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**6.01 SIDEWALK AND CURB AND GUTTER CONSTRUCTION**

- (1) All sidewalks, hereafter constructed, shall be concrete of one course construction, not less than four inches in thickness. Such portion of sidewalks as may be used as a driveway shall be six inches in thickness. (86)
- (2) All sidewalks shall be five feet in width on all streets, unless otherwise directed by the city engineer, except that in front of buildings used for mercantile, commercial, or industrial purposes, the sidewalk may extend from property line to curb line.
- (3) Unless otherwise ordered by the city engineer, all curb and gutter shall be combination curb and gutter, constructed of concrete according to the plans on file in the city engineer's office.

**6.02 SPECIFICATIONS**

- (1) All sidewalks and curb and gutter shall be concrete containing 1.5 barrels of cement per cubic yard. The city engineer will fix the proportions of fine and coarse aggregate, and the maximum allowable amount of water per bag of cement for the particular aggregate being used, which in his judgement, will assure durable concrete of the plasticity and workability required for the work.
- (2) Cement shall be air-entered portland cement and shall meet requirements of the Standard Specifications of the American Society for Testing Materials.
- (3) Fine aggregate shall consist of natural sand or screening from hard, tough, crushed rock or gravel. It must be clean

- and well graded. All fine aggregate shall pass .5-inch screen and 95 percent shall be retained on 100 mesh screen.
- (4) Coarse aggregate may be pebbles or broken stone. It must be clean, hard, durable, and un-coated. All coarse aggregate shall pass one inch screen and 95 percent shall be retained in a .5-inch screen.
  - (5) Water shall be clean and free from injurious amounts of oil, acid, alkali, organic matter, or other deleterious substances.
  - (6) Reinforcing steel, where used, shall be bars rolled from new billets of either structural or intermediate grade. All bars shall be free of grease, dirt, rust, and scale. Where steel fabric reinforcing is required, it shall be electrically welded, cold drawn, steel wire of the gauge specified.
  - (7) All concrete shall be mixed in an approved type of batch mixer, in good working order. The mixing of each batch shall continue for a period of not less than 1.5 minutes.
  - (8) Concrete shall be placed immediately after mixing. The subgrade and forms shall have been checked and approved by the city engineer before the concrete is placed. The concrete shall be placed on a moist subgrade, it shall be thoroughly puddled against the forms, and tamped and spaded sufficiently to bring the mortar to the surface. The face surfaces of the curb and gutter shall be thoroughly troweled and brushed. The back edge of the curb, the edge of the gutter, and the edges adjacent to expansion joints, shall be rounded with an edger on .5-inch radius. All honeycombed faces or backs of the curb shall be pointed with one-two mortar. The surface of the sidewalk shall be struck off and finished smooth and even by means of a wooden float and given a brushed surface finish. Before concrete is given the final finishing, the surface of the walk shall be checked with a 10 foot straight edge, and any irregularities of more than .25 inch in 10 feet shall be eliminated.
  - (9) All sidewalks built over area-ways, vaults, or coal holes, shall be constructed on suitable walls or steel beams and shall be constructed according to such specifications as may be given by the city engineer and under his supervision.
  - (10) All sidewalks shall be divided into unit areas of not more than six feet on any one side, by cutting joints in the concrete to a depth of not less than  $\frac{1}{4}$  of the thickness of the sidewalk. The surface edges of each unit shall be rounded to a radius of  $\frac{1}{4}$  to  $\frac{1}{2}$  inch.
  - (11) When completed, the concrete shall be cured by covering with suitable material or sprayed with a water retaining compound. Sufficient covering shall be kept available at all times to properly protect newly laid concrete from damage from the elements.
  - (12) The forms shall be of wood or metal, straight, free from warp, and of sufficient strength to resist springing during the process of depositing the concrete against them. If of wood, they shall be of at least two inch surfaced plank, except for sharply curved sections. If of metal, they shall be of approved section, and shall have a flat surface on top. They shall be securely staked, braced, held firmly to the required line and grade, and shall be sufficiently tight to prevent leakage of mortar. All forms shall be cleaned thoroughly and oiled before the concrete is placed against them.
  - (13) One-half inch transverse joints, pre-molded bituminous non-extruding, unless otherwise specified, shall be placed through the sidewalk at uniform intervals at no more than 30 feet.
  - (14) One-half inch expansion joints, pre-molded bituminous non-extruding, unless otherwise specified, shall be placed between the sidewalk and the back of the abutting parallel curb and gutter, and between sidewalk and buildings, and other rigid structures.
  - (15) One inch expansion joints shall be placed between sidewalk approaches and the back of the curb and gutter or the edge of the pavements.
  - (16) Where curb and gutter abuts on new or existing pavement, expansion joints of the same type and thickness shall be placed in the curb and gutter and directly opposite the expansion joints in the pavement, but no monolithic section of curb and gutter shall be less than eight feet or more than 12 feet. At street intersection, a one inch joint shall be placed in the curb and gutter where the tangent and radial curb come together.
  - (17) Sidewalk or curb and gutter joints shall be constructed with their faces perpendicular to the surface of the section. Expansion joint filler shall extend to the full depth of the joint and the top shall be flush with the finished surface.
  - (18) The pitch from the inside line of the sidewalk to the curb shall be .25 inch per foot, wherever possible.
  - (19) The inside or property line edge of the city sidewalk shall be located within the street right-of-way a distance of one foot from the street right-of-way line. The location of the inside or property line edge of city sidewalk on or less than one foot from the street right-of-way line shall be allowed only in those areas of the city wherein city sidewalk exists on or less than one foot from the street right-of-way line. The location of city sidewalk more than one foot from the street right-of-way line shall be allowed only by approval of the common council. (MC#92)
  - (20) All sidewalks and curb and gutter shall be constructed to the line and grade as furnished by the city engineer. No

person thereafter shall raise or lower the surface of any sidewalk, crosswalk, or curb and gutter above or below the established grade for the same.

- (21) All sidewalks and curb and gutter shall be constructed under the supervision of the city engineer.
- (22) The sub-grade shall be formed by trenching or filling to the required elevation for the bottom of the concrete. All soft or unsuitable material shall be removed and replaced with suitable material. The sub-grade shall be thoroughly tamped or otherwise compacted to insure stability. In cuts the sub-grade shall be made sufficiently wide to permit placing of forms and performing required placing and finished work, and in fills the sub-grade shall be made at least one foot wider on each side than required for the section. The slope of the fill shall be not less than two feet horizontal to one foot vertical.

#### 6.03 PAYMENT OF COSTS OF ASSESSMENT

- (1) The property owner shall pay for the construction, reconstruction, or repair of sidewalk and curb and gutter, except as herein provided.
- (2) The city will furnish the necessary material for sub-grade free of charge to the contractor or property owner.
- (3) A 50 percent credit may be granted for the installation of new sidewalk and the repair or replacement of sidewalk if approval of the maintenance of way committee is obtained prior to the time the installation or repair is made. In order to obtain a 50 percent credit for sidewalk which had to be repaired because of tree root damage, the entire tree would have to be removed.
- (4) Whenever a new curb and gutter section is constructed, the city will pay one-third of the costs of such construction and the property owner two-thirds.
- (5) The property owner shall be required to pay two-thirds of the cost of removal, repair, or replacement of curb and gutter which has deteriorated from natural causes or settlement and the city shall pay one-third of such cost.
- (6) The city will pay the entire cost of the laying, relaying, or repairing of a sidewalk approach, from the curb line to the property line at a corner of a block. The city will likewise pay for the construction, reconstruction, or repairing of a curb and gutter at a corner of a block between the extreme of sidewalk approaches. (MC#198)
- (7) A 100 percent credit may be granted for the installation of new sidewalk if it is to be installed due to Section 6.04(1)(a), except 6.04(1)(a)(1). (MC#1012)

#### 6.04 PROCEDURE FOR CONSTRUCTION OR REPAIR (MC#456)

- (1) Sidewalk shall be installed:
  - (a) At the time when adjacent street has curb and gutter installed, if the street has existing curb and gutter, sidewalk shall be installed when the street is reconstructed, rehabilitated, or overlaid if any of the following conditions are met and if it is approved by the common council:
    - (1) Abutting any lot zoned R-3, B-1, B-2, B-3, and conditional use permitted for commercial (only when adjacent to a commercial zone), public, and semi-public uses as defined by Section 11.05 of the zoning ordinance.
    - (2) On any street that is identified to be a main school route on the official school route map adopted by the common council.
    - (3) On any street that is classified as an arterial or collector street on the Wisconsin Rapids Urban Area Federal Aid System map.
    - (4) On any street that is:
      - (a) 36 feet wide or less and has a traffic volume in excess of 1,000 vehicles per day
      - (b) 40 feet wide and has a traffic volume in excess of 1,500 vehicles per day
      - (c) 44 feet wide and has a traffic volume in excess of 2,000 vehicles per day
      - (d) 48 feet wide and has a traffic volume in excess of 2,500 vehicles per day
      - (e) 52 feet wide and has a traffic volume in excess of 3,000 vehicles per day
    - (5) On any block of a street which has 50 percent of the sidewalk in that block existing.
  - (b) At the time when the main building on the lot is initially constructed, or when it is entirely reconstructed or replaced. Prior to issuance of a building permit for such construction, reconstruction, or replacement, the property owner shall execute and file with the city engineering department a written document certifying installation of a public sidewalk abutting such lot or execute a petition to the city for such installation and the levy of special assessments in connection therewith and waiving notice of hearing pursuant to Section 66.80(18), Wisconsin Statutes. And when the following conditions are met:
    - (1) Abutting any lot zoned R-3, B-1, B-2, B-3, and conditional use permitted for commercial (only

when adjacent to a commercial zone), public, and semi-public uses as defined by Chapter 11, the zoning ordinance.

- (c) Whenever the common council shall determine it necessary for public safety and welfare that a sidewalk be installed. Said common council shall declare by resolution and shall order such sidewalk to be laid. The resolution shall prescribe the street upon which such sidewalk is to be installed.
- (2) Sidewalk shall be repaired:
- (a) Whenever the city council shall determine it to be necessary for the benefit and use of the public that a sidewalk be laid, removed, replaced, or repaired on any public street, said city council shall so declare by resolution and shall order such sidewalk to be laid, removed, replaced, or repaired. The resolution shall prescribe the street upon which such sidewalk is required to be laid or repaired.
  - (b) It shall be the duty of the city clerk to serve a written notice or cause such notice to be served upon the owner of each lot or parcel of land in front of which such work shall have been ordered, and in case the owner or his agent cannot be found in the city, then by publishing in the official newspaper.
  - (c) Whenever any such owner shall neglect for a period of 20 days after such service to lay, remove, replace, or repair any such sidewalk, the city shall cause such work to be done at the expense of the owner, and the cost thereof shall be entered in the tax roll as a special tax against such property and the same shall be collected in all respects like other taxes upon real estate.
  - (d) When in the judgment of the city engineer, it is determined any sidewalk in front of any lot or parcel requires immediate repair for the safety of the public, the city engineer shall immediately repair or cause to be repaired, such sidewalk without notice, and charge the cost thereof to the owner of such lot or parcel of land, not to exceed \$100.00. All is in accordance with Section 66.615(3)(e) of the Wisconsin Statutes.
- (3) Sidewalk shall not be installed as follows: (MC#466)
- (a) On any street in the industrial park.

#### 6.05 CONTRACTOR'S BOND

Before any person, firm, or corporation shall be permitted to construct any sidewalk or curb and gutter, either by contract with the city or any property owner, such person, firm, or corporation shall enter into a good and sufficient bond to be approved by the city clerk providing that such person, firm, or corporation shall construct said sidewalks or curb and gutter in accordance with the ordinances of the city and shall conform to the directions of the city engineer, and shall repair, and if necessary, entirely reconstruct any sidewalk or curb and gutter in which settlement, cracks, or any other defects, due to bad materials and workmanship, shall appear during a period of three years from and after the date of their completion. Effective January 1, 1996, such bond shall be in the sum of \$3,000.00 and shall run to the City of Wisconsin Rapids and be for the benefit of said city and of all persons for whom sidewalks and curb and gutter shall be constructed by the principal in the said bond, and suit may be brought on the same by said city. (MC#700)

#### 6.06 LICENSE

- (1) It shall be unlawful for any person, firm, or corporation to lay, remove, replace, or repair any sidewalk or curb and gutter upon or within any public street without first having applied for and obtained a license therefore, from the City of Wisconsin Rapids. No license shall be granted to any such person, firm, or corporation until the issuance of the same shall have been approved by the city engineer. The fee for every license so granted shall be in the sum of \$50.00 to be paid to the city treasurer of the City of Wisconsin Rapids by the party, or parties, to whom it is granted before issuance of said license, and such license shall expire on the 31st day of December, first following the date of issue. (MC#1005)
- (2) All sidewalk contractors must provide themselves with a stamp made with raised letters and figures. All cement work done by the contractor shall be stamped at each end of each section of work, giving name of contractor and year of completion in clearly legible figures.

#### 6.07 PERMIT AND FEE

- (1) A permit to lay, replace, or repair a sidewalk or curb and gutter shall be issued to any person, firm, or corporation having a proper license and bond, as heretofore provided, upon application to the city engineer. A fee of \$40.00 shall be paid to the city treasurer at the office of code enforcement for each permit so issued except that the fee shall be \$80.00 if the application for such issued permit is not made prior to the construction or rebuilding of any sidewalk, curb and gutter, or driveway approach or if the city has to restake line and grade. (MC#1005)
- (2) Each permit so issued shall be for continuous sidewalk or curb and gutter, within or between intersection streets in

front of property owned by one person, firm, or corporation.

- (3) No permit shall be required when the cost of the rebuilding or repairing of a sidewalk or a curb and gutter is \$75.00 or less.
- (4) A permit shall be issued for a period of 60 days. If the work is not on time, a new permit shall be required.
- (5) A permit is not required for work done under the city's annual curb and gutter and sidewalk contract.

#### 6.08 CONSTRUCTION OF OWN SIDEWALK

This ordinance shall not be construed as prohibiting any person desiring to lay, remove, replace, or repair his own sidewalk, or driveway approach from so doing without obtaining the license or furnishing the bond as previously provided by this ordinance providing he shall have obtained the permit as required by this section and providing he shall construct them in every way according to this ordinance and specifications.

#### 6.09 REVOCATION OF LICENSE

Upon the recommendation of the city engineer, the city council may revoke the license or permit of any contractor operating under the provisions of this ordinance, who after due warning, violated any of the provisions of this ordinance. (86)

#### 6.10 CURB AND GUTTER INSTALLATION

- (1) Curb and gutter shall first be installed before any street is surfaced or resurfaced, except where it is planned to install sewer and water.
- (2) Temporary surfacing only may be placed upon a street or alley without first installing curb and gutter in such streets wherein sewer and water installation is planned.

#### 6.11 COSTS OF TEMPORARY AND PERMANENT SURFACING

- (1) If any street is torn up because of installation of improvements requested by the property owners, 100 percent of the actual cost of reconstruction shall be assessed to the property owner unless the common council shall determine that a lesser sum or percentage shall be paid. If any street is torn up because of the installation of improvements not requested by the property owner, or in need of reconstruction, then the cost of reconstruction shall be charged as provided by the resolution of charges in effect at the commencement of the project, with the property owner given credit for the unused life of the previous surfacing.
  - (a) The life of permanent surfacing shall be 20 years on streets built during or after 1968. Streets built prior to 1968 shall have a life of 10 years.
  - (b) The life of overlay on a permanent surfacing shall be six years.
  - (c) The life of temporary surfacing shall be three years.
  - (d) A hot mix permanent surfacing shall be a layer of 2.5 inches thick to 4.5 inches thick upon seven inches to 12 inches of crushed aggregate base course respectively. (MC#700)
  - (e) An overlay shall be a layer two inches thick upon existing permanent surfacing.
  - (f) A temporary hot or cold mix surfacing shall be a layer 1.5 inches thick on an existing base.
- (2) Permanent Surfacing. If 20 or more years have elapsed since the last permanent surfacing, the property owner shall pay the full cost of new surfacing. If less than 20 years, the property owner will be assessed at the proportion of the age of permanent surfacing in years, divided by 20 years, times the full cost.
- (3) Overlay Surfacing. If six or more years have elapsed since the last overlay surfacing, the property owner will be assessed at the proportion of the age of the overlay surfacing in years divided by six years, times the full cost.
- (4) Temporary Surfacing. If three or more years have elapsed since the last temporary surfacing, the property owner shall pay the full cost of the new surfacing. If less than three years, the property owner will be assessed at the proportion of the age of the temporary surfacing in years, divided by three, times the full cost. (MC#298)

#### 6.12 OBSTRUCTION OF SIDEWALK

- (1) It shall be unlawful to obstruct any of the streets, alleys, or sidewalks in the City of Wisconsin Rapids by placing thereon or leaving thereon any objects, merchandise, garbage, rubbish, or other articles. (190)
- (2) This section shall not apply to lawfully parked motor vehicles, motor bicycles, or horse drawn vehicles.
- (3) This section shall not apply to moving of buildings on public streets or alleys.
- (4) A portion of the sidewalk area may be used for street bazaars or open air merchandise sales for a period not to exceed one day, and not later than 9:00 p.m. or before 7:00 a.m., when application has been made to the council by a duly constituted organization and approved by the council. Liability insurance must accompany such

application in an amount and form to satisfy the council before such permission may be granted. (190)

#### 6.13 LITTERING (MC #1052)

- (1) Definitions. The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
  - (a) Litter means garbage, refuse, rubbish, and all other waste material which is thrown or deposited as prohibited in this section, and tends to create a danger to public health, safety, and welfare.
  - (b) Rubbish means nonputrescible and solid wastes consisting of both combustible and noncombustible wastes, such as circulars, leaflets, pamphlets, wrappers, handbills, newspapers, and all and any other printed or non-printed paper material, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, and other similar materials.
- (2) Public Place. No person shall throw, deposit, or cause to be placed, litter upon any street, sidewalk, alley, public parking lot, park, or other public place within the city.
- (3) Placement in Containers. Persons placing litter in refuse or garbage containers shall do so in a manner and in such containers as will prevent it from being carried or deposited by the elements upon any street, sidewalk, alley, public parking lot, park or other public place, or upon private property.
- (4) Sweeping into Gutters. No person shall sweep into or deposit in any gutter, street, alley, or public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalks, entrance walks, parking lots, and parking areas in front of or upon their premises free of litter.
- (5) Public Waters. No person shall throw or deposit litter in any fountain, pond, wading pool, river, by or any other body of water in a public place or elsewhere within the city.
- (6) Occupied Private Property. No person shall throw or deposit litter on any occupied private property within the city, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized refuse or garbage containers for collection such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk, alley, or other public area or any private property.
- (7) Maintenance of Premises. The owners or person in control of any private property shall at all times maintain the premises free to litter; provided, however, that this section shall not prohibit the storage of litter in authorized refuse or garbage containers for collection.
- (8) Vacant Lots. No person shall throw or deposit litter on any open or vacant private property within the city, whether owned by such person or not.

#### 6.14 CLEANING SIDEWALKS

It shall be the duty of the property owner to keep the sidewalks adjoining his property free and clear of dirt and refuse.

#### 6.15 SNOW REMOVAL

It shall be the property owner's duty to remove snow from sidewalks that are located in the street right-of-way which abuts an owner's property within 24 hours from the end of each snowfall. (MC#109)

#### 6.16 CHARGES FOR SNOW REMOVAL

Should the property owner fail to do the necessary clearing of snow or sanding within 24 hours from the end of the snowfall or icing conditions, the street superintendent shall order his crews to do this work, and the actual costs of the same, including administrative, labor, overhead, bookkeeping, mileage, and incidentals, shall be charged to the property owner and shall be added to his tax bill as a special tax. (MC#224)

#### 6.17 DEPOSITING SNOW REMOVAL

It shall be unlawful for any person, persons, or corporation to push or deposit snow from their personal driveway or parking area into public streets or alleys of the City of Wisconsin Rapids. The City of Wisconsin Rapids may cause such deposits of snow to be removed from the street or alley and the cost of such removal shall be charged to such property owners. (170-B)

#### 6.18 TREES AND FOLIAGE

Any person or persons owning land abutting upon any street in the City of Wisconsin Rapids, upon which there is situated trees, branches, shrubbery, or foliage extending over and above the sidewalk or paths used by pedestrians shall keep said limbs, branches, and foliage cut so as to leave a free, clear, and unobstructed passageway for a distance of at least eight

feet above such sidewalk or path. (133)

#### 6.19 USE OF STREETS: PARADES

- (1) Permit Required. It shall be unlawful for any person, firm, association, group of persons, or corporation to use or occupy any street within the City of Wisconsin Rapids for the purpose of holding thereon a parade, procession, or other similar use without first obtaining a permit therefore from the police chief as provided in this ordinance, except such processions which are a part of a religious function.
- (2) Application for Permit. An application for a permit to use any street in the City of Wisconsin Rapids for the purposes described in subsection (1) of this section shall be made to the police chief not less than seven days prior to the date for such proposed use. Such application shall be on such forms and shall contain such information as may be necessary to show the nature of the proposed use, the number of persons involved, the purpose of the person or organization sponsoring the same, and such other information as may be deemed necessary and proper by the police chief. For good cause shown, the police chief may shorten the period of time during which said application must be filed.
- (3) Scope of Permit. The police chief shall make a determination that such proposed use will not be harmful, dangerous, or injurious to public health or safety, either to persons or property prior to the issuance of any permit under this section. Such permit shall prescribe the use which is to be made of any such street or streets, and any change from the conditions of said permit, without prior approval by the police chief shall be a violation of this section. If any such use shall necessitate the closing of any street, or shall require the closing of parking meters, then the additional approval of the maintenance of way committee shall be a condition precedent to the issuance of such permit. (MC#19)

#### 6.20 CONTENTS OF PETITIONS AND RESOLUTIONS

All petitions requesting, and all resolutions ordering curb and/or sidewalks, and/or street surfacing shall include the following provision: "The front foot charge shall be figured on the rate set by resolution in effect on the date that this project of curb and gutter, and/or sidewalks, and/or street surfacing is installed. Each block shall be considered a separate project." (MC#85)

#### 6.21 BOND, PLANS, AND SPECIFICATIONS

Developers who desire to install curb, gutter, and street surfacing shall provide plans and specifications to the engineering department and shall post a bond in the amount of 100 percent of the project cost. The developer shall also file a permit with the engineering department of the City of Wisconsin Rapids. Said permit shall have been signed by the chairman of the maintenance of way committee and the chairman of the public works committee at a regular meeting of each respective committee and by the Wisconsin Rapids city engineer.

Failure to comply with the accepted standards of design and construction of the City of Wisconsin Rapids and/or with the conditions set by the maintenance of way or public works committees and approved by the common council shall result in the forfeiture of the bond posted.

An agreement on forms furnished by the city shall be executed by the developer prior to commencement of the work. Said agreement shall specifically outline the work to be completed by the developer. (MC#260)

#### 6.22 DRIVEWAY APPROACHES (MC#671)

- (1) All driveway approaches hereafter constructed shall be constructed of portland cement concrete from back of the curb and gutter to the back of sidewalk. (MC#700)
- (2) Portland Cement Concrete Driveways
  - (a) The driveway approach shall only be constructed in accordance with line and grade provided by the engineering department.
  - (b) A sidewalk section shall be installed in the driveway approach in accordance with Section 6.01, including expansion joints on either side of sidewalk section.
  - (c) The driveway approach shall be a minimum of six inches in thickness.
- (3) "Cutting in" new driveways in existing curb and gutter.
  - (a) Permit must be taken out in accordance with Section 6.07.
  - (b) A saw cut of a minimum of one inch in depth must be made as close to the curb head as possible. The curb head may then be broken off.
  - (c) The curb must be constructed as an integral part of the driveway approach to maintain drainage of the

curb and gutter.

- (d) The driveway approach of portland cement concrete must be installed at the time of "cutting in" from flow line of the curb to the lot line.
- (4) Driveway tapers shall be installed beginning at the front of the sidewalk widening three feet to five feet at the back of the curb and gutter.

#### 6.23 ASPHALT PAVING (MC#846)

- (1) Contractor's Bond. Before any person, firm, or corporation shall be permitted to pave asphalt, either by contract with the city or any property owner, such person, firm, or corporation shall enter into a good and sufficient bond to be approved by the city clerk providing that such person, firm, or corporation shall construct said asphalt paving in accordance with the ordinances of the city and shall conform to the directions of the city engineer, and shall repair, and if necessary, entirely reconstruct any asphalt paving in which settlement, cracks, or any other defects, due to bad materials and workmanship, shall appear during a period of three years from and after the date of their completion. The bond shall be in the sum of \$3,000.00 and shall run to the City of Wisconsin Rapids and be for the benefit of said city and of all persons for whom asphalt paving shall be constructed by the principal in the said bond, and suit may be brought on the same by said city.
- (2) License. It shall be unlawful for any person, firm, or corporation to lay, remove, replace, or repair any asphalt paving within the city limits of the City of Wisconsin Rapids without first having applied for and obtained a license therefore, from the City of Wisconsin Rapids. No license shall be granted to any such person, firm, or corporation until the issuance of the same shall have been approved by the city engineer. The fee for every license so granted shall be in the sum of \$50.00 to be paid to the city treasurer of the City of Wisconsin Rapids by the party, or parties, to whom it is granted before issuance of said license, and such license shall expire on the 31st day of December, first following the date of issue. (MC#1005)
- (3) Permit and Fee.
  - (a) A permit for asphalt paving shall be issued to any person, firm, or corporation having a proper license and bond, as heretofore provided, upon application to the city engineer. A fee of \$50.00 shall be paid to the city treasurer at the office of the city engineer for each permit so issued except that the fee shall be \$100.00 if the application for such issued permit is not made prior to the asphalt paving or if the city has to restake line and grade. (MC#1005)
  - (b) Each permit so issued shall be for continuous asphalt paving, within or between intersection streets in front of property owned by one person, firm, or corporation.
  - (c) No permit shall be required when the cost of the asphalt paving is \$75.00 or less.
  - (d) A permit shall be issued for a period of 60 days. If the work is not on time, a new permit shall be required.
  - (e) A permit is not required for work done under the City's annual asphalt paving contract.
- (4) Revocation of License. Upon the recommendation of the city engineer, the city council may revoke the license or permit of any contractor operating under the provisions of this ordinance, who after due warning, violated any of the provisions of this ordinance.

#### 6.24 LOCATING LOT CORNERS (MC#1005)

A request to locate lot corners on a property to be done by Engineer Department personnel will be done when personnel is available upon application to the city engineer. A fee of \$50.00 shall be paid to the city treasurer at the office of the city engineer for each parcel of property to have the lot corners to be located. There shall not be a refund even if Engineer Department personnel are unable to locate even one lot corner.

#### 6.25 RIGHT-OF-WAY MANAGEMENT (MC#1062)

Findings and Purpose. The city finds that the passage of the Telecommunications Act of 1996 has resulted in increased use of the public rights-of-way and increased costs to the taxpayers of the city and that these costs are likely to continue into the foreseeable future.

- (1) The city finds that excavation and occupancy of the public rights-of-way causes direct and indirect costs to be borne by the city and its taxpayers, including but not limited to:
  - (a) Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
  - (b) Management costs associated with ongoing management activities necessitated by public right-of-way users.

- (c) Repair costs to the roadway associated with the actual excavation into the public right-of-way.
- (d) Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way.

In response to the foregoing facts, the city hereby enacts this ordinance relating to administration of and permits to excavate, obstruct and/or occupy the public rights-of-way, together with an ordinance making necessary revisions to other Code provisions. This ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

The city's authority to enact this ordinance is pursuant, but not limited to, the following federal and state authority: 47 U.S.C. 253(c); Section 62.11(5) Wisconsin Statutes, Section 66.045 Wisconsin Statutes, Section 66.048 Wisconsin Statutes, Section 86.16 Wisconsin Statutes, Section 182.017 Wisconsin Statutes, Section 196.58(1) Wisconsin Statutes, and Section 196.499(1) Wisconsin Statutes.

The purpose of this ordinance is to provide the city a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of costs. This ordinance provides for the health, safety and welfare of the residents of the city as they use the rights-of-way of the city, as well as to ensure the structural integrity of the public rights-of-way. The city desires to minimize and anticipate the number of excavations taking place thereon and to regulate the placement of facilities within the rights-of-way to ensure that they remain available for public services. The taxpayers of the city bear the financial burden for the upkeep of the rights-of-way. A primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by Persons who locate facilities therein.

Under this chapter, all persons who excavate, obstruct, and/or occupy the public rights-of-way will reimburse the city's administrative, ongoing management and degradation costs. Right-of-way users will bear a fair share of the financial responsibility for the integrity of the public rights-of-way.

(2) Definitions. The following definitions apply in this ordinance. References hereafter to "sections" are unless otherwise specified references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

- (a) Alternative Telecommunications Utility has the meaning in Section 196.01 of the Wisconsin Statutes.
- (b) Applicant means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.
- (c) City means the City of Wisconsin Rapids, Wisconsin, a Wisconsin municipal corporation.
- (d) Degradation means the accelerated depreciation of the right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.
- (e) Department means the engineering department of the city.
- (f) Department Inspector means any person authorized by the department to carry out inspections related to the provisions of this chapter.
- (g) Emergency means a condition that (1) poses a clear and immediate danger to health, safety and/or public welfare; or (2) requires immediate repair or replacement in order to restore service to a customer.
- (h) Excavate means to dig into or in any way remove or physically disturb or penetrate any part of the right-of-way.
- (i) Facilities means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.
- (j) In, when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.
- (k) Local Representative means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.
- (l) Obstruct means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- (m) Occupy means to dwell or reside above, on, in, or below the boundaries of the public rights-of-way.
- (n) Permittee means any person to whom a permit to excavate or occupy a right-of-way has been granted by the city under this chapter.
- (o) Person means, municipality, corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.
- (p) PSC means the Public Service Commission of the State of Wisconsin.

- (q) Public Utility has the meaning provided in Wisconsin Statutes 196.01(5).
- (r) Registrant means any person who has registered with the city (1) to have its facilities located in and right-of-way, or (2) to use or seek to occupy or use the right-of-way or any facilities in the right-of-way.
- (s) Repair means to perform construction work necessary to make the right-of-way useable for travel, according to department specifications, or to return facilities to an operable condition.
- (t) Repair Bond means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation repair work is completed in both a timely and quality manner, per department specifications.
- (u) Restore or Restoration means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation repair work is completed in both a timely and quality manner, per department specifications.
- (v) Restoration Bond means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed according to department specifications.
- (w) Right-of-Way means the surface and space above and below a public roadway, highway, street, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way.
- (x) Service or Utility Service includes municipal sewer and water services and also includes, except as provided herein, but is not limited to (1) those services provided by a public utility as defined in Wis. Stats. 196.01(5); (2) telecommunications, pipeline, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a district heating or cooling system; and (4) cable service as defined and regulated under 47 U.S.C. 521 through 573. Wireless telecommunications service and cellular mobile radio telecommunications (CMRS) services as defined by Section 332(d) of the Federal Communications Act of 1996 (47U.S.C. 332(d)(1)) are excluded, unless these services have a presence in the right-of-way.
- (y) Supplementary Application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.
- (z) Telecommunications Carrier has the meaning in Section 196.01 of the Wisconsin Statutes.
- (aa) Telecommunications Provider has the meaning in Section 196.01 of the Wisconsin Statutes.
- (ab) Telecommunications Rights-of Way User means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. This includes Telecommunications Providers, Utilities, ATUs, and Carriers. For purposes of this chapter, a cable television system defined and regulated under Wis. Stats. 66.082(2)(d), and telecommunication activities related to providing natural gas or electric energy services, and which are not offered for resale as telecommunications services, are not telecommunications right-of-way users.
- (ac) Telecommunications Service means the offering for sale or the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including the regulated sale of customer premises equipment. Telecommunications Service does not include cable television service, wireless service or broadcast service.
- (ad) Telecommunications Utility has the meaning in Section 196.01 of the Wisconsin Statutes.
- (ae) Unusable Facilities means facilities in the right-of-way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using them within the next twenty-four (24) months or a potential purchaser or user of the facilities.
- (3) Administration. The city engineer is responsible for the administration of the rights-of-way and the permits and ordinances related thereto.
- (4) Registration for Right-of-way Occupancy.
  - (a) Registration. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or any facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any right-of-way shall register with the department and pay the fee set forth in Section 1.06. Registration will consist of providing application information and paying a registration fee.

This section shall not apply to those persons exclusively utilizing facilities provided by another right-of-way user.
  - (b) Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the

department.

- (c) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance requiring persons to plant or maintain the tree lawn in the area of the right-of-way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this chapter.

(5) Registration Information.

- (a) Information Required. The information provided to the department at the time of registration shall include, but not be limited to:
  - (1) Each registrant's name, Diggers Hotline 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 contract the local representatives in an emergency shall be provided at the time of registration.
  - (3) A bond required: No person, firm or corporation shall do any excavating work in any street, alley, public thoroughfare or right of way, in the City of Wisconsin Rapids, or receive a permit or permits for such work until the bond hereinafter specified shall first have been executed, approved and filed. Such bond shall be executed to the City of Wisconsin Rapids; shall be in the amount of \$10,000, shall be executed by the principal therein and by two sureties, or by principal and a surety company authorized to do business in the State of Wisconsin; shall be conditioned that the principal therein will perform faithfully all work with due care and skill and in accordance with the law, ordinances, rules, and regulations governing the plumbing and excavating. (The bond shall provide that the person, firm, or corporation will indemnify the City of Wisconsin Rapids and save it harmless against all damages, costs, expenses, outlays and claims of every nature and kind arising out of any unskillfulness or negligence on such principal's part in connection with the excavating work). Such bond shall be approved as to form and sufficiency of the sureties by the city attorney and after such approval shall be filed with the city clerk. If the sureties on such bond or any of them shall become insolvent, or removed from the State of Wisconsin, the city may require a new bond, and in such event the principal therein shall not be permitted to do any such work until a new bond has been executed, approved and filed. No person, firm or corporation engaged in the process of excavating, desiring to do excavating work in the city of Wisconsin Rapids shall commence such work until the provisions of this ordinance have been complied with. In addition, such bond shall provide that the applicant will backfill and maintain any street, alley or public grounds in which he makes any openings or excavations as directed by and to the satisfaction of the city engineer (or his authorized agent) for a period of one year after initial backfilling. All blacktop or concrete roadways which have been opened must have a temporary blacktop surfacing placed thereon within 36 hours after the opening has been backfilled. The property owner shall pay the cost of restoring the permanent surface to the street, alley or public grounds. In the event that the time the backfilling of any ditches or excavations between the curb and the lot line is found defective within a period of one year after the date of completion, the city shall make or cause to be made the necessary repairs to curbs, sidewalks, driveways, etc. The applicant shall reimburse the city for all damages to any city property resulting from his work operations, regardless of whether such damage is done by himself, his agents, employees, or subcontractors.
  - (4) If the person is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wis. Stats. as recorded and certified to by the Secretary of State.
  - (5) A copy of the person's certificate of authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
  - (6) Execution of an indemnification agreement in a form prescribed by the department, which is consistent with, and shall not exceed the obligations provided in, Subsection (24) herein.
- (b) Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.

- (6) Registration Fee.
- (a) Registration Fee. The department shall establish the Registration Fee in an amount sufficient to recover the costs incurred by the city for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration. (The fee is \$50.00 based on one hour of clerical labor charge plus incidental labor charge. This rate would be reviewed on a yearly basis and set by the engineering department.)
- (b) Fee Computation. The city may recalculate, and by resolution, establish the registration fee.
- (7) Reporting Obligations. It is in the best interests of all affected parties to attempt to coordinate construction in the public right-of-way whenever it is reasonably possible. Therefore, periodic reporting by the registrant of known construction plans will be useful to achieve this objective.
- (a) Operations. Every registrant shall, at the time of registration and no later than January 1 of each year, file a construction and major maintenance plan with the department. The department shall make available at the time of registration, and on January 1 of each year the department's construction and major maintenance plan. The registrant's plan and the department's plan shall be submitted on a form prescribed by the department and shall contain the information determined by the department to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way. The plan shall include, but shall not be limited to, the following information:
- (1) The locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this section, a "Next-year Project"); and
  - (2) The tentative locations and estimated beginning and ending dates for all Projects contemplated for the two years following the next calendar year (in this section, a "Two-year Project").
  - (3) Digital files in DXF format for next-year and two-year Projects.
- The term "project" in this section shall include both next-year project and two-year projects.
- By March 1 of each year the department will have available for inspection in its office a composite list of all Projects of which the department has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.
- Thereafter, by April 1, each registrant may change any Project in its list of Next-year Project, and must notify the department of all such changes in said list. The department will make all such changes available for inspection in its office. Notwithstanding the foregoing, a registrant may at any time join in a Next-year Project of another registrant listed by the other registrant. (See Section 6.25(15), Joint Applications.)
- (b) Additional Next-year Projects. Notwithstanding the foregoing, the department may, for good cause shown, allow a registrant to submit additional next-year projects. Good cause includes, but is not limited to, the criteria set forth in Subsection (18) concerning the discretionary issuance of permits.
- (8) Excavation Permit Requirement.
- (a) Excavation permit required. Except as otherwise provided in this chapter or other chapters of the city code, no person shall excavate any right-of-way or place facilities in a right-of-way without first having obtained an excavation permit from the department.
- No person shall excavate the right-of-way or maintain an excavation in the right-of-way beyond the date or area specified in the permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit, pursuant to Section 6.25(16), and a new permit or permit extension is granted.
- (b) Permit Display. A copy of any permit issued under this chapter shall be made available at all times by the permittee at the indicated work site and shall be available for inspection by the department upon request.
- (9) Excavation Permit Application. Application for a permit shall be made to the department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
- (a) Registration with the department if required by this chapter;
  - (b) Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project, an erosion control plan, a traffic control plan and the exact location of all existing and proposed facilities;
  - (c) Payment of all money due to the city for:
    - (1) applicable permit fees and costs as set forth below;
    - (2) subject to section (e), unpaid fees or costs due for prior excavations; or
    - (3) subject to section (e) any loss, damage, or expense suffered by the city because of applicant's

prior excavations of the rights-of-way or any emergency actions taken by the city.

- (d) When an excavation permit is requested for purposes of installing additional facilities, and the posting of a restoration bond for the additional facilities is insufficient, the posting of an additional or larger restoration bond for the additional facilities may be required.
  - (e) The department shall not deny a registrant an excavation permit because of a dispute between the city and the registrant, related to Subsection (9)(c)(2) and/or (3) if:
    - (1) the dispute has been adjudicated in favor of the registrant;
    - (2) the dispute is the subject of an appeal filed by the registrant and no decision in the matter has at yet been rendered.
- (10) Excavation Permit Fee.
- (a) Fee Calculation. The excavation fee shall be established by the department in an amount sufficient to recover the costs incurred by the city. This fee shall recover costs incurred by the city for each of the following categories as provided herein:
    - (1) Administrative: The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs. The fee is \$50.00 based on one hour of clerical labor charge plus incidental labor charge. This rate would be reviewed on a yearly basis and set by the engineering department.
    - (2) Repair: No repair fee shall be collected by the city, however the Permittee shall be required to repair the public right-of-way to department specifications, subject to inspection and acceptance by the department, as per Subsection (11), and to pay a degradation fee.
    - (3) Degradation: The general formula for computing the degradation fee shall be the cost per square foot for permanent, overlay or temporary street surfacing multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch.

The area of the patch shall be calculated by adding two feet to each side of the actual street cut.

The degradation fee = cost per square foot for permanent, overlay, or temporary street surfacing x depreciation rate x area of patch.

The cost per square foot for street surfacing = the street surfacing type and rate in effect at the time of the excavation divided by 20% then divided by 36 feet.

The depreciation rate = the age of street surfacing divided by life of the appropriate street surfacing as set by the municipal code. The life of permanent street surfacing, overlay street surfacing and temporary street surfacing as set by 6.11 of the municipal code as 20 years, 6 years and 3 years respectively.

The total excavation permit fee shall be calculated as follows:

Total Excavation Permit Fee = Administrative Cost + Degradation Fee.
  - (b) City Exemption. Notwithstanding Subd. a(c), the city and its contractors shall not pay degradation fees.
  - (c) Payment of Permit Fees. No excavation permit shall be issued without payment of applicable fees [unless the applicant shall agree to pay such fees within thirty (30) days of billing therefore].
  - (d) Non refundable. Permit fees paid for a permit that the department has revoked for a breach as stated in Subsection (18) are not refundable.
- (11) Right-of-way Repair.
- (a) Timing. The work to be done under the excavation permit, and the repair of the right-of-way as required herein, must be completed within one week after the completion of the project, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Subsection (17).
    - (1) Street surface shall be backfilled with road base meeting city specifications from bottom of the road base to top of paved surface until permanent repairs are made. The street will be patched with same material and depth as the surrounding pavement structure in accordance with chapter 6 of the Municipal Code. The Permittee is responsible for the maintenance of the temporary patch until permanent repairs are made.
    - (2) Concrete curb & gutter and sidewalk will be replaced in accordance with Chapter 6 of the Municipal Code.
    - (3) Grassed areas are to be backfilled with minimum of four inches (4") of topsoil, seeded with an approved lawn type seed and mulched with an approved product.
  - (b) Repair. In addition to repairing its own work, the Permittee must repair the general area of the work, and

the surrounding areas, including the paving and its foundations, to the specifications of the department. The department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the department.

A permittee may request to have the city repair the right-of-way.

- (1) City Repair. If the Permittee requests to have the city repair the right-of-way, the city may accept or reject the request at its sole option. If the city accepts, the Permittee shall be billed for the city's costs, and shall pay the amount thereof within thirty (30) days of billing.
  - (2) Permittee Repair. If the Permittee chooses to repair the right-of-way, it shall, at the time of application for an excavation permit, post a repair bond in an amount determined by the department to be sufficient to cover the cost of repairing the right-of-way to department specifications. If, thirty-six (36) months after completion of the repair of the right-of-way, the department determines that the right-of-way has been properly repaired, the surety on the repair bond shall be released.
- (c) Standards. The permittee shall perform repairs according to the specifications of the department and/or in the conditions specified in the permit. The department shall have the authority to prescribe the manner and extent of the repair, and may do so in written procedures of general application or on a case-by-case basis.
  - (d) Guarantees. The permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion, except for organic material which shall be maintained for twelve (12) months. During this period it shall, upon notification from the department, correct all repair work to the extent necessary, using the method required by the department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Subsection (17).
  - (e) Failure to Repair. If the permittee fails to repair the right-of-way in the manner and to the condition required by the department, or fails to satisfactorily and timely complete all repair required by the department, the department at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of repairing the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the repair bond.
  - (f) Erosion Control. The permittee is responsible to install and maintain erosion control devices as per the approved erosion control plan that was submitted with the excavation permit.
  - (g) Traffic Control. The permittee is responsible to install and maintain traffic control devices as per the approved traffic control plan in accordance with Wisconsin Manual of Uniform Traffic Control Devices that was submitted with the excavation permit.
- (12) Restoration in Lieu of Repair and Degradation. The permittee may elect to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. If restoration is elected, the department shall specify the area to be restored, and the methods and materials to be used for the restoration. The Permittee shall then also comply with the preceding Subsection (11), Subd. a through e as applied to restoration instead of repair.
- (13) Inspection.
- (a) Notice of Completion. When the work under any permit hereunder is completed, the Permittee shall notify the department.
  - (b) Site Inspection. Permittee shall make the work site available to the department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
  - (c) Authority of department. At the time of inspection, the city may order the immediate cessation of any work which poses a threat to the life, health, safety or well being of the public. The city may issue an order to the registrant for any work that does not conform to the applicable standards, conditions and codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the department that the violation has been corrected. If such proof has not been presented within the required time, the department may revoke the permit pursuant to Subsection. (18).
- (14) Ongoing Management Fees.
- (a) Fee Basis. Fees shall reflect the ongoing or long-term costs to the city of managing access to the right-of-

way. These costs are exclusive of Administrative costs collected under Excavation Permit Fees. Fees shall be initially set, and may be annually re-computed, to recover the costs include, but are not limited to, inventory maintenance, facility tracking, GIS, tree trimming, grass mowing, right-of-way maintenance, location marking and general inquires related to public right-of-way users. The fee shall be based on the number of feet of right-of-way occupancy by a Telecommunications Right-of-Way User. Utilities and companies that have a franchise agreement with the city are exempt from this fee.

The per foot management fee shall be calculated as follows:

Annual management fee per foot = Total annual management cost / Total ROW occupancy feet.

- (b) Payment of Fees. Ongoing management fee rate is \$0.22/ft and shall be subject to adjustment on an annual basis and correction at the conclusion of the calendar year. Such fees shall be paid for all and any part of a calendar year, prorated on a daily basis, during any time period in which the said Person:
  - (1) Uses or occupies the right-of-way to furnish Telecommunications Service, or
  - (2) Places, maintains or uses the Person's wires, mains, pipes, or any other facilities in the right-of-way.
- (15) Joint Applications.
  - (a) Joint Application. Registrants may jointly apply for permits to excavate the right-of-way at the same place and time.
  - (b) With City Projects. Registrants who join in a scheduled excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the degradation portion of the excavation permit fee.
  - (c) Shared Fees. Registrants who apply for permits for the same excavation, which the Department does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- (16) Supplementary Applications.
  - (a) Limitations on Area. An excavation permit is valid only for the area of the right-of-way specified in the permit. No Permittee may perform any work or excavate 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 excavated must, before working in that greater area (1) make application for a permit extension and pay any additional fees required thereby, and (2) be granted a new permit or permit extension.
  - (b) Limitations on Dates. An excavation 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.
  - (c) Fees for Supplementary Applications. A permittee shall pay administrative costs for any additional permits.
- (17) Other Obligations.
  - (a) Compliance with Other Laws. Obtaining a permit to excavate and/or occupy the right-of-way does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state, or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
  - (b) Prohibited Work. Except in an emergency, or with the approval of the department, no right-of-way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (18) Revocations, Suspensions, Refusals to Issue or Extend Permits.
  - (a) Grounds. The department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:
    - (1) The applicant or Permittee is required by Subsection. (4) to be registered and has not done so;
    - (2) The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan required under Subsection (7); which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
    - (3) Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
    - (4) Misrepresentation of any fact by the applicant or Permittee;

- (5) Failure of the applicant or Permittee to maintain required bonds and/or insurance;
  - (6) Failure of the applicant or Permittee to complete work in a timely manner;
  - (7) The proposed activity is contrary to the public health, safety or welfare;
  - (8) The extent of which right-of-way space where the permit is sought is available;
  - (9) The competing demands for the particular space in the right-of-way;
  - (10) The availability of other locations in the right-of-way or in other rights-of-way for the facilities in the right-of-way;
  - (11) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
  - (12) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; or
  - (13) The applicant or Permittee is otherwise not in full compliance with the requirements of this chapter or state or federal law.
- (b) Discretionary Issuance. Notwithstanding Subd. 1 (b), the department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or city ordinance or an order of a court or administrative agency.
  - (c) Appeals. Any person aggrieved by a decision of the department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Public Works Committee. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Common Council may affirm, reverse or modify the decision of the department.
- (19) Work done Without a Permit.
- (a) Emergency Situations. Each registrant shall immediately notify the city by verbal notice on an emergency phone number or fax notification provided by the city of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this chapter.
 

If the city becomes aware of an emergency regarding a registrant's facilities, the department may 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 protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
  - (b) Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently obtain a permit, and shall in addition to any penalties prescribed by Ordinance, pay double the normal fee for said permit, pay double all the other fees required by this chapter or other chapters of the city Code, deposit with the department the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.
- (20) Supplementary Notification. If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the department of the accurate information as soon as this information is known.
- (21) Location of Facilities.
- (a) Undergrounding. Under conformity with local, state and federal law, unless existing aboveground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
  - (b) Corridors. The department may assign specific corridors within the right-of-way, consistent with Wisconsin Public Service Commission standards. All excavation or other permits issued by the department involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Wisconsin Public Service Commission's corridor selection standards.
  - (c) Limitations of Space. The department may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the right-of-way. In making such decisions, the department shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect the public, health, safety or welfare.
  - (d) As Constructed Plans. Permittee shall provide the department as constructed plans on electronic files in

the DXF format within 30 days after the completion of the installation of their facilities. A \$100 fee will be charged in advance which would be refunded when the as constructed electronic plans are provided. The as constructed plans shall show the location of the permittee's facilities including the depth from a known reference. Failure to provide, as constructed plans in the electronic DXF format will cause the permittee to be assessed the actual cost for the department to prepare these files. Failure to provide as constructed plans may result in revocation of the permittee's registration. (MC#1107)

- (e) All utilities located in the public right-of-way that are 36" or less in height and within 5' of curb and gutter shall be marked by the utility owner by installing a 6' reflectorized identity marker at the installation. (MC #1093)
- (22) Relocation of Facilities. Except as prohibited by State or Federal law, a Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the department requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The department may make such request to prevent interference by the Company's facilities with (I) a present or future city use of the right-of-way, (II) a public improvement undertaken by the city, (III) an economic development project in which the city has an interest or investment, (IV) when the public health, safety and welfare require it, (V) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person thereof.
- (23) Interference with Other Facilities during Municipal Construction. When the city performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the city shall notify the local representative. The registrant shall meet with the city's representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within 72-hours, unless the city agrees to a longer period.

In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the city may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days.
- (24) Indemnification.
  - (a) Indemnification. Permittee expressly acknowledges and agrees, by acceptance of the permit, to indemnify, defend, and hold harmless the city, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the city or its agents or employees for damages because of bodily injury, including death at any time resulting there from, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Permittee's acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the city or its agents or employees.
- (25) Abandoned Facilities.
  - (a) Indemnification. A registrant who has determined to discontinue its operations in the city must either:
    - (1) Provide information satisfactory to the department that the registrant's obligations for its facilities under this chapter have been lawfully assumed by another registrant; or
    - (2) Submit to the department a proposal and instruments for dedication of its facilities to the city. If a registrant proceeds under this clause, the city may, as its options:
      - (a) accept the dedication for all or a portion of the facilities; or
      - (b) require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or
      - (c) require the registrant to post a bond or provide payment sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the facilities.

However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the department waives this requirement.
  - (b) Public Utilities. This section shall not apply to a public utility as defined by WI Stats. 196.01(5).
- (26) Reservation of Regulatory and Police Powers. The city, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under this chapter does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter granted to the city under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the Permittee; and

the Permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved by the city, shall be in full force and effect and subject to the exercise are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the city pursuant to such powers.

- (27) Severability. If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

#### 6.26 ENVIRONMENTAL TESTING WELLS IN THE RIGHT-OF-WAY (MC#1005)

A \$200.00 permit fee is required to be submitted with an application. An additional \$100.00 charge will be assessed per well if the City of Wisconsin Rapids engineering department needs to determine the coordinates of each well.

#### 6.27 Sidewalk Café (MC#1136)

- (1) Purpose. To further encourage the revitalization of the downtown and other areas of the City, including the development of social and economic activity, the City Council finds and determines:
- (a) That there exists a need for outdoor eating facilities in certain areas of the City to provide a unique environment for relaxation, social interaction, and food consumption.
  - (b) That sidewalk cafés will permit enhanced use of the available public rights-of-way, will complement restaurants operating from fixed premises, and will promote economic activity in the area.
  - (c) That the existence of sidewalk cafés encourages additional pedestrian traffic but their presence may impede the free and safe flow of pedestrians. Therefore, a need exists for regulations and standards for the existence and operation of sidewalk cafés to ensure a safe environment.
  - (d) That the establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect the public health safety and welfare.
- (2) Definitions. The following words, terms and phrases, when used in this division, shall have the meanings given in this section, except where the context clearly indicates a different meaning.
- (a) Central Business District, means the portion of the City that is zoned B-1, Central Commercial District as defined by the City of Wisconsin Rapids Zoning Ordinance.
  - (b) Initial application, means the first sidewalk café permit applied for by an establishment's owner or licensee.
  - (c) Parking space deck, means a temporary structure placed within the right-of-way, generally existing parking spaces, for the purpose of expanding the available area for a sidewalk café.
  - (d) Principal restaurant, means the restaurant which is applying to expand with a sidewalk café.
  - (e) Renewal permit, means a permit that is applied for by January 1<sup>st</sup> of the year by a currently valid sidewalk café permit holder.
  - (f) Restaurant, means an establishment requiring a State of Wisconsin restaurant license and where a minimum of 51% of the gross sales come from the sale of food and non-alcoholic beverages; or, has the meaning provided in Wis. Stat. § 254.61 (5).
  - (g) Sidewalk, has the meaning provided in Wis. Stat. § 340.01(58).
  - (h) Sidewalk Café, means any group of tables, chairs, benches, barriers or partitions, trash containers and suitable decorative devices maintained upon any part of the public right-of-way for use by an establishment in the sale to the public of food, refreshments, and beverages of all kinds.
- (3) Location. Sidewalk cafés may be permitted on public sidewalks and parking space decks within the Central Business District only and may be located only on that portion of the public sidewalk or parking space deck that is directly adjacent to the building, or portion of the building, where the permit holder's restaurant business is located, and shall not be in conflict with zoning requirements.
- (4) Permit Required. No person shall sell or offer to sell any food and/or drink at a sidewalk café unless a permit for the sidewalk café has been issued by the City Clerk under this division.
- (a) An applicant for a permit under this division shall file an application form and the permit fee with the City Clerk, who shall provide the application form. The application shall be signed by the applicant and, if the restaurant is a tenant, by the applicant's landlord. The initial application shall be accompanied by a scale

drawing of the site requested to be used as a sidewalk café, showing the location of all trees, poles, furniture, equipment, fixed barriers and other items that will be located:

- (1) In the sidewalk café
  - (2) Between the sidewalk café and the street curbing or, if utilized, parking space deck; and
  - (3) Within ten feet beyond each end of the sidewalk café area
- (b) Additional items that shall be submitted at the time of application include:
- (1) Photographs, pictures from a sales catalog or detailed drawings of the furniture and equipment proposed for use, with dimensions and colors;
  - (2) Proof of a valid restaurant license;
  - (3) Proof of the required insurance; and
  - (4) Details for a sandwich board sign, if one is desired.
- (c) If alcohol beverages are to be sold or served at the sidewalk café, the applicant shall apply for an expansion of the alcohol license for the principal restaurant to cover the sidewalk café area where alcohol beverages will be sold, served or consumed. Additional regulations are located in Section 50-519.
- (d) Initial applications shall be reviewed by the Planning and Economic Development Director. The Director shall review the design, type of furniture, furnishings and equipment proposed by the applicant and determine whether any of it detracts from the aesthetics of the area surrounding the proposed sidewalk café, and whether the area proposed is suitable for the sidewalk café. After the review of the Planning and Economic Development Director the application shall be submitted to the Finance and Property Committee for their review and approval. After approval by the Finance and Property Committee a permit may be issued by the City Clerk. If the application is denied by the Finance and Property Committee the applicant may appeal the decision to the full city council.
- (5) Permit Fee and Duration. The permit is good from January 1 or thereafter when the permit is issued, and shall expire on December 31 following its issuance. The annual fee for a sidewalk café permit shall be as set forth by the city council, and shall be paid to the city clerk at the time of application submission. Sidewalk cafés may generally only be in place from May 1 to November 1. Earlier setup is permitted with the permission of the Planning and Economic Development Director in the event of early spring weather.
- (6) Renewal Permit. An application for a renewal permit which involves changes to the location of the sidewalk café or to the furniture, furnishings or equipment, shall be treated as an initial application. An application for a renewal permit with no changes from the previous permit and the permit holder has not been cited or convicted of a permit violation or liquor license violation relating to the sidewalk café, does not require the review and approval of the Finance and Property Committee. After the review of the Planning and Economic Development Director a permit may be issued by the City Clerk.
- (7) Revocation, Suspension, Nonrenewal. In addition to any other penalty provided under this section, any sidewalk café permit issued hereunder may, after notice and hearing before the Finance and Property Committee, be suspended for a specific period of time, or not renewed or revoked, for violation of any provisions of this division or any other law, ordinance or regulation which is substantially related to the permit activity.
- (8) Insurance and Indemnification. No applicant shall be issued a sidewalk café permit unless proof of the following insurance, in amounts not less than stated and covering the sidewalk café area, is provided:
- (a) Commercial General Liability: \$1,000,000 per occurrence/general aggregate.
  - (b) Workers Compensation: statutory.
  - (c) Employers Liability: \$300,000 disease policy limit; \$100,000 per employee.
- The permit holder shall also provide, upon request, policies and endorsements. The policies shall be endorsed to name the city as an additional insured, and shall provide that the policies of insurance shall not be canceled or altered without thirty days prior written notice to the City. The insurance requirements are not intended to waive any immunity or statutory procedures that the City may have or be entitled to under provisions of law.
- By obtaining a sidewalk café permit, the permit holder agrees to indemnify, defend, save, and hold harmless the City, its officers and employees, from any and all claims, liability, lawsuits, damages, and causes of action, which may arise out the permit or permit holder's activity on the sidewalk café. The permit holder shall sign an indemnification agreement provided by the City Attorney prior to operation of the sidewalk café.
- (9) Restrictions. No sidewalk café shall be permitted unless the following restrictions are followed:
- (a) Signage. No signs shall be allowed in the sidewalk café area except the following:
    - (1) Table umbrellas with the permit holder's business name imprinted thereon.
    - (2) One (1) sandwich board sign showing daily specials.

- (3) Tabletop documents and menus are not considered signs.
- (b) Furnishings. The permit holder shall use, and maintain in good repair, safe and sturdy furniture, furnishings and equipment which enhance the aesthetics of the surrounding area. Umbrellas shall be anchored so they will not lift and blow away.
  - (c) Hours. A sidewalk café may only be open during the hours of the principal restaurant, but in no case shall the sidewalk café be open from 10:00 p.m. to 7:00 a.m.
  - (d) Use after hours. The sidewalk café area shall not be utilized for any purpose after hours. It is the responsibility of the permit holder to prevent loitering and unauthorized use of the sidewalk café area and site furnishings.
  - (e) Food service availability. A sidewalk café shall not be open during hours when food service is not available.
  - (f) Music/Noise. The sidewalk café area shall not have music directed to it from speakers nor shall live music take place at the sidewalk café.
  - (g) Use of public property. No sidewalk café permit holder may use public property such as light poles, utility poles, flower planters, trees or other amenities as a point of attachment for anything, including ropes, posters or signs.
  - (h) Trash removal. The permit holder shall remove all trash from the sidewalk café on a regular basis during business hours and shall keep the sidewalk café area in a clean, orderly, litter-free and hazard-free condition. The permit holder shall remove litter from the abutting properties that may have come from the sidewalk café. The permit holder shall provide covered trash containers for the costumers. The permit holder shall not place trash in the City trash containers.
  - (i) Unobstructed sidewalk, hydrants, standpipes. The permit holder shall provide at least five (5) feet of unobstructed sidewalk for pedestrian right-of-way past the sidewalk café, and shall not place anything within two (2) feet of the curb or street (curb setback not required if a parking space deck is part of the sidewalk café area). The required two (2) foot setback from the curb or street must be separate from the required five (5) foot unobstructed pedestrian right-of-way. Access to and view of fire hydrants and standpipes shall be provided.
  - (j) Distance from curb-cut, crosswalk. No portion of a sidewalk café shall be located within five (5) feet of a curb-cut or marked crosswalk.
  - (k) Restroom Facilities. Facilities within the restaurant shall be sufficient to adequately serve the additional seating and capacity provided by the sidewalk café area as required by the State of Wisconsin Commercial Building Code.
  - (l) Non-smoking. The entire area contained within a sidewalk café permit shall be an area where outside smoking is prohibited, as the City is authorized to so designate pursuant to Section 101.123(4m), Wisconsin Statutes, and Section 25.35 (4m), Municipal Code. A person in charge of the business to which the sidewalk café permit is issued may designate an outside area on his or her private property that is a reasonable distance from the entrance, where persons may smoke.
- (10) Service of Alcohol Beverages. A permit holder may sell and serve alcohol beverages in an outdoor café only under the following conditions:
- (a) The permit holder has a valid and appropriate alcohol license for the principal premises.
  - (b) The alcohol license includes the sidewalk café area in the description of the licensed premises.
  - (c) The alcohol license permits the sale of the type of alcohol beverages to be served at the sidewalk café.
  - (d) Alcohol beverages are sold and served only to seated customers of the sidewalk café and are served by the licensee or licensee's employees in compliance with the alcohol beverage laws, ordinances and regulations.
  - (e) Alcohol beverages may only be served at the sidewalk café when food service is available through the principal restaurant.
  - (f) The permit holder shall be responsible for policing the sidewalk café area to prevent underage persons from entering or remaining in the sidewalk café, except when underage persons are allowed to be present on the licenses premises under applicable laws.
  - (g) The permit holder shall not allow patrons of the sidewalk café to bring alcohol beverages from another location, nor to carry open containers of alcohol beverages about in the sidewalk café area, nor to carry open containers of alcohol beverages served in the sidewalk café outside the sidewalk café area.
  - (h) The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk café area.

- (i) No container of alcohol beverages shall be present in the sidewalk café area between 10:00 p.m. and 7:00 a.m.
- (11) Parking Space Decks . The intent of the parking space decks is to provide an expanded area within the public right-of-way for a restaurant to establish an outdoor café area. All restrictions applicable to sidewalk cafés shall apply to the parking space decks as well.
- Regulations that are specific to the parking space deck areas are as follows:
- (a) Approval of a parking space deck shall be part of the approval for a sidewalk café. A parking space deck is not permitted separate from a sidewalk café.
  - (b) A building permit is required for all parking space decks. Plans for a parking space deck shall be approved by the City prior to the start of construction. A minimum of a 36" guardrail shall be provided on the sides of the deck not adjacent to the sidewalk.
  - (c) The size of the parking space deck shall be limited to the area occupied by parking spaces located entirely within the frontage of the restaurant holding the permit. A minimum of 3 foot setback from adjacent parking spaces and a 4 foot setback from the traffic lane shall be provided.
  - (d) If parking space decks are approved for adjacent restaurants, the decks may be integrated and constructed as one large parking space deck.
  - (e) Parking space decks shall be installed no earlier than May 1<sup>st</sup> and shall be removed no later than November 1. Earlier setup is permitted with the permission of the Planning and Economic Development Director in the event of early spring weather.
  - (f) Cost for the construction, installation, removal and storage of the parking space deck is the responsibility of the permit holder. If the structure is not removed from the property in accordance with the regulations of this section, the City may remove the structure after a 15 day notice and charge the expense of removal to the permit holder or property owner.