, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this Chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

7-2-2: DEFINITIONS:

The following definitions apply in this Chapter of this Code. References hereafter to "sections" are unless otherwise specified references to sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

APPLICANT: Any Person requesting permission to Excavate or Obstruct a Right-of-Way.

CITY: City of Sartell, Minnesota. For purposes of section 1.28, City means its elected officials, officers, employees and agents.

MANAGEMENT COSTS: 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

130 of this Chapter.

DEGRADATION:	A decrease in the useful life of the Right-of-Way caused by excavation in or disturbance of the Right-Of-Way, resulting ha the need to reconstruct such Right-Of-Way earlier than would be required if the excavation did not occur. (Note: Pending adoption by PUC. Concept agreed to by Industry.)
DEGRADATION COSTS:	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 proposed PUC rules parts 7819.9900 to 7819.9950. (Note: Pending adoption by PUC. Concept agreed to by Industry.)
DEGRADATION FEE:	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 Costs.
DEPARTMENT:	The Department of Public Works of the City.
DEPARTMENT INSPECTOR:	Any Person authorized by the Director to carry out inspections related to the provisions of this Chapter.
DIRECTOR:	The Director of the Department of Public Works of the City, or her or Iris designee. (Note: Some cities may prefer to use the term "City" rather than delegating responsibilities to a specific position.)
DELAY PENALTY:	The penalty imposed as a result of unreasonable delays in Right-of-Way construction.
EMERGENCY:	A condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of Facilities in order to restore Service to a customer.
EQUIPMENT:	Any tangible asset used to install, repair, or maintain Facilities in any Right-Of-Way.
EXCAVATE:	To dig into or in any way remove or physically disturb or penetrate any part of the Right-Of-Way.
EXCAVATION PERMIT:	The permit which, pursuant to this Chapter, must be obtained before a Person may Excavate in a Right-Of-Way. An excavation Permit allows the holder to Excavate that pm~ of the Right-of-Way

described in such permit.

EXCAVATION PERMIT FEE:	Money paid to the City by an applicant to cover the costs as provided in Section 1.11.
FACILITY OR FACILITIES:	Any tangible asset in the Right-of-Way required to provide Utility Service.
LOCAL REPRESENTATIVE:	A local Person or Persons, or designee of such Person or Persons, authorized by a Registrant to accept Service and to make decisions for that Registrant regarding all matters within the scope of this Chapter.
OBSTRUCT:	To place any tangible object in a Right-of-Way so as to hinder free and open passage over that or any part of the Right-of-Way.
OBSTRUCTION PERMIT:	The permit which, pursuant to this Chapter, must be obtained before a Person may Obstruct a Right-of Way, allowing the holder to hinder free and open passage over the specified portion of that Right-of-Way by placing Equipment described therein on the Right-of-Way for the duration specified therein.
OBSTRUCTION PERMIT FEE:	Money paid to the City by a Permittee to cover the costs as provided in Section 1.11.
PATCH OR PATCHING:	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.
PERMITTEE:	Any Person to whom a permit to Excavate or Obstruct a Right-of-Way has been granted by the City under this Chapter.
PERSON:	Any natural or corporate Person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
PROBATION:	The status of a Person that has not complied with the conditions of this Chapter.

PROBATIONARY PERIOD:	One year from the date that a Person has been notified in writing that they have been put on Probation.
REGISTRANT:	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 in the Right-of-Way.
CONSTRUCTION PERFORMANCE BOND:	A performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that Right-of-Way Excavation and Obstruction work is completed in accordance with the terms of the Right-of-Way Permit, or other applicable State law or local regulation. (NOTE: Pending adoption by PUC. No agreement with Industry.)
RESTORE OR RESTORATION:	The process by which a Right-of-Way is returned to the same condition and life expectancy that existed before excavation. (Note: Pending adoption by PUC. No agreement with Industry.)
RESTORATION COSTS:	The amount of money paid to the City by a Permittee to achieve the level of restoration according to plates 1 to 13 of PUC rules. (Note: Pending Adoption by PUC. No agreement with Industry.)
RIGHT-OF-WAY:	The area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A Right-of-Way does not include the airwaves above a Right-of-Way with regard to cellular or other nonwire telecommunications or broadcast service.
RIGHT-OF-WAY PERMIT:	Either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this Chapter.
SERVICE OR UTILITY SERVICE:	Includes but is not limited to (1) those services provided by a public utility as defined in Minn. Stat 216B.02, subs. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. 300.03; (4) the services provided by a district heating or cooling system; and (5) cable Telecommunication

Right-of-Way User as defined in (kk)

SUPPLEMENTARY APPLICATION: 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.

TELECOMMUNICATIONS RIGHTS-OF-WAY USER: A Person owning or controlling a Facility in the Right-of-Way, or seeking to own or control a Facility in the Right-of-Way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Chapter, a cable communication system defined and regulated under 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 Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not Telecommunications Right-of-Way Users for purposes of this Chapter.

UNUSABLE FACILITIES: Facilities in the Right-of-Way which have remained unused for one year and for which the Registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) Months or a potential purchaser or user of the Facilities. (Pending adoption by PUC. No agreement with Industry.)

7-2-3: 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.

7-2-4: REGISTRATION AND RIGHT-OF-WAY OCCUPANCY

1. Registration. Each Person who occupies, uses, or seeks to occupy or use, the Right-of-Way or place any Equipment or Facilities in the Right-of-Way, including Persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Director. Registration will consist of providing application information and paying a registration fee.

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 Director.

3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting Persons to plant or maintain boulevard plantings or gardens in the area of the Right-of Way between their property and the street curb. Persons planting or

maintaining boulevard plantings or gardens shall not be deemed to use or occupy the Right-Of-Way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Chapter. However, nothing herein relieves a Person from complying with the provisions of the Minn. Stat. Chap. 216D, "One call" Law.

7-2-5: REGISTRATION INFORMATION:

1. Information Required. The information provided to the Director at the time of registration shall include, but not be limited to:

(a) Each Registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a Local Representative. The Local Representative or designee shall be available at all times. Current information regarding how to contact the Local Representative in an Emergency shall be provided at the time of registration.

(c) A certificate of insurance or self-insurance: **(Note: Pending adoption by PUC. No agreement with Industry.)**

(1) Verifying that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the Director;

(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 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) 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;

(4) Requiring that the Director 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 Director in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Chapter.

(d) The City may require a copy of the actual insurance policies. **(Note: No agreement with Industry.)**

(e) If the Person is a corporation, a copy of the certificate required to be filed under Minn. Stat 300.06 as recorded and certified to by the Secretary of State.

(f) A copy of the Person's order granting a certificate of authority from the Minnesota

Public Utilities Commission or other applicable state or federal agency, where the Person is lawfully required to have such certificate from said Commission or other state or federal agency.

2. Notice of Changes. The Registrant shall keep all of the information listed above current at all times by providing to the Director information as to changes within fifteen (15) days following the date on which the Registrant has knowledge of any change.

7-2-6: REPORTING OBLIGATIONS

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 Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavations and Obstructions of Rights-of-Way.

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

(a) The locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this section a "Next-year Project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all Projects contemplated for the five years following the next calendar year (in this section, a "Five-year Project").

The term "project" in this section shall include both Next-year Projects and Five-year Projects.

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

Thereafter, by February 1, each Registrant may change any Project in its list of Next-year Projects, and must notify the Director 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.

2. Additional Next-year Projects. Notwithstanding the foregoing, the Director 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.

7-2-7: PERMIT REQUIREMENT

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 Director to do so.

(a) Excavation Permit. An Excavation Permit is required by a Registrant to excavate that part of the Right-of-Way described in such permit and to hinder free and open passage over the specified portion of the Right-Of-Way by placing Facilities described therein, to the extent and for the duration specified therein.

(b) Obstruction Permit. An Obstruction Permit is required by a Registrant to hinder free and open passage over the specified portion of Right-of-Way by placing Equipment described therein on the Right-of-Way, to the extent and for the duration specified therein. An Obstruction Permit is not required if a Person already possesses a valid Excavation Permit for the same project.

2. Permit Extensions. No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the permit unless such Person (i) 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.

3. Delay Penalty. Notwithstanding subd. 2 of this section, the City shall establish and impose 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.

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

7-2-8: PERMIT APPLICATIONS

Application for a permit is made to the Director. 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 Director pursuant to this Chapter;

(b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed Facilities.

(c) Payment of money due the City for:

(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;

(4) franchise or user fees, if applicable.

(d) Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing. **(Note: Pending adoption by PUC. No agreement with Industry.)**

(e) When an Excavation Permit is requested for purposes of installing additional Facilities, and the posting of a Construction Performance Bond for the additional Facilities is insufficient, the posting of an additional or larger Construction Performance Bond for the additional Facilities may be required.

7-2-9: ISSUANCE OF PERMIT; CONDITIONS

1. Permit Issuance. If the Applicant has satisfied the requirements of this Chapter, the Director shall issue a permit.
2. Conditions. The Director 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.

7-2-10: PERMIT FEES

1. Excavation Permit Fee. The Excavation Permit Fee shall be established by the Director in an amount sufficient to recover the following costs:
 - (a) the City Management Costs;
 - (b) Degradation Costs, if applicable.
2. Obstruction Permit Fee. The Obstruction Permit Fee shall be established by the Director and shall be in an amount sufficient to recover the City Management Costs.
3. Payment of Permit Fee 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.
4. Non refundable. Permit fees that were paid for a permit that fine Director has revoked for a breach as stated in Section 1.21 are not refundable.

7-2-11: RIGHT-OF-WAY PATCHING AND RESTORATION

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 extraordinary circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Section 1.15.
2. Patch and Restoration. Permittee shall Patch its own work. The City may choose either to have the Permittee restore the Right-of-Way or to Restore the Right-of-Way itself.
 - (a) City Restoration. If the City restores the Right-Of-Way: Permit-tee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such Restoration, the pavement settles due to Permittees's improper backfilling the Permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct 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 ha an mount determined by the Director to be sufficient to cover the cost of Restoration. If, within thirty-six (36) months after completion of the Restoration of the Right-of-Way, the Director determines that the Right-of-Way has been properly Restored, the surety on the Construction Performance Bond shall be released.
3. Standards: The Permittee shall perform Patching and Restoration according to the standards and with the materials specified by the Director. The Director shall have the

authority to prescribe the hammer and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The Director in exercising this authority shall comply with PUC standards for Right-of-Way Restoration and shall further be guided by the following considerations: **(Note: Pending adoption by PUC of Plates 1 to 13, General Agreement with Industry, except in some rural areas).**

(a) The number, size, depth and duration of the excavations, disruptions or damage to the Right-of-Way;

(b) The traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way.

(c) The pre-excavation condition of the Right-of-Way; the remaining life expectancy of the Right-of-Way affected by the excavation.

(d) Whether the relative cost of the method of restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the Right-of-Way; and

(e) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place.

4. Guarantees: By choosing to Restore the Right-of-Way itself, the Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period it shall, upon notification from the Director, construct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.15.

5. Failure to Restore: If the Permittee fails to Restore file Right-of-Way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all Restoration required by the Director, the Director at its option may do such work. In that event the 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.

6. Degradation Cost in Lieu of Restoration: In lieu of Right-of-Way Restoration, a Right-of-Way user may elect to pay a Degradation Fee. However, the Right-of-Way User shall remain responsible for Patching and Degradation Fee shall not include the cost to accomplish these responsibilities. **(Note: unless voluntarily agreed to, Degradation Fees cannot be imposed upon telecommunication Right-of-Way users until March 1, 1998.)**

7-2-12: JOINT APPLICATIONS

1. Joint Application: Registrants may jointly apply for permits to Excavate or Obstruct the Right-of-Way at the same place and time.

2. With City Projects: Registrants who join in a scheduled Obstruction or excavation performed by the Director, whether or not it is a joint application by two or more Registrants or a single application, are not required to pay the Obstruction and Degradation portions of the permit fee.

3. Shared Fees: Registrants who apply for permits for the same Obstruction or excavation, which the Director does not perform, may share in the payment of the Obstruction or Excavation Permit Fee. Registrants must agree among themselves as to the

portion each will pay and indicate the same on their applications.

7-2-13: SUPPLEMENTARY APPLICATIONS

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 this 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.

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 done before the permit end date.

7-2-14: OTHER OBLIGATIONS

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 ("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.

2. Prohibited Work: Except in an Emergency, and with the approval of the Director, no Right-of-Way Obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

3. Interference with Right-of-Way: A Permittee shall not so Obstruct a Right-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in file 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.

7-2-15: DENIAL

The Director may deny a permit for failure to meet file requirements and conditions of this Chapter or if the Director 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.

7-2-16: INSTALLATION REQUIREMENTS

The excavation, backfilling, Patching and Restoration, and all other work performed in the Right-of-Way shall be done in conformance with Engineering Standards adopted by the PUC

or other applicable local requirements, in so far as they are not inconsistent with the PUC Rules. **(Note: Standards awaiting adoption by PUC. General agreement with Industry.)**

7-2-17: **INSPECTION**

1. Notice of Completion: When the work under any permit hereunder is completed, the Permittee shall furnish a Completion Certificate in accordance with PUC Rules. **(Pending adoption by PUC. Agreement with Industry.)**

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

3. Authority of Director.

(a) At the time of inspection the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

(b) The Director may issue an order to the Permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the Permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Sec. 1.21.

7-2-18: **WORK DONE WITHOUT A PERMIT**

1. Emergency Situations: Each Registrant shall immediately notify the Director of any event regarding its Facility which it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to the Emergency. Within two business days after the occurrence of the Emergency the Registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the Emergency.

If the Director becomes aware of an Emergency regarding a Registrant's Facilities, the Director will attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the Director 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.

2. Non-Emergency Situations: Except in an Emergency, any Person who, without first having obtained the necessary permit, Obstructs or Excavates a Right-of Way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by the Legislative Code, deposit with the Director the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this Chapter.

7-2-19: **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 Director of the accurate information as soon as this information is known.

7-2-20: **REVOCAION OF PERMITS**

1. Substantial Breach: The City reserves its right, as provided herein, to revoke any Right-of-Way Permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by Permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the Right-of-Way Permit:
- (b) An evasion or attempt to evade any material provision of the Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- (c) Any material misrepresentation of fact in the application for a Right-of-Way Permit:
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the Permittee's control; or
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an Order issued pursuant to Sec. 1.18.

2. Written Notice of Breach: If the Director 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 Director 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 Director, at his or her discretion, to place additional revised conditions on the permit to mitigate and remedy the breach.

3. Response to Notice of Breach: Within twenty-four (24) hours of receiving notification of the breach, Permittee shall provide the Director with a plan, acceptable to the Director that will cure the breach. Permittee's failure to so contact the Director, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee's failure to so contact the Director, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall automatically place the Permittee on Probation for one (1) full year.

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

5. Automatic Revocation: If a Permittee, while on Probation, commits a breach as outlined above, Permittee's permit will automatically be revoked and Permittee will not be allowed further permits for one full year, except for Emergency repairs.

6. Reimbursement of City Costs: If a permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration Costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

7-2-21: **MAPPING DATA**

1. Information Required: Each Registrant shall provide Mapping information required by the Director in accordance with PUC Rules. **(Pending adoption by PUC. Agreement with Industry.)**

2. Trade Secret Information: At the request of any Registrant, any information requested by the Director, which qualifies as a "trade-secret" under Minn. Stat. 13.37 (b) shall be treated as trade secret information as detailed therein.

7-2-22: **LOCATION OF FACILITIES**

1. Undergrounding: Unless otherwise permitted by an existing franchise or Minnesota Stat. 216B.34, or unless existing above-ground Facilities is repaired or replaced, new construction and the installation of new Facilities and replacement of old Facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

2. Corridors: The Director may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of Facilities that is or, pursuant to current technology, the Director expects will someday be located within the Right-of-Way. All excavation, obstruction, or other permits issued by the Director involving the installation or replacement of Facilities shall designate the proper corridor for the Facilities at issue.

Any Registrant who has Facilities in the Right-of-Way in a position at variance with the corridors established by the Director shall, no later than at the time of the next reconstruction or excavation of the area where the Facilities are located, move the Facilities to the assigned position within the Right-of-Way, unless this requirement is waived by the Director for good cause shown, upon consideration of such factors as the remaining economic life of the Facilities, public safety, customer Service needs and hardship to the Registrant.

3. Nuisance: One year after the passage of this Chapter, any Facilities found in a Right-of-Way that have not been Registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the Facilities and restoring the Right-of-Way to a useable condition.

4. Limitation of Space: To protect health, safety, and welfare or when necessary to protect the Right-of-Way and its current use, the Director 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 Director shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by consecrations 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.

7-2-23: RELOCATION OF FACILITIES

A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the Director for good cause requests such removal and relocation, and shall restore the Right-of-Way to the same condition it was in prior to said removal or relocation. The Director may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future City use of the Right-of-Way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way. **(Note: No agreement with Industry.)**

Notwithstanding the foregoing, a Person shall not be required to remove or relocate its Facilities from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the Person therefor.

7-2-24: PRE-EXCAVATION FACILITY AND 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 mark the horizontal and approximate vertical placement of all said Facilities. Any Registrant whose Facilities is less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its Facilities and the best procedure for excavation.

7-2-25: DAMAGE TO OTHER FACILITIES

When the Director does work in the Right-of-Way and finds it necessary to maintain, support, or move a Registrant's Facilities to protect it, the Director shall notify the Local Representative as early as is reasonably possible. The costs associated therewith will be billed to that Registrant and must be paid within a 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. Each Registrant shall be responsible for the cost of repairing any damage to the Facilities of another Registrant caused during the City's response to an Emergency occasioned by that Registrant's Facilities.

7-2-26: RIGHT-OF-WAY VACATION (awaiting further discussion.)

1. Reservation of Right: If the City vacates a Right-of-Way which contains the Facilities of a Registrant, and if the vacation does not require the relocation of Registrant's or Permittee's Facilities, the City shall reserve, to and for itself and all Registrants having Facilities in the vacated Right-of-Way, the right to install, maintain and operate any Facilities in the vacated Right-of-Way and to enter upon such Right-of-Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

2. Relocation of Facilities: If the vacation requires the relocation of Registrant's or Permittee's Facilities; and (i) if the vacation proceedings are initiated by the Registrant or Permittee, the Registrant or Permittee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the City, the Registrant or Permittee must pay the relocation

costs unless otherwise agreed to by the City and the Registrant or Permittee; or (iii) if the vacation proceedings are initiated by a Person or Persons other than the Registrant or Permittee, such other Person or Persons must pay the relocation costs.

7-2-27: INDEMNIFICATION AND LIABILITY (Pending adoption by PUC. No agreement with Industry.)

By registering with the Director, or by accepting a permit under this Chapter, a Registrant or Permittee agrees as follows:

1. Limitation of Liability: By reason of the acceptance on a registration or the grant of a Right-of-Way Permit, the City does not assume any liability (i) for injuries to Persons, damage to property, or loss of Service claims by parties other than the Registrant or the City, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Registrants or activities of Registrants.

2. Indemnification: A Registrant or Permittee shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to Persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of Registrant's or Permittee's Facilities located in the Right-of-Way.

The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the local government unit's negligence as to the issuance of permits or inspections to ensure permit compliance. The City shall not be held indemnified if the injury or damage results from the performance of a proper mariner of acts that the Registrant or Permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the City after receiving notice of the Registrant's or Permittee's determination.

3. Defense: If a suit is brought against the City under circumstances where the Registrant or permittee is required to indemnify, the Registrant or Permittee, at its sole cost and expense shall defend the City in the suit if written notice of the suit is promptly given to the Registrant or Permittee within a period in which the Registrant or Permittee is not prejudiced by the lack or delay of notice.

If the Registrant or Permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the Registrant or Permittee may not settle the litigation without the consent of the City. Consent will not be unreasonably withheld.

This permit is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the City.

In defending an action on behalf of the City, the Registrant or Permittee is entitled to assert in an action every defense, immunity, or damage limitation that the City could assert in its own behalf.

7-2-28: ABANDONED AND UNUSABLE FACILITIES

1. Discontinued Operations: A Registrant who has determined to discontinue its operations in the City must either:

(a) Provide information satisfactory to the Director that the Registrant's obligation for its Facilities in the Right-of-Way under this Chapter have been lawfully assumed by another Registrant; or

(b) Submit to the Director a proposal and instruments for transferring ownership of its Facilities to the City. If a Registrant proceeds under this clause, the City may, at its option:

(1) purchase the Facilities; or

(2) require the Registrant, at its own expense, to remove it; or

(3) require the Registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.

2. Abandoned Facilities: Facilities of a Registrant who fails to comply with subd. 1. of this Section, and which for two (2) years, remains unused shall be deemed to be abandoned. Abandoned Facilities is deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (i) abating the nuisance (ii) taking possession of the Facilities and restoring it to a useable condition, or (iii) requiring removal of the Facilities by the Registrant, or the Registrant's successor in interest. **(Note: Industry opposes this section.)**

3. Removal. Any Registrant who has unusable and abandoned Facilities in any Right-of-Way shall remove it from that Right-of-Way during the next scheduled excavation, unless this requirement is waived by the Director.

7-2-29: **APPEAL**

a) 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 invalid, 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 written and supported by written findings establishing the reasonableness of the decision.

b) Upon affirmation by the City Council of the denial, revocation, or fee imposition, the Right-of-Way User shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Council and Right-of-Way User. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the Right-of-Way User and one selected by the other two arbitrators. The costs and fees of single arbitrator shall be borne equally by the City and Right-of-Way User. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the expense of the third arbitrator and of the arbitration.

7-2-30: **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.

7-2-31: SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Chapter 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 Chapter or any portions of this Chapter 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 Chapter precludes the City from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.

CHAPTER 3

PARKS

SECTION:

- 7-3-1: Intent; Purpose
- 7-3-2: Park Hours
- 7-3-3: Park Rental
- 7-3-4: Care And Use Of Park Property
- 7-3-5: Winter Use Of Parks
- 7-3-6: Selling And Commercial Enterprise
- 7-3-7: Traffic And Parking
- 7-3-8: Law Enforcement Authority
- 7-3-9: Penalty

7-3-1: **INTENT; PURPOSE:**

- A. Intent: It is the intent of this Chapter to promote the peaceable use and enjoyment of City parks by the general public by regulating their use pursuant to the provisions of this Chapter.
- B. Purpose: It is the express purpose of this Chapter to prevent disturbances or behavior in "the use of the parks that interfere with, or impede, the designated use of the parks from their inherent recreational purposes, such as for picnics, camping (where designated), and other controlled athletic activities. (1981 Code § 302.01)

7-3-2: **PARK HOURS:** Except for Rotary Park, all parks will be open from seven o'clock (7:00) A.M. to eleven o'clock (11:00) P.M. Rotary Park will be open 24 hours a day.

7-3-3: **PARK RENTAL:**

A. Rental Application; Fees: Renting a park shelter provides the renter with the exclusive use of the designated facility or portion during the rental period. For park shelters in Northside Park, Watab Park, Val Smith Park, Pinecone Regional Park, and Lions Park for which the City Council has designated available for rental for various group activities and/or benefits, a rental application shall be made to the City and the prescribed fees as set forth by City Ordinance shall be paid at the time of application. All relative information requested by the City must be provided or it will be considered grounds for denial of said rental. The City may also deny a permit application on any of the following grounds:

1. The permit application contains a material falsehood or misrepresentation;
2. The applicant or the person on whose behalf the application for permit was made has on prior occasions damaged park property and has not paid in full for such damage.
3. A fully executed prior application for permit for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular park shelter or part thereof;

4. The use or activity intended by the applicant would conflict with previously planned programs organized and conducted by the City and previously scheduled for the same time and place;
5. The proposed use or activity is prohibited by or inconsistent with the classifications and uses of the park.

B. Open Dates: A shelter rental application can be made beginning at the start of the calendar year for that year's reservation and are available for rent during the following months:

Northside Park	May 1-Labor Day
Watab Park	May 1-September 30
Lions Park Gazebo	May 1 to September 30
Val Smith Park	May 1-September 30
Val Smith Warming House	December 1-March 30 (weather permitting)
Pinecone Regional Park	Year-round

C. Liability Of Person Making Application; Damage Deposit: The rental applicant shall be personally liable for the conduct of the participants and any subsequent damages to the public facilities. The damage deposit must be paid at time of picking up the shelter keys. The amount of the damage deposit will be equal to the estimated cost of cleaning up and restoring the park upon the conclusion of the use or activity.

D. Cancellation; Refund: In order to cancel the rental and to receive a refund of the fee, minus an administrative processing fee, the City must be notified at least two (2) weeks in advance of the rental date. Otherwise, the fee will be forfeited and the shelter made available for rental on a first-come, first-serve basis.

E. Alcoholic Beverages:

1. Alcoholic Beverages Permitted: Except as provided for in E.2. below and as otherwise provided for in law, alcoholic beverages are allowed for personal consumption.

2. Special Permit Required: For groups of twenty five (25) or more to consume alcoholic beverages, a special permit from the Police Department shall be required. The permit must also be approved by the City Administrator or the City Administrator's designee. (Ord. 81-4, 11-23-1981)

3. Sale of Alcoholic Beverages: No person shall sell alcoholic beverages in any city park unless authorized by the City Council, and only at locations designated by the City Council.

7-3-4: CARE AND USE OF PARK PROPERTY:

A. Damage To Natural Environment, Park Property:

1. Damage To Property: No person shall disfigure, injure, tamper with, willfully mark or remove any of the manmade or natural resources and environment of the parks.

This shall include, but not be limited to, equipment, shelters, picnic facilities, utility lines, trees, plants or wildlife, of any and all sorts.

2. Use Of Poisonous Substance Prohibited; Exception: No poisonous substance shall be utilized in any of the park premises which would have an effect of destroying or damaging any person, wildlife or result, directly or indirectly, or the pollution of any water source. The City may use weed killer to get rid of the weeds.

- B. Use Of Weapons; No person shall use or discharge any air rifle, sling shot, bow and arrow, gun, pistol or firearm of any description within any City park except in areas which may be expressly designated for such activities.
- C. Refuse: All refuse or other trash or waste generated by the use of the park shall be placed in the proper receptacles provided. Every attempt must be made to maintain the park grounds in a neat and clean state.
- D. Fire; Burning: All fires shall be restricted to proper fireplaces, charcoal burners, stoves or grills. Cigarettes, pipes and cigars shall be properly put out in such a manner so as to prevent damage to the premises and to ensure the avoidance of any improper burning or fires within the parks. (1981 Code § 302.04)
- E. Swimming: All swimming, bathing and wading in the Mississippi River, Sauk River and Watab River accessed from any City-owned or controlled property is prohibited. (Ord. 92-6, 7-27-1992)
- F. Fishing Areas: Fishing in the Mississippi River, Sauk River and Watab River accessed from any City-owned or controlled property is permitted.
- G. Sports; Games:
 - 1. Prescribed Areas: All sports and gaming activities of a team nature or other organized games such as football, baseball, softball or golf and horseshoes, are restricted to the prescribed areas for those activities. Such sports and gaming activities are intended to be separate from the picnic areas to prevent injuries and promote safety of all park occupants.
 - 2. Use Of Areas: The use of the prescribed sports activity areas shall be governed by the rule of first come, first serve except where prior reservations have been made.
- H. Picnic Tables: No stacking or rearranging of picnic tables in such a manner as to disrupt overall park use shall be allowed.
- I. Pets: The owners of all domestic pets are responsible for the behavior of their animal(s). Such pets must be kept leashed.
- J. Horseback Riding: No horseback riding shall be allowed within City parks nor shall such animals be allowed to graze or go unattended. (1981 Code § 302.04)
- K. Use of Park Shelters: Park Shelters that have been reserved for the exclusive use of the renter may not be used or occupied by any person not a guest of the renter during the rental period. Shelter facilities that are not reserved may be utilized on a first come first serve basis.

7-3-5: **WINTER USE OF PARKS:** All authorized winter sports shall be confined to their designated areas which shall include, but not be limited to, Nordic skiing, snowshoeing, sledding, tobogganing, ice skating, hockey and similar activities. (1981 Code § 302.05)

7-3-6: **SELLING AND COMMERCIAL ENTERPRISE:** No person shall sell, solicit, or carry on any business or commercial enterprise or service in a park unless authorized by the City Council.

7-3-7: **TRAFFIC AND PARKING:**

- A. Parking: All vehicles, whether motorized or non-motorized, shall be restricted to their designated parking area.
- B. Speed Limit: In those parks where roadways extend into and through the parks, no vehicle may drive at a speed in excess of five (5) miles per hour.
- C. Operation Of Vehicle: All persons must operate their vehicles in a safe and reasonable manner. No vehicles are to extend beyond the roadway or parking areas. (1981 Code § 302.06)

7-3-8: **LAW ENFORCEMENT AUTHORITY:**

- A. Grant Of Power: Whenever, in the judgment of any City official or the Police Department, hereinafter referred to as "City authorities", the peaceable use and enjoyment of the park premises is disturbed by individual(s) or groups, it is expressly provided by this Chapter that the appropriate City authorities have the full power to remove said person or persons in order to promote the public health, welfare, safety, recreation and enjoyment of the parks. Any activity that is reasonably anticipated to invite violence, crime or disorderly conduct shall be prohibited. (1981 Code § 302.01)
- B. Obedience Required: All City law enforcement authorities and designated City authorities shall be obeyed concerning the use, care and occupancy of City parks. (1981 Code § 302.07)

7-3-9: **PENALTY:** Any person violating any provision of this Chapter shall be guilty of a misdemeanor. A person convicted of violating any provision of this Chapter shall be subject to penalty as provided in Section 1-4-1 of this Code. (1981 Code § 302.08; 1997 Code).

CHAPTER 4

BASEBALL FIELD

SECTION:

- 7-4-1: Establishment
- 7-4-2: Name Of Field
- 7-4-3: Use Regulations
- 7-4-4: Concession, Advertising, Admission Agreements
- 7-4-5: Penalty

7-4-1: **ESTABLISHMENT:** An official baseball field is hereby established and located within the corporate limits of the City upon a portion of the following described City-owned lands:

All that part of the north half of the southwest quarter (N1/2 of SW1/4) of Section Sixteen (16), Township One Hundred Twenty Five (125) North, Range Twenty Eight (28) West, described as follows:

Commencing at the northeast corner of said southwest quarter; thence west along the north line thereof a distance of 726.03 feet; thence south at right angles a distance of 292.4 feet; thence west and parallel with the north line of said quarter a distance of 80.13 feet; thence south at right angles a distance of 1027.31 feet to the south line of said north half of the southwest quarter; thence west along the south line of said north half of southwest quarter a distance of 1178.89 feet; thence north by a deflection angle 90°30'20" to the right, to the north line of said southwest quarter; thence east along the north line of said quarter to the point of beginning and there terminating, said tract containing 34.75 acres, more or less. (1981 Code § 303.01)

7-4-2: **NAME OF FIELD:** The name of the baseball field established in Section 7-4-1 of this Chapter shall be commonly known and referred to as Muskie Field. Such signs or other appropriate means of identification shall be installed at the location of the field. (1981 Code § 303.02)

7-4-3: **USE REGULATIONS:**

- A. Definition: "Baseball" shall be defined as a game which utilizes a ball commonly known as a baseball and a field area containing ninety foot (90') base lines.
- B. Nonbaseball Activities Prohibited: The use of Muskie Field shall be limited exclusively to "baseball" as defined in subsection A of this Section. No other activities such as softball, football, soccer, etc., shall be allowed or permitted.
- C. Scheduling Activities:
 - 1. Responsibility Of Clerk-Treasurer: The Clerk-Treasurer or an appointee so designated by the Clerk-Treasurer shall be responsible for scheduling all baseball activities.
 - 2. Written Request: Any person wishing to use Muskie Field shall submit to the Clerk-Treasurer or the Clerk-Treasurer's appointee an official request to do so in

writing stating the time, date and duration of use requested.

3. Scheduling Final: The Clerk-Treasurer or the Clerk-Treasurer's appointee shall respond to such requests as soon as possible. All scheduling of baseball activities by the Clerk-Treasurer or the Clerk-Treasurer's appointee shall be final. (1981 Code § 303.03)

7-4-4: **CONCESSION, ADVERTISING, ADMISSION AGREEMENTS:** The City Council may, at any time, enter into an agreement with any person for the purpose of selling concessions, advertising space, admissions, etc., in connection with the operation of Muskie Field. Such agreement shall be in writing and available for public inspection upon execution. (1981 Code § 303.04)

7-4-5: **PENALTY:** Any person violating any provision of this Chapter shall be guilty of a misdemeanor. Any person convicted of violating any provision of this Chapter shall be subject to penalty as provided in Section 1-4-1 of this Code. (1981 Code § 303.305; 1997 Code)

CHAPTER 5

CEMETERY

SECTION:

- 7-5-1: Definitions
- 7-5-2: Establishment/Continuance
- 7-5-3: Sale Of Lots
- 7-5-4: Handling Of Funds
- 7-5-5: Burial Permits
- 7-5-6: Interments
- 7-5-7: City Repurchase of Unused Cemetery Lot
- 7-5-8: Conduct of Persons in the Cemetery
- 7-5-9: Monuments and Markers
- 7-5-10: Foundations
- 7-5-11: Mausoleums
- 7-5-12: Decoration of Lots
- 7-5-13: Exceptions
- 7-5-14: Penalty

7-5-1: **DEFINITIONS**

- A. **City.** The City of Sartell, Minnesota.
- B. **Cemetery.** A tract of land used for burials or above-ground interment.
- C. **Interment.** Disposition of human remains or cremains by burial or entombment.
- D. **Mausoleum.** An external free-standing building enclosing the interment space or burial chamber of a deceased person or persons.
- E. **Memorial.** A monument or marker.
- F. **Monument.** A memorial of granite or other approved material that extends above the surface of the lawn.
- G. **Marker.** A memorial of granite or other approved material that does not extend above the surface of the lawn.

7-5-2: **ESTABLISHMENT/CONTINUANCE**

- A. A cemetery has been established and is continued upon land owned by the City of Sartell, Minnesota. The plat of the cemetery, as prepared by C.H. West, Civil Engineer, was placed on file in the office of the Clerk-Treasurer, and is adopted as the official plat of the cemetery, which shall be called Oak Hill Cemetery.
- B. It is the aim of the City to make the Oak Hills Cemetery a quiet and beautiful cemetery. To preserve the appearance of the cemetery and for the mutual protection of every lot owner, the City of Sartell hereby adopts the rules and

regulations within this Ordinance, and such other reasonable rules and regulations as the Council may adopt relative to the use of the cemetery. All lot owners and the use of all cemetery lots shall be subject to said rules and regulations, amendments, or alterations as may be adopted by the City from time to time.

7-5-3: SALE OF LOTS

- A. The prices of cemetery services and lot fees shall be set at such rates as the Sartell City Council shall from time to time designate.
- B. No lot shall be used for any purpose other than the burial of human remains.

7-5-4: HANDLING OF FUNDS

- A. All money received from the sale of lots and other services shall be paid to the City. No receipt to any cemetery lot shall be issued, nor any cemetery service performed, until a receipt showing payment to the City of the cost thereof is exhibited to the person who issues the conveyance or performs the services.
- B. All money received from the sale of lots and performance of services shall be placed in the cemetery fund. The fund may be used only for payment of the purchase price of grounds, or maintenance and improvements to the cemetery.
- C. The City shall keep an account of all receipts and disbursements of money belonging to the cemetery fund.

7-5-5: BURIAL PERMITS

Before any interment, a burial permit shall be obtained from the funeral home or State Registrar of Vital Statistics.

7-5-6: INTERMENTS

- A. Graves shall be dug by the City or its agent.
- B. No interment may be made in the cemetery unless all laws, ordinances, rules, and regulations regarding interments have been complied with and until all lot and burial fees are paid.
- C. Acceptable burials for one lot are:
 - One casket burial.
 - Parent and child in one casket, if lot dimensions allow.
 - Two infants in one casket, if lot dimensions allow.
 - One casket burial and one cremains burial, if depth allows.
 - Two cremains burials.
- D. The City shall not be responsible for ground preparation, including but not limited to tree root removal, stone removal, etc. If any lot conditions make burial prohibitively expensive (granite outcroppings, etc.), the City may provide a replacement lot, in City's sole discretion.
- E. All caskets must be encased in a permanent type burial case or vault; fiberglass vaults are prohibited.

7-5-7: **CITY REPURCHASE OF UNUSED CEMETERY LOT**

- A. A lot owner may sell his or her unused lot back to the City pursuant to Minnesota Statutes.
- B. The City may use any of its funds to repurchase lots and may hold or again sell and convey them.

7-5-8: **CONDUCT OF PERSONS IN THE CEMETERY**

- A. No person may discharge any firearm within the cemetery grounds without written permission of the City. This prohibition shall not apply to authorized volleys at burial services conducted by recognized military organizations or associations of the United States of America.
- B. No person may make any excavation without the written permission of the City.
- C. No person may obstruct any driveway or path in the cemetery.
- D. No person shall injure, deface, or destroy any monument, marker, stone, structure, grave, fence, flower, tree, or other thing within the cemetery.
- E. No person may drive any vehicle at a speed exceeding ten (10) miles per hour.
- F. No person may disturb the quiet of the cemetery by noise or improper conduct of any kind.
- G. No motorized vehicles may enter or leave the cemetery except at the entrances provided.
- H. No person may use the cemetery grounds or any road therein as a public thoroughfare, nor drive any vehicle through the cemetery grounds except for purposes related to the cemetery.
- I. No child under the age of twelve (12) years of age shall be permitted within the cemetery unless accompanied by an adult.
- J. No person may allow any animal to run at large in the cemetery.
- K. No tobacco use or alcohol is allowed other than in connection with a religious service.
- L. No advertising or solicitation of any kind is allowed on cemetery premises.
- M. No spreading of ashes is allowed on cemetery premises.
- N. The cemetery will be open to visitors from sunrise to sunset. Permission to enter at other times must first be secured from the City.

7-5-9: **MONUMENTS and MARKERS**

- A. All monuments and markers shall be placed as directed by the City.

- B. No monument or marker may be placed unless the location has been approved by the City and all fees have been paid.
- C. Monuments and markers must be constructed of granite, marble, or bronze material.
- D. One monument or marker may be placed on a lot at the West end (or head) of the lot.
- E. One marker may be placed on a lot at the East end (or foot) of the lot.
- F. Veterans may be recognized with a Veterans marker provided by the U.S. Department of Veterans Affairs. Such Veterans marker shall either be used in place of a marker described in this Section or shall be incorporated into an existing monument or marker placed pursuant to this Section. All markers and monuments incorporating a Veterans marker and all Veterans markers used in place of an allowed memorial shall comply with the maximum size restrictions for markers provided in this Section.
- G. Single lot monuments shall not exceed thirty-six inches (36") in length nor sixteen inches (16") in width, and shall not exceed forty-five inches (45") in height above the ground surface.
- H. Double lot (or companion) monuments shall not exceed fifty inches (50") in length. Other dimensions of double monuments shall be the same as for single monuments.
- I. Single lot markers shall consist of one piece and shall not exceed thirty-six inches (36") in length by sixteen inches (16") in width, and the height must be flush with the ground surface.
- J. Double lot (or companion) markers shall consist of one piece and shall not exceed fifty inches (50") in length. Other dimensions of double markers shall be the same as for single markers.
- K. Vases are permitted to be incorporated into monuments so long as they are constructed of granite, marble or bronze material and the overall monument dimensions, including any such vases, comply with the requirements of this Section.
- L. The City is not responsible for damage done to monuments and/or markers in the cemetery.
- M. Monuments and markers are considered the private property of the relatives of the deceased and the relatives are, therefore, responsible for their care and maintenance. City may repair or re-set monuments or markers due to settling or soils issues as needed, in City's sole discretion.

7-5-10: **FOUNDATIONS**

- A. All monuments and markers shall be placed on foundations of solid masonry at a depth to be determined by the City.
- B. Foundations shall extend three inches (3") beyond the base of all monuments and markers on each side.
- C. The top of all foundations shall not be higher than the established grade.

- D. The location of all foundations for monuments and/or markers shall be marked by the Public Works department, and all foundations shall be installed by the company supplying the monument or marker.
- E. All foundations for monuments and/or markers placed after the effective date of this ordinance at the West end (head) of a grave space shall contain a hole for a plant stand in the middle of the North side of the foundation of such marker or monument. In the event that no marker or monument will be placed at the head of the grave space, then the foundation for a marker placed after the effective date of this ordinance at the East end (foot) of a grave space shall contain a hole for a plant stand in the middle of the North side of the foundation of such marker.

7-5-11: **MAUSOLEUMS**

Mausoleums may be placed only on cemetery lots designated by the City for such structures.

7-5-12: **DECORATION OF LOTS**

- A. All flowers and plants must be contained in plant holders and, unless contained in a vase that is incorporated into a monument or marker, must be elevated at least 18" but no more than 24" from the ground. Artificial flowers may be placed in approved plant stands and must be securely fastened so that they will not fall or be blown from the container.
- B. One single-pole metal plant stand is permitted per monument or marker, with a maximum of one single-pole plant stand per lot. All plant stands must be placed in a monument or marker foundation hole/holder if available. Plant stands not incorporated into monument/marker foundations must be placed on the north side of monuments and/or markers. The City reserves the right to relocate plant stands to comply with this requirement. The City may add holes for plant holders in each marker/monument in existence at the time of this Ordinance adoption to bring grave sites in compliance with these requirements.
- C. The City is not responsible for damaged, lost, stolen or misplaced decorations, plants or plant stands.
- D. Wreaths are permitted but must be mounted on plant stands.
- E. Memorial Day: Artificial flowers, potted plants and decorations not in plant stands or vases placed on graves for Memorial Day will be allowed to remain for 1 week, by which time they must be placed in permanent stands or vases or they may be removed and discarded by City.
- F. No person shall do any grading causing the surface of the ground to be raised above the existing height of the surrounding area.
- G. No curbs or fences or other similar barriers shall be permitted around any individual or group of lots without prior written authorization from the City.
- H. All decorative items, including flowers, wreaths, flags, balloons, banners, toys, ornaments, knick knacks, solar lights and lanterns, stuffed animals, wind chimes, windmills, windsocks, birdhouses, bird feeders, and statuary not incorporated into a

monument or placed in a permanent vase or plant stand, are prohibited and may be subject to immediate removal and may be discarded.

- I. All decorations not removed by November 1 may be removed and discarded by City.
- J. The City reserves the right to remove all flowers, plants, plant stands, trees, decorations, or other similar things without liability to the owner whenever any of these objects become unsafe, unsightly, or are deemed to be unauthorized.

7-5-13: **EXCEPTIONS**

Special cases may arise in which the enforcement of a rule may impose unnecessary hardship. The City hereby reserves the right to make exceptions, suspensions, or modifications of any rule or regulation. No temporary exception, suspension, or modification shall in any way be construed as a permanent change to the established rules and regulations.

7-5-14: **PENALTY**

Any person violating any provision of this ordinance is guilty of a misdemeanor and subject to penalty as provided in Title 1 of this Code.

CHAPTER 6

PRIVATE DOCKS ON PUBLIC PROPERTY

- 7-6-1: Permit Required
- 7-6-2: Docks
- 7-6-3: Term
- 7-6-4: Insurance
- 7-6-5: Posting
- 7-6-6: Removal of dock if permit violated
- 7-6-7: Eligible Permittees

1. Permit Required. No person shall construct, install, or maintain a dock, wharf, or similar structure, nor any decks, steps or other conveyances to such dock or similar structure, on public property or upon public waters abutting public property without first obtaining a permit for such dock from the City of Sartell. There shall be no storage of equipment, materials, or docks on public property.
2. Docks. The permit holder shall maintain the dock and any conveyance structures in good repair during the term of the permit and shall agree in writing to indemnify the City of Sartell from any liability for injuries to persons or property which may arise from the use of the dock or structures. It is unlawful to have docks extending more than 15 feet from shore and may measure no more than four (4) feet wide. All docks shall be removed no later than October 31 of each year. No dock shall be installed before April 15, or before all ice is out of the public water each spring, whichever is later.
3. Term. Permits shall be issued on an annual basis and shall expire on December 31 of each year. All docks and structures must be built of sound, aesthetically pleasing materials and be constructed of a standard that is safe for the public's health, safety and welfare. The permit for such dock and structures is in addition to, and not in replacement of, any building or other permit required for the construction or installation of such dock or structure.
4. Insurance. The permit holder must at all times during the period of the permit maintain in force and provide evidence to the City of liability insurance in a minimum amount of \$1,000,000.00. All insurance shall be taken out and maintained in responsible insurance companies authorized under the laws of the State of Minnesota to assume the risk covered thereby. The permit holder is required to produce an insurance binder on Acord 75 stating the limits of liability, permit holder's name and address, effective dates of coverage, insurance company's authorized signature or agent's authorized signature and insurance company's name, address and phone number. Note: The limit of liability needs to be listed in the box (special conditions/other coverages). This binder will have to be approved by the City of Sartell before the permit is released. Failure to maintain such insurance at all times during a permit effective period shall result in automatic revocation of the permit and the permit holder shall not be entitled to issuance of a permit in the future.
5. Posting. The dock shall be posted with a sign both in written English and Universal symbols indicating NO SWIMMING AND NO DIVING. Signs must be acquired

through the City of Sartell and sign placement must be approved by a duly designated City representative.

6. Removal of dock if permit violated. Notwithstanding any other penalties herein, in the event any person, including a permit holder, refuses to remove a dock or other personal property from the public water or right of way, then upon failure to comply following written notice to the owner, the City of Sartell shall be entitled to remove said offending property, storing, and selling the same in accordance with Minnesota Statutes. In the event the City of Sartell suffers a cost of storage and/or sale which is not recovered from the sale, the City of Sartell shall be entitled to maintain a cause of action against the owner of the dock and/or property to recover the remaining balance.
7. Eligible Permittees. Only property owners whose property abuts public property/right of way abutting Linear Park are eligible to apply for a permit to place a private dock on public waters from public property. Property owners are not allowed to sublease or rent the dock to other parties. Further, any transfer of ownership of the property will make such property ineligible for future docks. Also, if a property owner does not obtain a dock permit by 12/31/09 or allows their permit to lapse for one year or more after that time, their property shall become ineligible for future dock permits. It is the intent of the City to phase out allowing of private docks on public property, but to allow 2009 permit holders to be grandfathered in as long as they own their property and provided they continuously maintain an active dock permit and provided the City Council continues to allow private dock permits and that a particular private dock does not conflict with any future public dock, fishing pier, or other park amenity which the City may install in the future. The City may revise this Ordinance at any time following statutory requirements for Ordinance revisions and property owners are not guaranteed any rights to private dock permits in the future.

CHAPTER 7

HOUSE MOVING

SECTION:

- 7-7-1: Permit Required
- 7-7-2: Application; Bond
- 7-7-3: Consent Of Utilities
- 7-7-4: Issuance Of Permit
- 7-7-5: Notification Of Police And Fire Chief

7-7-1: **PERMIT REQUIRED:** It shall be unlawful for any person to move any house, or other building along, over or across any of the public streets or alleys of the City without first securing a permit to do so as hereinafter provided. (1981 Code § 514.01)

7-7-2: **APPLICATION; BOND:**

- A. Written Application: Any person desiring to move any house or other building, along, over or across any streets or alleys in the City shall, before the commencement of such moving, make written application to the Clerk-Treasurer for a permit to do so.
- B. Required Information: In the application shall be stated the dimensions, nature and kind of house or other building desired to be moved, route to be used, the location from which and the location to which applicant desires the same to be moved, the time when applicant desires to commence, the time when applicant desires to complete such moving and the manner in which applicant desires to effect such moving.
- C. Bond Required: Applicant shall execute a bond in the sum of five thousand dollars (\$5,000.00) running to the City, conditioned to indemnify it from all damages that might occur from injury to streets, alleys, trees, pavements, sidewalks or other property of the City by reason of such moving. Such bond shall be approved by and filed with the Clerk-Treasurer.
- D. Additional Restrictions: The City Council reserves the right to impose such other restrictions as it may deem necessary for the protection of the City. (1981 Code § 514.02)

7-7-3: **CONSENT OF UTILITIES:** Said written application for permit shall be accompanied by a written statement from each of the companies owning or operating any wires, cables or other apparatus legally in or over any of the streets, alleys or public grounds along said prescribed route to the effect that satisfactory arrangements have been made with the company owning or operating such wires, cables or other apparatus. If satisfactory arrangements cannot be made, the matter will be referred by said applicant to the Clerk-Treasurer and if the Clerk-Treasurer cannot satisfactorily adjust the difference, the permit will not be issued. (1981 Code § 514.03)

7-7-4: **ISSUANCE OF PERMIT:** Upon such application being filed, and such bond being approved and filed, as aforesaid, it shall thereupon be the duty of such Clerk-Treasurer, within twenty four (24) hours thereafter, to issue to the applicant a permit in writing granting to such applicant authority to move the building described in such application from the location and to the location described in such application, which permit shall specifically state all the conditions, prescribe the route to be taken and limit the time for the moving of such house or other building. (1981 Code § 514.04)

7-7-5: **NOTIFICATION OF POLICE AND FIRE CHIEF:** No permit shall be issued hereunder to move any building from a location without to a location within the fire limits of said City, or from a location within to another location within such fire limits, without first notifying the Fire Chief and Police Chief. (1981`1 Code § 514.05)

CHAPTER 8

DRIVEWAY, SIDEWALK, CURB OR GUTTERS/APRON, RAIN GARDEN, SURFACING OF BOULEVARDS

SECTION:

- 7-8-1: Permits Required, Exceptions
- 7-8-2: General Conditions
- 7-8-3: Bond, Insurance Requirements
- 7-8-4: Regulations

7-8-1: **PERMITS REQUIRED, EXCEPTIONS**

- A. No person shall construct or repair any driveway, sidewalk, curb or other impervious surfacing within the public right-of-way outside the normal vehicle traveled area, on or within any public street, alley or other public property without first obtaining a permit from the city.
- B. Permits will not be required for the initial construction of streets, curb and gutter, aprons, driveways and sidewalks within new subdivisions.

7-8-2: **GENERAL CONDITIONS**

- A. If a driveway location is changed, any and all existing driveway cuts and aprons will be removed and replaced with barrier curb and gutter.
- B. All replacement concrete or bituminous street surfacing, concrete curbs or gutters, sidewalks, apron, shall be constructed in accordance with the current standards for such construction as used by the City on its construction projects and such special requirements established by the City.
- C. Rain gardens located in the right of way shall be maintained by the adjacent property owner. The gardens should be cleaned at least once per year to remove weeds, debris, and excess sediment that has accumulated. Should the regular maintenance not be completed, the city will undertake the maintenance and the costs of this work will be billed to the property owner. Filling of the rain garden within the right of way is not allowed except in those instances where the property owner submits an application requesting a detailed review by the Public Works and Engineering staff. The granting of the removal of the rain garden will only occur if the location of the rain garden is deemed to not be a critical location for the overall functioning of the City storm sewer system. If filling of the rain garden is approved, the property owner, at their own cost, will be responsible for removal of the existing curb cut and installing the full-back curb in its place in order to keep water within the street's curb and gutter. Property owners wishing to create or add a new rain garden within the right of way will need to submit a rain garden application to the City for review and approval. New rain garden locations will be considered and approved on a case-by-case basis. The rain garden application fee and all installation costs shall be the responsibility of the applicant.

7-8-3: BOND, INSURANCE REQUIREMENTS

- A. Corporate Surety Bond: Any permittee except a public utility corporation shall file with the Clerk-Treasurer a corporate surety bond in the amount of five thousand dollars (\$5,000.00) conditioned that the permittee will:
1. Perform work in connection with the excavation in accordance with applicable ordinances and regulations;
 2. Indemnify the City and hold it harmless from all damage caused in the execution of such work; and
 3. Pay all costs and damages suffered by the City by reason of the failure of the permittee to observe the terms of applicable ordinances and regulations or because of negligence in the execution of the work.

The bond shall be approved as to form and legality by the City Attorney.

- B. Liability Insurance: Any permittee except a public utility corporation shall furnish proof that the permittee has in existence an insurance policy protecting permittee from liability to the public, including the City, in an amount equal to the maximum claim the City might be required to pay under Minnesota Statutes chapter 466. (Ord. 85-1, 7-8-1985).

7-8-4: REGULATIONS AND GENERAL CONDITIONS

The director of Public Works is authorized to enact reasonable rules and regulations, which shall include the following:

- a. All work shall be performed by a licensed contractor and in accordance with plans and specifications approved by the director.
- b. Payment of permit fees, as determined by council resolution, and payment of all additional costs of inspection incurred by the department.
- c. During construction, the work are shall be guarded by day with suitable barriers and by night with flashing yellow lights to prevent injury or damage to persons or property.
- d. The contractor shall assume full responsibility for all damages to persons or property arising out of the construction, reconstruction or repair of the improvements.
- e. All work shall be performed in accordance with all applicable laws or regulations.
- f. Materials, methods of construction, minimum and maximum width of driveways and sidewalks, shall be subject to the approval of the director.
- g. All driveway aprons shall be concrete construction.
- h. Driveways that lead to new or altered parking areas on private property must comply with applicable zoning requirements.
- i. Duty to correct defects. The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee, upon notification from the Director, shall correct all restoration work to the extent necessary. The work shall be completed within 10 calendar days of the receipt of the notice from the Director.

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