



AGENDA OF THE PLANNING  
COMMISSION  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
October 19, 2017  
6:30 P.M.

**CALL TO ORDER**

**APPROVE AGENDA**

**REGULAR AGENDA**

- A. Review/Approve October 3, 2017 Meeting Minutes\* (p. 2)
- B. Review Alan Mitchell Feedback on Draft City Code 303\* (pp. 3-23)
  - 1. Amend recommendation to the City Council (if applicable)
- C. Review Feedback on Draft Impervious Surface Amendment\* (pp. 24-27)
  - 1. Amend recommendation to the City Council (if applicable)
- D. Review Draft Right of Way Ordinance\* (pp. 28-52)
  - 1. Amend recommendation to the City Council (if applicable)

**ADJOURN**

\* Denotes items that have supporting documentation provided

**CITY OF BIRCHWOOD VILLAGE  
PLANNING COMMISSION MEETING  
October 3, 2017**

**MINUTES**

**COMMISSIONERS PRESENT: Chair Doug Danks, Vice Chair John Lund and Randy Felt. John Winters and Jozsef Hegedus were absent.**

**OTHERS PRESENT: Andy Sorenson, Steve Hawkinson, Linda Hawkinson and Tim Lange.**

**Chair Doug Danks** called the meeting to order at 7:08 p.m.

**Chair Doug Danks** suggested adding another agenda item, the informational meeting for the Hawkinson's. John Lund moved to approve the amended agenda; Randy Felt seconded. Motion approved.

**REGULAR AGENDA**

**A. Informational Meeting for Steve and Linda Hawkinson.**

As prospective buyers of a property in Birchwood, 303 Cedar Street, they have questions on variance requirements in order to build a house on the property. Doug Danks advised they go through the variance process.

**B. Review/Approve September 28, 2017 Meeting Minutes.**

John Lund motioned to approve minutes from September 28, 2017; Randy Felt seconded. Motion approved.

**C. Review Draft Right of Way Ordinance.**

Doug Danks moved that we recommend to the City Council approval of the Right of Way Ordinance as revised in the October 3<sup>rd</sup> packet; John Lund seconded. Motion passed unanimously.

**D. Review Comp Plan Maps from Jennifer Haskamp**

John Lund pointed out many incorrect labeling. Doug Danks recommended that John Lund consult with City Administrator Tobin Lay to make corrections for Jennifer.

**ADJOURN**

**MOTION WAS MADE BY COMMISSIONER LUND AND SECONDED BY COMMISSIONER FELT TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 7:50 P.M.**

# MEMORANDUM

DATE: October 19, 2017

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TO: Birchwood Planning Commission  
FROM: Tobin Lay, City Administrator  
SUBJECT: City Code 303 Recommendation



**Birchwood Village**

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Dear Commissioners,

During the October 10<sup>th</sup> City Council meeting, the Council requested that the Commission revisit its recommendation for Section 303 amendments. Staff was instructed to invite resident Alan Mitchell to attend tonight's meeting to share his feedback on this recommendation.

Enclosed is a draft written by Alan Mitchell and a document explaining his draft; previously emailed to each Commissioner. Also enclosed is the previously recommended draft ordinance.

Attorney Alan Kantrud plans to attend tonight's meeting but may be late if a previous commitment goes long.

## **Request**

Council requests Commissioners:

- 1) Review and consider points raised by Alan Mitchell; and
- 2) Recommend for Council's approval, amendments to Section 303.

Thanks!

Regards,  
Tobin Lay

**ORDINANCE 2017-10-01**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE RESCINDING AND REPLACING THE DUTIES OF A  
CITY PLANNING COMMISSION IN CITY CODE**

The City Council of the City of Birchwood Village hereby ordains that existing Chapter 303 (Zoning Code Administration) of the Municipal Code of the City of Birchwood Village is hereby rescinded and replaced as follows:

**SECTION 303: ZONING CODE; ADMINISTRATION**

**303.010 ESTABLISHMENT OF THE PLANNING COMMISSION**

The Planning Commission is hereby established. The Planning Commission shall be the city planning agency authorized by M.S. 462.354, subd. 1, as it may be amended from time to time. Accept as otherwise provided in this ordinance, the Planning Commission shall be advisory directly to the City Council.

**303.020 COMPOSITION AND TERMS**

1. **Composition, Number.** Such Planning Commission shall consist of five members, who are residents of the city. Members shall be appointed by the City Council. In addition, the City Council shall select an ex officio member from among its own members to serve on the Commission as a council liaison to the Planning Commission. The ex officio member shall be a non-voting member who is not counted for quorum purposes.
2. **Terms.** The term of each member shall be for three (3) years.
3. **Compensation.** No members shall be compensated.
4. **Removal.** Members may be removed by the City Council by a simple majority vote of the City Council.
5. **Vacancies.** Vacancies during the term shall be filled by the City Council for the unexpired portion of the term.
6. **Oath.** Every appointed member shall, before exercising any of his or her duties, take an oath that he or she will faithfully discharge the duties of the office.

**303.030 ORGANIZATION, MEETINGS, MINUTES AND EXPENDITURES**

1. **Officers.** At the first regular meeting in January, the Planning Commission shall elect a Chairperson and a Vice-Chairperson from among its appointed members, each for a term of one year. The Planning Commission may create and fill other offices as it may determine necessary.

2. **Meeting.** The Planning Commission may hold at least one meeting each month as needed at the time and place as they may fix by resolution, subject to City Council approval and file with the City Clerk. Special meetings may be called at any time by the Chairperson, or in the case of the Chairperson's absence, by the Vice-Chairperson, or as directed by the City Council or Mayor.
3. **Commission Policy on Meetings, Organizational Form and Rules of Order.** Subject to approval by the City Council, the Planning Commission may adopt rules of order or bylaws for the transaction of business, ordering meetings, adopting findings of fact and holding public hearings.
4. **Minutes.** Written minutes of meetings shall be kept and filed with the City Clerk prior to the next regularly scheduled City Council meeting, but shall be subject to approval at the next Planning Commission meeting.
5. **Expenditures.** No expenditures by the city on behalf of the Planning Commission shall be made unless and until authorized by the City Council.

303.040 **ATTENDANCE**

Duly appointed members of the Planning Commission shall be required to attend no less than half the official meetings of the Planning Commission held within a given calendar year unless specifically excused by the Chair of the Planning Commission and said excused absences noted in the minutes. Failure to attend no less than half of the official meetings within a given calendar year, without excuse of the Chair of the Planning Commission, shall be considered as formal notice of resignation from said Planning Commission. In addition, failure to attend four-consecutive regular meetings without excuse of the Chair of the Planning Commission, shall be considered as formal notice of resignation from said Planning Commission.

303.050 **STAFF FOR THE COMMISSION**

The City Clerk or Administrator, Building Inspector, City Planner, City Engineer and City Attorney may act as staff for the Planning Commission and may be required at times to attend commission meetings. City Staff may provide the Commission with information as requested by the Commission. The City Administrator-Clerk or other person may perform secretarial duties for the Commission, such as the keeping of minutes, and may be responsible for the keeping of records.

303.060 **POWERS AND DUTIES**

1. **Generally.** The Planning Commission shall have the powers and duties given to city planning agencies generally by law, including the authority to conduct public hearings as directed by City Council or city policy. The Planning Commission also shall exercise the duties conferred upon it by this ordinance.
2. **Comprehensive Plan.** It shall be the purpose of the Planning Commission to prepare and adopt a comprehensive plan for the physical development of the city, including

proposed public buildings, street arrangements and improvements, efficient design of major thoroughfares for moving of traffic, parking facilities, public utilities services, parks and playgrounds, a general land use plan and other matters relating to the physical development of the city. This plan may be prepared in sections, each of which shall relate to a comprehensive plan program. After the City Council has adopted the comprehensive plan, the Planning Commission may periodically, but at least every five years, review the comprehensive plan and any ordinances or programs implementing the plan.

3. **Means of Executing Plan.** Upon the adoption of a comprehensive plan or any section thereof, it shall be the concern of the Planning Commission to recommend to the City Council reasonable and practical means for putting into effect the plan or section thereof, in order that it will serve as a pattern and guide for the orderly physical development of the city and as a basis for judging the timely disbursements of funds to implement the objective. Means of effectuating the plan, among other things, shall consist of a zoning ordinance, subdivision regulations, capital improvement programming and technical review, and recommendations of matters referred to the Planning Commission by the City Council.
4. **Zoning Ordinance.** Pursuant to M.S. 462.357, subd. 3, as it may be amended from time to time, after adoption of a comprehensive plan, the Planning Commission shall review all proposed amendments to the zoning ordinance, conduct public hearings as directed by City Council or city policy, and make recommendations to the City Council concerning zoning ordinance amendments and their relation to the city comprehensive plan and other land use controls. The Planning Commission shall report its recommendations to the City Council for action.
5. **Conditional Permits.** The Planning Commission may make recommendations on all requests for a conditional use permit under the terms of the zoning ordinance and conduct public hearings as directed by City Council or city policy. The Planning Commission shall report its recommendations to the City Council for action.
6. **Interim Use Permits.** The Planning Commission may make recommendations on all requests for an interim use permit under the terms of the zoning ordinance and conduct public hearings as directed by City Council or city policy. The Planning Commission shall report its recommendations to the City Council for action.
7. **Subdivision Regulations.** The Planning Commission may make recommendations about the subdividing of land as prescribed by the ordinance and conduct public hearings as directed by City Council or city policy. The Planning Commission shall report its recommendations to the City Council for action.
8. **Zoning Variances.** All applications for variances may be referred to the Planning Commission, and forwarded with or without recommendations directly to the City Council. The City Council shall have the powers of a Board of Appeals and

Adjustments as provided for in M.S. 462.357, subd. 6, as it may be amended from time to time for its decision.

9. **Official Map.** Pursuant to M.S. 462.359, subd. 2, as it may be amended from time to time, after adoption of a major thoroughfare plan and a community facilities plan (which may be contained in the city comprehensive plan or adopted separately), the Planning Commission, for the purpose of carrying out the policies of the major thoroughfare plan and community facilities plan, may prepare and recommend to the governing body a proposed official map covering the entire municipality or any portion thereof. The official map or maps shall be prepared in sufficient detail to permit the establishment of the future acquisition lines on the ground. In unplatted areas, a minimum of a centerline survey shall have been made prior to the preparation of the final draft of the official map. The accuracy of the future acquisition lines shown on the official map shall be attested to by a licensed land surveyor.
10. **Appeals to Denials of Zoning, Land Use or Building Permits Based on the Official Map.** All appeals to denials of zoning, land use or building permits based on the official map may be referred to the Planning Commission, and forwarded with or without recommendations directly to the City Council. The City Council shall have the powers of a Board of Appeals and Adjustments as provided for in M.S. 462.359, subd. 4, as it may be amended from time to time for its decision.
11. **Purchase and Sale of Real Property.** Pursuant to M.S. 462.356, subd. 2, as it may be amended from time to time, after adoption of a comprehensive plan, the Planning Commission shall review all proposed acquisitions or disposals of publically owned interests in real property within the city by the municipality, or any special district or any agency thereof, or any other political subdivision having jurisdiction within the municipality, and make findings as to the compliance of the proposed acquisition or disposal of real property with the comprehensive municipal plan. The City Council may by resolution adopted by two-thirds vote dispense with the requirements of this section when in its judgment it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.
12. **Capital Improvements.** Pursuant to M.S. 462.356, subd. 2, as it may be amended from time to time, after adoption of a comprehensive plan, the Planning Commission shall review all proposed capital improvements within the city by the municipality, or any special district or any agency thereof, or any other political subdivision having jurisdiction within the municipality, and make findings as to the compliance of the proposed capital improvement with the comprehensive municipal plan. The City Council may by resolution adopted by two-thirds vote dispense with the requirements of this section when in its judgment it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.
13. **Comprehensive Plan Amendments.** Pursuant to M.S. 462.355, subds. 2, 3, as it may be amended from time to time, after adoption of a comprehensive plan, the

Planning Commission shall review all proposed amendments to the comprehensive plan, hold at least one public hearing, and make recommendations to the City Council comprehensive plan amendments and their relation to the city comprehensive plan and other land use controls. The Planning Commission shall report its recommendations to the City Council for action.

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this 10<sup>th</sup> day of October, 2017

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Mary Wingfield  
Mayor

Attest:

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Tobin Lay  
City Administrator-Clerk

**Tobin Lay**

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**From:** alanshari@comcast.net  
**Sent:** Monday, October 09, 2017 8:22 PM  
**To:** City Birchwood  
**Subject:** Fwd: Planning Commission Ordinance  
**Attachments:** New chapter 303.docx; EXPLANATION OF LANGUAGE IN PROPOSED CITY CODE SECTION 303.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tobin, below is an email I sent to the mayor and each of the Council members individually regarding the amendments to chapter 303 of the city code relating to the Planning Commission. I am urging the council to ask the Planning Commission to take another shot at the ordinance to make it more specific to Birchwood's situation.

Thanks. Al

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**From:** [alanshari@comcast.net](mailto:alanshari@comcast.net)  
**To:** "wingfield mary" <[wingfield.mary@gmail.com](mailto:wingfield.mary@gmail.com)>  
**Sent:** Monday, October 9, 2017 8:17:14 PM  
**Subject:** Planning Commission Ordinance

Mary,

On the agenda for the October 10 City Council meeting is a discussion of a proposed amendment to chapter 303 of the City Code, the chapter that creates the Planning Commission. The draft that is in the agenda packet is essentially a copy of a model ordinance provided by the League of Minnesota Cities, with a few minor tweaks. I would like to suggest that the City Council ask the Planning Commission to take a further look at amending chapter 303 to make it more amenable to Birchwood, taking into account other parts of the Birchwood Zoning Code and our planning history.

In early August, after attending a June Planning Commission meeting where the matter of amending chapter 303 was discussed, I drafted a suggested chapter 303 that was based on the League's model ordinance but was adapted to fit Birchwood's situation. I have attached a copy of that draft, along with an Explanation of each of the provisions. I provided this material to Doug Danks, chair of the Planning Commission, on August 3. Doug provided a copy to Tobin Lay and Alan Kantrud, but not to other members of the Planning Commission. I don't know if any Council members saw this material. With some further editing, this draft could form the foundation for a more workable ordinance for Birchwood.

The League's model ordinance leaves a lot of questions and is not so easy to apply. Let me give a couple of examples. In the first paragraph, section 303.010, there is a typographical error that appears in the model ordinance. The word "Accept" should be "Except" where it talks about exceptions to the Planning Commission only serving in an advisory role. I don't think there are any exceptions. The Planning Commission always serves in an advisory rule. Why raise the matter of exceptions if there are none?

In section 303.020(1), a three year term is provided for Planning Commission members. This language would result in all five members of the Commission having their terms expire at the same time. Even the model

ordinance suggests that the terms be staggered so not more than two members have their terms expire at the same time.

In section 303.060, there are several references to the city's "zoning ordinance." It is not clear what the "zoning ordinance" is. Section 301.010 of the present code says chapters 301 to 307 are the "Zoning Code." Section 300.010 says chapters 300 to 399 regulate the use of land in Birchwood. The City has ordinances on Conditional Use Permits and Interim Use Permits; why not recognize those provisions. Is it necessary to include a provision for the subdivision of land in Birchwood, as is included in section 303.060(7)?

I encourage the Council to take this opportunity to draft an ordinance for Birchwood that fits our situation and is easy to apply and clear in its terms. The Planning Commission is an important arm of city government and a carefully drafted ordinance will prove helpful going forward. Please make a concerted effort to draft a workable ordinance for Birchwood and ask the full Planning Commission to consider this matter further.

Thank you.

Alan Mitchell

### 303 PLANNING COMMISSION

#### 303.010. ESTABLISHMENT OF THE BIRCHWOOD PLANNING COMMISSION

There is hereby established a Planning Commission in and for the City of Birchwood. The Planning Commission shall be the city planning agency as authorized by Minnesota Statutes section 462.354, subdivision 1. The Planning Commission shall be advisory only.

#### 303.020. COMPOSITION AND TERMS

**A. Composition.** The Birchwood Planning Commission shall consist of at least five members and no more than seven. All members of the Planning Commission shall be residents of Birchwood. The members shall be appointed by the City Council. The City Council may appoint a member of the Council to serve as the liaison to the Planning Commission. The liaison shall not be a voting member of the Planning Commission and shall not be counted for determining a quorum.

**B. Terms.** Persons appointed to the Planning Commission by the City Council shall serve a term of three (3) years. Terms shall expire on December 31 of the appropriate year. At the first meeting in January 2018, the City Council shall establish the number of years remaining on the terms of each of the serving members, such that no more than three members' terms expire on the same date. The city administrator shall record the terms of each member appointed to the Planning Commission. A member whose term has expired may continue to serve on the Planning Commission until a successor is appointed. A member whose term has expired may be reappointed by the City Council but no member may serve more than three consecutive three year terms. After an absence of three years, a person who has served three terms may be reappointed.

**C. Compensation.** The City Council shall set the compensation to be paid members of the Planning Commission. The City Council may determine that members of the Planning Commission will receive no compensation.

**D. Resignation.** A member of the Planning Commission may decide to resign from the Planning Commission prior to the expiration of the member's term. The member who desires to resign shall notify the City Council in writing of the request and the effective date of the resignation.

**E. Removal.** The City Council may remove a member from the Planning Commission at any time and for any reason by a majority vote of the Council and may appoint a new person to complete the term of the removed member.

**F. Vacancies.** In the event a vacancy shall occur on the Planning Commission, the City Council shall appoint another person to complete the unexpired portion of the term.

### **303.030. ORGANIZATION AND MEETINGS**

**A. Officers.** At its first meeting of each calendar year, the Planning Commission shall elect a Chairperson and a Secretary from among its appointed members, each for a term of one year. The Planning Commission may create and fill other offices as it may determine necessary.

**B. Meetings.** At its first meeting of each calendar year, the Planning Commission shall determine a specific day of the month to hold a regular meeting and the location of the regular meetings. The date and location of the regular monthly meetings shall be recorded by the city administrator and placed on the city webpage. The Planning Commission may cancel any regular meeting. The Chair of the Planning Commission may also schedule a special meeting at a time and place to be determined by the Chair. The Planning Commission may also hold special meetings at the direction of the City Council.

**C. Notice of Meetings.** The Planning Commission shall give at least five days notice of all regular and special meetings. The notice must include a copy of the agenda for the meeting.

**D. Open Meetings.** All meetings of the Planning Commission shall be open to the public, unless closure is authorized by the City Council.

**E. Quorum.** A quorum is required to hold a meeting and to take any action. A quorum is a majority of the members.

**F. Minutes.** Written minutes of all Planning Commission meetings, regular and special, shall be kept and filed with the City Administrator and posted on the city webpage.

**G. Expenditures.** The Planning Commission shall not incur any expenditure on behalf of the Commission or the City without the approval of the City Council. The City Council may appropriate moneys to the Planning Commission for use in carrying out its duties under this chapter 303 and other provisions of the City Code.

**H. Bylaws.** The Planning Commission may adopt rules of procedure or bylaws for the transaction of business, taking action, or providing for the general conduct of the Commission.

### **303.040. POWERS AND DUTIES.**

**A. Generally.** The Planning Commission shall have the powers and duties given to city planning agencies generally by law. The Planning Commission shall also exercise those duties conferred upon it by chapter 303 or other provisions of the Birchwood City Code or assigned to it by the City Council.

**B. Conditional Use Permits.** The Planning Commission shall consider all requests for a conditional use permit under chapter 306 of the Birchwood City Code.

**C. Interim Use Permits.** The Planning Commission shall consider all requests for an interim use permit under chapter 305 of the Birchwood City Code.

**D. Zoning Permits.** The Planning Commission shall consider all requests for a zoning permit when requested to do so by the City Council.

**E. Variances.** The Planning Commission shall consider all requests for a variance from any of the land use restrictions in chapters 300 to 399 of the Birchwood City Code. The Planning Commission shall compile the record on all variance applications, conduct public hearings as appropriate, make a recommendation to the City Council, and perform other duties necessary to a full understanding of the variance application.

**F. Building Permits.** The Planning Commission shall review applications for building permits pursuant to chapter 203 when requested to do so by the City Council.

**G. Board of Appeals.** The Planning Commission shall act as the Board of Appeals whenever a person shall allege that there is an error in any order, requirement, decision, or determination made by any person other than the City Council or the Planning Commission in the enforcement of any provision of the Birchwood zoning ordinances. The review of the decision being challenged by the Planning Commission shall only be advisory and the City Council shall make the final decision.

**H. Real Property.** The Planning Commission shall review all proposed acquisitions or disposals of publically owned interests in real property within the city by the municipality and make findings as to the compliance of the proposed acquisition or disposal of real property with the comprehensive municipal plan. The City Council may by resolution adopted by two-thirds vote dispense with the requirements of this section when in its judgment it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.

**I. Comprehensive Plan.** The Planning Commission shall review all proposed amendments to the Birchwood Comprehensive Plan, hold at least one public hearing on the proposed amendments, and make a recommendation to the City Council on whether such amendments should be adopted or further amended. The Planning Commission may on its own initiative also propose and hold a public hearing on possible amendments to the Birchwood Comprehensive Plan.

**J. Zoning Code Amendments.** The Planning Commission shall review all proposed amendments to the Birchwood Zoning Code (chapters 300 to 399) and make a recommendation to the City Council on whether such amendments should be adopted or further amended. The Planning Commission may on its own initiative also propose possible amendments to the Birchwood Zoning Code.

## EXPLANATION OF LANGUAGE IN PROPOSED CITY CODE SECTION 303

**I. Background.** In spring 2017, the Planning Commission determined that it would like to change the time of its regular monthly meeting. The present timing for the regular monthly meeting was the first Tuesday of the month. However, the requirement to hold a regular monthly meeting each month on the first Tuesday was embedded in the ordinance, section 303.010. That section reads:

The Commission shall hold at least one regular meeting each month. These meetings shall be held on the first Tuesday of the month.”

It was thus necessary to change the ordinance to allow the Planning Commission to change the timing of its regular monthly meetings.

On June 6, 2017, the Planning Commission met to discuss what to do about the desire to provide more flexibility in deciding the day of the regular monthly meetings. The Commission discussed that it would not only be a good idea to change the language of the ordinance, but it would also be helpful to undertake a complete revision of the city code provision creating the Commission. The Commission considered the Model Ordinance drafted by the League of Minnesota Cities for municipalities to create a Planning Commission and the Mahtomedi City Code provision creating its planning commission. Mahtomedi City Code, section 2.11. In the meantime, the Commission determined that it would continue throughout the rest of 2017 to hold its regular monthly meetings on the first Tuesday of the month.

**II. Existing Ordinance Chapter 303.** The existing chapter 303 is entitled Zoning Code: Administration. It is proposed to be repealed in its entirety. It is uncertain when the existing ordinance was adopted by the City Council, but it has surely been more than twenty years, going back to at least the 1990s.

Section 303.010 entitled **General** is the section that creates the Planning Commission. Many of the concepts in this section are contained in the new proposed language but they are stated more clearly and in an updated fashion.

Section 303.020 entitled **Enforcement** is proposed to be deleted because it is no longer needed. There is no reason to have a separate Enforcement section. In 2012 a new chapter in the Birchwood Code, chapter 619 entitled Penalties and Enforcement, was adopted. That chapter applies to every provision in the Birchwood Code, making it a misdemeanor to violate any provision of the Code.

The existing language does set forth some procedural steps that the City will take to ensure that construction activity is in compliance with the Code and to notify the contractor or landowner of alleged violations. The City Council could elect to continue language like this but it seems unnecessary to include language about what the City will do in the event of a violation.

There is now a separate ordinance, chapter 619 entitled Penalties and Enforcement, that applies to all provisions of the city code so a separate Enforcement provision in chapter 303 is unnecessary.

Section 303.030 entitled **General Administration of the Zoning Code** is replaced with more specific language in the new proposed chapter.

Section 303.040 entitled **Other Governmental Units** is also proposed to be repealed in its entirety. This provision identifies several other governmental bodies, including the Department of Natural Resources, the Rice Creek Watershed District, the White Bear Lake Conservation District, and the Army Corps of Engineers, that may have authority over certain land use projects. It seems unnecessary (and difficult) to attempt to identify other governmental bodies – local, state, and federal – that may have jurisdiction over a specific project. It is enough that the Planning Commission take into consideration the fact that other governmental bodies may have regulations that apply to a project. If those agencies have jurisdiction in a specific situation, that

Section 303.050 entitled **Related Chapters** is also unnecessary. Also, there are chapters other than those cited that have application to the Planning Commission and to projects in the city.

While the entire existing chapter 303 is proposed to be repealed, it is still acceptable to use the same numbering system, and that is what is shown in the draft language. However, if the City Council wants to create a new numbering system for the new language, that is certainly acceptable.

### **III. New Proposed Language.**

Below is an explanation of each of the new sections of chapter 303.

#### **303.010. ESTABLISHMENT OF THE BIRCHWOOD PLANNING COMMISSION**

This language is taken from the League's Model Ordinance (Section 1) and from state law - Minnesota Statutes § 463.354, subd. 1. It is similar to the existing language in section 303.010 and continues the existing situation that Birchwood shall have a Planning Commission. The section contains a sentence saying that the Planning Commission is advisory only. It has no authority to make final decisions, which is consistent with present practice, but it is helpful to follow the League's Model Ordinance language and include that in the code provision itself.

The language from the Model Ordinance contains a reference to the fact that the statute (§ 463.354) could be amended in the future, but that language is not included here. It seems unduly cumbersome to include a reference to the fact that a statute may be amended, because that point is obvious, and also because even if it is amended, it is not certain that any changes would require changes in the city code language or that the City Council would want to make any changes. Even without the language in the code, the City Council can change its own ordinance any time it desires to do so, or any time a change in state law requires it to do so.

### **303.020. COMPENSATION AND TERMS**

**A. Composition.** This language is a combination of the existing language and language from the Model Ordinance (Section 2A). The Planning Commission has for many years consisted of five members, and that is likely to continue, but the proposed language allows the City Council to appoint up to seven members, just like the League's Model Ordinance provides for seven members and just like the existing section 303.010 does.

Consistent with what the Council does with other committees created by the Council, the Council may appoint one of its members to be the liaison to the Planning Commission. The liaison is not authorized to vote on any matters before the Commission, but, of course, is entitled to vote on the final decision when the matter comes before the Council.

**B. Terms.** The Model Ordinance (Section 2B) provides for four year terms on the Planning Commission. The proposed language provides for three year terms instead. The Council, of course, can decide to make the length whatever it chooses it to be, but three years seems to be an appropriate length for a term. Three years is generally the existing term for service on a city committee. *See* the bylaws for the Parks and Natural Resources Committee and the Roads Committee. Three year terms allow a member to gain experience and yet allow new City Council members to have a role in selecting members to the Commission.

The existing language in section 303.010 provides for one year terms. That seems entirely too short and would result in every member's term expiring every year. Four years is probably okay too, but it might seem so long as to dissuade volunteers from serving. Whatever term is ultimately selected, it will be important for the City to keep track of when precisely each member's term expires, and language is included in the proposal saying the City Administrator shall keep track of each member's term. Language from the Model Code is incorporated to clarify that each term shall expire on December 31 in the year the term is up.

Another important point addressed in the proposed language is that the City needs to set up the Commission so that the members have staggered terms, so no more than two members' terms expire every year. The Model Code addresses the need to do this. It is better to have continuity on the Planning Commission, so that when new members come on, there is always a majority that is experienced. In order to ensure that the terms expire at different times, in January 2018, the Council would establish the terms of the existing members so that no more than three members' terms expire on the same date. With a five member Commission, which is what there is now and likely to continue to be, it would be enough to have no more than two members' terms expire on the same date. If the Council did decide to go to a seven member Commission, three terms could expire at the same time. Once the length of each member's term was established, it would not be necessary to undertake that task again. As a result of that action in January 2018, as an example, two members' terms would expire on December 31, 2018, two

members' terms would expire on December 31, 2019, and the fifth members' term would expire on December 31, 2020.

It is also a good idea to allow a member whose term has expired to continue to serve until a successor is appointed, to ensure that the work of the Planning Commission can continue while the Council seeks a new appointee. Language to that effect is included in this provision.

Also, the language provides that no person shall serve more than three consecutive terms, a total of nine years. The person can be reappointed after an absence of three years. There is nothing like this in the Model Ordinance and the Council can decide whether it wants to include such a provision. Of course, whether the ordinance has language like this or not, the Council is always the ultimate arbiter of how long a person serves. Also, a person who has been appointed to fill a vacancy could end up serving more than nine consecutive years, since that person could fill an unexpired term and be appointed for three consecutive three-year terms.

**C. Compensation.** The Council should decide whether members of the Planning Commission are to be compensated for their service. Members of other committees serve as volunteers, and are not generally compensated, but the Council has in the past provided a small stipend for members of the Planning Commission. The Planning Commission is the only city committee or commission that is required by statute so there is some reason to provide compensation for this work.

**D. Resignation.** Nothing can stop a member of the Planning Commission from deciding to resign, of course. This provision simply recognizes that and designates a process for the member to follow if he or she wishes to resign. This language is similar to what is found in the bylaws of other city committees.

**E. Removal.** Like any other committee created by the City Council, members serve at the will of the City Council. If a majority of the City Council is unhappy with the service of a particular member, the Council has the right to remove that member. This authority should be exercised judicially but the fact is that a majority of the Council has the right to remove any Commission members that it wants and replace them with individuals of the majority's choosing.

**F. Vacancies.** This paragraph simply recognizes that when a vacancy on the Planning Commission occurs, the Council should act expeditiously to fill the position. The language makes clear that when a person is appointed to fill a vacancy, the appointment is for the remainder of the term, not for a full three years. The person appointed to fill the vacancy can, of course, be appointed for a full three year term at the expiration of the term and could serve three full-time appointments and end up serving more than nine consecutive years.

### **303.030. ORGANIZATION AND MEETINGS**

**A. Officers.** This language pretty much follows the League’s Model Ordinance (Section 3A). One change is that rather than reference the first meeting in January, this language references the first meeting of the year, just in case there isn’t a meeting in January. This language only provides for the election of a Chair and a Secretary – the Chair to preside at the meetings and the Secretary to keep the Minutes. However, language is included to allow the Planning Commission to elect other offices if it so desires. A Vice-Chair is likely the next post to be created if the Commission decides it needs another officer.

**B. Meetings.** It is important that the public know when it is the Planning Commission is likely to meet. Therefore, language is included requiring the Planning Commission to establish early in the year as its first meeting, when it will regularly meet. This information can then be posted on the city webpage and the public will have a list of twelve regular meetings, one each month. That doesn’t mean that the Planning Commission will hold a meeting every month, and any regular meeting could be cancelled because of the lack of matters to consider or the lack of a quorum or for other legitimate reasons.

The present language in section 303.010 says “The Commission shall hold at least one regular meeting each month.” This language is proposed to be deleted since the Commission doesn’t always have business to require a meeting every month, and also, if a second meeting is held in a single month, the second meeting should be a special meeting, not a regular meeting.

The present code provision requires the Commission to meet on the first Tuesday of the month. That is the language that has precipitated the desire to amend the entire chapter. The new language allows the Commission to decide each year when it will hold its regular meetings. If the Commission decided one year to meet on the first Tuesday of the month, but decided the next year that the first Tuesday was not the best day, it could change the time without requiring a change in the ordinance. Of course, the Commission must still decide in January what day of the month will be its regular meeting, so the City Administrator can publish this information on the webpage and perhaps elsewhere. If the Commission wants to change the meeting date for a particular month, perhaps to accommodate members’ schedules or to allow time to gather information, or whatever reason, it can cancel the regular meeting and schedule a special meeting.

Also, the Commission has to determine where it will hold its regular meetings. City hall is the most appropriate place to hold its meetings, and the Commission will want to select a date for its regular monthly meetings on a day that city hall is available. Importantly, the proposed language allows the Commission to cancel any regular meeting.

The Planning Commission can also schedule special meetings, in addition to the regular monthly meetings. A special meeting can be called at any time by the Secretary, for any legitimate reason, perhaps the need to make a timely decision or because of pending weather conditions. Also the Commission will hold a special meeting when directed to do so by the City Council

**C. Notice of Meetings.** The Planning Commission must give notice of every meeting, whether a regular meeting or a special meeting. It is important that the notice also provide an agenda describing the matters that will be considered at the meeting. The proposed language does not describe how the notice shall be given but it would be a good idea to follow the City's Rules of Procedure in that regard, (see article 2.10), by posting the notice on the bulletin board outside city hall and on the city webpage.

The proposed language requires five days notice. The reason five days is proposed is because under the Rules of Procedure, Article 3.09, the agenda for a City Council meeting must be available five days before the meeting, even though under Article 2.10(b), the notice of a City Council meeting, is only required three days in advance. The Planning Commission can certainly give notice the same time the agenda must be available.

When determining how many days before the meeting notice must be given, the day of the meeting is counted but not the day the notice is first available. Thus, for a Tuesday meeting, notice must be provided the previous Thursday to satisfy the five-day requirement. See Minnesota Statutes § 645.15, which provides:

**645.15 COMPUTATION OF TIME.**

Where the performance or doing of any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, the time, except as otherwise provided in sections 645.13 and 645.14, shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

**D. Open Meetings.** This provision simply recognizes existing law that all meetings of all committees of a city must be open to the public.

**E. Quorum.** It is common practice to require a quorum before a committee or commission can hold a meeting. If the Planning Commission consists of five members, a quorum is three. If the Planning Commission has seven members, a quorum is four. As provided in section 303.020, subp. A, the Council liaison cannot be counted in determining whether a quorum is present. The Planning Commission can meet if three members are present but the Council liaison is absent, but it cannot meet if two members and the Council liaison are present.

**F. Minutes.** The Planning Commission is required to keep written minutes of its meetings, both regular and special. This requirement is already in the existing ordinance. Section 303.010 says the Commission "shall keep a record of its resolutions, transactions and findings, which record shall be a public record." In practice, the Secretary would prepare the

Minutes, provide a draft to the Planning Commission, the Planning Commission would approve them at its next meeting, perhaps with changes or additions, and then the City Administrator would post the approved Minutes on the city webpage. The public, of course, would have access to both the draft Minutes and the final Minutes.

**G. Expenditures.** This language is taken from the Model Ordinance (Section 3.E). It provides that the Planning Commission shall not spend any money or incur any debt without first getting the approval of the City Council. However, the language recognizes that the City Council may appropriate funds to the Planning Commission for use by the Commission in carrying out its duties. For example, if the City determined that it wanted the Planning Commission to consider revisions to the City’s comprehensive plan, the Council might appropriate moneys to the Commission to allow it to hire consultants to assist with that task. In any event, the Commission would not be authorized to spend any money without direct approval from the Council.

**H. Bylaws.** This is another provision that is taken from the Model Ordinance (Section 3.C). It allows the Planning Commission to establish additional requirements on how it conducts itself through the adoption of rules of procedure or bylaws; it doesn’t matter what the requirements are called. Additional requirements will not only be helpful for the Commission, but will give persons with business before the Commission and the general public knowledge about how the Commission will go about its business.

Existing language in section 303 provides that the Commission “shall adopt rules for the transaction of business.” The new language makes adoption of bylaws or procedural rules discretionary with the Planning Commission. Also, the Model Ordinance provides that the city council must approve these requirements, and language like that could be added if the Birchwood City Council wants to review every procedural requirement proposed by the Planning Commission.

### **303.040. POWERS AND DUTIES.**

**A. Generally.** This language is similar to that in the Model Ordinance (Section 6) and in the Mahtomedi ordinance (section 2.11, subp. 5). Probably every duty the Planning Commission has is spelled out in the subparts below, but a general statement like this helps ensure that if something comes up where the Planning Commission is the appropriate body to act, the authority is there. This new section 303.040 certainly covers all the powers assigned to the Planning Commission under existing section 303.010 (Jurisdiction).

**B. Conditional Use Permits.** The Mahtomedi ordinance (section 2.11, subp. 5) combines the various land use authorities of the Planning Commission, like conditional use permits, interim use permits, variances, and zoning amendments, under the general powers section, but it seems clearer to list them separately, particularly when Birchwood has separate ordinance chapters on these various matters. Conditional use permits are covered in chapter 306

of the Birchwood Code and sections 306.010 and 306.080 set forth more details about how an application for a conditional use permit is handled. Importantly, while the Planning Commission handles the application initially, the City Council makes the final decision.

**C. Interim Use Permits.** This language is just like the language in subpart B on Conditional Use Permits, except this subpart applies to Interim Use Permits. Interim Use Permits are covered in Chapter 305. Section 305.030 sets forth the process the Planning Commission will follow in considering such requests. Again, the Planning Commission only compiles the record and makes a recommendation; the final decision belongs to the City Council.

**D. Zoning Permits.** The Birchwood Code also recognizes that in some cases, with smaller projects, a Zoning Permit may be required. Section 301.080 identifies those land use activities that require a Zoning Permit and Chapter 307 (Zoning Permits) addresses how an application is to be administered. There is no reference to the Planning Commission in either of these code provisions but this new language allows for the City Council to ask the Planning Commission to review such an application and make a recommendation.

**E. Variances.** The Planning Commission has long been the body to review applications for zoning variances. This is covered in chapter 304 (Variances and Appeals). The proposed language contains more specifics about what the Planning Commission should do – compile the record, hold a public hearing, make a recommendation – because chapter 304 does not contain the procedural specifics that chapters 305 and 306 do for interim use and conditional use permits.

The first sentence refers to the land use restrictions in chapters 300 to 399, not because there are that many chapters, but because that is how section 300.010 defines the “land use regulations” of the City of Birchwood Village. The definitions in section 300.020 also apply to chapters 300 to 399. The 300 to 399 language was probably adopted so that it didn’t have to be amended each time a new chapter was added. Interestingly, section 301.010 defines the Birchwood Zoning Code as chapters 301 to 307, although there is now a chapter 308 entitled Subdivision of Land. What this all really means is that a lot of Birchwood ordinances need to be updated.

**F. Building Permits.** It’s unclear just what the Planning Commission’s role under the Birchwood Code is with respect to building permits, but it has long been the practice for the Planning Commission to review applications for building permits. There is a reference in section 303.030 that the City Clerk may consult with the Chair of the Planning Commission about compliance with the Zoning Code when a building permit is applied for, or refer the matter to the entire Planning Commission, but this process seems a little too ambiguous. Also, section 308.160 entitled Building Permits says no building permit shall be issued unless all land use regulations are complied with.

In any event, this provision is included to recognize that the Planning Commission has the task to review all building permits that the Council would like it to review. The language could be

beefed up to simply say that the Planning Commission will review all building permit applications, if the City Council would like language to that effect included in the ordinance.

**G. Board of Appeals.** Chapter 304 of the Birchwood Code already provides that the Planning Commission acts as the Board of Appeals to hear appeals from a person adversely affected by a city decision that the person maintains is erroneous. Minnesota Statutes § 462.354, subd. 2 provides that “The governing body of any municipality adopting or having in effect a zoning ordinance or an official map shall provide by ordinance for a board of appeals and adjustments.” That appellate body has for a long time been the Planning Commission, and this language continues that practice.

What is unclear, though, is just what decisions the Planning Commission is supposed to review in an appellate role. It’s not the original decision on a permit or variance request, since that is a decision by the full City Council that is reviewable in court. The statutory requirement for a city to have an appellate body is designed to allow an aggrieved person to appeal the decision of a building inspector or a planning department person or other city staff person. Birchwood doesn’t really have people like that, although from time to time, a homeowner has been directed to stop construction or to take certain mitigative steps. It isn’t review of a city decision to issue a permit that can be appealed, but disagreements over compliance with the terms of the permit that are at issue. The proposed language is written to clarify that it isn’t a City Council or Planning Commission decision that is subject to appeal under chapter 304, but a decision by another person, although no attempt is made to identify who those other persons may be. It will be the obligation of the aggrieved party to identify the person and the decision that is being appealed. This leads to the inevitable conclusion that chapter 304 of the city code should also be amended to update variances and appeals.

**H. Real Property.** This language comes from the League’s Model Ordinance (Section 6.M). It comes from state law, Minnesota Statutes, section 462.356, subd. 2, which reads

Compliance with plan. After a comprehensive municipal plan or section thereof has been recommended by the planning agency and a copy filed with the governing body, no publicly owned interest in real property within the municipality shall be acquired or disposed of, nor shall any capital improvement be authorized by the municipality or special district or agency thereof or any other political subdivision having jurisdiction within the municipality until after the planning agency has reviewed the proposed acquisition, disposal, or capital improvement and reported in writing to the governing body or other special district or agency or political subdivision concerned, its findings as to compliance of the proposed acquisition, disposal or improvement with the comprehensive municipal plan. Failure of the planning agency to report on the proposal within 45 days after such a reference, or such other period as may be designated by the governing body shall be deemed to have satisfied the requirements of this

subdivision. The governing body may, by resolution adopted by two-thirds vote dispense with the requirements of this subdivision when in its judgment it finds that the proposed acquisition or disposal of real property or capital improvement has no relationship to the comprehensive municipal plan.

Since Birchwood has adopted a Comprehensive Plan, it seems appropriate to include language like that recommended by the League and required by the statute.

**I. Comprehensive Plan.** Since Birchwood already has a Comprehensive Plan, it seems unnecessary to adopt suggested language from the League's Model Ordinance that the Planning Commission prepare such a plan. But it is appropriate to recognize the Planning Commission's role in amending the Plan. That is particularly pertinent at the moment since the City is in the process of amending its Comp Plan. Also, an appropriate role for the Planning Commission is to consider possible amendments to the Comp Plan at any time on its own initiative.

**J. Zoning Code Amendments.** The League also has language like this in its Model Ordinance (Section 6.D). One change from the League's language, however, is that there is no requirement for the Planning Commission to hold a public hearing. The statute, Minnesota Statutes § 462.357, subd. 3, requires either the planning agency or the municipality to hold a public hearing on changes to its zoning code. However, since the City Council is required under its Rules of Procedure, Article 7.02( c), to hold a public hearing, it may not be necessary for the Planning Commission to hold one, too. That doesn't mean the Planning Commission couldn't hold its own public hearing, but it is not required under this provision.

# MEMORANDUM

DATE: October 19, 2017

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TO: Birchwood Planning Commission  
FROM: Tobin Lay, City Administrator  
SUBJECT: Impervious Surface Amendment Update



**Birchwood Village**

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Dear Commissioners,

During the October 10, 2017 City Council meeting, the Council considered the Commission's recommendation for amendments to Section 302.050 – Impervious Surfaces.

The Council listened to comments by residents on the proposed amendments and requested staff forward the draft to City Engineer Steve Thatcher for further feedback and then send back to the Planning Commission to consider all feedback.

The City Engineer has reviewed the amendments but “does not have any changes to recommend or feedback.”

Enclosed is feedback from resident Bryan McGinnis for your review and feedback. Also enclosed is the previously recommended draft ordinance. Mr. McGinnis may also be in attendance at tonight's meeting.

### **Request/Recommendation**

Council requests Commissioners

- 1) Review City Engineer comments;
- 2) Review and consider enclosed feedback by Bryan McGinnis; and
- 3) Recommend for Council's approval, amendments to Section 302.050.

Regards,  
Tobin Lay

**ORDINANCE 2017-01-01**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING IMPERVIOUS COVER STANDARD AND VARIANCE  
STANDARDS IN CITY CODE**

The City Council of the City of Birchwood Village hereby ordains that Chapter 302 (Zoning Code: Requirements and Performance Standards) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

**SECTION 302.050: IMPERVIOUS SURFACES**

- 302.050 1. Impervious surface coverage of lots shall not exceed twenty-five (25) percent of the lot area unless the applicant obtains a variance and the following conditions are satisfied:
- a. The applicant shall submit a stormwater management plan for the site that analyzes the proposed development including the area(s) of impervious surfaces, direction of runoff, proposed best management practices to manage runoff, and stormwater retention that the best management practices will achieve.
  - b. The stormwater management plan shall include structures and/or best management practices for the mitigation of stormwater impacts on receiving waters in compliance with the City's Surface Water Management Plan, or as approved by the City Engineer, so that the site design includes stormwater management practices that control the stormwater runoff volumes, and the post-construction runoff volume shall be retained on site for 1.1 inches of runoff from impervious surfaces. Examples of best management practices that may be included in the plan include, but are not limited to, the following: pervious pavements, rainwater gardens, and french drains.
  - c. The applicant shall utilize the most recent version of the Minnesota MIDS (Minimum Impact Design Standards) Calculator (available on the Minnesota Pollution Control Agency's website), the U.S. Environmental Protection Agency's National Stormwater Calculator, or another similar stormwater design calculator approved by the city to complete the plan and show that the proposed stormwater management practices meet the required infiltration standard. The applicant shall submit the calculator results to the City with the stormwater management plan.
  - d. The applicant shall provide documentation that the proposed stormwater management methods meet the required standard, will be designed and installed consistent with the City's Surface Water Management Plan, NPDES stormwater

standards, and the Minnesota Pollution Control Agency’s Minnesota Stormwater Manual.

- e. No permeable pavement system is permitted in the Shore Impact Zone. (The Shore Impact Zone is the land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the required structure setback. The required structure setback from the OHWL in the City of Birchwood Village is 50 feet, and the Shore Impact Zone is 25 feet.)
- f. Site design shall comply with the City’s Tree Ordinance, and shall minimize changes in ground cover, loss of natural vegetation, and grade change as much as possible.
- g. The base of installed infiltration structures or practices must be a minimum of three (3) feet above the established ground water table or the Ordinary High Water Level of White Bear Lake, whichever is higher.
- h. The stormwater management practices shall be designed in accord with the Minnesota Stormwater Manual, American Concrete Pavement Association design criteria, Center for Watershed Protection, *Stormwater BMP Design Supplement for Cold Climates*, or other design guidance provided by the City.
- i. The stormwater management plan shall include the applicant’s description of how the practices shall be maintained to function as designed for the long-term. The City may inspect the installation of the stormwater management system at the site.
- j. The applicant shall include the maintenance plan and a maintenance schedule for the approved stormwater management practices with the building permit application.
- k. The applicant shall record the variance with the property records at Washington County.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this \_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Mary Wingfield  
Mayor

Attest:

\_\_\_\_\_  
Tobin Lay  
City Administrator-Clerk

To: City of Birchwood Village via Tobin Lay, City Administrator  
Doug Danks, Chair, Birchwood Village Planning Commission

From: Bryan J. McGinnis  
194 Wildwood Avenue

Subject: Comments at the October 10 Public Hearing on the “Impervious Surface Amendment”

Here is written text following what I said at the subject hearing: (Comments in parentheses were not made at the meeting.)

The draft of the amended “Impervious Cover Standard” appears thorough and complete, and I commend the Planning Commission for its extensive work on this ordinance. I believe that this draft formalizes the flexibility that the Planning Commission has used for several years in dealing with variances to the 25% maximum impervious surface coverage standard.

1. Section f. refers to a “Tree Ordinance”. The City has no code so titled. I think it would work to refer to the entire 302.055 Land Disturbance Activity Standards that cover the “changes” (if they are really in effect. See my following comments.) noted in the Section f. I believe that the Council wanted to delete the phrase “as much as possible”. I noted, without going into detail, that Code 302.055 is incorrect in the official city books and on the website. (To elaborate, 302.055 section 2 parts a, b, and c are missing, and have been since changes were made a couple years ago. 302.060 should have been deleted since this material was revised and put into the new 302.055. 2. d. Vegetative Alterations. I have a copy of the missing parts a, b, and c that I could offer up to anyone to confirm that these were the right versions when the ordinance was changed. **As 302.055 is now “on the books”, it may be that we really have no enforceable requirements that should be in parts a, b, and c. Residents/contractors may have no legal obligation in regard to Land Disturbance Activities! This problem should be corrected.**)
2. The term “pervious pavements” in Section b. is not consistent with “permeable pavement system” in Section e. One or the other could be chosen and defined in 300.020 or in this section. Or a definition from one of the referenced sources could be cited and used.
3. The terms “rainwater garden(s)” (Should probably be the more commonly used term “raingarden”.) and “french drain” in Section b. should also be defined.
4. “impervious surface” is well defined in 300.020.23. (Is Section a., which refers to “best management practices” as defined in 300.020.2 , compatible with all other sections of the draft document?)

Thank you for the opportunity to make recommendations on the Impervious Surface draft.

Bryan J. McGinnis

# MEMORANDUM

DATE: October 19, 2017

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TO: Birchwood Planning Commission  
FROM: Tobin Lay, City Administrator  
SUBJECT: Right of Way Ordinance



Dear Commissioners,

During the October 10, 2017 City Council meeting, the Council reviewed the Commission's recommendation for a Right-of-Way ordinance. Commission Chair Doug Danks was present at that meeting and fielded many questions.

After much discussion, the Council requested that the Commission revisit its recommendation to consider feedback from Council Members and to discuss how this ordinance should address non-permit users of the right-of-way; incidental uses.

Staff has amended the "plate" numbers up to 20 plates (bolded and red on enclosed draft ordinance) and asks that Commissioners confirm this information is correct. Staff also asks Commissioners to recommend an appropriate City Code chapter to place this ordinance.

Enclosed is feedback from the Mayor and an amended draft ordinance.

## **Request/Recommendation**

Council and/or staff requests Commissioners:

- 1) Review and consider feedback and amendments to the previously recommended draft ordinance;
- 2) Confirm "plate" information;
- 3) Discuss how this ordinance should address non-permit users of the right-of-way, such as incidental uses;
- 4) Recommend an amended draft ordinance for Council's approval; and
- 5) Determine the appropriate City Code chapter to place this ordinance.

Thanks!

Regards,  
Tobin Lay

**RIGHT-OF-WAY ORDINANCE**

**City of Birchwood Village, Washington County, Minnesota, witnesseth:**

That an ordinance to enact a new Section of the Birchwood Village Code of Ordinances to administer and regulate the public **rights-of-way (Generally hereinafter called ROW)** in the public interest, and to provide for the issuance and regulation of ROW permits to maintain the safe maintenance and passage there-through:

***THE COUNCIL OF BIRCHWOOD VILLAGE ORDAINS:***

**Article I. In General, Section 32-4 through Section 32-27,** City of Birchwood Village, County of Washington, Minnesota, “Right-of-Way Ordinance” is herewith adopted into city code. Any and all previously adopted sections or articles which may appear contrary or in conflict with this ordinance are hereby replaced or modified by this code.

**SEC. 32-4. FINDINGS, PURPOSE AND INTENT.**

The City of Birchwood Village holds the ROW within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the ROW. It also recognizes that some persons, by placing their equipment in the ROW and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases necessary and proper use of the ROW, the City must regulate and manage such uses.

To provide for the health, safety and well-being of its citizens and to ensure the structural integrity of its streets and the appropriate use of ROW, the City strives to keep its ROW in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the ROW, one of the causes for the early and excessive deterioration of its ROW is frequent excavation or other intrusions into its sub-surface area. This Article imposes reasonable fees and regulations on the placement and maintenance of equipment currently within its ROW or to be placed therein at some future time. It is intended to complement the regulatory roles of state, federal and other agencies. Under this Article, persons disturbing and obstructing the ROW will bear a fair share of the financial responsibility for its integrity. This Article also provides for recovery of the City's costs associated with managing its ROW.

**SEC. 32-5. EXEMPTIONS.**

The provisions and requirements of this ordinance shall not apply to inter-governmental entities that have Joint Powers Agreements with the City or other ROW users exempted by the statutes of the state of Minnesota.

## **SEC. 32-6. DEFINITIONS.**

The following words, terms and phrases, as used herein, have the following meanings:

**Abandoned Facility** - (1) a facility no longer in service and physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service; or (2) a facility that is deemed abandoned by the ROW user.

**Applicant** – Any person or entity requesting permission to excavate or obstruct a ROW.

**City** - means the corporate municipality, its elected officials, its manager and/or appointed employees to include the Director of Public Works or his/her designee, City of Birchwood Village, Minnesota.

**City Management Costs** - the actual costs incurred by the City for public ROW management; including, but not limited to, costs associated with registering applicants seeking permission to excavate or obstruct a ROW; issuing, processing and verifying ROW permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting or moving user equipment during public ROW work; determining the adequacy of ROW restoration; restoring work inadequately performed after providing notice and opportunity to correct the work; mapping of "as built" locations of facilities located in ROW; and revoking ROW permits and performing all other functions required by this Article, including other costs the City may incur in managing the provisions of this Article.

**Degradation** – means a decrease in the useful life of the ROW caused by excavation in or disturbance of the ROW, resulting in the need to reconstruct such ROW earlier than would be required if the excavation or disturbance did not occur. This condition is only applicable in ROW's that are not included in the current 5-year street replacement plan scheduled for full removal and reconstruction.

**Degradation Cost** – subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown on **Birchwood Village plates 1 to 20**, and set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

**Degradation Fee** – Means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the ROW caused by the excavation, and which equals the degradation cost. This fee does not include the cost of patching, which is the sole responsibility of the ROW user.

**Delay Penalty** - In accordance with Minnesota Rule 7819.1000 subd. 3, the director shall impose a delay penalty for unreasonable delays in ROW excavation, obstruction, patching, or restoration by permittee. The delay penalty shall be proposed by the director and established from time to time by city council resolution.

**Director** - the City's ADMINISTRATOR or designee.

**Emergency** - a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

**Emergency Hole** - excavation of a hole necessitated by a condition creating a clear and immediate threat to life, health, safety or property or requiring immediate repair or replacement in order to restore service to a customer.

**Engineer** – the City's Appointed or approved Engineer or Engineering Firm.

**Equipment** - any tangible asset used to install, repair or maintain facilities in any ROW.

**Excavate** - to dig into remove or physically disturb or penetrate any part of a ROW.

**Excavation Permit** - a permit which must be obtained before a person may excavate in a ROW. An excavation permit allows the holder to excavate only in that part of the ROW described in the permit.

**Facility or Facilities** - any tangible asset in the ROW required to provide utility service. The term does not include facilities to the extent the location and relocation of such facilities are preempted by Minnesota Statute 161.45, governing utility facility placement in state trunk highways.

**Franchise** – any person or entity with tangible assets or equipment in the ROW for the purpose of providing utility service to the general public having been previously approved by the city by written agreement, contract or by franchise ordinance.

**Hole** - an excavation having a length on the long side that is less than 2 times the dimension of the width of the excavation and that conforms to O.S.H.A. standards.

**Obstruct** - to place any tangible object in a public ROW so as to hinder free and open passage over that or any part of the ROW for an aggregate period of five (5) hours or more in conjunction with the issuance of a ROW permit.

**Obstruction Permit** - a permit which must be obtained before a person may obstruct a ROW, allowing the holder to hinder free and open passage over the specified portion of that ROW by placing equipment described therein on the ROW for the duration specified in the permit.

**Patch or Patching** - a method of pavement replacement that is considered temporary in nature. A patch consists of (1) the compaction of the sub base and aggregate base, and (2) the replacement in kind, to match the existing pavement per **Birchwood Village Plates 1-20**. A patch shall be considered “full restoration” only if the pavement is included in the City's five year project plan.

**Pavement Repair Plates** – Drawings and details for the reconstruction and repair of Birchwood Village ROW pavements (all types) that are herewith copied and adopted from the original thirteen (20) plates as suggested and provided by the Minnesota Public Utilities Commission and any supplemental additions as provided by the City of Birchwood Village.

**Permit Holder** - any person to whom a permit to excavate, obstruct, or place equipment or facilities in a ROW has been granted by the City under this Article.

**Person** – a private individual or authorized representative or agent of an entity subject to all laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

**Registrant** - any person or entity that digs, excavates, intrudes or has or seeks to have its facilities or equipment located in any ROW for temporary or permanent placement

**Restoration or “Full Restoration”** - the process by which the ROW and surrounding area, including pavement, foundation, and turf areas is returned to the same or better condition and life expectancy that existed immediately before excavation.

**Restoration Cost** - the amount of money paid to the City by a permit holder to have the city or its designated contractor perform the work to achieve the required level of restoration according to **Birchwood Village plates 1 to 20**, which are attached hereto and incorporated herein.

**ROW** – (Right-of-Way) - the area on, below, or above a public roadway, highway, street, cart way, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated ROW for travel purposes and/or utility easements of the City.

**ROW Engineer** – that person or persons appointed, directed and empowered by the City of Landfall Village to administrate the management of the Office of the Right-of-Way Engineer and those necessary responsibilities empowered by the City ROW Ordinance.

**ROW Permit** - either an excavation permit or obstruction permit, or both, depending on the context required by this Article.

**ROW User** - (1) a telecommunications ROW user as defined by Minnesota Statutes, Section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the public ROW that is used or is intended to be used for providing utility service and who has a right under the law, franchise, or ordinance to use the public ROW.

**Trench** - an excavation having a length that is in excess of two (2) times the width of the excavation for the sections of roadway where the work is occurring, including a directional bore.

**Utility or Utility Service** – means services provided by: (1) a public utility as defined in Minnesota Statutes, section 216B.02; (2) services of a telecommunications ROW user, including the transporting of voice or data information;; (3) services provided by a cable communications system as defined in Minnesota Statutes, Chapter 238;(4) natural gas or electric energy or telecommunications services provided by a local government unit; (5)services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling, heating services, community television antenna system, fire and alarm communications, storm sewer, light, or power services including wind generation.

**Wireless Telecommunication Facility** - a tangible asset used to provide wireless telecommunication or data services, including all antennas, support devices, equipment including ground equipment, associated cables, and attachments.

## **SEC. 32-7. REGISTRATION.**

(a) **Registration Required Prior to Work.** No one shall construct, install, repair, remove, relocate or perform any work within any ROW without first being registered pursuant to this Section. Such registration shall be made on an application form provided by the City's Department of Public Works and shall be accompanied by the registration fee set forth in this Code. Registration and the accompanying fee shall be required each calendar year. A franchised service or utility service operating under this section shall be registered pursuant to this Section but need not annually provide registration information as required by subsection (c) of this Section if such information has been submitted pursuant to a franchise agreement or ordinance. Further, a franchised service or utility service operating pursuant to a franchise agreement or ordinance shall be exempt from payment of an annual registration fee providing said franchise fee has been paid per written agreement or ordinance. Exceptions to the registration requirements, as described in section 32-7, shall be determined at the discretion of the ROW Engineer.

(b) **Exceptions.** The following are not subject to the requirements of this Section:

(1) Person or Persons planting or maintaining pre-approved boulevard surface plantings or gardens.

(2) Person or Persons installing mail boxes or private sidewalk from street or curb to dwelling or commercial structure.

(3) Person or Persons engaged in commercial or private snow removal activities.

(4) Person or Persons installing street furnishings.

(5) Person or Persons installing irrigation systems.

(6) City of Birchwood Village

(7) Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this Section.

(c) **Registration Information.** The registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:

(1) Registrant's name, address, telephone number, facsimile number and Gopher One Call registration certificate number if required by state law.

(2) Name, address, telephone number and facsimile number of the person responsible for fulfilling the obligations of the registrant.

(3) Unless exempted by previous or existing agreements or ordinance, a current Certificate of Insurance from a company licensed to do business in the State of Minnesota providing minimum coverage in the following amounts:

**GENERAL LIABILITY:**

Public Liability, including premises, products and complete operations

Bodily Injury Liability - \$1,000,000 each person, \$3,000,000 each occurrence

Property Damage Liability - \$3,000,000 each occurrence

In lieu of (1) & (2): All Combined - \$3,000,000 single limit

**COMPREHENSIVE:**

Automobile Liability Insurance, including owned, non-owned and hired vehicles.

Bodily Injury Liability - \$1,000,000 each person, \$3,000,000 each occurrence

Property Damage Liability - \$3,000,000 each occurrence

In lieu of (1) and (2) Bodily Injury and Property Damage Combined - \$3,000,000 single limit. Such certificate shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the ROW by the registrant, its officers, agents, employees and permit holders, and (ii) placement and use of equipment or facilities in the ROW by the registrant, its officers, agents, employees and permit holders, including but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property. Such certificate shall also name the City as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage. Such certificate shall require that the City be notified thirty (30) days prior to cancellation of the policy.

(4) A 24 hour emergency number.

(5) An acknowledgment by the registrant of the indemnification pursuant to this Code.

(6) Such additional information as the City may require.

### **SEC. 32-8. FRANCHISE REPORTING OBLIGATIONS.**

Each franchise registrant shall, at the time of registration and not later than November 1st of the preceding year, file a proposed construction and major maintenance plan for underground facilities with the City.

Such plan shall be submitted using a format designated by the City and shall contain the information determined by the City to be necessary to facilitate construction coordination and reduction in the frequency of excavations and obstructions of ROW.

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

(a) To the extent known, the locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year; and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year.

The City will have available for inspection in the Engineer's office a composite list of all known or planned projects that have been adopted for the next calendar year. All registrants are responsible for keeping themselves informed of the current status of this improvement list. Each franchise registrant must notify the City immediately of any change in its list of planned projects.

### **SEC. 32-9. PERMIT REQUIREMENT.**

#### **(a) Permit Required.**

No person may obstruct or excavate any ROW without first having been issued the appropriate ROW permit pursuant to this Section, except as otherwise provided in this Code. Exceptions to the permitting requirements, as described in section 32-9(3)(h), shall be made at the discretion of the ROW Engineer.

(1) **Excavation Permit.** An excavation permit is required by the registrant to excavate that part of the ROW described in each permit that may hinder free and open passage over the specified portion of the ROW when placing or repairing facilities therein, to the extent and for the duration specified in the permit.

(2) **Obstruction/Aerial/Interduct Permit.** An obstruction/aerial/interduct permit is required by a registrant if the work proposed may hinder free and open passage over the specified portion of ROW by placing or repairing equipment described therein within the ROW, to the extent and for the duration specified in the permit. An obstruction/aerial/interduct permit is not required if a registrant has been issued a valid excavation permit for the same project.

(3) **Pole Attachment Permit.** A pole attachment permit is required by the registrant in order to attach a wireless telecommunication facility to an existing public utility structure in the public ROW. A pole attachment permit is not required if a registrant has been issued a valid excavation permit for the same project.

(b) **Permit Extension.** No person may excavate or obstruct the ROW beyond the date or dates specified in the permit or do any work outside the area specified in the permit unless such person makes a supplementary application before the expiration of the permit. Payment of all fees for an extension of the permit is required before extension may be granted by the City; If the work could not be completed because of circumstances beyond the control of the permit holder or the work was delayed or prohibited by unseasonable or unreasonable conditions, the City may grant and extend the completion date of the work.

(c) **Delay Penalty.** Notwithstanding Subsection (b) of this Section, the City may impose a delay penalty where excavating or obstruction work in the ROW is not completed within the time specified if no permit extension application has been made prior to the expiration date of the permit.

A delay penalty will not be imposed if the delay is due to circumstances beyond the control of the applicant, including without limitation inclement weather, acts of God, or civil strife.

(d) **Application and Fee.** An application for a ROW permit shall be made on forms provided by the City and shall be accompanied by a fee as set forth from time by the City which is established to reimburse the City for costs. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from the payment of permit fees. If the work is to be performed by an agent, contractor, or subcontractor on behalf of the registrant, such application shall be signed by the registrant. The application shall also be accompanied by the following:

(1) Scaled drawings showing the location of all known existing facilities and improvements proposed by the applicant. The applicant will be requested to submit in English measurement two (2) paper copies at 1" = 50' scale plans at the smallest and/or one (1) copy in Auto CAD format (Washington County Coordinate system) with X, Y, Z dimensions to foot accuracy electronic plan. All plans must be dimensional and show existing utilities, curb and gutter, sidewalks, bikeways, signal poles, driveways, boxes, relevant structures, property lines and corners and property addresses.

(2) A description of the methods that will be used for installation.

(3) A proposed schedule for all work.

(4) The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work and proposed detour route with appropriate signage.

(5) A description of methods for restoring any public improvements disrupted by the work.

(6) Any other information reasonably required by the City.

(e) **Security.** A performance bond and cash deposit in an amount determined by the City shall be required from each applicant. The applicant, at its option, may post security sufficient to cover all projects contemplated for the current calendar year. The performance bond must be approved by the City Attorney. Security required pursuant to this Subsection shall be conditioned that the holder will perform the work in accordance with this Article and applicable regulations and will pay to the City any costs incurred by the City in performing work pursuant to this Article. Said conditions will indemnify and save the City and its officers, agents and employees harmless against any and all claims, judgment or other costs arising from any excavation and related work covered by the ROW permit. And to include further indemnification by reason of any accident or injury to persons or property through the fault of the permit holder, either for improperly fencing and guarding the excavation or for any other injury resulting from the negligence or willful actions of the permit holder. The bond or any unused portions of a cash deposit shall be released by the City upon completion of the work and compliance with all conditions imposed by the ROW permit. For permits allowing excavations within public streets, such bond or unused part of a cash deposit shall be held for a period of twenty-four (24) months to guaranty adequacy of all restoration work.

(f) **Permit Issuances; Conditions.** The City shall grant a ROW permit upon finding the work will comply with the requirements of this Article. The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the public health, safety and welfare, to insure the structural integrity of the ROW, to insure completion of restoration of the ROW within a specified period, to protect the property and safety of other users of the ROW and to minimize the disruption and inconvenience to the traveling public. If it is determined by the Office of the ROW Engineer that the proposed ROW intrusion or use is not in the best interest of the city and no agreement or alternative compromise solution is feasible, the applicant may appeal the Engineers decision to the Director of Public Works. Should the issue there remain unresolved, the applicant may then request to address the case before the Birchwood Village City Council for final disposition. If the applicant's ROW permit application is terminated at any given level, the City may at its discretion elect to grant a partial refund of fees that may have been paid but shall not disburse any part of the basic Registration Fee or more than 50% of the Administrative Fees. No ROW permit shall be issued to any person who has failed to register pursuant to this code.

(g) **Dumpsters/Portable-on-Demand-Storage (POD) Units.** The placement of dumpsters or POD units in the street portion of the ROW is not allowed. Dumpsters or POD units may be placed within the boulevard or driveway portions of the ROW provided that they do not obstruct pedestrian traffic along sidewalks or trails and the boulevard is restored to previous conditions. In extraordinary circumstances, the City Right of Way Engineer may make exceptions to this provision and applicant shall be subject to the permitting and fee requirements of this ordinance.

(h) **Exceptions.** No permit shall be required for the following:

- (1) Approved surface landscaping work.
- (2) Approved private sidewalks, street furnishings, posts and pillars.
- (3) Snow removal activities.
- (4) Irrigation systems provided that the system does not connect directly to water mains in the ROW installed at the property owner risk.
- (5) Activities of the City of Birchwood Village.
- (6) If granted approval by the city, piercing or drilling a street or sidewalk/trail pavement for the purpose of exploratory examination or utility depth determination.

#### **SEC. 32-10. TIMELINESS OF WORK.**

The work to be done under the ROW permit and the patching and restoration of the ROW as required herein, must be completed within the dates specified in the permit. It may be increased by as many days as work could not be done because of circumstances beyond the control of the permit holder or when work was prohibited as unseasonable or unreasonable.

#### **SEC. 32-11. STANDARDS FOR CONSTRUCTION OR INSTALLATION.**

(a) **General Standards.** The permit holder shall comply with the following standards, to the extent consistent with applicable Minnesota rules, when performing the work authorized under the permit:

- (1) Take such precautions as are necessary to avoid creating unsanitary or unsafe conditions. Observe and comply with all laws, rules and regulations of the State and local governments.
- (2) Conduct the operations and perform the work in a manner as to insure the least obstruction to and interference with traffic.
- (3) Take adequate precautions to insure the safety of the general public and those who require access to abutting property.
- (4) Notify adjoining property owners prior to commencement of work which may disrupt the use of and access to such adjoining properties.
- (5) Comply with the Minnesota Manual of Uniform Traffic Control Devices at all times during construction or installation.
- (6) Exercise precaution at all times for the protection of persons, including employees and property.
- (7) Protect and identify excavations and work operations with barricade flags and if required, by flagmen in the daytime and by warning lights at night.
- (8) Provide proper trench protection as required by O.S.H.A..
- (9) Protect the root growth of trees and shrubbery.
- (10) Where possible, provide for space in the installation area for other telecommunication ROW users and companies that install facilities in public ROW.
- (11) Maintain maximum access to all properties and cross streets as possible during construction operations and maintain emergency vehicle access at all times.
- (12) Maintain planned alignment and grade unless otherwise authorized by the City. Field changes not approved by the City will require removal and reconstruction.
- (13) During trenching of facilities, a warning tape must be placed at a depth of twelve inches above all copper cables with over two hundred (200) pairs and above any fiber facilities.
- (14) Beneath concrete or bituminous paved road surfaces, directional bore facilities shall be installed in conduit of a type approved by the city.
- (15) The placing of all telecommunications facilities must comply with the National Electric Safety Code, as incorporated by reference in Minn. Stat. Sec. 326.243.

(16) Locate all property lines near ROW lines and replace any disturbed property corner markers or judicial monuments. A Minnesota licensed surveyor must be used in the replacement of disturbed property corners markers or judicial monuments.

(17) Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability and as directed by the City.

(18) Excavating, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage.

(19) All backfilling materials must be placed in 6 inch lifts (maximum) at optimum moisture and compacted with the objective of attaining ninety-five percent (95%) of Standard Proctor Density. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate.

(20) Backfill material shall be subject to the approval of the City. The City may permit backfilling with the material from the excavation provided such material is granular in nature and acceptable to the City.

(21) Compacted backfill shall be brought to bottom of the gravel of the approved street section.

(22) All work performed in the ROW shall be done in conformance with **Birchwood Village Plates 1 to 20**, unless a less stringent standard is approved by the City.

(23) Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.

(24) No road surface damaging lugs, cleats or equipment may be used or driven upon paved city street surfaces.

(25) Dirt, trash or other debris must be periodically removed during construction

(26) Other reasonable standards and requirements of the City.

(b) **Standards for Installation of Underground Utilities.** The permit holder shall comply with the following standards when installing facilities underground:

(1) Underground facilities must be placed as far off the roadway as possible to provide access from outside of the paved area.

(2) Buried fiber facilities shall be at a minimum depth of three (3) feet and a maximum depth of four (4) feet unless an alternate location is approved by the City. Buried copper facilities beneath concrete or bituminous paved road surfaces must be placed at no less than three (3) feet but no more than four (4) feet deep. Other buried copper facilities must be placed at a minimum depth of thirty (30) inches and a maximum depth of four (4) feet.

(3) Crossing of streets and hard surfaced driveways shall be directional bored unless otherwise approved by the City.

(4) If construction is open cut, the permit holder must install the visual tracers approximately twelve (12) inches above buried facilities. If other construction methods are used, substitute location methods will be considered.

(5) The permit holder shall register with Gopher State One Call and comply with the requirements of that system.

(6) Compaction in trench backfill material shall be ninety-five percent (95%) of the standard proctor density and copies of test results shall be submitted to the City. All tests and their locations shall be determined by the City. Tests must be conducted by an independent testing firm approved by the City. Street pavement replacement will not be permitted until sub-base densities are approved by the city. Testing shall be required at the discretion of the ROW engineer. Street Pavement structure and materials shall be as specified by the city and re-paved in accordance with **Birchwood Village plates 1-20**. All pavement replacement shall be done in the presence of a City inspector with certified pavement material to City specifications.

(7) The facilities shall be located so as to avoid traffic signals and signs which are generally placed a minimum of five (5) feet behind the curb.

(8) When utilizing trenchless installation methods to cross an area in which a municipal utility is located, and/or when directed by the City, the permit holder shall excavate an observation hole over the utility to ensure that the City utility is not damaged. Observation holes shall not be backfilled until viewed and approved by the city ROW Inspector.

(9) All junction boxes or access points shall be located no closer than ten (10) feet from municipal fire hydrants, valves, manholes, lift stations or catch basins unless an alternate location is approved by the City.

(10) Underground facilities shall not be installed between a hydrant and auxiliary valve.

(11) Underground facilities shall not be installed within five (5) feet of hydrants, valves, lift stations or manholes in areas where utility easements exist beyond the ROW. In those areas in which no utility easement exists, placement of an underground facility shall be between the edge of pavement and no closer than three (3) feet to an existing municipal utility appurtenance unless approved by the City.

(12) In areas where an extensive effort to determine the location of municipal utility lines will be required to accommodate the installation of private facilities, the City's representative for Gopher State One Call must be contacted by the permit holder two (2) weeks prior to the beginning of the work to schedule meetings.

(13) Buried telecommunication facilities must have a locating wire or conductive shield, except for di-electric cables.

(14) Buried fiber facilities must be placed in a conduit of a type determined by the ROW user unless the permit holder obtains a waiver from the City.

(c) **Standards for Installation of Overhead Facilities.** The permit holder shall comply with the following standards when installing facilities overhead:

(1) All wires must be in compliance with the National Electric Safety Code and at a location that does not interfere with traffic signals, overhead signs, or street lights.

(d) **Standards for Wireless Telecommunication Facilities.**

(1) **Purpose.** The City of Birchwood Village desires high quality wireless communication services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that wireless telecommunication facilities can have on aesthetics and public safety. Due to the many services that must be delivered within its limited area, the City also strives to avoid unnecessary encumbrances within the public ROW. The City allows and regulates wireless telecommunication facilities outside of the public ROW through performance standards and height limits. The purpose of this Section is to regulate wireless telecommunication facilities within the public ROW in a manner that balances desire for service with aesthetic, public safety, and ROW flexibility concerns.

Public ROW are appropriate locations for wireless telecommunication facilities that present minimal impacts (i.e. small pole attachments that do not require new poles, do not require pole extensions, and do not have associated ground mounted equipment).

Wireless telecommunication facilities that require greater heights than can be afforded by existing poles in the public ROW and that require ground-mounted equipment are more appropriately sited outside the public ROW in accordance with adopted performance standards of this Code. However, the City recognizes that as wireless technology advances, some residential areas of the City may be hard to serve with wireless technology due to the lack of acceptable siting alternatives in the immediate vicinity. In such areas, where no alternative non-ROW locations are available, wireless telecommunication facilities that require pole extensions and ground equipment will be allowed in the public ROW subject to the requirements of this Section which are meant to protect the public health, safety, and welfare.

**(2) Wireless Telecommunication Facilities as Pole Attachments.** Wireless telecommunication facilities that comply with the following requirements may be attached to existing public utility structures within the ROW after issuance of a pole attachment permit.

(A) The wireless telecommunication facility shall not extend above the top of the existing public utility structure and the height of the existing public utility structure shall not be increased to accommodate the wireless telecommunication facility.

(B) If the public utility structure must be replaced to structurally accommodate the wireless telecommunication facility, the replacement public utility structure height shall not exceed the existing public utility structure height and the replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50 percent.

(C) The wireless telecommunication facility shall not be larger than three (3) cubic feet and shall have no individual surface larger than four (4) square feet.

(D) The wireless telecommunication facility shall not extend outward from the existing pole or tower or arm thereof by more than two and one half (2 1/2) feet, except that an antenna one half inch in diameter or less may extend an additional six inches.

(E) The wireless telecommunication facility shall include no ground mounted equipment.

(F) The wireless telecommunication facility shall not interfere with public safety communications and shall meet the requirements of this Code.

(G) Wireless telecommunication facilities in the ROW shall be removed and relocated at City request subject to the provisions of this Article.

(H) The wireless telecommunication facility shall not block light emanating from the public utility structure and shall not otherwise interfere with the original use of the public utility structure.

**(3) Wireless Telecommunication Facilities as Pole Extensions or with Ground Mounted Equipment.** Wireless telecommunication facilities that require increased public utility structure height or that have ground mounted equipment may be erected in the public ROW only when in compliance with the following provisions and after issuance of a pole attachment permit or excavation permit:

(A) The applicant shall demonstrate to the satisfaction of the City or his/her designee that the wireless telecommunication facility cannot be placed in a Code complying location outside the ROW within one quarter (1/4) mile of the proposed location.

(B) The replacement public utility structure, including lightning rods and all other attachments, shall not exceed the height of the existing public utility structure by more than fifteen (15) feet. Once the height of a public utility structure has been increased under the provisions of this Section, the height shall not be further increased.

(C) The replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than fifty (50) percent.

(D) The wireless telecommunication facility shall not extend outward from the public utility structure by more than two (2) feet.

(E) If feasible and desirable, as determined by the City, the replacement public utility structure shall match the original and surrounding public utility structures in materials and color.

(F) The wireless telecommunication facility shall not interfere with public safety communications and shall meet the requirements of this Code.

(G) A pole attachment or excavation permit for a wireless telecommunication facility that has ground mounted equipment will be issued only if the Issuing Authority finds the following:

(i) the ground mounted equipment will not disrupt traffic or pedestrian circulation;

(ii) the ground mounted equipment will not create a safety hazard;

(iii) the location of the ground mounted equipment minimizes impacts on adjacent property; and,

(iv) the ground mounted equipment will not adversely impact the health, safety, or welfare of the community.

(H) Ground mounted equipment associated with the wireless telecommunication facility shall meet the following performance standards:

(i) be set back a minimum of ten (10) feet from the edge of street or curb line;

(ii) be separated from a sidewalk by a minimum of three (3) feet;

(iii) be set back a minimum of fifty (50) feet from the nearest intersecting ROW line;

(iv) be separated from the nearest ground mounted wireless telecommunication equipment installation on the same block face by a minimum of 330 feet unless the equipment is placed underground;

(v) if located adjacent to residential uses, ground mounted equipment shall be limited to three (3) feet in height above grade and twenty seven (27) cubic feet in cumulative size;

(vi) if located adjacent to non-residential uses, ground mounted equipment shall be limited to five (5) feet in height above grade and eighty-one (81) cubic feet in cumulative size;

(vii) ground mounted equipment located outside the public ROW shall conform to the requirements of this Code.

(viii) vegetative or other screening compatible with the surrounding area shall be provided around the ground mounted equipment if deemed necessary by the City.

(I) Wireless telecommunication facilities in the ROW shall be removed and relocated at City request subject to the provisions of this Article.

(4) **New Poles.** The construction in the ROW of a new pole to support wireless telecommunication facilities is not allowed, except as a replacement of an existing public utility structure subject to the requirements of this Section.

(5) **Charges.** In addition to the permit fees outlined in this Code, the City reserves the right to charge telecommunication providers for their use of the public ROW to the extent that such charges are allowed under state or Federal law. Telecommunication providers shall be responsible for payment of property taxes attributable to their equipment in the public ROW.

#### **SEC. 32-12. PATCHING OR FULL RESTORATION OF ROW.**

The permit holder shall patch its own work. In lieu of ROW restoration, a ROW user may elect to pay a degradation fee as determined by the City.

(a) **City Restoration.** If the City restores the ROW, the permit holder shall pay the costs thereof within thirty (30) days of billing. If, during the twenty-four (24) months following such surface restoration, the pavement settles due to the permit holder's improper backfilling and compaction, the permit holder shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.

(b) **Permit Holder Restoration.** If the permit holder restores the ROW, it shall at the time of application for a ROW permit post a performance bond or cash deposit in an amount determined by the City to be sufficient to cover the cost of restoration and any associated erosion and sediment control measures. The performance bond or cash deposit must be approved by the City Attorney. If, within twenty-four (24) months after completion of restoration of the ROW, the City determines the ROW has been properly restored, the posted security will be released.

(c) **Standards.** The permit holder shall perform patching and restoration according to the Birchwood Village standards.

(d) **Guarantees.** If the permit holder performs the restoration work, the permit holder shall guarantee such work and its maintenance for twenty-four (24) months following its completion. During this twenty-four (24) month period it shall, upon notification from the City, promptly and within 7 working days from receipt of notification, correct all faulty restoration work to the extent necessary, using the method required by the City. If permit holder fails to act within the 7 working day period the City shall at its discretion have the work performed and the security shall be used to reimburse the City for its actual and administrative costs associated with the correction(s).

### **SEC. 32-13. JOINT APPLICATIONS.**

(a) **Joint Application.** Registrants may jointly apply for permits to excavate or obstruct the ROW at the same place and time.

(b) **Shared Fees.** Registrants who apply for permits for the same obstruction or excavation may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

### **SEC. 32-14. OTHER OBLIGATIONS.**

(a) **Compliance With Other Laws.** The permit holder must obtain all other necessary permits, licenses and approvals and pay all fees required. The permit holder shall comply with all requirements of local, state and federal laws, including Minn. Stat. Secs. 216D.01-.09 ("One Call Excavation Notice System"). A permit holder shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the ROW pursuant to its permit, regardless of who does the work.

(b) **Prohibited Work.** Except in an emergency, and with the approval of the City, no ROW excavation or obstruction may be done when seasonally prohibited or when conditions are unreasonable for such work.

(c) **Interference with ROW.** A permit holder shall not so obstruct a ROW that the natural free and clear passage of water through the gutters or other waterways is or would be interfered with. Any physical observation of such obstruction shall be grounds to revoke a permit without further proceedings.

### **SEC. 32-15. DENIAL OF PERMIT.**

The City may deny a permit based on any of the following grounds:

(a) Failure to register pursuant to requirements of this Code.

(b) The applicant is subject to revocation of a prior permit issued pursuant to this Article.

(c) The proposed schedule for work would conflict or interfere with an exhibition, celebration, festival or any other similar event.

(d) The proposed schedule conflicts with scheduled or total or partial reconstruction of the ROW.

(e) The applicant fails to comply with the requirements of this Article or other provisions of this Code.

(f) The City determines that denial is necessary to protect the health, safety and welfare of the public or protect the ROW and its current use.

### **SEC. 32-16. EMERGENCIES AND WORK DONE WITHOUT A PERMIT.**

Each registrant shall immediately notify the City and all other affected parties or property owners of any event regarding its facilities, which it considers to be **an emergency**. The registrant may proceed to take whatever actions are necessary to respond to the emergency. If the registrant has not been issued the required permit, the registrant shall, within two (2) business days after the occurrence of the emergency, apply for the necessary permits, pay the permit fees (where necessary) and fulfill the remaining requirements necessary to bring itself into compliance with this Article for the actions it took in response to the emergency.

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

Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a ROW must subsequently obtain a permit and (where appropriate) as a penalty, pay twice the normal fee for the permit and shall deposit with the City the fees determined to correct any damage to the ROW.

### **SEC. 32-17. INSPECTION.**

(a) **Site Inspection.** The permit holder shall make the work site available to the City and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

#### **(b) Authority of City**

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

(2) The City may issue a stop work order to the permit holder for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation within a stated deadline will be cause for revocation of the permit. If the violation is not corrected within the stated deadline, the City may revoke the permit.

### **SEC. 32-18. REVOCATION OF PERMITS.**

(a) **Substantial Breach.** The City may revoke a ROW permit, without a fee refund, if there is a substantial breach of the terms or conditions of any statute, this Code, rule or regulation, or any condition of the permit. A substantial breach of a permit holder shall include, but not limited to, the following:

- (1) The violation of any material provision of the permit.
- (2) Any material misrepresentation of fact in the application for a permit.
- (3) The failure to maintain the required bonds or other security and insurance.
- (4) The failure to complete the work in a timely manner.
- (5) The failure to correct, in a timely manner, work that does not conform to applicable standards, conditions or codes, upon inspection and notification by the City of the faulty condition.
- (6) An evasion or attempt to evade any material provision of the ROW permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens.
- (7) The failure to comply with the terms and conditions of any applicable federal, state and local laws, rules and regulations, including any provision of this Article.

(b) **Notice of Breach.** If the City determines that a permit holder has committed a substantial breach of a term or condition of any statute, this Code, rule or regulation or any condition of the permit, the City shall make a written demand upon the permit holder to remedy such violation within a reasonable period of time or be subject to potential revocation of the permit. The City may impose additional or revised conditions on the permit to mitigate or remedy the breach.

(c) **Reimbursement of City Costs.** If a permit is revoked, the permit holder shall reimburse the City for its reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees incurred in connection with the revocation.

## **SEC. 32-19. APPEAL.**

(a) **Filing of Appeal.** Any person aggrieved by, (i) the denial of a permit application; (ii) the denial of a registration; (iii) the revocation of a permit, or (iv) the application of the fee schedule imposed by this Code, may appeal to the City Council by filing a written notice of appeal with the City Clerk or Administrator. Said notice must be filed within twenty (20) days of the action causing the appeal.

(b) **Notice of Hearing.** The City Council shall hear the appeal at its next regularly scheduled meeting, unless the time is extended by agreement of the parties. Notice of the date, time, place and purpose of the hearing shall be mailed to the appellant.

(c) **Hearing and Decision.** The City Council shall, at the hearing, consider any evidence offered by the appellant, the City and any other person wishing to be heard. The Council shall issue a written decision within thirty (30) days of the completion of the hearing.

## **SEC. 32-20. MAPPING DATA.**

(a) **Information Required.** Each registrant shall provide mapping as required by the City and which shall include the following information:

(1) Location and approximate depth of registrant's mains, cables, conduits, switches and related equipment and facilities, with the location based on:

- (A) offsets from property lines, distances from the centerline of the public ROW and curb lines as determined by the City; or
- (B) Washington County Coordinate System; or
- (C) Any other system agreed upon by the ROW user and the City;

(2) The type and size of the utility;

(3) A description showing above-ground appurtenances;

(4) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and

(5) Any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, Section 216D.04, subdivision 3.

(b) **Submittal Requirement.**

(1) Within two (2) years after the effective date of this ordinance, all telecommunication ROW users shall submit comprehensive detailed maps, if available, in accordance with Subsection (a) of this Section, for all facilities and equipment installed, used or abandoned within the public ROW.

(2) Subsequent to providing the required comprehensive facility map, interim mapping data shall be submitted by all registrants for all equipment and facilities which are to be installed or constructed after the effective date of this ordinance at such time as permits are sought pursuant to this ordinance.

(c) **Trade Secret Information.** At the request of any registrant, information requested by the City which qualifies as "trade secret" data under Minnesota Statutes, Sec. 13.37(b) shall be treated as trade secret information as detailed therein.

#### **SEC. 32-21. RELOCATION OF FACILITIES.**

A ROW user shall promptly and at its own expense, with due regard for seasonal working conditions, remove and relocate their facilities in the ROW when it is necessary to prevent interference or obstruction, but not merely for the convenience of the City, in connection with: (1) a present or future City use of the ROW for a public project or facility, (2) the public health or safety; or (3) the safety and convenience of travel over the ROW. The registrant shall restore any ROW to the condition it was in prior to removal and relocation.

#### **SEC. 32-22. DAMAGE TO OTHER FACILITIES.**

When the City does work in the ROW and finds it necessary to maintain, support, or move registrant's facilities to protect it, the City shall notify the registrant as soon as possible. The costs associated therewith shall be billed to the registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the ROW which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

#### **SEC. 32-23. ROW VACATION.**

(a) **Reservation of Right.** If the City vacates a ROW which contains the equipment or facilities of a registrant or permit holder, and if the vacation does not require the relocation of the registrant's or permit holder's equipment or facilities, the City shall reserve, to and for itself and all registrants or permit holders having equipment and facilities in the vacated ROW, a public easement for the right to install, maintain and operate any equipment and facilities in the vacated ROW and to enter upon such ROW at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.

(b) **Relocation of Facilities.** If the vacation requires the relocation of the registrant's or permit holder's equipment or facilities; and (i) if the vacation proceedings are initiated by the registrant or permit holder, the registrant or permit holder must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the City, the registrant or permit holder must pay the relocation costs unless otherwise agreed to by the City and the registrant or permit holder; or (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, such person or persons must pay the relocation costs.

#### **SEC. 32-24. ABANDONED AND UNUSABLE EQUIPMENT AND FACILITIES.**

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

(b) **Removal of Abandoned Facilities.** Any registrant who has abandoned facilities in any ROW shall remove it from that ROW to the extent such facilities interfere with another ROW repair, excavation, or construction, unless this requirement is waived by the City.

#### **SEC. 32-25. INDEMNIFICATION AND LIABILITY.**

By registering with the City or by accepting a permit granted under this Article, a registrant or permit holder agrees as follows:

(a) **Limitation of Liability.** By reason of the acceptance of a registration or the grant of a ROW permit, the City does not assume any liability (i) for injuries to persons, damage to property or loss of service claims by parties other than the registrant or the City, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permit holders or activities of registrants or permit holders.

(b) **Indemnification.** A registrant or permit holder shall indemnify, keep and hold the City, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a ROW, whether or not any act or omission complained of is authorized, allowed or prohibited by a ROW permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permit holder or the City, and the registrant or permit holder, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

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

**SEC. 32-26. FRANCHISE HOLDERS.**

If there is a conflict in language between the franchise of a person holding a franchise agreement with the City or the Water Service Agreement with the City and this Article, the terms of the franchise or Water Service agreement shall prevail.

**SEC. 32-27. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this Article 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.

*APPENDIX I ESSENTIAL MUNICIPAL SERVICES*

Special conditions and provisions to regulate and control ROW intrusions by essential service providers for which previous agreements or ordinances have been enacted and approved by the City in concurrence with the respective service providers.

**INDEX**

**Participating Municipal Provider:**

City of White Bear Lake  
White Bear Township  
City of St. Anthony Village

**Tobin Lay**

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**From:** H. Alan [hakantrud@coyotelawyer.com]  
**Sent:** Wednesday, October 11, 2017 4:58 PM  
**To:** Mary Wingfield  
**Cc:** Tobin Lay; Alan kantrud  
**Subject:** Re: ROW ordinance bits

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thanks! A few good points to be sure (sorry I missed a Landfall reference and Engineer one). As we discussed the ROW Ordinance is not really going to nor is it designed to catch the odd homeowner or contractor that scuffs pavement during another project not in the ROW, such as a landscaping off the ROW. I think that is why we are contemplating the addition of a small escrow for such infractions as part of a building permit. That said, some of the projects such as your example, Mayor, may not trigger either permit whatsoever in which case you are right and no better off than now but it is hard to imagine a situation where that would not be the case.

Alan

On 11 October 2017 at 14:06, Mary Wingfield <[wingfield.mary@gmail.com](mailto:wingfield.mary@gmail.com)> wrote:  
Hi Alan and Tobin

Rather than take up time at the meeting last night, I thought I would just pass along some (non-substantive) things that should be addressed in the proposed ordinance. Perhaps Alan could address them and a cleaned up copy could be forwarded to the PC for final review.

p. 43

Patch or Patching--Delete "A Patch shall be considered "full restoration" only if the pavement is included in the city's five year project plan"

We don't have a 5 year project plan. Our roads are on a chip seal plan that MnDOT says should extend our roads for another 20 years w/o any major repairs. The chip sealing plan should not excuse a contractor from repairing any damages he/she creates.

p. 44

ROW Engineer--Change "Landfall Village" to Birchwood Village

**REGISTRATION**

"City's Department of Public Works" does not exist. You might want to make the city the registrar but incorporate the engineer as the agent

p. 47

(6) any other information reasonably required by the city....probably not enforceable?

BTW, the demand for insurance and security will render most residents

from being able to comply and therefore unable to use the ROW. Maybe that is what we want, but what if they dump rocks in their drive, then drive their Bobcat into the street while spreading the rock around. That causes much scuffing and then we have no damage deposit to fix...so we are no better off than now.

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Patriotism is proud of a country's virtues and eager to correct its deficiencies; it also acknowledges the legitimate patriotism of other countries, with their own specific virtues. The pride of nationalism, however, trumpets its country's virtues and denies its deficiencies, while it is contemptuous toward the virtues of other countries. It wants to be, and proclaims itself to be, "the greatest", but greatness is not required of a country; only goodness is. -Sydney J. Harris, journalist and author (14 Sep 1917-1986)