
SECTION 600.00 STREET EXCAVATION

- 600.01 Permit Required
- 600.02 Application and Regulations.
- 600.03 Certificate of Insurance and/or Performance Bond.
- 600.04 General Regulations for Excavations.
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600.01 PERMIT REQUIRED.

No person, except an authorized City employee or a contractor performing work under a contract with the City, shall make any excavation in a street, alley, sidewalk, or public ground without first having secured a permit from the City Administrator. The fee for such the permit shall be set by Council resolution together with a certification of insurance for each location covered by the permit. A deposit shall be required for an excavation made pursuant to a permit for sewer or water construction. The amount of the deposit shall be set by Council resolution and refunded upon approval of the work by the Public Works Superintendent. If work is not satisfactorily completed within ten (10) days, the deposit shall be used for the improvements.

600.02 APPLICATION AND REGULATIONS.

The City Administrator shall prepare the necessary application forms and permits required under Section 600.01. The City Administrator shall also prepare such rules and regulations with respect to excavations as he or she finds necessary to protect the public from injury, prevent damage to public or private property, and minimize interference with the public use of streets, alleys, sidewalks, and public grounds. Any person making an excavation covered by this Section shall comply with such the rules and regulations of this Section.

600.03 CERTIFICATE OF INSURANCE AND/OR PERFORMANCE BOND.

Any person or contractor who makes any excavation in a street, alley, sidewalk or public ground shall furnish proof that the person or contractor has in existence an insurance policy protecting him or her from liability to the public, including the City, and shall provide proof of liability limits no less than \$500,000 single limit liability and an umbrella insurance policy no less than one million dollars. The City shall be named as an additionally insured party in an amount equal to the maximum claim the City might be required to pay under Minnesota Statutes, Chapter 466. The City shall require at least ten (10) days notice of cancellation of insurance policy. A performance bond for the amount of the contract shall be required, if the amount of the contract exceeds \$10,000. The person or contractor shall:

- A. Perform work in connection with the excavation in accordance with applicable ordinances and regulations;
- B. Defend, indemnify, and hold the City harmless from all damage caused in the execution of the work; and
- C. Pay all costs and damages suffered by the City by reason of the failure of the person or contractor 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.

600.04 GENERAL REGULATIONS FOR EXCAVATIONS.

Street openings shall be made in a manner that will cause the least inconvenience to the public. Provision shall be made for the passage of water along the gutters, and at least one half of the traveled portion of the street shall be left open and in good condition for the safe passage of vehicles. Open excavations shall be guarded with substantial barriers and marked with red flags and at night with red lights or flashing devices. Pipes or mains exposed to freezing temperatures shall be protected so as to prevent freezing. Any person responsible for exposing a City main or pipe so that it might be damaged by freezing shall be liable to the City for all damages caused by the freezing and all damages sustained by others by the freezing for which the City may be liable. No opening shall be made prior to contacting the Gopher State One Call system to determine if underground utilities are present and prior to approval by the Superintendent of Public Works.

600.05 REFILLING EXCAVATIONS.

Every street excavation shall be refilled as soon as possible after the work is completed and paving, sidewalks and appurtenances shall be replaced in at least as good condition as before the excavation to the satisfaction of the Superintendent of Public Works. All dirt and debris shall be removed immediately. Any person who fails to comply with these requirements within 24 hours after notice from the City shall be liable to the City for the full cost incurred by the City in remedying the defect and restoring the street, sidewalk, alley or public ground to its proper condition. The cost shall be an obligation of the surety on the bond of the permittee. All backfill shall be suitable for use considering weather and other conditions and shall be approved by the City Engineer or the Superintendent of Public Works. Selected backfill material shall be used if required by the Superintendent of Public Works or the City Engineer.

SECTION 601.00 ASSESSABLE CURRENT SERVICES.

- 601.01 Definitions
- 601.02 Removal or Elimination of Public Nuisances
- 601.03 Repair of Sidewalks and Alleys.
- 601.04 Street Maintenance, Tree Care.
- 601.05 Installation and Repair of Water Service Lines.
- 601.06 Personal Liability.
- 601.07 Assessment.

601.01 DEFINITIONS.

The term "current service" as used in this Section shall mean one or more of the following: removal or elimination of Public Nuisances as defined in Chapter 4; installation or repair of water service lines; street sprinkling, street flushing, light street oiling, or other dust treatment of streets; repair of sidewalks and alleys; trimming, and care of trees; and the operation of street lighting system.

601.02 REMOVAL OR ELIMINATION OF PUBLIC NUISANCES.

Removal or elimination of Public Nuisances as regulated in Chapter 4 of this City Code shall be considered an assessable service as defined herein.

601.03 REPAIR OF SIDEWALKS AND ALLEYS.

Subd. 1. Sidewalk Repair by Owner. The owner of any property within the City abutting a public sidewalk may provide for repair of the sidewalk. Upon issuance of a sidewalk repair permit, repairs shall be made in accordance with the standard specifications approved by the Council and on file in the office of the City Administrator.

Subd. 2. Inspections; Notice. The Superintendent of Public Works or other designated official shall make such inspections as are necessary to determine that public sidewalks and alleys within the City are kept in repair and safe for pedestrians or vehicles. If the Superintendent of Public Works finds that any sidewalk or alley abutting on private property is unsafe and in need of repairs, he or she shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property and the occupant if the owner does not reside within the City or cannot be found therein notifying the owner that the sidewalk or alley will be repaired and made safe by the Superintendent of Public Works or other designated official on behalf of the City, that the expense thereof must be paid by the owner, and that if unpaid it shall be made a special assessment against the property concerned.

Subd. 3. Repair by City. Upon receipt of a notice regarding repair of a sidewalk, the record owner shall be afforded ten (10) days to apply for a sidewalk repair permit. If no application for a sidewalk repair permit is made, or if the notice relates to repair of an alley, the Superintendent of Public Works or other designated official shall report the facts to the Council and the Council may by resolution order repair of the sidewalk or alley by day labor or by contract in accordance with law. The Superintendent of Public Works shall keep a record of the total cost of the repair attributable for each lot or parcel of property and report the information to the City Administrator who shall cause the expense to be assessed against the property.

601.04 STREET MAINTENANCE AND TREE CARE.

Subd. 1. Proposed Projects. Upon recommendation by the Public Works Superintendent, the Council shall each year determine by resolution what streets and alleys shall be oiled, seal coated, overlaid, patched or other required maintenance. Before any work is done the City Administrator shall, under the Council's direction, publish notice that the Council will meet to consider the projects. The notice shall be published in the official newspaper, at least once no less than two weeks prior to such the meeting of the Council and shall state the date, time, and place of the meeting, the streets affected and the particular projects proposed, and the estimated cost of each project, either in total or on the basis of the proposed assessment per front foot or otherwise. However, such the notice shall not be required if the Council determines that no assessment under this part shall be levied.

Subd. 2. Hearing; Order. At the hearing, or at any adjournment thereof, the Council shall hear property owners with reference to the scope and desirability of the proposed projects. The Council shall thereupon adopt a resolution confirming the original projects with the modifications which it considers desirable and shall provide for the doing of the work by day labor through the Superintendent of Public Works or other designated official or by contract. The Superintendent of Public Works shall keep a record of costs and the portion of the cost properly attributable to each lot and parcel of property abutting on the street or alley on which the work is done and shall report the information to the City Administrator.

601.05 INSTALLATION AND REPAIR OF WATER SERVICE LINES.

Whenever the City installs or repairs water service lines serving private property under Chapter 7 of this Code, the Superintendent of Public Works or other designated official shall keep a record of the total cost of the installation or repair against the property and deliver the information to the City Administrator annually by August 15 as to each parcel of property on which the cost has not been paid.

601.06 PERSONAL LIABILITY.

The owner of property on which or adjacent to which a current service has been performed shall be personally liable for the cost of the service. As soon as the service has been completed and the cost determined, the City Administrator, or other designated official, shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the City Administrator.

601.07 ASSESSMENT.

On or before November 30 of each year, the City Administrator 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. The Council may then spread the charges against property benefited as a special assessment under Minnesota Statutes, Section 429.101 and other pertinent statutes for certification to the County Auditor and collection alone, with the current taxes the following year or in annual installments, not exceeding ten, as the Council may determine in each case.

(Ord. 14-02, Section 601, Adopted March 17, 2014.)

(Ord. 20-02, Section 601.04, Adopted March 16, 2020.)

SECTION 602.00 SPECIAL ASSESSMENT AND TRUNK AREA POLICIES AND
PROCEDURES FOR PUBLIC IMPROVEMENTS AND
MAINTENANCE COSTS.

602.01 General Policy Statement.

602.02 Intent.

602.03 Prepayment.

602.01 GENERAL POLICY STATEMENT. The City Council may, by resolution, adopt from time to time, amend, or repeal policies and procedures related to assessment for certain public improvements. The policy shall be known as “Special Assessment and Trunk Area Policies and Procedures for Public Improvements and Maintenance Costs.”

602.02 INTENT. It is the intent of the City Council to set forth policies for assessment of local improvements within the City. No such policy, however, can be all encompassing and recognize every conceivable situation. The Council, may, therefore, with respect to any particular public improvement project vary such policies to obtain a just and equitable result. The policies are meant to be guides only.

602.03 PREPAYMENT. As provided in Minnesota Statutes, Section 429.061, subd. 3, the City Council hereby authorizes the partial prepayment of assessments prior to certification of the assessment, or the first installment thereof, to the County Auditor, in the manner provided in the City’s assessment policies.

SECTION 603.00 RAILROAD CROSSINGS

- 603.01 Streets Intersected by Railroads.
- 603.02 Railroad Grades.

603.01 STREETS INTERSECTED BY RAILROADS.

At all intersections of streets and railroads, the owner of the railroad shall be responsible for planking or otherwise surfacing the space between tracks of the railroad in such a way as to place it on the same grade or level as the abutting grade or level of the street and to the full width of the street.

603.02 RAILROAD GRADES.

No railroad grades shall, whether it be by raising or lowering the same, be changed without a permit in writing from the City Administrator

SECTION 604.00 REIMBURSEMENT OF LOCAL IMPROVEMENT COSTS FOR
VACATED STREETS, ALLEYS AND PUBLIC AREAS.

- 604.01 Reimbursement.
- 604.02 Time Limitation.
- 604.03 Costs.
- 604.04 Notice.
- 604.05 Consent and Approval.
- 604.06 Payment.
- 604.07 Violations.

604.01 REIMBURSEMENT.

The City shall be allowed reimbursement for the cost of local improvements made to streets, alleys and public areas which may be vacated by Council action upon the request of any adjoining property owner, provided, however, that consent of all affected property owners shall be required before a petition for vacation may be submitted.

604.02 TIME LIMITATION.

This Section shall apply only to the cost of all local improvements levied at any time prior to the date of vacation in which a portion of the local improvement project was assessable under Chapter 429 of Minnesota Statutes.

604.03 COSTS.

The cost to be reimbursed to the City shall be determined by the Council prior to the vacation of any street, alley or public area and shall be related to the benefit received by the property because of the local improvement and the cost of similar improvements at the time of vacation.

604.04 NOTICE.

Whenever vacation of public areas involves reimbursement of the cost of local improvements pursuant to this Section, the City shall give written notice by certified mail to all owners who may be affected by such the vacation. The notice shall state the amount of the reimbursement and shall provide for a public hearing prior to, or simultaneously with, the public hearing for vacation of the street, alley or public area. The notice shall be given not less then ten days before the hearing.

604.05 CONSENT AND APPROVAL.

Not less than five days before the public hearing required under Section 604.04 above, the property owner requesting the vacation shall provide the City Administrator with a verified statement of consent executed by all affected property owners. This consent shall be on a form authorized by the Council and shall set for the following:

- A. Name and address of fee owner of property.
- B. Legal description of affected property.
- C. Amount of reimbursement of local improvement cost.
- D. Agreement by affected property owner to pay the amount of reimbursement together with consent for the county auditor to add this amount to the property taxes for the affected parcel.
- E. Verified signature of fee owner and spouse, if any.

604.06 PAYMENT.

The Council shall determine the method and schedule for payment of any reimbursement amount.

604.07 VIOLATIONS.

It shall be a misdemeanor for any person to violate any of the provisions of this Chapter.

SECTION 605.00 RIGHT-OF WAY REGULATION

- 605.01 Purpose and Intent.
- 605.02 Election to Manage Public Rights-Of-Way
- 605.03 Definitions.
- 605.04 Registration Requirements.
- 605.05 Permit Requirements.
- 605.06 Permit Applications.
- 605.07 Permit Fees.
- 605.08 Restoration of Right-of-Way.
- 605.09 Emergency Situations.
- 605.10 Revocation of Permits.
- 605.11 Indemnification and Liability.
- 605.12 Appeal.
- 605.13 Mapping Data.
- 605.14 Abandoned and Unusable Facilities.

605.01 PURPOSE AND INTENT.

In order to provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and 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.

This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the City's rights-of-way or to be placed therein at some future time. This Section shall not be construed to supersede rules or regulations of other governmental entities controlling rights-of-way within the City.

605.02 ELECTION TO MANAGE PUBLIC RIGHTS-OF-WAY.

Pursuant to the authority granted to the City under state and federal statutory, administrative, and common law, the City hereby elects, pursuant to Mn. Stat. 237.163 Subd. 2(b) to manage rights-of-way within its jurisdiction.

605.03 DEFINITIONS..

The following definitions apply in this Section of the City Code. The following words, terms and phrases, as used herein, shall have the following meanings:

ABANDONED FACILITY – “Abandoned Facility” means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless deemed so by the owner of the facility.

ABOVE GROUND UTILITY STRUCTURE – “Above Ground Utility Structure” means any structure, equipment cabinet, electric meter, or other appurtenance, other than a pole or device attached to a pole that is owned by a utility company, cable company, or telecommunications provider to provide service and that extend above the ground upon

which it is placed or built.

APPLICANT – “Applicant” means any public right-of-way user required to obtain a permit under this Section.

CITY – “City” means the City of Belle Plaine, Minnesota.

CITY MANAGEMENT COSTS – “City Management Costs” means the actual costs incurred by the City for public rights-of-way management, including, but not limited to, costs incurred in connection with the registration process, the permit process, the inspection of project work and restoration and enforcement and correction of non-complying project work, mapping of public right-of-way users and maintenance and regulation of public rights-of-way occupied by public right-of-way users.

COLLOCATE OR COLLOCATION – “Collocate or Collocation” means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.

CONSTRUCTION PERFORMANCE BOND – “Construction Performance Bond” means any of the following forms of security provided at the permittee’s option:

- a. Cash deposit;
- b. Individual project bond;
- c. Letter of Credit, in a form acceptable to the City; or
- d. A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

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

DEGRADATION COST – “Degradation Cost” subject to Minnesota Rules 7819.1100 means the cost to achieve the level of restoration as determine by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

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

DEPARTMENT – “Department” means the Public Works Department of the City.

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

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

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

EXCAVATION PERMIT – “Excavation Permit” means the permit which, pursuant to this Section, must be obtained before a person may excavate in a public right-of-way, as specifically described in the permit.

FACILITY OR FACILITIES – “Facility or Facilities” means tangible asset in the public right-of-way required to provide utility service.

HOLE – “Hole” means an excavation having a length that is equal to, or less than, the width of the public right-of-way.

LOCAL REPRESENTATIVE – “Local Representative” means a person or designee of such person authorized by a public right-of-way user to accept service and to act and make decisions regarding matters within the scope of this Section on behalf of the public right-of-way user.

MANAGEMENT COSTS – “Management Costs” mean 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 or small wireless facility 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 or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the City including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the City, 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 1.30 of this chapter.

MICRO WIRELESS FACILITY – “Micro Wireless Facility” means a Small Wireless Facility that is no larger than twenty-four (24) inches long, fifteen (15) inches wide, and twelve (12) inches high, and whose exterior antenna, if any, is no longer than eleven (11) inches.

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

OBSTRUCTION PERMIT – “Obstruction Permit” means a permit which is issued by the City authorizing the permittee to obstruct a public right-of-way as specifically described in the permit.

PATCH OR PATCHING – “Patch” or “Patching” means a method of pavement replacement or restoration that consists of; (1) the compaction of subbase and aggregate base; (2) the replacement, in kind, of the existing roadway surface for a minimum of two (2) feet beyond the edges of the excavation in all directions.

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

PERMIT – “Permit” means “right-of-way permit”, per Minnesota Statutes, Section 237.162.

PERMITTEE – “Permittee” means any person to whom an excavation or obstruction permit has been issued by the City under this Section.

PERSON – “Person” means an individual or entity subject to the laws and rules of Minnesota, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate or political.

PUBLIC RIGHT-OF-WAY – “Public Right-of-Way” means the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, trail, avenue, boulevard, drive, court, park, parkway, easement, or similar property or waters within the City owned by or under control of the City, or dedicated or otherwise conveyed to the City for general public use, including, but not limited to, any riparian right which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining utility service facilities. No reference herein to a “public right-of-way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining utility service facilities.

PUBLIC RIGHT-OF-WAY USER – “Public Right-of-Way User” means any person or entity which owns or controls a utility service that is located, or intended to be located, in a public right-of-way including persons who have installation and maintenance responsibilities by contract, lease, sublease or assignment.

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

RIGHT-OF-WAY PERMIT – “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Section.

SERVICE OR UTILITY SERVICE- “Service” or “Utility Service” means services provided by: (1) a public utility as defined in Minnesota Statutes; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services; (3) a corporation organized for the purposes set forth in Minnesota Statutes; (4) a district heating or cooling system; or (5) a cable communication system as defined in Minnesota Statutes.

SMALL WIRELESS FACILITY – “Small Wireless Facility” means a wireless facility that meets both of the following qualifications: (1) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure;

and (2) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment; or (3) a Micro Wireless Facility.

SUPERINTENDENT – “Superintendent” means Public Works Superintendent, or his or her designee.

TELECOMMUNICATIONS RIGHT-OF-WAY USER – “Telecommunications Right-Of-Way User” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or 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, a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

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

UTILITY POLE – “Utility Pole” means a pole that is used in whole or in part to facilitate telecommunications or electric service.

WIRELESS FACILITY – “Wireless Facility” means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

WIRELESS SERVICE – “Wireless Service” means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

WIRELESS SUPPORT STRUCTURE – “Wireless Support Structure” means a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

605.04 REGISTRATION REQUIREMENTS.

Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment, items, or facilities in or on the right-of-way, including persons or their assigns who own, lease, sublease, or control a utility service within any public right-of-way, or any portion thereof, shall register with the City. Registration shall be deemed completed upon the public right-of-way user submitting to the City a completed registration form, furnished by the City, and payment of the registration fee, as set by the City Council.

Whenever any public right-of-way user transfers, sell, assigns or otherwise conveys ownership or interest in facilities or equipment to another person, the registered public right-of-way user shall notify the City of the date of conveyance and the name of the transferee within thirty (30) days of the conveyance.

No person may construct, install, repair, remove, relocate, or perform any other work on, or use and facilities or any part thereof, in any right-of-way without first being registered with the City.

The Supervisor may allow persons to plant or maintain boulevard vegetative plantings or biodegradable mulch in the area of the right-of-way between their property and the street curb pursuant to a written request and providing adequate sight-lines are maintained at intersections. Persons planting or maintaining boulevard plantings or biodegradable mulch shall not be deemed to use or occupy the right-of-way and shall not be required to register as a right-of-way user. Persons planting or maintaining boulevard plantings do so at their own risk in the event removal is needed.

605.05 PERMIT REQUIREMENTS.

Except as otherwise provided in the City Code, it is unlawful for any person or public right-of-way user to obstruct or excavate any public right-of-way without first having obtained the appropriate permit from the City, unless another reporting process is approved by the Superintendent.

An excavation permit is required for any excavation, unless otherwise noted in this Section. An obstruction permit is required for any obstruction in connection with the installation, relocation, operation or maintenance of a utility service or placement of any tangible object in a public right-of-way so as to hinder free and open passage over that or any part of the right-of-way. An obstruction permit is not required if a person or right-of-way user already possesses a valid excavation permit for the same project.

A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked. All street light fixtures and poles installed in conjunction with Small Cell Wireless facility equipment within the City of Belle Plaine shall be reviewed and approved by the Public Works Superintendent or his/her designee prior to installation. This includes approval of wireless facility equipment installed on City

property as well as privately owned street lights, including those owned by Xcel Energy and Minnesota Valley Electric Cooperative. When a permit application is received, the City shall work with the applicant to provide information on the desired pole, fixture, mounting, and base for requested locations. The City reserves the right to require plans associated with permit application are signed and sealed by a Professional Civil and Electrical Engineer.

605.06 PERMIT APPLICATIONS.

An application for a permit shall be on a form furnished by the City and submitted to the City with payment of the permit fee, as set by City Council. Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless; (1) such person makes a supplementary application for another permit before the expiration of the initial permit, and (2) a new permit or permit extension is granted.

The Superintendent may approve a permit which, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that are less than eight (8) hours in duration may be included in this permit.

The City may deny a permit for the following reasons:

- a. The applicant failed to fully comply with the application requirements herein.
- b. The City has initiated revocation of a prior permit by the applicant issued under this Section.
- c. The applicant has violated any requirements of this Section within the past two (2) years.
- d. The time schedule for the project will conflict or interfere with a community exhibition, celebration, festival or any other similar community event in the area of the project.
- e. The time schedule for the project conflicts with scheduled public improvement of the public right-of-way.
- f. The proposed project violates a provision of this Code.
- g. The proposed project is adverse to the public health, safety and welfare, by interfering with the safety and convenience of ordinary travel over the public right-of-way, or endangers the public right-of-way and its users.

The City may impose 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.

In addition to the aforementioned requirements of Section 605.06, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

- a. The City of Belle Plaine reserves the right to reject any Small Cell Wireless facility proposed to be located on City owned, maintained, or installed infrastructure based solely on its appearance and consistency with existing City owned infrastructure and/or City equipment and maintenance capabilities.
- b. The City reserves the right to require collocation agreements for each Small Cell Wireless facility proposed on City owned infrastructure. The standard collocation agreement may require payment of the following: annual rent to collocate on the City structure, an annual maintenance fee for maintenance associated with the collocation, and a monthly fee for electrical service.
- c. The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the City and applicant. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of small wireless facilities.
- d. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- e. Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
- f. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
- g. The City shall not allow small cell wireless facility equipment to be installed on City maintained decorative street lights.
- h. Small Cell Wireless facilities affixed to light poles, monopoles, traffic signals, and other existing rights of way structures or assets shall be integrated to the structure to which they are attached resulting in minimal intrusion into the right of way and a viewshed that is largely undisturbed by Small Cell Wireless facilities. Exposed elements or cables are not allowed.
- i. No wireless facility may extend more than 10 feet above its wireless support structure.
- j. Small Cell Wireless facilities and equipment shall be mounted no more than six (6) inches off the pole or other structure to which they are affixed.
- k. Antenna shall be limited to snug-mount, canister-mount, and concealed antennas.
- l. The color and surface treatment of poles and Small Cell Wireless facility equipment shall match the surrounding area.
- m. No signage is permitted, except to the extent required by local, state, or federal law or regulations.

- n. Attached Small Cell Wireless equipment must be a minimum of ten (10) feet from sidewalk elevation.
- o. All ground-based wireless equipment, including, but not limited to, equipment cabinets or power pedestals, shall be placed at the back of the right of way.
- p. All cables or wires for attached wireless equipment shall be located inside the pole structure, except where cables or wires attach to the antenna.
- q. Above Ground Utility Structures.
 1. Documentation the above ground structure's proposed location meets required sight triangle locations referenced in Chapter 11 of the City Code.
 2. Documentation the structure will be placed on the same side of the right of way as utility poles.
 3. A color photograph(s) of the proposed structure from a perspective perpendicular to the street.
 4. Structural detail including all dimensions.
 5. Above ground utility structures shall not exceed thirty-six inches in height in any area planned or currently zoned for residential purposes.
 6. Above ground utility structures shall comply with the height and development standards of the underlying zoning classification.
 7. Above ground utility structures with air-conditioning shall be enclosed by walls and setback a minimum of twenty (20) feet from lots where the existing or planned use is low or medium density residential.
 8. Associated equipment shall be reviewed administratively by the City for each location, and screening will be required in a reasonable manner as approved by the City.
 9. No more than one equipment cabinet and/or power pedestal shall serve any one Small Cell Wireless facility pole structure

605.07 PERMIT FEES.

The City Council shall annually set the permit fee required. The permit fees shall be designed to recover the City's actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the City. The excavation permit fee shall also include an amount sufficient to recover degradation costs, if applicable.

No excavation permit, obstruction permit, or small cell wireless permit shall be issued without payment of excavation or obstruction permit fees. Permit fees that were paid for a permit that the City has revoked are not refundable.

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.

605.08 RESTORATION OF RIGHT-OF-WAY.

All project work under a permit shall be completed within the dates specified in the permit, unless the project work could not be completed due to circumstances beyond the permittee's control, including seasonal weather prohibitions or inclement weather.

The permittee shall restore the public right-of-way and assume all costs therefore, unless otherwise agreed upon. The right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate base material in excavation. The City, at its option, may choose to perform its own restoration, including any paving. If the City performs the restoration pursuant to this Section, the permittee shall reimburse to the City all costs thereof, within thirty (30) days of billing. If following such restoration, the roadway surface, boulevard, sidewalk, curb or related infrastructure settles due to the permittee's improper back-filling; the permittee shall, at the City's option, either correct the defect or pay the City all costs associated with correcting the defective work. If the permittee restores the public right-of-way, the City may require, and the permittee shall provide at the time of application, a City specified type of security, to cover the cost of repair and restoration. If, within twenty-four (24) months after completion of restoration of the right-of-way, the posted security will be released.

The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100. The permittee shall guarantee the restoration of the public right-of-way for twenty-four (24) months following its completion and twelve (12) months for turf establishment. During the guarantee period, the permittee shall, upon written notification from the City, correct all non-complying restoration work, using the method required by the City. The correction work shall be completed within ten (10) business days of the receipt of notice from the City, unless a longer period of time is required due to unseasonable or inclement weather.

605.09 EMERGENCY SITUATIONS.

In an emergency situation, work may be done without a permit, if approved by the Superintendent. All persons with facilities in the public right-of-way shall include the City in its list of those to be notified immediately of any event regarding its utility services that may be considered as an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after that occurrence of the emergency, the registrant shall apply for the necessary permits, pay the required fees and fulfill the rest of the requirements necessary to be in compliance with this Section. These permitting requirements shall not apply if the repair is made within the hole of the permitted excavator.

If the City becomes aware of an emergency regarding utility services, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

605.10 REVOCATION OF PERMITS.

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

- a. The violation of any material provision of the right-of-way permit;
- b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- c. Any material misrepresentation of fact in the application for a right-of-way permit;
- d. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control;
- e. The failure to correct, in a timely manner, work that does not conform with the conditions imposed by this Section.

If the City determines that the permittee has committed a substantial breach of a term or condition of the permit, the City shall make a written demand upon permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City to place additional or revised conditions on the permit to mitigate and remedy the breach.

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

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 fees incurred in connection with such revocation.

605.11 INDEMNIFICATION AND LIABILITY.

Upon the issuance of a public right-of-way permit, the City does not assume the liability; (1) for persons, damage to property or loss of service claims by parties other than the registrant or the City, or (2) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or utility services by the registrants or permittees or activities of registrants or permittees.

A registrant or permittee shall indemnify, keep and hold the City, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, whether or not any act or omission complaint is authorized, allowed or prohibited by a public right-of-way permit.

605.12 APPEAL.

A public right-of-way user who; (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation or fee imposition reviewed by the City Council upon written request. The City Council shall act on a written request at its next regularly scheduled meeting. The decision by the City Council shall be in writing and supported by written findings establishing the reasonableness of the decision.

605.13 MAPPING DATA.

Each registrant and permittee shall provide mapping information required by the City.

605.14 ABANDONED AND UNUSABLE FACILITIES.

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

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

(Ord. 04-15, Section 605, Adopted December 20, 2004.)

(Ord. 13-05, Section 601.06, Adopted February 19, 2013.)

(Ord. 14-02, Section 601.00, Adopted March 17, 2014.)

(Ord. 19-08, Section 605.00, Adopted July 15, 2019.)

SECTION 606.00 TREE CARE AND MAINTENANCE

- 606.01 Findings and Purpose.
- 606.02 Definitions.
- 606.03 Tree Care Manager/City Forester Duties.
- 606.04 Tree Planting on Public Property.
- 606.05 Tree Care.
- 606.06 Penalty.

606.01 FINDINGS AND PURPOSE.

The City of Belle Plaine recognizes the value of a healthy urban forest to its residents and visitors. The City finds trees provide many benefits, including but not limited to:

- a. Protecting against wind and water erosion,
- b. Providing a natural buffer between land uses,
- c. Supplying shade and insulation that increases energy conservation,
- d. Sequestering of carbon emissions,
- e. Providing habitat for wildlife,
- f. Improving privacy and increasing livability

The City will continue to work to enhance, preserve, and protect the urban forest within its boundaries by promoting and establishing the growth of new trees, ensuring proper and adequate tree maintenance, and monitoring the removal of public trees.

The purpose of this Section is to provide regulations and standards for the planting, maintenance, and removal of shade trees within the City.

606.02 DEFINITIONS

PARK TREES – “Park Trees” are trees, shrubs, bushes, and all other woody vegetation in public parks having individual names, and all areas owned by the City or to which the public has free access as a park.

STREET TREES – “Street Trees” are trees, shrubs, bushes, and all other woody vegetation which have been or will be planted in a public right-of-way by the City at the direction of the Tree Care Manager/City Forester. “Right-of-Way” is as defined in Section 605.03 of the City Code, as may be amended.

TREE CARE MANAGER/CITY FORESTER – The “Tree Care Manager/City Forester” is a person or persons certified by the Minnesota Commission of Agriculture to plan, direct, and supervise all requirements for controlling shade tree diseases throughout the City. The Superintendent of Public Works and authorized assigns shall be the Tree Care Manager/City Forester.

TREE SIZES – A “Small Tree” is any plant material that will grow to a height of thirty (30) feet; a “Medium Tree” is any plant material that will grow to a height of thirty-one to and including fifty (50) feet; a “Large Tree” is any plant material that will grow to a height of over fifty (50) feet.

606.03 TREE CARE MANAGER/CITY FORESTER DUTIES

The Tree Care Manager/City Forester shall study, investigate, counsel, develop, and administer plans for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs, in parks, along public rights-of-way, and in other public areas. The Tree Care Manager/City Forester shall also administer the shade tree disease control programs for the city in accordance with the city code and best practices.

606.04 TREE PLANTING

Subd. 1. Planting on Public Property. No species may be planted on public property without the consent of the Tree Care Manager/City Forester. The Tree Care Manager/City Forester shall assure all plantings and requests for planting include species that are appropriate.

Subd. 2. Tree Spacing. The spacing of Street Trees shall be in accordance with tree species size classes. Typical tree spacing minimums shall be: small trees, 30 feet; Medium Trees, 40 feet; Large Trees 50 feet, except as approved by the Tree Care Manager/City Forester.

Subd. 3. Drainage and Utilities. Plantings within drainage and utility easements is subject to approval of the Tree Care Manager/City Forester. In general, if trees are proposed, only Small Trees will be considered, and trees must not be planted under or over any existing utility line or within ten feet thereof.

606.05. TREE CARE

Subd. 1. Care of Trees in Rights-of-Way. The City may plant, prune, maintain, and remove trees, plants, and shrubs within public rights-of-way and other public property. No other planting may be done without consent of the Tree Care Manager/City Forester. The Tree Care Manager/City Forester shall have control and supervision over all shrubs and trees upon, or overhanging all streets or other public property and rights-of-way.

Subd. 2. Removal of Trees Endangering Utilities or Other Public Improvements. The Tree Care Manager/City Forester may remove, order removal of, or authorize removal of any tree or part thereof which is in an unsafe condition or which by reason of its nature is determined to be potentially injurious to utilities or other public improvements. The Tree Care Manager/City Forester may also remove or authorize removal of a tree that is affected with any injurious fungus, insect, or other pest. Trees overhanging rights-of-way may be pruned to remove obstructions and to provide clear space.

Subd. 3. Trees on Private Property. Pursuant to Chapter Four of the City Code, the Tree Care Manager/City Forester has the authority to trim or remove or order the trimming and removal of trees, shrubs, or plants upon private property when such action is necessary to mitigate hazards, provide for the public's safety, or to prevent the spread of disease or insects.

Subd. 4. Tree Topping. It is unlawful for any entity to remove, alter, destroy, or top any Street Tree, Park Tree, or other tree on public property without authorization of the Tree Care Manager/City Forester. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown, to such a degree as to remove the normal canopy and disfigure the tree.

Subd. 5. Hazardous Trees. A tree is potentially hazardous when it has a structural defect likely to cause failure of all or part of the tree which could strike a "target." A target can be a vehicle, building, or a place where people gather such as a park bench, picnic table, street, or backyard. Structural defects to trees include: deadwood, cracks, weak branch unions, decay, cankers, root problems, and poor tree architecture. A tree with defects is not hazardous, however, unless some portion of it is within striking distance of a target. The Tree Care Manager/City Forester take immediate action to mitigate hazardous trees when: broken branches or tree top is lodged in a tree; a tree is dead as determined by the Tree Care Manager/City Forester, and if a branch is dead and of sufficient size to cause injury.

606.06 PENALTY

Any person, firm, or corporation who violates any portion of this Section shall be guilty of a misdemeanor. In addition, thereto, the costs of prosecution may be imposed upon the defendant, and the Court shall order restitution to the City for damage to the tree or property.

(Ord. 20-02, Section 606.00, Adopted March 16, 2020.)