

CHAPTER VIII

STREETS, PARKS, PUBLIC PROPERTY AND IMPROVEMENTS

Section 800 - Relocation of Buildings

800.01. Definitions. Subdivision 1. For purposes of this section, the terms defined in this subsection have the meanings given them.

Subd. 2. "Relocated building" means a building moved into or within the city.

800.03. Relocated buildings subject to this section. The following buildings are subject to this section and a relocation permit is required.

- (a) Any building, regardless of size, designed or intended for human habitation which is relocated within the city.
- (b) Any building not designed or intended for human habitation exceeding 100 square feet of gross floor area which is relocated within the city.
- (c) Any building together with the vehicle or vehicles transporting it, the size and weight of which exceeds the maximums specified in the highway traffic regulation act, chapter 169 of Minnesota Statutes, and which is moved upon the roads or streets of the city provided that any building exceeding said maximums but not covered under subdivisions (a) and (b) of this section shall be required to meet only the road restrictions of subsection 800.05.

800.05. Road restrictions. Buildings moved or caused to be moved upon, across or along any road or street in the city shall be moved in such a manner as to prevent unnecessary interference with or damage to bridges, trees, hedges, fences, telephone or electric power lines, wires, cables or any appurtenance upon or near said road or street. Such building shall not be moved in such a way as to cause damage to the road or street itself.

800.07. Standards for relocation permits. Subdivision 1. City council finding. No relocation permits shall be issued unless the city council finds that all the conditions of subsection 800.05 will be met. Faithful compliance with this subdivision shall be guaranteed as part of the performance bond hereinafter required.

Subd. 2. Compliance with land use regulations. All relocated buildings shall be so constructed and reconstructed as to meet the requirements of the zoning code and all other land use regulations of the city. Faithful compliance with this subdivision shall be guaranteed as part of the performance bond hereinafter required.

Subd. 3. Construction period. Except as provided in Minnesota Statutes, section 16B.62, subdivision 1, all relocated buildings shall be constructed and reconstructed on the proposed site in a manner which meets the requirements of the state building code and other applicable codes. All such construction and reconstruction shall be accomplished within a period of six months after the issuance of the building permit. Faithful compliance with the terms of this subdivision shall be guaranteed as part of the performance bond as hereinafter required. (Amended, Ord. No. 2008-02)

800.09. Application for relocation permit. Subdivision 1. Contents of application. Application for a relocation permit shall be made to the clerk-treasurer on forms provided by the clerk-treasurer. The application shall include among other things, (i) a description of the roads and streets over which the building shall be moved; (ii) a site plan drawn to scale, showing the location of the proposed building or structure and all other buildings or structures on the site together with the location of driveways, drainage ways, boundary lines, and other matters required to determine compliance with applicable codes; (iii) plans setting forth construction detail of any reconstruction planned and required to meet or exceed applicable building and other construction codes. Four copies of all documents shall be submitted.

Subd. 2. Staff review. The clerk-treasurer shall forward a copy of the application to the building inspector, the director of public works and the planning commission. The director of public works, the building inspector and the planning commission shall examine the application for compliance with the applicable statutes and codes and shall submit to the clerk-treasurer in writing their recommendations upon the compliance or non-compliance of the application with applicable codes.

Subd. 3. Hearing. The clerk-treasurer shall mail notice of the time and place of the planning commission meeting at which the relocation permit shall be considered to the owner of record of all property abutting the property upon which the building will be relocated.

Subd. 4. City council review. The clerk-treasurer's copy of the application shall be presented to the city council at its next regular meeting together with the written report of the building inspector, the director of public works and the planning commission.

Subd. 5. Fee. A permit fee as set by resolution of the city council shall accompany the application. The full amount thereof shall be remitted to the clerk-treasurer and deposited in the general fund. No action by any city official shall be taken on said application until said fee is paid.

800.11. Issuance of relocation permit. Upon receiving the application and the reports of the building inspector, director of public works and planning commission the city council shall consider the application and issue a permit therefor if all conditions set forth in this section and all other applicable statutes, ordinances and the requirements of this code have been met. The city council may attach any conditions or restrictions to the permit which are necessary to insure compliance with applicable statutes, ordinances and provisions of this code and to protect the health, safety and welfare of the community.

800.13. Procedural requirements. Approval of the relocation permit shall be by resolution only and shall contain a clear statement of the conditions and restrictions if any, upon which the permit is issued. A copy of the resolution shall be attached to the application. The permit shall be issued by the city clerk-treasurer on a form approved by the city council upon the filing of a performance bond as hereinafter provided. The performance bond shall be approved as to form by the city attorney and the attorney's initials endorsed thereon. Upon issuance of the relocation permit each page of the application and plans shall be stamped with the stamp of the city clerk-treasurer and no substitution or changes shall be allowed without approval of the city council.

800.15. Performance bond or cash deposit. The city council shall require the filing of a performance bond in an amount to be determined by the city council and executed by a corporate surety company licensed to do business in the state of Minnesota or shall require a cash deposit. Said bond or deposit shall be conditioned upon the full and faithful performance by the applicant of all requirements of this section and the relocation permit. A further condition of said bond shall be the payment of all fees applicable hereunder and the payment of reasonable attorneys' fees incurred by the city in enforcing the bond or in obtaining compliance with the terms of this section or the conditions of the relocation permit.

800.17. Additional fees. Subdivision 1. City expenses. The applicant shall pay all reasonable fees incurred by the city for engineering studies, planning studies, legal review or other professional services which, in the discretion of the city council are required to fully consider the application for permit.

Subd. 2. Other regulatory fees. In addition to the fees required hereunder, the applicant shall be liable for all fees ordinarily required under the state building code, the zoning code, chapter V and other regulatory provisions of this code.

800.19. Penalties. It shall be unlawful for any person, firm or corporation to relocate a building or to move a building upon any street or road within the city without first obtaining the permit as described herein. It shall be unlawful for any person, firm or corporation to move, locate, relocate, construct or reconstruct any building or structure within the city for which a permit has been obtained hereunder in a manner which is not authorized by said permit.

Section 805 - Streets, General Provisions

805.01. Procedure to vacate streets and alleys. Section 412.851 of Minnesota Statutes relating to vacation of streets is hereby adopted and incorporated by reference as though fully set forth herein.

805.03. Encroachments. Subdivision 1. Encroachments prohibited. Except as provided in this section, no person may erect, build, keep or maintain any portion of a building or structure which encroaches upon or projects into, upon, over or under any street or alley, right-of-way, park or other public property. Any encroachment which is established without a permit as provided in this section shall constitute a public nuisance and may be abated pursuant to section 2010 of this code. (Amended, Ord. 94-01, Sec. 1)

Subd. 2. Permit; limitation of rights under permit. A person may, upon issuance of a permit by the city council, erect or maintain an encroachment upon public property. Any permission granted under this subsection and all rights of the permittee shall cease at any time that the encroachment is removed. Issuance of that permit shall not be considered a relinquishment by the city of that portion of the public right-of-way and shall not grant to the permittee any vested right in the continued use of the public right-of-way beyond the time stated in the permit and this code. The city council may impose additional conditions on encroachment permits as the council deems necessary to protect the health, safety or welfare of the public or to protect nearby property owners from hardship or damage or to protect other public interests as determined by the council. (Amended, Ord. 94-01, Sec. 1)

Subd. 3. Application procedure. Application for an encroachment permit shall be made to the city clerk-treasurer and shall be accompanied by the fee set forth in appendix II of this code. A permit may be issued only upon approval of the city council. The city council may approve the permit only upon making the following findings:

- (a) That the application meets the requirements of this subsection;
- (b) That allowing the encroachment will not endanger the health, safety or welfare of the public; and
- (c) That allowing the encroachment will not cause hardship or damage to nearby property owners. (Amended, Ord. 94-01, Sec. 1)

Subd. 4. Insurance. An encroachment permit may be granted only after filing with the city clerk-treasurer by the owner and/or lessee of the property:

- (a) Evidence of a public liability insurance policy in force in the amount of \$500,000 combined single limit, or more for bodily injury and property damage for any one encroachment granted after the effective date of this section, or \$100,000 for bodily injury and property damage for encroachments on public property which adjoins property used or zoned to be used for residential purposes. The insurance must name the city as an additional insured, and the endorsement shall show the date the permit was granted, description and location of the encroachment, and shall state that the policy does provide the insurance coverages required by this chapter. The furnishing and existence of any insurance policy shall not limit nor abrogate the obligations of the permittees, their successors or assigns, to indemnify and hold harmless the city for the full amount of any actions, proceedings, claims, costs, damages and expenses.
- (b) On all underground encroachments, the policy of insurance shall specifically delete any exclusion with regard to explosion, collapse, or underground hazards.
- (c) Failure to keep in force the insurance required by this subdivision shall be just cause for revocation of the permit and removal of the encroachment. (Amended, Ord. 94-01, Sec. 1)

Subd. 5. Removal upon order. The city council may order the removal of a permitted encroachment upon a finding that the property owner/lessee has failed to comply with the requirements of the permit or upon a finding that removal is in the public interest. The city shall not be liable for any damages resulting to the property owner/lessee by reason of such order. The property owner/lessee shall remove the encroachment and restore the right-of-way at their sole expense. Upon failure of the property owner to remove the encroachment as ordered, the reasonable costs of removing the encroachment incurred by the city shall be billed and levied against the property as a special assessment. (Amended, Ord. 94-01, Sec. 1)

Subd. 6. Projections to be safe. All encroaching structures and projections over public property, including awnings and canopies, shall be structurally safe and shall be kept in a safe condition and maintained in a workerlike state of repair consistent with the design thereof.

Subd. 7. Appendix II to the Independence city code is amended to allow the following permit fee:

<u>Activity</u>	<u>Fee</u>
Encroachments	\$50.00

(Amended, Ord. 94-01, Sec. 1)

Section 810 – Right-of-Way Regulations; Permits
(Added, Ord. 2000-09)

810.01. 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 under Minnesota Statutes, section 237.163, subdivision 2(b) to manage right-of-ways within its jurisdiction.

810.03. Definitions. The definitions included in Minnesota Rules 7819.0100, subparts 1 through 23 are hereby adopted by reference and are incorporated into this section as if set out in full.

810.05. Permit requirement. Subdivision 1. Permit required. Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city. The types of permits are as follows:

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

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

Subd. 3. Delay penalty. In accordance with Minnesota Rules 7819.1000, subpart 3 and notwithstanding subdivision 2 of this subsection, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The city council shall establish the amount of the delay penalty from time to time by resolution.

Subd. 4. Permit display. Permits issued under this section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the public works director.

810.07. 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:
 - (i) Verifying that an insurance policy has been issued to the applicant by an insurance company licensed to do business in the state of Minnesota, or a form of self insurance acceptable to the public works director;
 - (ii) Verifying that the applicant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the applicant, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the applicant, 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;
 - (iii) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (iv) Requiring that the public works director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

- (v) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the public works director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this section.
 - (4) If the applicant is a corporation, a copy of the certificate required to be filed under Minnesota Statutes, section 300.06 as recorded and certified to by the Secretary of State.
 - (5) A copy of the applicant's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the applicant is lawfully required to have such certificate from said commission or other state or federal agency.
- (b) Payment of money due the city for:
- (1) permit fees, estimated restoration costs and other management costs,
 - (2) prior obstructions or excavations;
 - (3) any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
 - (4) franchise fees or other charges, if applicable.

810.09. Issuance of permit; conditions. Subdivision 1. Permit issuance. If the applicant has satisfied the requirements of this section, the public works director shall approve and the city clerk-treasurer shall issue a permit.

Subd. 2. Conditions. The public works director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

810.11. Permit fees. Subdivision 1. Excavation permit fee. The city council by resolution shall establish an excavation permit fee in an amount sufficient to recover the following costs:

- (a) the city management costs;
- (b) degradation costs, if applicable.

Subd. 2. Obstruction permit fee. The city council by resolution shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

Subd. 3. Payment of permit fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within 30 days of billing.

Subd. 4. Non refundable. Permit fees that were paid for a permit that the public works director has revoked for a breach as stated in subsection 810.27 are not refundable.

Subd. 5. 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.

Subd. 6. Compliance with Minnesota Rules. All permit fees shall be established consistent with the provisions of Minnesota Rules, part 7819.1000.

810.13. Right-of-way patching and restoration. Subdivision 1. Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee.

Subd. 2. Patch and restoration. The permittee shall patch its own work. The city may choose either to restore the right-of-way itself or have the permittee restore the right-of-way.

- (a) City restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If following such restoration, the pavement settles due to 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.
- (b) Permittee restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules, part 7819.3000.
- (c) Degradation fee in lieu of restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

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

Subd. 4. Duty to correct defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. The permittee upon notification from the public works director, shall correct all restoration work to the extent necessary, using the method required by the public works director. Said work shall be completed within five calendar days of the receipt of the notice from the public works director, not including days during which work cannot be done because of circumstances constituting force majeure.

Subd. 5. Failure to restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the public works director, or fails to satisfactorily and timely complete all restoration required by the public works director, the city, at the option of the public works director, may do such 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 permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

810.15. Supplementary applications. Subdivision 1. Limitation on area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

Subd. 2. Limitation on dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

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

810.19. Installation requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules, part 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163.

810.21. Inspection. Subdivision 1. Notice of completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, part 7819.1300.

Subd. 2. 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.

Subd 3. Authority of public works director.

- (a) At the time of inspection the public works director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well being of the public.
- (b) The public works director may issue an order to the permittee for any work, which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within 10 days after issuance of the order, the permittee shall present proof to the public works director that the violation has been corrected. If such proof has not been presented within the required time, the public works director may revoke the permit pursuant to subsection 810.27 of this Code.

810.23. Work done without a permit. Subdivision. 1. Emergency situations. 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 section for the actions it took in response to the emergency. 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.

Subd. 2. Non-emergency situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said 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 section.

810.25. Supplementary notification. If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the public works director of the accurate information as soon as this information is known.

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

- (a) The violation of any material provision of the right-of-way permit;
- (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to subsection 810.21 of this code.

Subd. 2. Written notice of breach. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to notice of breach. Within 24 hours of receiving notification of the breach, 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 permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

Subd. 4. Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

810.29. Mapping data. Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules, parts 7819.4000 and 7819.4100.

810.31. Location of facilities. Subdivision 1. Undergrounding. Unless otherwise agreed in a franchise between the applicable right-of-way user and the city, newly constructed facilities in the right-of-way must be located underground. The city may approve above-ground installation of pedestals, equipment boxes, and other equipment typically located above-ground. The city may impose restrictions on the location, size, design and appearance of any such above-ground equipment.

Subd. 2. 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.

Subd. 3. Limitation of space. To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the public works director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the public works director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by 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.

810.33. 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 public works director 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.

810.35. Right-of-way vacation. If the city vacates a right-of-way, which contains the facilities of a permittee, the permittee's rights in the vacated right-of-way are governed by Minnesota Rules, part 7819.3200.

810.37. Indemnification and liability. By applying for and accepting a permit under this section, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rules, part 7819.1250.

810.39. 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 public works director.

810.41. Appeal. A right-of-way user that: (i) has been denied registration; (ii) has been denied a permit; (iii) has had permit revoked; or (iv) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

810.43. Reservation of regulatory and police powers. A permittee'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.

Section 815 – Regulation of Parks and Recreation
(Added, Ord. No. 2002-04)

815.01. Purpose. This section is enacted to govern the conduct of members of the public during their use and enjoyment of the city of Independence park system so as to further the safety, health, enjoyment, and welfare of all persons in the use of those facilities and to protect public property and resources for posterity.

815.03. Definitions. As used in this section, the following words and terms have the meanings ascribed to them in this section. Subdivision 1. "Park" means and refers to any park, reserve, special use area, golf course, linear park or any other area owned, improved, maintained, operated or otherwise controlled by the city for recreation and natural resource preservation purposes.

Subd. 2. "Peace officer" means and refers to any person duly deputized or commissioned for the purpose of enforcing laws, ordinances, and regulations.

Subd. 3. "Motorized vehicle" means every vehicle which is self-propelled and does not derive its power from overhead wires. Motorized vehicles include, but shall not be limited to automobiles, trucks, motor bikes, mini bikes, all-terrain vehicles, and snowmobiles, but do not include battery powered wheelchairs.

815.05. Construction and scope. In the interpretation of this section, all provisions contained are to be construed as follows: Subdivision 1. Any requirement or prohibition by any provision extends to and includes the causing, procuring, aiding or abetting directly or indirectly, of such acts; and the permitting or allowing any minor by the responsible parent, guardian, or custodian to commit any such act.

Subd. 2. No provision shall make unlawful any act necessarily performed by any peace officer, or city employee, or city contractor in the line of duty or work.

Subd. 3. Any act otherwise prohibited is lawful if performed by virtue of and strictly within the provisions of a city permit to do so, and to the extent authorized thereby.

815.07. Hours and access. Subdivision 1. The park system shall be open to the public between the hours of 6:00 a.m. and 10:00 p.m. No person shall remain, stop, use, or be present within the confines of any park between the hours of 10:00 p.m. and 6:00 a.m. Exceptions may be made at the discretion of the city council in the case of emergency, when use permits have been authorized, or for other reasons the city council may determine necessary or desirable. In addition to the foregoing, parks are subject to any other curfew hours in force in the city.

Subd. 2. Any section or part of any park may be declared closed to the public by the city council at any time or for any interval of time, either temporarily or at regular and stated intervals, and either entirely or for certain uses as the council shall find necessary or desirable.

815.09. Permits. Subdivision 1. Permits are required for the exclusive use of all or portions of specific areas, buildings, and other system facilities; and for conducting special events such as those of a cultural, educational, political, religious or recreational nature; and for specific exemption from any provision of this section. Any person, group, or association of persons required to obtain a permit must file an application for a permit with the city clerk-administrator.

Subd. 2. In addition to any permit terms, the grantee of a permit is bound by this section and any other applicable regulations.

Subd. 3. The grantee of a permit is liable for any loss, damage, or injury sustained by the system or by any person whatever, by reason of the negligence of the person or persons to whom such permits are issued.

Subd. 4. The grantee of a permit may not transfer or relinquish the permit to another person or group of persons without the written permission of the clerk-administrator.

Subd. 5. The clerk-administrator may revoke a permit upon evidence of good cause.

Subd. 6. No person may disturb, harass, or interfere with the grantee of a valid permit, nor with any of the grantee's property or equipment.

Subd. 7. Permits may be issued to adults only and an adult must be on the premises at all times during the duration of the permit.

Subd. 8. No person or group may place or keep any goods, wares, merchandise, or other articles on park property or facilities without the written permission of the clerk-administrator.

Subd. 9. No person may use park facilities such as picnic areas, ballfields, tennis courts or volleyball courts which have been reserved by another party, or to conduct picnic activity at reservation picnic sites in violation of a permit.

815.11. Special Activities. Subdivision 1. Bicycling.

- (a) No person may ride or operate a bicycle in any park except on designated bikeways or surfaces normally provided for vehicular traffic.
- (b) No person may ride or operate a bicycle in violation of state law. Persons riding a bicycle must observe and obey all traffic and directional signs.
- (c) No person may ride or operate a bicycle in any park except in a prudent and careful manner, and unless the person is capable of effective control and operation of the bicycle. Pedestrians and motorized vehicles shall have the right-of-way where a bikeway intersects pedestrian trails or roadways.
- (d) No person may ride or operate a bicycle in any park faster than is reasonable and safe, with regard to the safety of the operator and other persons in the immediate area.
- (e) No person may ride or operate a bicycle in any park 30 minutes after sunset or 30 minutes before sunrise without appropriate front and rear lighting.
- (f) All bicycle riders must remain in single file and proceed in the extreme right hand lane of a drive or bikeway at all times except when passing another vehicle or bicyclist parked or traveling in the same direction.
- (g) Bicycles must be parked in locations, wherever provided, set aside specifically for their storage.

Subd. 2. Boating.

- (a) No person may on any pond or stream within the city use any mechanically propelled boat or other watercraft unless being used for emergency rescue or the maintenance of the lake, pond, or stream.
- (b) No person may operate any watercraft on any park waters contrary to or in violation of state law.
- (c) No person may operate, row, or paddle a boat, canoe, or other watercraft on any park waters unless able to handle the same with safety to themselves, other occupants, or in such manner as not to annoy or endanger the occupants of other boats.

- (d) No person may leave any watercraft unattended except in areas specifically designated for mooring, anchoring or beaching.
- (e) No person may operate watercraft within an area which has been designated as a swimming area.
- (f) All watercraft launched from a system facility or operating on park waters must have a Coast Guard-approved life preserver for each occupant.
- (g) No person may operate any watercraft in a careless or reckless manner.

Subd. 3. Motorized vehicle.

- (a) No person shall operate a motorized vehicle within any park except in areas specifically designated for such use.
- (b) No person may operate a nonlicensed motorized vehicle on any parkway or other roadway within any park.
- (c) No person may place any motorized vehicle for sale or exchange on park property.
- (d) No person may wash, grease, repair, change oil, or maintain in any way a motorized vehicle except as necessary in an emergency.

Subd. 4. Camping. No person may establish or maintain any camp or other temporary lodging or sleeping place in any park.

815.13. General conduct. Subdivision 1. Defacement, destruction of property and resources.

- (a) No person may tamper with, climb on, injure, deface, destroy, disturb, damage, move, or remove any part of any park building, portable bathrooms, structure, sign, light pole, drinking fountain, hydrant, picnic table, grill, trash receptacle, equipment, statue or other property found therein. This does not prohibit appropriate use of play equipment.
- (b) No person may deface, disturb, or remove in any manner any soil, artifact, fossil, rock, or other mineral resource.
- (c) No person may excavate any ditch, trench, tunnel, or hole in any park.

- (d) No person may erect or maintain a shelter, hockey goal, or other structure in any park unless the structure is portable and removed each day.
- (e) No minor may possess unauthorized permanent markers, paint, matches, or sharp tools.

Subd. 2. Preservation of vegetation.

- (a) No person may injure, cut, destroy, mutilate, uproot, disturb, or remove any flower, tree, shrub, or any plant whether wild or cultivated, or any part thereof.
- (b) No person may plant or cause to be planted any wild, cultivated or exotic tree, shrub, or plant except with the written permission of the city council.
- (c) No person may fell or climb any tree, pick any flowers, fruit, or vegetable, or trample any flowers, tree seedlings, flower beds, vegetable gardens or new turf seedlings.
- (d) No person may hitch any animal or fasten, anchor, or otherwise attach any wire, rope, cable, signs, posters, or other articles to any tree, shrub or plant.
- (e) No person may make any unauthorized use of any park which is detrimental to the turf and soil conditions.
- (f) No person may remove any device, apparatus or material installed for the protection, support, or preservation of any tree, shrub, or plant.
- (g) No person may construct or place any type of structure including but not limited to deer tree stands, playhouses, treehouses, temporary storage buildings, motorcycle or bicycle launches, temporary shelters, tents, tarps, canopies, or other such devices upon park land without permission by the council.

Subd. 3. Animals.

- (a) No person owning, being in custody, or having control of an animal, whether wild, pet, or domestic, may cause or allow the animal to roam or be at large in any park.
- (b) No person being in custody of any animal may permit the animal to enter any beach area, nature interpretive area, wildlife refuge, golf course or park building, whether leashed or otherwise, except trained animals assisting disabled persons.

- (c) No person in custody of any pet or animal may allow the animal to disturb, harass, or interfere with other park users or their property.
- (d) No person may feed wild animals or birds or deposit a food source for wild animals or birds in any park.
- (e) Any unattended domestic animal or pet found roaming or at large within any park will be impounded.
- (f) All state and local ordinances relating to the licensing and muzzling of animals and pets apply to any park.
- (g) No person may release or possess any exotic or wild animal in any park without written permission of the council.
- (h) It is unlawful for any person who owns, harbors, or has custody of a dog, cat, or other animal to permit such animal to defecate on any public property unless such person immediately removes the excrement and properly disposes of it. This provision shall not apply to any person riding or otherwise in control of a horse while on any equestrian trail, or roadway or other property on which the horse is lawfully present.

Subd. 4. Hunting, fishing, and molesting wildlife.

- (a) No person may kill, hunt, trap, pursue, injure, molest, or unnecessarily disturb or have in possession any species of wildlife including birds, waterfowl, fish, or other animals found within the confines of any park, except that fishing may be permitted in designated areas subject to state laws and regulations.
- (b) No person may rob, disturb, or molest the nest, eggs, or young of any birds or other animals within the confines of any park.

Subd. 5. Fires.

- (a) No person may start or maintain a fire in any park except small recreational fires in fireplaces, fire rings, and grills provided for that purpose in areas specifically designed for such use. Private grills may be used in designated areas provided that all ashes and residue are disposed of in containers provided for such disposal.

- (b) Any person who starts or maintains a fire in an authorized area must exercise continuous supervision from the time the fire is kindled until it is extinguished. No fire may cause damage or constitute a threat to site vegetation and resources, nor may it cause discomfort to other park users.
- (c) The council may, at its discretion, prohibit fires for limited periods at any location for any purpose when it is necessary for the continued protection of park property and resources.

Subd. 6. Waste and litter.

- (a) No person may throw, cast, drop, pour, spill or discharge, or permit to escape in or upon any land, pond, river, creek, stream, ditch, storm sewer, or drain flowing into or through any park, any substance, matter or thing whether solid, liquid, or gas, which may result in the pollution of such waters, interfere with the conservation management of the water resource, or endanger the health of the public.
- (b) No person may deposit in public trash receptacles any household refuse, including organic material resulting from the manufacture, preparation, or serving of food or food products; spoiled, decayed or waste products from any source; bottles, cans or glassware; paper or paper products; crockery, ashes, rags, discarded clothing, tree or lawn clippings, leaves, weeds, waste resulting from building construction, remodeling or demolition; and other waste products, unless such refuse is the result of activities in the park in which such public receptacles are located.
- (c) No person may drop, throw or otherwise leave unattended in any park lighted matches, burning cigars, cigarettes, tobacco, paper, or other combustible material.

Subd. 7. Firearms, weapons, fireworks.

- (a) No person may possess, fire, discharge, or set off any firearm, missile, fireworks, or explosives in any park. Permits for fireworks will only be issued upon proof of adequate insurance and compliance with state and local laws and regulations.
- (b) No person, except a peace officer, shall possess or carry a firearm of any description in any park. No person may possess or carry in any park any air gun, bow and arrow, knife with a blade greater than three inches, slingshot, dart, or projectile thrower, or any other dangerous or illegal weapon.

- (c) Any unauthorized or illegal weapon within any park is subject to seizure by a peace officer.

Subd. 8. Disturbing the peace - conduct.

- (a) No person, or group of persons, may disturb the peace and good order in any park by either word or act.
- (b) No person, or group of persons, may use threatening, abusive, insulting, obscene or indecent language or commit, perform or engage in any lewd, lascivious, obscene or indecent act.
- (c) No person, or group of persons may engage in fighting, quarreling, wrangling, riotous clamor, or tumult.
- (d) No person, or group of persons, may disturb, harass, or interfere with any park user or the user's property.
- (e) No person may solicit or ask anyone to commit, perform or engage in any lewd, lascivious, obscene, or indecent act or behavior.

Subd. 9. Audio devices. No person may operate or play any musical instrument, radio, television, record or tape players, loudspeaker, public address system or sound amplifying equipment of any kind in any park in such a manner that the sound emanating therefrom is audible beyond the immediate vicinity of the set or instrument, and subsequently interferes with the use of the park by other users or disturbs the residents of adjacent property.

Subd. 10. Loitering.

- (a) No person over the age of six may enter any comfort station or restroom, washroom or toilet facility set apart or designated for the opposite sex.
- (b) No person may lurk or loiter in or around any toilet facility or other system structure except to use such facility for the purpose of which it is intended.

Subd. 11. Alcoholic and intoxicating beverages. No person may possess, have within their immediate control, display, consume or use intoxicating liquor or 3.2 percent malt liquor in any park.

Subd. 12. Parades, entertainment, public meetings. No procession, parades, pageants, ceremonies, exhibitions, celebration, training exercises, speeches, entertainment or other public gatherings may be allowed to take place in any park except with written permission of the city clerk-administrator.

Subd. 13. Games. No person may engage in any potentially dangerous games involving thrown or propelled objects, such as horseshoes, golf balls, darts, or similar objects except in appropriate areas specifically designated for such usage.

Subd. 14. Use of tennis and basketball courts.

- (a) No person may use a bicycle, roller skates, roller blades, roller skis, skateboard or scooter, or allow a dog to be on a color-coated tennis or basketball court surface, excluding hockey rink pavement, which is specially designed for roller blade use.
- (b) No person may use a tennis court or basketball court while not wearing tennis shoes.
- (c) No person may play continuously upon a tennis court for more than one hour while others are waiting to use the court.
- (d) No person may play hockey on a tennis court.

Subd. 15. Skateboards.

- (a) No person shall operate a skateboard carelessly or heedlessly in disregard of the rights of others, in a manner that endangers or is likely to endanger persons, property or the operator of the skateboard, or in a place where the surface or traffic conditions render the place unsafe for skateboarding.
- (b) An operator of a skateboard must yield the right-of-way to any other type of vehicle or a pedestrian while the operator is entering or traveling upon a street, alley, sidewalk, bicycle path, or other paved surface.

Subd. 16. Advertising.

- (a) No person may distribute or disseminate any leaflets, pamphlets, circulars, handbills, advertisements or other written or printed material except with the written permission of the city clerk-administrator.
- (b) No person may post, display, affix or attach any sign, poster, placard, notice, banner or advertisement to any tree, building, shelter, fence, pole, or other structure except with the written permission of the clerk-administrator.

- (c) No person may use loudspeakers, sound amplifying equipment, musical equipment, or cause any noise to be made for advertising purposes or for the purpose of attracting attention to any exhibition, performance, event or other purpose except with the written permission of the clerk-administrator.

Subd. 17. Unlawful sales.

- (a) No person may sell, offer for sale, hawk, peddle or lease any object, merchandise or service or carry on any manner of business or commercial enterprise except those concessions authorized or operated by the city.
- (b) No person may park or occupy a vehicle or stand to sell any farm produce, flowers, merchandise or any other product or for conducting any business or selling of services unless authorized by the city.

Subd. 18. Soliciting alms. No person shall beg or solicit alms, donations or contributions without a valid permit.

Subd. 19. Lost and found articles. Lost or mislaid articles or money or personal property which are found in any park shall be delivered or turned over to the city clerk-administrator. If the lawful owner of any article or money deposited with the city does not claim the same within a period of 60 days, it may be returned to the finder upon request.

Subd. 20. Peace officers and employees.

- (a) No person may willfully resist, refuse or fail to comply with any order, direction or request lawfully given by any peace officer or city employee acting under the authority of the board and in accordance with this section.
- (b) No person may interfere with, or in any manner hinder any city employee, city contractor, or peace officer during the performance of assigned duties.

Subd. 21. Posted regulations, directional signs and graphics. No person may disregard or fail to comply with any posted regulations, directional signs and graphics, barriers or other control devices located within any park or on any parkway.

815.15. Traffic rules. Subdivision 1. No person may drive or operate a motorized vehicle within any park except upon roadways, parking areas, parkways or other areas designated for such use. Disabled motorized vehicles may be moved off a paved area to allow for the continued flow of traffic but the motorized vehicle must be repaired or removed within two hours, unless other arrangements are made with the council.

Subd. 2. No person may operate a motorized vehicle within any park or on any parkway, in violation of posted regulations and directional signs, state law, county or municipal traffic ordinances, or orders or direction of peace officers or city employees.

Subd. 3. No person may drive or operate a motorized vehicle on or along any roads, drives or parking lots which have been restricted, closed, or posted with appropriate signs or barricades. The council will have the authority to order roads, drives, or parking lots within any park or any roadway closed during the process of construction, reconstruction, or repair or when in its opinion, weather conditions render travel unsafe or unduly destructive.

Subd. 4. No person may operate a motorized vehicle in a careless or reckless manner or without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, so as to endanger the life, limb, or property of any other person.

Subd. 5. No person may park, stop, or leave a motorized vehicle in any park between the hours of 10:00 p.m. to 6:00 a.m., unless a permit is obtained from the city clerk-administrator.

Subd. 6. No person may operate a motorized vehicle in any park or on any parkway at a speed in excess of 15 miles per hour or in excess of posted speed limits.

Subd. 7. No person may operate a motorized vehicle in any park which emits excessive or irritating noise, noxious fumes, dense smoke or other pollutants.

Subd. 8. No person may wash, grease or change oil on any motorized vehicle in any park.

Subd. 9. No person shall park a motorized vehicle adjacent to any curb painted yellow in any park.

Subd. 10. Motorized vehicles illegally parked, disabled or abandoned may be towed away and impounded at the owner's expense.

Subd. 11. Motorized vehicles must yield the right-of-way at all times to pedestrians.

Subd. 12. No person may participate in a drag race or test of unreasonable acceleration in any park or on any parkway.

815.17. Penalties for violation. Subdivision 1. Violation of any of the provisions of this section shall be a misdemeanor.

Subd. 2. Any person violating any of this section may be expelled, ejected, or ousted from a park at the discretion of a peace officer.

815.19. Additional rules and regulations. The council may adopt additional rules and regulations not contrary to the provisions of this Code governing the use and enjoyment of parks, trails, playgrounds, lakes, ponds, streams and other publicly owned properties which shall be prominently posted or publicly announced in the places where they are intended to apply. Any person who violates a rule or regulation so posed may be excluded from the use of the park system and may in addition be prosecuted as for a misdemeanor.