



AGENDA OF THE PLANNING  
COMMISSION  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
September 5, 2017  
7:00 P.M.

**CALL TO ORDER**

**APPROVE AGENDA**

**REGULAR AGENDA**

- A. Approve June 6, 2017 Meeting Minutes\* (p. 2)
- B. Discuss Creation of a Right of Way Ordinance\* (pp. 3, 4-15, 16-40)
- C. Discuss City's Comprehensive Plan – vision statement, consultant, etc.\* (pp. 41-46)
- D. Discuss Draft Amendment to City Code 303\* (pp. 47-55)
- E. Review DNR's Response to Impervious Surface Amendment\* (pp. 56-61)

**ADJOURN**

\* Denotes items that have supporting documentation provided

**CITY OF BIRCHWOOD VILLAGE  
PLANNING COMMISSION MEETING  
June 6, 2017**

**MINUTES**

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

**OTHERS PRESENT:** City Administrator Tobin Lay, City Attorney Alan Kantrud, Andy Sorenson and Alan Mitchell.

Chair Doug Danks called the meeting to order at 7:00 p.m.

**REGULAR AGENDA**

**A. Discuss City's Comprehensive Plan.**

Planning Commission recommends Bridget Sperl be hired to prepare the local water plan and to assist the Commission in updating the Comprehensive plan.

Doug Danks motioned; John Lund 2nd. Recommendation passed unanimously.

**B. Discuss City Code 303 Amendment.**

Planning Commission moves to recommend the model ordinance from the league of cities with revisions as discussed.

Doug Danks motioned; John Lund 2nd. Recommendation passed unanimously.

**C. Vision Letter.**

2030 Plan lacks a clear vision for the future for Birchwood Village. Motion made for commissioners to send vision letter to Doug Danks to consolidate.

~~John Winters motioned; John Lund 2nd. Motion passed unanimously.~~

**Comment [A1]:** Commissioners withdrew because motion was not needed

**D. Elect Vice Chair.**

Doug Danks nominated John Lund for Vice Chair; Randy Felt 2nd. Nomination passed unanimously.

**ADJOURN**

**MOTION WAS MADE BY COMMISSIONER LUND AND SECONDED BY COMMISSIONER WINTERS TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 8:12 P.M.**

# MEMORANDUM

DATE: September 5, 2017

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



**Birchwood Village**

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Dear Commissioners,

During the August 8<sup>th</sup> City Council meeting, the City Council reviewed two (2) separate Right of Way Ordinances (enclosed); one from the City of Grant and the other that City Attorney Kantrud had written for the City of Landfall.

Council Members all agreed that the City should enact a Right of Way ordinance. They voted unanimously to request the Planning Commission work with City Attorney Kantrud to study the two samples and create a recommendation/draft for the Council to consider and enact.

This topic is timely and should be acted on expeditiously to protect the City's interest in its right-of-ways. In addition to losing control over contractor access to these right-of-ways and those associated lost revenues, there is also a state and national movement to take away cities' rights when it comes to small cell wireless use in the right-of-ways. The League of MN Cities is urging cities to address this topic now and they are currently working on a model ordinance to aid in this process.

The City Council requests Commissioners push through an initial version to cover existing Right of Way uses; by October, if possible. The Commissioners should then review and consider the League of Minnesota Cities' model small cell wireless ordinance once that has been published and recommend to Council necessary amendments to the Right of Way ordinance or creation of additional ordinances.

Enclosed is a reworked version of the Grant ordinance with Birchwood's information. Also enclosed is Attorney Kantrud's Landfall ordinance.

Attorney Kantrud is unable to attend this Planning Commission meeting tonight but he requests Commissioners start the initial dialogue. Kantrud is available by phone or email and plans to attend any subsequent meetings the Commission schedules on this subject.

## **Request**

Council requests Commissioners work with City Attorney Kantrud to:

- 1) Provide a recommended draft of a Right of Way ordinance right away; for the October Council meeting, if possible; and
- 2) Provide recommended amendments or additional ordinances based on the League of Minnesota Cities' model small cell wireless ordinance after that becomes available.

Thanks!

Regards,  
Tobin Lay

CITY OF BIRCHWOOD VILLAGE FEE SCHEDULE—(amended)

ADDITIONAL CHARGES FOR ESCROW AMOUNTS

An escrow amount will be required at the time application fees and the application is received by the City's Consultant.

Subdivision	\$7000
Lot Split	N/A
Variance	\$3000
Conditional Use Permit (Amended and new)	\$3000
Conditional Use Permit (Renewal)	N/A
All Other Land uses	\$1000
Grading Permit Fees (under 100 cu. Yards)	\$200
(100+ cu. Yards)	\$3000

- \* Unused escrow amounts will be returned to the applicant
- \* For additional information, see also the Escrow Account Policies Form.

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

**ORDINANCE 2017- \_\_\_\_\_**

**An Ordinance Amending the City of Birchwood Village  
Code of Ordinances  
Enacting Chapter 309, Right-of-Way Land Use**

The City Council of the City of Birchwood Village, Washington County, Minnesota, does hereby ordain as follows:

**SECTION 1. ENACTING OF CHAPTER 309 RIGHT-OF-WAY LAND USE**

That City Code Chapter 309 is hereby ENACTED as follows:

**309.010 Findings, Purpose, and Intent.**

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in good repair and free from unnecessary encumbrances. Accordingly, the city enacts this Section 1 of Chapter 309 of the Code establishing reasonable regulations concerning the placement and maintenance of facilities and equipment within the city's rights-of-way and obstructions of such rights-of-way.

This Section is intended to implement Minnesota Statutes Sections 237.162 and 237.163 Minnesota Rules 7819.0050-7819.9950, and other applicable laws governing use of rights-of-way. Pursuant to Minnesota Statutes, Sections 237.163 subdivision 2(b), and all authority granted to the city, the city hereby elects to manage rights-of-way within its jurisdiction.

**309.020 Definitions.**

*Abandon Facility* means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use.

*Applicant* means any person that has applied for a permit to excavate or obstruct a right-of-way.

*City* means the City of Birchwood Village, Minnesota, its elected officials, officers, employees and agents.

*Commission* means the Minnesota Public Utilities Commission.

*Construction Performance Bond* means any of the following forms of security provided at a permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;

- (3) Security of a form listed or approved under Minnesota Statutes, section 15.73, subdivision;
- (4) Letter of Credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specific and in a form acceptable to the city.

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

*Degradation Cost* means the cost, subject to Minnesota Rules 7819.1100, 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 in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

*Degradation Fee* means the fee established by the city at the time of permitting in an amount estimated to recover the degradation cost.

*Director* means the City Engineer of the city, or his or her designee.

*Delay Penalty* is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

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

*Equipment* means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

*Excavate* means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

*Facility or Facilities* means tangible asset in the public right-of-way required to provide utility service.

*Local Representative* means a local person authorized by a right-of-way user to accept service and to make decisions for that right-of-way user regarding all matters within scope of this Section 1.

*Management Costs* means the actual costs the city incurs in managing its rights-of-way, including costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment for the use of the right-of-way or the fees and costs of any litigation or appeals relating to this Section 1.

*Obstruct* means to place any tangible object in the right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

*Patch or Patching* means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

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

*Permit* has the meaning given "right-of-way permit" in Minnesota Statutes, section 237.162.

*Permittee* means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this Section 1.

*Person* means an individual or entity subject to the 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.

*Public Right-of-Way or Right-of-Way* has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

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

*Restoration Cost* means the amount of money paid to the city by a right-of-way user to achieve the level of restoration according to plates 1 to 13 of Minnesota Rule 7819.1100 Subpart 1.

*Right-of-Way User* means any person who has or seeks to have its equipment or facilities located in any right-of-way.

*Service or Utility Service* means and includes (1) services provided by a public utility as defined in Minnesota Statutes 2168.02, subdivisions 4 and 6; (2) services of a telecommunications provided including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperate electric association organized under Minnesota Statutes, chapter 308A.

*Temporary Surface* means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's pavement management plan, in which case it is considered full restoration.

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

### **309.030 Administration**

The City Engineer is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Engineer may delegate any or all of the duties hereunder.

### **309.040 Conduct Prohibited.**

Except as authorized pursuant to a permit issued by the city, no person shall:

- (a) Obstruct or excavate any right-of-way.
- (b) Place any equipment, facilities, or structures in any right-of-way.
- (c) Deposit snow or ice on any right-of-way.

- (d) Erect a fence or other barrier on or across any right-of-way.
- (e) Obstruct any ditch in or abutting a right-of-way.
- (f) Place any advertisement or sign other than a traffic control sign or other governmental sign in any right-of-way.
- (g) Deface, mar, damage or tamper with any sign, marker, signal, monument, equipment facility, structure, material, tools, or any appurtenance in any right-of-way.
- (h) Drive a vehicle over, through, around, or past any fence, barrier, sign, or obstruction erected to prevent traffic from passing over the right-of-way, or portion of the right-of-way .

**309.050 Registration and Right-of-Way Occupancy.**

(a) *Registration.* Each right-of-way user, including persons with installation and maintenance responsibilities by contract, lease, sublease or assignment, must register with the city. Registration will consist of providing registration information and paying a registration fee.

(b) *Registration prior to work.* No person may construct, install, repair remove, relocate any equipment or facilities or perform any other work in any right-of-way without first being registered with the city.

(c) *Exceptions.* Persons shall not be required to register, obtain permits or satisfy any other requirements under this Section for the following:

- (1) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots pursuant to a driveway permit, except repairs or restoration necessitated by utility cuts or other work;
- (2) Snow removal activities;
- (3) Placement of flexible fiberglass markers at the edge of the paved road to assist snow plow operators (metal posts are prohibited).

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

**309.060 Registration Information.**

(a) *Information Required.* The information provided to the city at the time of registration shall include, but not be limited to:

- (1) The right-of-way user's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers;
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of local representative accessible for consultation at all times. Current contact information shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance:
  - i. Verifying that an insurance policy has been issued to the right-of-way user by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;
  - ii. Verifying that the right-of-way user is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the right-of-way user, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the right-of-way user, its officers, agents, employees and

- iii. Either naming the city as an additional insured or otherwise providing evidence satisfactory to the Administrator that the city is fully covered and will be defended;
- iv. Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification off a coverage term;
- v. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this Section.
- vi. Evidencing adequate third part claim coverage and city indemnification for all actions included in Minnesota Rule part 7819.1250.

- (4) Such evidence as the city may require to demonstrate that the person is authorized to do business in Minnesota.
- (5) Such evidence as the city may require to demonstrate that the person is authorized to use or occupy the right-of-way.

(b) *Notice of Changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

**309.070 Reporting Obligations.**

(a) *Operations.* Each right-of-way user shall, at the time of registration and by December 1 of each year, file a construction and 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 the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

- (b) *Plan.* The plan shall include, but not be limited to, the following information:
  - (1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
  - (2) 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 (in this section, a "five-year project").

(c) *Failure to Include Projects in Plan.* The city may deny an application for a right-of-way permit for failure to include a project in the plan submitted to the city for next-year projects unless the right-of-way user demonstrates that it used commercially reasonable efforts to identify the project. The city may annually produce for inspection a list of all planned projects for inspection.

**309.080 Permit Requirement.**

(a) *Permit Required.* A permit is required to excavate the right-of-way, to place equipment of facilities in or on the right-of-way, or to obstruct or otherwise hinder free and open passage over the right-of-way. The permit shall specify the extent and the duration of the work permitted.

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

(c) *Delay Penalty.* In accordance with Minnesota Rule 7819.1000 subp. 3, the city may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(d) *Permit Delay.* Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

### **309.090 Permit Applications.**

An application for a permit is made to the city. Right-of-way permit applications shall contain, and will only be considered complete upon compliance with the following:

(a) Registration with the city pursuant to this Section.

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

(c) Payment of money due to the city for:

(1) Permit fees, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;

(4) Franchise fees or other charges, if applicable.

(d) Payment of disputed amounts due to the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

(e) Posting an additional or larger construction performance bond should the city deem the existing construction performance bond inadequate.

### **309.100 Issuance of Permit; Conditions.**

(a) *Permit Issuance.* If the Applicant has satisfied the requirements of this Section 1, the city shall issue a permit.

(b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. The city may establish and define location and relocation requirements for equipment and facilities to be located in the right-of-way.

### **309.110 Permit Fee.**

(a) *Fee Schedule and Fee Allocation.* The city's permit fees shall be designed to recover the city's actual costs and shall be based on an allocation among all users of the right-of-way, including the city.

(b) *Permit Fee Amount.* The city shall establish a permit fee sufficient to recover the following costs:

(1) The city's management costs;

(2) Degradation costs, if applicable

(c) *Payment of Permit Fees.* No permit shall be issued without payment of permit fees. Permit fees paid for a permit that the city has revoked for a breach are not refundable.

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

### **309.120 Right-of-Way Patching and Restoration.**

(a) *Timing.* The work to be done under a permit, and the required patching and restoration of the right-of-way, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee.

(b) *Patching.* The permittee must patch its own work.

(c) *Restoration.* The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or the city may restore the surface portion of right-of-way itself. If the city restores the surface portion of right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work. If the permittee restores the right-of-way itself, it shall at the time of filing the permit application post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

(d) *Degradation fee in Lieu of Restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee in an amount identified by the city. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate base material in the excavation and degradation fee shall not include the cost to accomplish these responsibilities.

(e) *Standards.* The permittee shall perform patching and restoration according to the standards in Minnesota Rule 7819.1100, and with the materials specified by the city.

(f) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents upon notification from the city, using the method required by the city.

(g) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee ten (10) days from receipt of notice to cure said failure or failures. In the event the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

### **309.130 Other Obligations.**

(a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to apply all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Statute 216D.01-.09 (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with the applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

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

(c) *Interference with right-of-way.* A permittee shall not so obstruct or interfere with the natural passage of water through the gutters or other waterways. Private vehicles must be parked in conformance with city parking regulations. Unless specifically authorized by a permit, trucks must be loaded and unloaded within the defined permit area.

(d) *Traffic control.* A permittee shall implement traffic control measures in the area of the work and use traffic control procedures in accordance with the most recent manuals on uniform traffic control traffic control devices and traffic zone layouts published by the State of Minnesota.

#### **309.140 Denial of Permit**

The City may deny a permit for failure to meet the requirements and conditions of this Section, to protect the public health, safety, and welfare, or to protect the right-of-way and its current use.

#### **309.150 Installation Requirements.**

The installation of facilities in the right-of-way and associated excavation, backfilling, patching, and restoration work shall be done in conformance with Minnesota Rule 7819.1100 and other applicable local requirements.

#### **309.160 Inspection.**

(a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minnesota Rule 7819.1300.

(b) *Site Inspection.* The permittee shall make the work site available to the city for inspection at all reasonable times during the execution of and upon completion of the work.

(c) *Authority of Director.* The director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, or order the permittee to correct work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a "substantial breach" within the meaning of Minnesota Statute 237.163 subd. 4(c), the order shall state the failure to correct the violation will be cause for revocation of the permit after a specified period determined by the director. The permittee shall present proof to the director that the violation has been timely corrected. If the violation is not timely corrected, the director may revoke the permit.

#### **309.170 Work Done without a Permit.**

(a) *Emergency Situation.* Each right-of-way user shall immediately notify the director of any event regarding its facilities that the right-of-way user considers to be an emergency. The right-of-way user may take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the right-of-way user shall apply for the necessary permits and fulfill the rest of the requirements necessary to comply with this Section.

(b) If the city becomes aware of an emergency affecting facilities in the right-of-way, the city will attempt to contact the local representative of each potentially affected right-of-way user. The city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by affected right-of-way users.

(c) *Non-Emergency Situation.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay an unauthorized work permit fee in an amount established from time to time by the city council, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all the requirements of this Section

### **309.180 Revocation of Permits.**

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

- (1) The violation of any material provision of a permit'
- (2) An evasion or attempt to evade any material provision of a permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a permit;
- (4) The failure to complete work in a timely manner; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated in an order issued by the director.

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

(c) *Response to notice of breach.* Within a time established by the director following permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

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

### **309.190 Mapping Data.**

Each right-of-way user and permittee shall provide mapping informational a form required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

### **309.200 Relocation of Facilities.**

A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection with: (1) a present or future city use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

### **309.210 Interference by Other Facilities.**

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a right-of-way user's facilities to carry out the work without damaging right-of-way user's facilities, the city shall notify the local representative as early as is reasonable possible. The city costs associated therewith will be billed to that right-of-way user and must be paid within thirty (30) days from the date of billing. Each right-of-way user shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

**309.220 Right-of-Way Vacation.**

If the city vacates a right-of-way that contains the facilities of a right-of-way user, the right-of-way user's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

**309.230 Indemnification and Liability.**

By registering with the city, or by accepting a permit under this Section, a right-of-way user or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

**309.240 Abandoned and Unusable Facilities.**

(a) Discontinued Operations. A right-of-way user who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the right-of-way user's obligations for its facilities in the right-of-way under this Section have been lawfully assumed by another right-of-way user.

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

**309.250 Appeal.**

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are not in conformity with Minnesota Statute 237.163, Section 410.06 may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing.

**309.260 Reservation of Regulatory and Policy Powers.**

A permittee's or right-of-way user's rights are subject to the regulatory and police power authority of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

**309.270 Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this Section 1 is for any reason held invalid or unconstitutional by any court, regulatory body 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.

**309.280 Penalty.**

Any person violating any provision of this Section 1 or any permit or order issued hereunder, shall, upon conviction thereof, be guilty of a misdemeanor punishable in accordance with Section 619 of the City Code.

**SECTION 2. SEVERABILITY.**

In the event that court of competent jurisdiction adjudges any part of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included within that judgment.

**SECTION 3. EFFECTIVE DATE.**

This ordinance takes effect upon its adoption and publication according to law.

WHEREUPON, a vote, being taken upon a motion by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ ,

Voting AYE:

Voting NAY:

Whereupon said Ordinance was declared passed adopted this \_\_day of \_\_\_\_\_, 2017.

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

\_\_\_\_\_  
Attest: Tobin Lay, City Administrator

## **RIGHT-OF-WAY ORDINANCE**

### **City of Birchwood Village, Washington County, Minnesota**

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.

### ***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. 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.

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**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 13, 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 Director of Public Works or his/her 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 Director of Public Works or his/her designee.

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

**Excavate** - to dig into or in any way 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 1-13. 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 (13) 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.

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**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 13, 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 Director of

Public Works 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.

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**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 Little Canada\*
- (7) City of Birchwood Village
- (8) City of North Saint Paul\*
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- (9) City of Oakdale\*
- (10) City of Saint Paul\*
- (11) City of Woodbury\*
- (12) Board of Water Commissioners of the City of Saint Paul\*

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

\* See Appendix I

(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) and (2) Bodily Injury and Property Damage 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

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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

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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, 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;

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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 in this Code 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 1

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.

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(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 un-resolved, 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.

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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:

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(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 which 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 (12) 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.

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(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 13, 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 1-13. 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 an 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.

(15) The standards set forth in the Standards of Installation of Water Mains required by the Board of Water Commissioners of the City of Saint. Paul.

(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 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 specified in Plates 1 to 13, which are attached hereto and incorporated herein.

(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.

#### **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 shall be interfered with.

#### **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. 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 its' 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, 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 Oakdale

# MEMORANDUM

DATE: September 5, 2017

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TO: Birchwood Planning Commission  
FROM: Tobin Lay, City Administrator  
SUBJECT: Comp Plan



**Birchwood Village**

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Dear Commissioners,

The City Council has approved the Commission's recommendation to engage Jennifer Haskamp's consulting services with completing the 2040 Comp Plan. Enclosed is a letter to the Commission from Haskamp regarding this relationship and first steps.

Additionally, staff has enclosed several vision statements per Commissioners' request; one compiled by volunteer Briget Sperl that summarizes comments shared by residents at a recent town hall meeting on this subject and the other from Commissioners.

The City Council has not reviewed Sperl's summary yet and plans to do so during the Sept Council meeting.

**Request**

Staff requests Commissioners:

- 1) Review and consider the enclosures.

Thanks!

Regards,  
Tobin Lay



**TO:** Members of the Planning Commission, **Date:** September 1, 2017  
City of Birchwood Village  
Tobin Lay, City Administrator

**RE:** 2040 Comprehensive Plan Update  
Introduction and Roadmap

**FROM:** Jennifer Haskamp, Principal Planner  
SHC

## MEMO

### Introduction

Recently the City Council engaged my firm to assist the community with the 2040 Comprehensive Plan update process. It is my understanding that this is the first time that the Planning Commission will be participating in the process to update the Plan, so in an effort to kick the project off with everyone on the same page I have prepared the following memo as an introduction. This memo will address the following:

- Brief comprehensive plan introduction – why do we do it? What are the benefits and opportunities to the planning process?
- Roadmap of upcoming topics and potential discussion items that will be addressed over the next several months and at Planning Commission meetings.

### Comprehensive Plan Background

#### What is a Comprehensive Plan?

A Comprehensive Plan establishes a community's long-term vision, goals and strategies for guiding future changes and investments. The Plan is intended to serve as a roadmap for the City for the next 20-year planning period. The Birchwood Village Plan ("Plan") update should address future land uses, housing, economic development, transportation, parks, trails, open space, natural resources, and infrastructure (water plan and wastewater).

#### Why update the 2030 Comprehensive Plan for the City of Birchwood Village?

The Metropolitan Land Planning Act requires all cities and counties in the Twin Cities Metropolitan Area (seven counties) to adopt a Comprehensive Plan. The Plan is required to comply with the Metropolitan Council's regional system plans that include transportation (transit), wastewater systems and services, airports and parks/open space. The Plan update must be submitted to the Metropolitan Council for review and approval by the end of 2018.

#### How does Birchwood Village "comply" with the regional systems?

The Metropolitan Council provides a System Statement to each community that tells a community what must be included and addressed within their Plan update process. Each of the regional systems is discussed within the System Statement and the corresponding impact and/or data that must be included and updated within the City's Plan is included to make it easier for a community to ensure compliance.

**If Birchwood Village addresses everything in the System Statement, is that it? Or is there more?**



The System Statement addresses the regional systems on a 1,000-foot level, and the City must provide additional detail to support how it will be consistent with the regional systems. As such, the Metropolitan Council has created a “Checklist” for the City that details all the components that must be included in the Plan. Additionally, this a great opportunity for the City to review its systems, policies, and strategies outside of the ‘checklist’ that might be important to you as a community. This planning process does not necessarily have to be limited only to the items contained in the System Statement or checklist (those things just have to be adequately addressed, at a minimum).

## Roadmap of Planning Process for 2040 Plan

Over the next several months City Administrator Lay will primarily be working with you to address topics/elements that must be included within the Plan update. I will mostly be working with Administrator Lay in the background providing assistance with developing key questions, draft materials, and maps for planning commission meeting discussion; but I will also attend a couple of key meetings. The process to update the Plan is the City’s opportunity to review its vision, goals, strategies, land uses, housing, and economic development plans for the next decade. So, taking time discuss the City’s aspirations moving forward is an important undertaking.

The following table provides a general ‘roadmap’ of the steps and process, along with key objectives/questions that will be addressed over the next several months. The list of objectives and question is not meant to be exhaustive, but is meant to get you thinking about the types of questions and analysis we’ll be looking for you to help with as this planning process progresses. Much of the data will be collected by the City and SHC, and then presented to the Planning Commission for discussion.

Topic/Element	Objective	Key Questions
<b>Background Report/Data</b>	<ul style="list-style-type: none"> <li>Update demographics information using current projections and census data</li> <li>Establish a ‘baseline’ from which the planning discussion can occur – it’s hard to know where you’re going if you don’t know where you are</li> <li>Update all mapping and have current acreages and data (land uses, wetlands, natural resources, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>Have the demographics changed in the past 10-years?</li> <li>If so, how? Who’s here now that wasn’t here 10-years ago?</li> <li>What are the biggest age cohorts?</li> <li>What is the condition of existing housing stock?</li> <li>Has there be reinvestment? How/Where?</li> </ul>
<b>Vision, Goals &amp; Strategies</b>	<ul style="list-style-type: none"> <li>Establish a Vision that clearly communicates the city’s aspirations for the future (event if it’s to stay the same, you have to plan for that)</li> <li>Create a set of goals and strategies that are actionable, clear, concise and describe the level of investment</li> <li>Prioritize the city’s interests, and areas of focus over the next 10-20 year planning period</li> </ul>	<ul style="list-style-type: none"> <li>What are the key strengths of the community today?</li> <li>What are the weaknesses of the community today?</li> <li>What opportunities exist in the community that are not here today?</li> <li>What threats exist in the community that are not here today?</li> <li>In 2040 what are the key characteristics/elements of the community? What does it look like? Is it the same, or different? How?</li> </ul>
<b>Land Use</b>	<ul style="list-style-type: none"> <li>Evaluate the existing land use patterns</li> </ul>	<ul style="list-style-type: none"> <li>Does the existing land use pattern support the demographic trends</li> </ul>



	<p>to understand what is working and what could be used better (if applicable)</p> <ul style="list-style-type: none"> <li>• Understand how existing land use patterns and future land use patterns influence other city systems (infrastructure, transportation, parks, trails, etc.)</li> </ul>	<p>shown within the Background Report?</p> <ul style="list-style-type: none"> <li>• If not, what land use changes/opportunities are available that could better support the demographics?</li> </ul>
<b>Housing</b>	<ul style="list-style-type: none"> <li>• Evaluate existing housing stock for general condition, sizes, market values, etc.</li> <li>• Understand if current housing stock is adequate and meeting demands of the market</li> <li>• Determine whether there are any policies or strategies that should be evaluated to support the housing stock and any demographic changes</li> </ul>	<ul style="list-style-type: none"> <li>• Does the current housing stock match and support demographic trends as shown within the Background Report?</li> <li>• How does the City maintain a sustainable housing stock for the next 10-20 years?</li> <li>• What challenges exist in the existing product? Opportunities?</li> </ul>
<b>Parks, Trails and Open Space</b>	<ul style="list-style-type: none"> <li>• Identify and inventory existing system</li> <li>• Identify “gaps” in trail system, and look for opportunities to complete the system</li> <li>• Evaluate general condition and location of parks, open spaces and natural resources (if applicable)</li> <li>• Plan for demands/programming of parks and open space system based on projected population and demographic shifts (if applicable)</li> </ul>	<ul style="list-style-type: none"> <li>• How does the current system support the demographic trends and patterns of the community?</li> <li>• Is current programming of spaces adequate? Could it be improved? How? Where</li> </ul>
<b>Infrastructure Water Plan Wastewater Transportation</b>	<ul style="list-style-type: none"> <li>• Prepare a Water Plan consistent with the requirements of the Rice Creek Watershed District, MnDNR and Metropolitan Council requirements</li> <li>• Evaluate and update wastewater plan</li> <li>• Update transportation plan, as needed, for consistency with land use plan</li> </ul>	<ul style="list-style-type: none"> <li>• Are there any land use changes that could impact infrastructure systems?</li> <li>• What changes have occurred since the last plan that could impact the water plan, wastewater, and transportation plans?</li> </ul>

## City of Birchwood Village Mission, Vision, Guiding Principles

The Birchwood City Council is in the process of updating the comprehensive plan. To guide the development of the plan and our vision for Birchwood Village, the Council is proposing a mission statement, a vision statement and a set of guiding principles to guide us in this work and the governing of Birchwood.

### **Birchwood's Mission Statement:**

To provide quality public services in a fiscally responsible manner while preserving the city's natural environment and reinforcing a safe and friendly neighborhood.

### **Birchwood's Vision Statement:**

Birchwood Village commits to building on its small town, close community heritage, while enhancing a high quality of life for its citizens. We pledge to work in collaboration with our residents to foster pride, to preserve and enhance our natural environment and reinforce our safe and friendly neighborhood.

### **Birchwood's Guiding Principles:**

Ethics and Integrity We believe that ethics and integrity are the foundation of public trust and confidence and that all meaningful relationships are built on these values.

Excellence and Quality in the Delivery of Services We believe that service to our residents is our reason for being and commit to delivering services in a professional, cost-effective, and efficient manner.

Fiscal Responsibility We believe that fiscal responsibility, prudent stewardship of public funds and full fiscal transparency are essential for citizen confidence in government.

Open, Honest, Consumable Communication We believe that open, honest, consumable communication is paramount for an involved citizenry.

Respect for the Individual We believe that citizens of Birchwood are to be treated with the utmost respect and deserve the best treatment the city can provide.

Community Building We believe in the preservation and development of our community through two way communication, community events and gatherings and creating and maintaining open spaces that are safe and accessible for all our citizens.

## Tobin Lay

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**From:** JACKIE/RANDOLPH FELT [rfelt@comcast.net]  
**Sent:** Thursday, June 15, 2017 10:20 AM  
**To:** Tobin Lay  
**Subject:** Vision for Birchwood

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

Tobin, my vision for Birchwood includes maintaining the "Mayberry" feel of a small, close community, but without the present dissension that permeates the politics of Birchwood. I have no recommendations at this time for achieving this dream.

Looking forward, as the age demographics evolve, I would like to see voluntary steps taken to smoothly meld the new, younger families with the current aging residents. A very simple example would be to include "Pickleball" court boundaries marked out on the existing tennis court. A more complex example would be to assure that Birchwood remain in the White Bear Lake school system versus aligning with Mahtomedi school system for taxation purposes.

Long term and perhaps not feasible for a number of reasons would be to have all utility lines buried so our beautiful trees along Birchwood/Hall/Cedar Ave would not require the present mutilation for such lines.

Thanks for compiling the PC visions for us, Tobin.

Randy Felt

# MEMORANDUM

DATE: September 5, 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 last Commission meeting, Commissioners approved a recommendation for amendment to City Code 303 for City Council's consideration. Commissioner's recommendation included keeping portions of existing 303 and adopting the League of MN Cities' model code with changes that apply to Birchwood – including a clause from Mahtomedi's ordinance (enclosed).

Staff is unsure how the Commission wants existing 303 and the revised League model code to be merged together and seeks Commissioner's direction.

**Request**

Staff requests Commissioners:

- 1) Advise how Commissioner's want existing 303 to be merged with the League's model ordinance.
- Thanks!

Regards,  
Tobin Lay

### 303. ZONING CODE; ADMINISTRATION

303.010. GENERAL. A Planning Commission is hereby established in and for the City of Birchwood consisting of at least five and no more than seven members, who are residents of Birchwood, appointed by the Mayor and approved by the City Council. No member of the Planning Commission shall hold any elected public office in the City.

All members shall be appointed for a one year term; however, said term may be terminated earlier by the Council. Said terms are to commence on the day of appointment. Vacancies during the term shall be filled by the Mayor with approval by the City Council for the unexpired portion of the term.

**ORGANIZATION AND MEETINGS:** The Commission shall elect a chairman from among its appointed members for a term of one year and the Commission may create and fill such other offices as it may determine.

The Commission shall hold at least one regular meeting each month. These meetings shall be held on the first Tuesday of the month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions and findings, which record shall be a public record.

**JURISDICTION:** The Commission shall study land use, proposed plats, rezoning, applications for conditional uses, and special uses, hold public hearings when necessary, and act as the Board of Appeals.

303.020. ENFORCEMENT. It is unlawful for any person to violate any of the terms and provisions of this Code. Violation shall be a misdemeanor. Each period of two weeks that the violation is permitted to exist will constitute a separate offense. In addition, the City Attorney may require the person to take actions to prevent, restrain, correct or abate such violations.

The City will ensure that all construction activity is in compliance with land use ordinances through periodic inspections and issuance of a Certificate of Compliance. The building inspector will assume all inspection responsibilities including but not limited to land use standards as specified on the use permit.

The contractor or owner shall be informed immediately when a violation occurs, and shall be given an opportunity to make the necessary corrections. If the corrections are not made within a reasonable period of time, the owner shall be sent a written notice and the contractor issued a stop work order. The building inspector shall, when necessary, call upon the police for enforcement assistance.

303.030. GENERAL ADMINISTRATION OF THE ZONING CODE. The City Clerk, in consultation with the Chairman of the Planning Commission, shall make all administrative determinations as to compliance with the Zoning Code, at the time when a building permit is sought. The Clerk may also forward a request for an administrative decision on interpretation of the Code to the entire Planning Commission. When making such administrative decisions, the

Planning Commission cannot grant variances, which require hearings as described in Section 304. VARIANCES AND APPEALS.

303.040. OTHER GOVERNMENTAL UNITS. It is recognized that measures beyond those outlined in this Code may be required by other Governmental units. No permit (including grading and filling) shall be approved until the requester shall have obtained all necessary approvals from the Department of Natural Resources, the Rice Creek Watershed District, the White Bear Lake Conservation District, the Army Corps of Engineers, the Pollution Control Agency, or any other Group, Department, Agency or Government entity which has jurisdiction over the project.

The Minnesota Department of Natural Resources has the authority to regulate any proposed dredging, filling, or changes of the shoreland of all navigable waters in the state. A permit to alter the shoreline is required. It also has the authority to establish minimum standards for land use controls within the shoreland areas of the state.

The Rice Creek Watershed District has the authority to control or alleviate damage by floodwaters and to improve stream channels for drainage, navigation and other purposes.

The White Bear Lake Conservation District has the authority to manage water quality and regulate activity on White Bear Lake.

The Washington Conservation District administers a program of cost sharing with land occupiers for installing soil and water conservation practices (those structural and vegetative practices applied to the land to control erosion, sediment and other water pollutants). The District also prepares erosion control plans for developments that have erosion or sediment hazards.

The Army Corps of Engineers manages navigable waterways and adjacent wetlands.

~~303.050. RELATED CHAPTERS:~~

- ~~1. Chapter 202—Plumbing and Sewage System~~
- ~~2. Chapter 203—Building Regulations~~
- ~~3. Chapter 308—Sub-Division of Land~~
- ~~4. Chapter 404—Housing~~
- ~~5. Chapter 405—National Flood Insurance Program~~

## LEAGUE OF MINNESOTA CITIES SAMPLE CITY PLANNING COMMISSION ORDINANCE (January 2012)

Before adopting this ordinance, a city should be familiar with the contents of the League information memo, [Planning Commission Guide](#) LMC 430A.8 (January 2012).

### INTRODUCTION AND INSTRUCTIONS:

This sample ordinance establishing a city planning commission contains a number of provisions a city may want to adopt. A city wishing to adopt this ordinance should review it with the city attorney to determine which provisions are best suited to the city's circumstances. A city can modify these ordinances by eliminating provisions that apply to activities it does not seek to regulate. Because provisions within this ordinance implicate state statutes and involve state and federal constitutional rights, the city attorney should review any modifications to ensure they conform to current law.

This sample ordinance is drafted in the form prescribed by [Minn. Stat. § 412.191, subd. 4](#), for statutory cities. Home rule charters often contain provisions concerning how the city may enact ordinances. Home rule charter cities should consult their charter and city attorney to ensure that the city complies with all charter requirements.

If your city has codified its ordinances, a copy of any nuisance ordinance must be furnished to the county law library or its designated depository pursuant to [Minn. Stat. § 415.021](#).

ORDINANCE NO. \_\_\_\_\_  
AN ORDINANCE ESTABLISHING AND FIXING THE DUTIES OF A  
CITY PLANNING COMMISSION  
WITHIN THE CITY OF BIRCHWOOD VILLAGE, MINNESOTA

THE CITY COUNCIL OF THE CITY OF BIRCHWOOD VILLAGE, MINNESOTA DOES ORDAIN:

**SECTION 1. 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.

**SECTION 2. COMPOSITION AND TERMS**

(A) **Composition, Number.** Such Planning Commission shall consist of ~~seven~~ 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.

(B) **Terms.** ~~Of the members of the Commission first appointed, one shall be appointed for the term of one (1) year, two for the term of two (2) years, two for the term of three (3) years, and two for the term of four (4) years. Their successors shall be appointed for terms of four (4) years. Both original and successive appointees shall hold their offices until their successors are appointed and qualified. Terms shall expire each year on December 31. The term of each member shall be for three (3) years.~~

Comment [ts11]: Replaced with Mahtomedi 3B language

(C) **Compensation.** ~~All~~ No members shall be compensated ~~at a fixed rate of \_\_\_\_\_ per meeting attended (regular and special).~~

(D) **Removal.** Members may be removed by the City Council ~~with or without cause by a four-fifths~~ by a simple majority vote of the City Council.

(E) **Vacancies.** Vacancies during the term shall be filled by the City Council for the unexpired portion of the term.

(F) **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.

### SECTION 3. ORGANIZATION, MEETINGS, MINUTES AND EXPENDITURES

- (A) **Officers.** At the first regular meeting in January, the Planning Commission shall elect a Chairperson ~~and~~ a Vice-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) **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.
  
- (C) **Commission Policy on Meetings, Organizational Form and Rules of Order.** Subject to approval by the City Council, the Planning Commission ~~shall may~~ adopt rules of order or bylaws for the transaction of business, ordering meetings, adopting findings of fact and holding public hearings.
  
- (D) **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.
  
- (E) **Expenditures.** No expenditures by the city on behalf of the Planning Commission shall be made unless and until authorized by the City Council.

Comment [ts12]: Maplewood PC Handbook forwarded by Attorney Kantrud

### SECTION 4. 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.

### SECTION 5. 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 ~~Administrator~~ other person may perform secretarial duties for the Commission, such as the keeping of minutes, and may be responsible for the keeping of records.

## SECTION 6. POWERS AND DUTIES

- (A) **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.
- (B) **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.
- (C) **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.
- (D) **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.
- (E) **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.
- (F) **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.
- (G) **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.

**(H) 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.

**(I) 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.

**(J) 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.

**(MK) 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.

**(N)(L) 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.

**(O)(M) Comprehensive Plan Amendments.** Pursuant to M.S. 462.355, subsd. 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

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at: 0.5"

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.

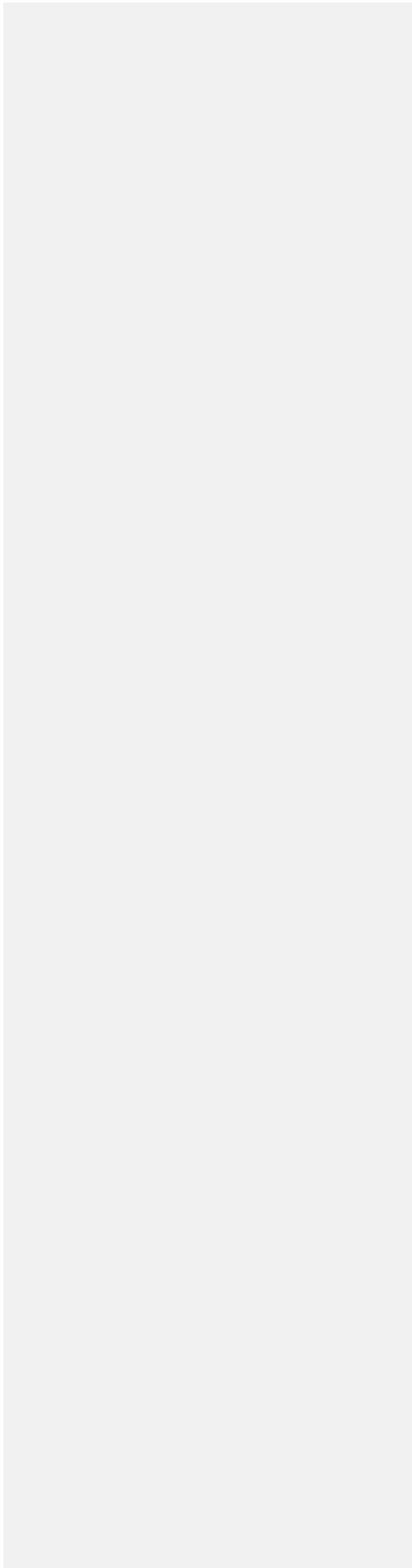
**SECTION 7. EFFECTIVE DATE**

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.

Passed by the Council this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor

Attested: \_\_\_\_\_  
Clerk



# MEMORANDUM

**DATE:** September 5, 2017

---

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



**Birchwood Village**

---

Dear Commissioners,

Many months ago, the Planning Commission provided a recommendation to City Council to amend the City's Impervious Surface ordinance. The City Council reviewed the Commission's recommendation and forwarded to the DNR for their input.

This last May, the DNR provided the enclosed comments that recommend keeping the existing language. The City Council has not discussed this topic since that time.

In order to keep Commissioners up to date on their recommendation, staff is forwarding the DNR's comments to them now. There is no request from Council for the Commission to do anything more on this subject but Commissioners may decide to discuss the topic again if they so choose. Thanks!

Regards,  
Tobin Lay

## Tobin Lay

---

**From:** Sorensen, Jenifer (DNR) [jenifer.sorensen@state.mn.us]  
**Sent:** Tuesday, May 30, 2017 6:14 PM  
**To:** Mary Wingfield  
**Cc:** Tobin Lay; Mary Wingfield; Petrik, Daniel (DNR)  
**Subject:** RE: Impervious Surface Ordinance  
**Attachments:** 2017-05-09\_DNRCommentLetterOnDraftImperviousCoverOrd.pdf

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

Mary -

DNR's recommendation is to keep the percent impervious standard as it is currently written in Birchwood's shoreland ordinance. Then, if the City is interested in considering changing stormwater management standards, you could look to MPCA for guidance on their MIDS (minimum impact design standards) (<https://www.pca.state.mn.us/water/enhancing-stormwater-management-minnesota>). I believe MPCA has draft ordinance language for MIDS.

DNR does not have model shoreland ordinance language for incorporating stormwater management standards into the percent impervious shoreland standard.

Let me know if you'd like to discuss this further -

Jen

Jenifer Sorensen  
East Metro Area Hydrologist (Ramsey and Washington Counties) Division of Ecological and Water Resources  
Minnesota Department of Natural Resources  
1200 Warner Road  
St Paul, MN 55106  
Phone: 651-259-5754  
Email: [jenifer.sorensen@state.mn.us](mailto:jenifer.sorensen@state.mn.us)

-----Original Message-----

**From:** Mary Wingfield [<mailto:wingfield.mary@gmail.com>]  
**Sent:** Saturday, May 27, 2017 11:08 AM  
**To:** Sorensen, Jenifer (DNR) <[jenifer.sorensen@state.mn.us](mailto:jenifer.sorensen@state.mn.us)>  
**Cc:** Tobin Lay <[Tobin.Lay@cityofbirchwood.com](mailto:Tobin.Lay@cityofbirchwood.com)>; Mary Wingfield ([mary.wingfield@juno.com](mailto:mary.wingfield@juno.com)) <[mary.wingfield@juno.com](mailto:mary.wingfield@juno.com)>  
**Subject:** Re: Impervious Surface Ordinance

Hi Jen:

Thanks for the update. It is complicated. do you have any clone or prototype code we can incorporate? I hate reinventing wheels.

Look forward to working with you.

thx  
m

On 5/2/17, Sorensen, Jenifer (DNR) <[jenifer.sorensen@state.mn.us](mailto:jenifer.sorensen@state.mn.us)> wrote:

> Tobin and Mayor Wingfield -

>

> As an update, I've reviewed the draft impervious cover ordinance for  
> Birchwood (2017-01-01) and I'm working on putting together comments. I  
> should have comments to you by the end of this week.

>

> Jen

>

>

> Jenifer Sorensen  
> East Metro Area Hydrologist (Ramsey and Washington Counties) Division  
> of Ecological and Water Resources Minnesota Department of Natural  
> Resources  
> 1200 Warner Road  
> St Paul, MN 55106  
> Phone: 651-259-5754  
> Email:

> [jenifer.sorensen@state.mn.us](mailto:jenifer.sorensen@state.mn.us)<<mailto:jenifer.sorensen@state.mn.us>>

>

> From: Tobin Lay [<mailto:Tobin.Lay@cityofbirchwood.com>]

> Sent: Thursday, March 23, 2017 4:50 PM

> To: Sorensen, Jenifer (DNR) <[jenifer.sorensen@state.mn.us](mailto:jenifer.sorensen@state.mn.us)>

> Subject: Impervious Surface Ordinance

>

> Hello Jenifer,

>

> I'm just writing to follow up on your review of Birchwood's Impervious  
> Surface Ordinance. Have you had a chance to review it yet? Thanks!

>

>

> Tobin Lay

> City Administrator/Clerk

> City of Birchwood Village, MN

> office: (651) 426-3403

> fax: (651) 426-7747

> email:

> [tobin.lay@cityofbirchwood.com](mailto:tobin.lay@cityofbirchwood.com)<<mailto:tobin.lay@cityofbirchwood.com>>

> website: <http://www.cityofbirchwood.com/>

>

> [Birchwood Clump Logo\_2]

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5/9/2017

Tobin Lay  
City Administrator/Clerk  
207 Birchwood Avenue  
City of Birchwood Village, MN 55110

Tobin –

Below are DNR's comments on Birchwood's draft impervious cover ordinance (2017-01-01):

Birchwood's current impervious surface standard is 25% and this percentage would not change with the adoption of ordinance 2017-01-01 (attached). This draft ordinance would specify what is required if a variance is given to the impervious surface standard, and the variance requirements would address the management of runoff from individual lots by including a Minimal Impact Design (MID) stormwater management standard.

There are two parts to stormwater regulation: a volume standard and a rate control standard. This draft ordinance is only considering a volume standard. The MID volume standard is meant to improve runoff water quality by retaining the first 1.1 inches of runoff (the amount of runoff produced by 90<sup>th</sup> percentile storm events in MN). However, this draft ordinance does not include a standard for runoff during larger storm events – this is what is regulated by a rate control standard. A rate control standard is meant to provide flood control.

From DNR's perspective, it is better to keep the percent impervious standard as it is currently written in City code (and which meets DNR shoreland rule requirements), and comprehensively regulate stormwater management elsewhere within the City's code, rather than trying to partially build stormwater management into the City's percent impervious standard.

To meet the state shoreland standard for percent impervious, DNR would require that this ordinance be rewritten to apply only to lots that are not single family residential and to lots that are not riparian (not adjacent to a public water). As part of the variance requirements, the property owner would need to have a long term maintenance agreement with the City of Birchwood and the City would need to have a process in place to verify that regular maintenance is being performed per the agreement. Without functioning infiltration structures, percent impervious surface would be permanently increased on lots where variances were given, effectively defeating the purpose of the draft ordinance's requirements. Also, there is no language in the draft ordinance that limits the amount of impervious surface allowed with a variance if the specified MID standard (retention of 1.1 inches of runoff) is achieved.

Sincerely,



Jenifer Sorensen  
MN DNR, East Metro Area Hydrologist  
1200 Warner Road  
St. Paul, MN 55106  
651-259-5754; [jenifer.sorensen@state.mn.us](mailto:jenifer.sorensen@state.mn.us)

**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