

CHAPTER 92: STREETS AND SIDEWALKS

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RIGHT-OF-WAY CONSTRUCTION REGULATIONS**§ 92.01 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.**

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

§ 92.02 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in Minn. Rules part 7819.0100 subps. 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this subchapter.

§ 92.03 PERMIT REQUIREMENT.

(A) *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 permit from the city.

(1) *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in the 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.

(2) *Obstruction permit.* An obstruction permit is required 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.

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

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the City Council.

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City Administrator, Utilities Superintendent or other person designated by the Council.

Penalty, see § 10.99

§ 92.04 PERMIT APPLICATIONS.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

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

(1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(2) 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.

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

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the City Administrator, Utilities Superintendent or other person designated by the Council;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(c) 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 coverages;

(d) Requiring that the City Administrator, Utilities Superintendent or other person designated by the Council be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Administrator, Utilities Superintendent or other person designated by the Council in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(4) The city may require a copy of the actual insurance policies.

(5) If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as it may be amended from time to time as recorded and certified to by the Secretary of State.

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(6) 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 the certificate from the Commission or other state or federal agency.

(B) Payment of money due the city for:

(1) Permit fees as established by the City Council and as amended from time to time, 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 the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or

(4) Franchise fees or other charges as established by the City Council and as amended from time to time, if applicable.

§ 92.05 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the City Administrator, Utilities Superintendent or other person designated by the Council shall issue a permit.

(B) *Conditions.* The City Administrator, Utilities Superintendent or other person designated by the Council 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.

§ 92.06 PERMIT FEES.

Permit fees shall be in an amount established by the City Council and as amended from time to time.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee as established by the City Council, and as may be amended from time to time, in an amount sufficient to recover the following costs:

(1) The city management costs; and

(2) Degradation costs, if applicable.

(B) *Obstruction permit fee.* The city shall establish the obstruction permit fee as established by the City Council, and as amended from time to time, and shall be in an amount sufficient to recover the city management costs.

(C) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.

(D) *Non-refundable.* Permit fees as established by the City Council, and as amended from time to time, that were paid for a permit that the City Administrator, Utilities Superintendent or other person designated by the Council has revoked for a breach as stated in § 92.14 are not refundable.

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

(F) *Establishment of fees.* All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.100, as it may be amended from time to time.
Penalty, see § 10.99

§ 92.07 RIGHT-OF-WAY PATCHING AND RESTORATION.

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

(B) *Patch and restoration.* The 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.

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

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it may be required at the time of application for an excavation permit to post a construction performance bond or a deposit in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.

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(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The City Administrator, Utilities Superintendent or other person designated by the Council shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(D) *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 City Administrator, Utilities Superintendent or other person designated by the Council, shall correct all restoration work to the extent necessary, using the method required by the City Administrator, Utilities Superintendent or other person designated by the Council. The work shall be completed within five calendar days of the receipt of the notice from the City Administrator, Utilities Superintendent or other person designated by the Council, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this subchapter.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the City Administrator, Utilities Superintendent or other person designated by the Council, or fails to satisfactorily and timely complete all restoration required by the City Administrator, Utilities Superintendent or other person designated by the Council, the City Administrator, Utilities Superintendent or other person designated by the Council at his or her 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.

(F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the City Council, and as amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

§ 92.08 SUPPLEMENTARY APPLICATIONS.

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

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue

working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

§ 92.09 DENIAL OF PERMIT.

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

§ 92.10 INSTALLATION REQUIREMENTS.

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

§ 92.11 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300, as it may be amended from time to time.

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

(C) *Authority of City Administrator, Utilities Superintendent or other person designated by the Council.*

(1) At the time of inspection, the City Administrator, Utilities Superintendent or other person designated by the Council may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The City Administrator, Utilities Superintendent or other person designated by the Council 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 days after issuance of the order, the permittee shall present proof to the City Administrator, Utilities Superintendent or other person designated by the Council that the violation has been corrected. If proof has not been presented within the required time, the City Administrator, Utilities Superintendent or other person designated by the Council may revoke the permit pursuant to § 92.14.

§ 92.12 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner 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.

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

(B) *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 the permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

§ 92.13 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the City Administrator, Utilities Superintendent or other person designated by the Council of the accurate information as soon as this information is known.

§ 92.14 REVOCATION OF PERMITS.

(A) *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 the permittee shall include, but shall not be limited, to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) 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;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) 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 permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 92.11.

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

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

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

§ 92.15 MAPPING DATA; INFORMATION REQUIRED.

Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.

§ 92.16 LOCATION OF FACILITIES.

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.* The city 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 city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

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

§ 92.17 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the City Administrator, Utilities Superintendent or other person designated by the Council shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner 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 owner's facilities.

§ 92.18 RIGHT-OF-WAY VACATION.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

§ 92.19 INDEMNIFICATION AND LIABILITY.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules 7819.1250, as it may be amended from time to time.

§ 92.20 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City Administrator, Utilities Superintendent or other person designated by the Council.

§ 92.21 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had permit revoked; or 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 as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 92.22 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.

CONSTRUCTION, REPAIR AND MAINTENANCE OF SIDEWALKS

§ 92.30 PURPOSE.

The City of Byron intends to provide safe pedestrian walkways throughout the community and, in particular, to provide for safe pedestrian traffic to and from schools and school bus stops, and other services to the neighborhood and community.

(Ord. 100, passed 1-13-10)

§ 92.31 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEFECTIVE SIDEWALK. Any of the following:

- (1) Vertical separations of 3/4 inch or more;
- (2) Horizontal separations of 3/4 inch or more;
- (3) Holes or depressions of three inches or more in diameter and 3/4 inch more in depth; spanning over 50% of a five-foot by six-foot square or panel of the sidewalk with one or more depressions of 3/4 inch or more;
- (4) A single square or panel of sidewalk cracked in such a manner that no part thereof has a piece greater than one square foot, or is cracked in such a manner that it constitutes a danger or a potential danger to the public safety; or
- (5) A sidewalk with any part thereof missing to the full depth.

SIDEWALK CONSTRUCTION. Any of the following:

- (1) A sidewalk shall be a monolithic pour of concrete of four inches in thickness placed on two inches of gravel base;
- (2) All sidewalks shall slope 1/4 inch per foot away from the property line and the profile grade shall not exceed 6%;
- (3) All side streets sidewalks in the residential district shall be five feet in width; and five foot sidewalks width on main local streets. All sidewalks in the business district shall be ten feet in width exclusive of the curb. Exception to these limits may be made in the case of new construction between portions of sidewalk already constructed, in such cases; the new construction shall be the same width as the contiguous sidewalk;
- (4) Sidewalks shall be placed in the public right-of-way within six inches of the property line;
- (5) *Joints.* Expansion joints shall be placed not less than 60 feet on center for full width of sidewalk and full thickness of slab. Joint materials shall be at least 1/2 to one inch thick and shall be performed by a contractor. Contractor joints shall be placed not more than six feet on the center full width of slab and cut through to depth of at least 1/2 inch. Both expansion and contraction joints shall

be finished with a 1/2 inch edging tool. Similar expansion joints shall be placed at the junction of walks with curbs; or in other cases where natural expansion movement is restrained;

(6) *Handicapped accessible corners.* The slope of the sidewalk shall meet current MNDOT standards, Standard Plate # 7036F - Pedestrian Curb Ramp;

(7) *New subdivisions.* All new subdivisions are required to install sidewalks on both sides of local streets per requirements of subchapter. Reviewing of all subdivision plans shall be by the Planning and Zoning Commission and the City Council, with final approval by the City Council. There may be circumstances where the terrain or other circumstance may not allow for sidewalks on one or both sides of the street. The City Council reserves the right to determine and set forth the requirements for sidewalks in each proposed subdivision on a case by case basis; or

(8) *Sidewalks in existing neighborhood.* Phasing for placement of sidewalks in the existing neighborhoods are identified on the attached map. City of Byron, Minnesota Sidewalk System August 2000. The phasing is broken up into four areas:

(a) Phase I is the older part of Byron between 2nd Street N.W. to 1st Street N.E. and Frontage Road to 7th Street N.W.

(b) Phase II includes 7th and 9th Streets N.W. from 9th Avenue N.W. to 4th Avenue N.E. and that portion of 1st Avenue from 7th Street N.W. to 9th Street N.W., and that portion of 4th Street N.E. to 5th Avenue N.E.

(c) Phase III includes portions of 3rd and 4th Avenues N.E. from 4th Street to 13th Street N.E. and 3rd Avenue N.W. from 4th Street to 7th Street N.W. and that portion of 3rd and 4th Avenues N.E. and 2nd Street N.E. from 3rd Avenue N.E. to 4th Avenue N.E. and that portion of 7th Avenue N.E. from 4th Street N.W. to 6th Street N.E. then west on 6th Street N.E. to 3rd Avenue N.E. and that portion of 9th Avenue N.W. from Frontage Road to 13th Street N.W. and 4th Avenue N.W. to 8th Street then east on 8th Street N.W. to 9th Street N.W.

(d) Phase IV includes the Baach Addition, Cheery Meadows I, II and III Subdivisions, and Brooklawn Estates I, II, III, IV, V and VI Subdivisions, 2nd Avenue N.E. from the Frontage Road to 4th Street, and Valley View III and VI Subdivisions and Rolling Height I, II, III, IV, V, VI, VII, VIII and IX Subdivisions.

SIDEWALK MASTER PLAN. A plan established by motion of the City Council, which includes all sidewalks in the city, which the City Council finds necessary or convenient for public pedestrian traffic.

(Ord. 100, passed 1-13-10)

§ 92.32 REPAIRS AND IMPROVEMENTS.

(A) *Inspections and reports.* The owner of any private property within the city abutting a sidewalk (whether or not such sidewalk is on the Sidewalk Master Plan) shall report any defective, unsafe, or broken sidewalk to the Public Works Director. The Public Works Director shall cause inspections to be made throughout the city, at such time as are reasonably necessary, to determine whether public sidewalks within the city are safe for pedestrians.

(B) *Barricades and signal lights.* Whenever any materials of any kind are deposited on any sidewalk when sidewalk improvements are being made, or when any sidewalk is in a dangerous condition, it is the duty of all persons having any interest in the property in front of or along which such material may be deposited, or where such dangerous condition exists, to put in conspicuous places at each end of such sidewalk and at each end of any pile of materials deposited in the street, a sufficient number of approved barricades and/or signal lights, and to keep such signal lights burning continuously to secure the same.

(C) *All sidewalks.*

(1) *Duty to repair.* The owner of any private property within the city abutting a sidewalk (whether or not such sidewalk is on the Sidewalk Master Plan) shall keep the sidewalk in repair and safe condition. The only exceptions to the above are cases in which the city has damaged sidewalks through maintenance or repair of city-owned infrastructures such as water, sewer, or storm sewers, or damage caused by boulevard trees. In these instances, the city, after approval by the City Council, may accept the responsibility for the repair or replacement of sidewalk damaged through its own actions. A sidewalk damaged by a homeowner's own negligence shall be the responsibility of that homeowner. All sidewalk repair shall be done by the city, unless otherwise determined by the City Council.

(2) *Repair.*

(a) If the Public Works Director finds that any sidewalk abutting on private property is unsafe, defective, or in need of repairs, he or she shall cause a notice to be served. The notice shall be served upon the record owner by personal service, or upon the record owner and occupant by registered or certified mail to his or her last known address if the owner does not reside within the city or cannot be found therein. The notice shall inform the owner that the city will be repairing the sidewalk within a reasonable period of time, that the expense thereof must be paid by the owner, and that if unpaid, it will be made a special assessment against the property concerned, if the work is performed by the city.

(b) After service of the notice, the Public Works Director shall report the facts to the City Council. The City Council may, by resolution or motion, order the construction or repairs to be made. If the City Council orders construction or repairs to be made, the Public Works Director shall keep a record of the total cost of repair attributable to each lot or parcel of property and report such information to the City Clerk.

(c) The city shall be responsible for the total cost of repairing the sidewalks in the designated areas of the city. If there are any further repairs to these same sidewalks, the costs shall be shared equally between the city and the landowner.

(3) *Special assessments.* On or before September 1 of each year, the City Clerk shall list the total unpaid charges for each type of repair service against each separate lot or parcel to which they are attributable under this subchapter. After notice and hearing as provided in M.S. § 429.061, the City Council may spread the charges against the property benefitted as a special assessment under M.S. § 429.101 and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten years, as the City Council may determine in each case.

(Ord. 100, passed 1-13-10) Penalty, see § 92.99

§ 92.33 REMOVAL WITHOUT REPLACEMENT.

Removal of a sidewalk designated on the Sidewalk Master Plan, without replacement of that sidewalk, shall occur only by the following:

(A) If the owner of the abutting property petitions the City Council and the City Council determines by resolution or motion that it is in the interest of the public to remove the sidewalk without replacing it.

(B) The City Council, on its own motion, seeks the removal of sidewalk without replacement by resolution or motion, and the motion passes by at least a 4/5 vote.

(Ord. 100, passed 1-13-10) Penalty, see § 92.99

§ 92.34 MAINTENANCE.

(A) All snow, ice, dirt, and rubbish remaining on a public sidewalk more than 48 hours after its deposit thereon is a public nuisance. The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep such walk safe for pedestrians. No such owner or occupant shall allow snow, ice, dirt, or rubbish to remain on the walk longer than 48 hours after its deposit thereon.

(B) If the Public Works Director finds that any snow, ice, dirt or rubbish has remained on a public sidewalk more than 48 hours after its deposit thereon, he or she shall cause notice to be served upon the recorded owner of the property by personal service, or upon the occupant if the owner does not reside within the city or cannot be found therein, ordering the owner or occupant to have the snow, ice, dirt or rubbish removed and made safe within 24 hours and stating that if the owner or occupant fails to do so, the Public Works Director will do so on behalf of the city, that the expense thereof must be paid by the owner, and that if unpaid it will be a special assessment against the property concerned.

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(C) If the snow, ice, dirt or rubbish is not removed within 24 hours after service of the notice, the Public Works Director shall cause the snow, ice, dirt, or rubbish to be removed. The Public Works Director shall keep a record of the total costs of the removal attributable to each lot or parcel of property and report such information to the City Clerk.

(D) On or before September 1st of each year, the City Clerk shall list the total unpaid charges for each type of current service against each separate lot or parcel to which they are attributable under this chapter. After notice and hearing as provided in M.S. § 429.061, the City Council may then spread the charges against the property benefitted as a special assessment under M.S. § 429.101 and other pertinent statutes for certification to the County Auditor collection along with current taxes the following year or in annual installments, not exceeding ten years, as the City Council may determine in each case.
(Ord. 100, passed 1-13-10)

§ 92.99 PENALTY.

(A) Whoever shall violate any provision of this chapter for which no specific penalty is provided shall be punished as set forth in § 10.99 of this code of ordinances.

(B) Any person violating any provisions of § 92.30 *et seq.* shall be guilty of a misdemeanor. The minimum fine given by the City Council for a violation shall be as follows:

(1) First winter season offense (October-April): \$30 per incident for residential property and \$50 per incident for commercial property.

(2) Second winter season offense (October - April): \$60 per incident for residential property and \$100 per incident for commercial property.

(3) Third or more winter season offense (October - April): \$120 per incident for residential property and \$200 per incident for commercial property.

(C) The penalties in this section are in addition to the cost recovery provisions in § 92.34(D).

(D) In addition to receiving a fine per the schedule listed above property owners will be charged for the clearing of the sidewalk. The rate for sidewalk clearing will be determined by the most recent Olmsted County Maintenance Agreement rates for equipment.
(Ord. 100, passed 4-26-06 Ord. 100, passed 1-13-10)

§ 92.99 PENALTY.

(A) Whoever shall violate any provision of this chapter for which no specific penalty is provided shall be punished as set forth in § 10.99 of this code of ordinances.

(B) Any person violating any provisions of § 92.30 *et seq.* is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$700 plus the cost of prosecution in any case. (Ord. 100, passed 4-26-06)

