

TITLE IX: GENERAL REGULATIONS

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9.1: ABANDONED PROPERTY

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Statutory reference:

Sale of unclaimed property, see M.S. §471.195

ABANDONED MOTOR VEHICLES

§ 9.1.01 IMPOUNDMENT AND SALE.

The city law enforcement authorities shall take into custody and impound any abandoned motor vehicle as defined by M.S. § 168B.02, Subd. 2, as it may be amended from time to time. It shall give notice of the taking as provided by law, and, if the owner or any lienholder does not reclaim the vehicle to the highest bidder, [dispose of the vehicle] at public auction or sale following two weeks' published notice.

§ 9.1.02 DISPOSITION OF PROCEEDS.

The proceeds of the sale of an abandoned motor vehicle shall be placed in the general fund of the city. If the former owner or entitled lienholder makes application and furnishes satisfactory proof of ownership or lien interest within 90 days of the sale, the former owner shall be paid the proceeds of the sale of the vehicle less the cost of towing, preserving, and storing the vehicle and all administrative, notice, and publication costs incurred in its handling.

OTHER ABANDONED PROPERTY

§ 9.1.03 PROCEDURE

All other property lawfully coming into the possession of the city shall be disposed of as provided in this subchapter.

§ 9.1.04 STORAGE.

The department of the city acquiring possession of the property shall arrange for its storage. If city facilities for storage are unavailable or inadequate, the department may arrange for storage at privately owned facilities.

§ 9.1.05 CLAIM BY OWNER.

The owner may claim the property by exhibiting satisfactory proof of ownership and paying the City any storage or maintenance costs incurred by it. A receipt for the property shall be obtained upon release to the owner.

§ 9.1.06 SALE.

If the property remains unclaimed in the possession of the city for 60 days, the property shall be sold to the highest bidder at a public auction conducted by the chief of

police of the city after two weeks published notice setting forth the time and place of the sale and the property to be sold.

§9.1.07 DISPOSITION OF PROCEEDS.

The proceeds of the sale shall be placed in the general fund of the city. If the former owner makes application and furnishes satisfactory proof of ownership within six months of the sale, the former owner shall be paid the proceeds of the sale of the property less the costs of storage and the proportionate part of the cost of published notice and other costs of the sale.

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DOGS

§ 9.2.01 RUNNING AT LARGE PROHIBITED

No dog shall be permitted to run at large within the limits of the city. This restriction does not prohibit the appearance of any dog upon the streets or public property when the dog is leashed and/or kept under the control of the person charged with its care.

§ 9.2.02 DOG NUISANCE.

The owner or custodian of any dog shall prevent the dog from committing in the city any act which constitutes a nuisance. It is a nuisance for any dog habitually or frequently to bark or cry between the hours of 10 p.m. and 8 a.m., to frequent parks unattended and leashed, to chase vehicles, to molest or annoy any person away from the property of its owner or custodian, or to damage, defile, or destroy public or private property. Failure of the owner or custodian of a dog to prevent the dog from committing such a nuisance is a violation of this section and subjects the owner to the penalty of a petty misdemeanor for each violation. The owner of any dog violating this section is entitled to one written notice detailing the basis of the alleged violation prior to being charged with nuisance.

§ 9.2.03 DANGEROUS DOGS.

Any dog that is allowed to run at large and bites or attacks a person within the city limits of Cromwell shall subject the owner to a misdemeanor violation. At the discretion of the health officer designated by the City Council, the dog may be quarantined. The quarantine may be on the premises of the owner; however, if the health officer requires any other confinement, the owner shall surrender the animal for the quarantine period to an animal shelter or shall, at the owner's own expense, place it in a veterinary hospital or at an animal shelter.

OTHER ANIMALS

§ 9.2.07 CATS OR ANIMALS OF ALLIED GENERA.

(A) It shall be the obligation and responsibility of the owner of any cat or animal of allied genera to prevent the animal from molesting, defiling, or destroying any property, public or private.

(B) It shall be unlawful for any owner of cat or animal of allied genera to permit or allow the animal to roam or engage in activities which otherwise constitute a nuisance.

§ 9.2.08 CERTAIN ANIMALS REGULATED.

(A) It shall be unlawful to keep or harbor in the city any of the following animals, or animals of allied genera, without first obtaining a written permit therefor from the City Council: horses, cows, sheep, goats, swine, chickens, animals of the genus reptilia or allied genera which are venomous or of the constrictor type, birds, or other animals the keeping in captivity of which is prohibited by law.

§ 9.2.09 SHOD ANIMALS PROHIBITED ON CITY STREETS.

It shall be unlawful for any person to permit or allow an animal with shod hoofs on any city street, without approval of City Council.

§ 9.2.10 PENALTY.

(A) Any person who violates a provision of this chapter to which no other specific penalty applies shall be guilty of a misdemeanor.

(B) Any person keeping a dog without a license is guilty of a petty misdemeanor.

9.4: STREETS AND SIDEWALKS

Section

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STREET EXCAVATIONS

§ 9.4.01 PERMIT REQUIRED

No person, except an authorized city employee or a contractor performing work under a contract with the city, shall make an excavation in a street, alley, sidewalk, or public ground within the City of Cromwell.

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

§ 9.4.08 ELECTION TO MANAGE THE PUBLIC RIGHT-OF -WAY.

In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage rights-of-ways within its jurisdiction.

§ 9.4.09 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minnesota Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and are incorporated into this code as if set out in full. The definitions included in Minnesota Rules part 7819.0100 subps. 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this subchapter.

§ 9.4.10 PERMIT REQUIREMENT.

(A) Permit required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.

- (1) Excavation permit. An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (2) Obstruction permit. An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not

required if a person already possesses a valid excavation permit for the same project.

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

(C) Delay penalty. In accordance with Minnesota Rules part 7819.1000 subp. 3, as it may be amended from time to time, and notwithstanding division (B) of this section, the city shall 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 an ordinance establishing fees and charges, as it may be amended from time to time.

(D) Permit display. Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director.

§ 9.4.11 PERMIT APPLICATIONS.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

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

- (1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance:

- (a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self insurance acceptable to the Director;
 - (b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - (c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;
 - (d) Requiring that the Director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
 - (e) Indicating comprehensive liability coverage, automobile liability coverage, worker's compensation and umbrella coverage established by the Director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- (4) The city may require a copy of the actual insurance policies.
 - (5) If the person is a corporation, a copy of the certificate required to be filed under M.S. ' 300.06, as it may be amended from time to time, as recorded and certified to by the Secretary of State.
 - (6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

- (B) Payment of money due the city for:
- (1) Permit fees as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, 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 the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or
 - (4) Franchise fees or other charges as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, if applicable.

§ 9.4.12 ISSUANCE OF PERMIT; CONDITIONS.

(A) Permit issuance. If the applicant has satisfied the requirements of this chapter, the Director shall issue a permit.

(B) Conditions. The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

§ 9.4.13 PERMIT FEES.

(A) Generally. Permit fees shall be in an amount established in an ordinance establishing fees and charges, as it may be amended from time to time.

(B) Excavation permit fee. The city shall establish an excavation permit fee as established by the Ordinance Establishing Fees and Charges adopted by this code, as that ordinance may be amended from time to time, in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(C) Obstruction Permit Fee. The city shall establish the obstruction permit fee as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.

(D) Payment of permit fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.

(E) Non-refundable. Permit fees as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, that were paid for a permit that the Director has revoked for a breach are not refundable.

(F) 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.

(G) All permit fees shall be established consistent with the provisions of Minnesota Rules part 7819.100, as it may be amended from time to time.

§ 9.4.14 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable.

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

(1) City restoration. If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) Permittee restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules part 7819.3000, as it may be amended from time to time.

(C) Standards. The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule part 7819.1100, as it may be amended from time to time. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(D) Duty to correct defects. The permittee shall correct defects in patching, or restoration, performed by the permittee or its agents. The permittee upon notification from the Director, shall correct all restoration work to the extent necessary, using the method required by the Director. The work shall be completed within five calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable.

(E) Failure to restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(F) 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 as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

§ 9.4.15 SUPPLEMENTARY APPLICATIONS.

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

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

date of the previous permit. This supplementary application must be submitted before the permit end date.

§ 9.4.16 DENIAL OF PERMIT.

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

§ 9.4.17 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules part 7819.1100, as it may be amended from time to time, and other applicable local requirements, in so far as they are not inconsistent with M.S. § 237.162 and 237.163, as it may be amended from time to time.

§ 9.4.18 INSPECTION.

(A) Notice of completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule part 7819.1300, as it may be amended from time to time.

(B) Site inspection. The permittee shall make the work-site available to city personnel and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) Authority of Director.

- (1) At the time of inspection, 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.
- (2) The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If proof has not been presented within the required time, the Director may revoke the permit.

§ 9.4.19 WORK DONE WITHOUT A PERMIT.

(A) Emergency situations.

- (1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.
- (2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

(B) Non-emergency situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for the permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

§ 9.4.20 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify City Maintenance of the accurate information as soon as this information is known.

§ 9.4.21 REVOCATION OF PERMITS.

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

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued.

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

(C) Response to notice of breach. Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably 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 the revocation.

§ 9.4.22 MAPPING DATA; INFORMATION REQUIRED.

Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.

§ 9.4.23 LOCATION OF FACILITIES.

(A) Location. Placement, location, and relocation of facilities must comply with applicable laws, g and with Minnesota Rules parts 7819.3100,7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) Corridors. The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

(C) Limitation of space. To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

§ 9.4.24 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the Director shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for

the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that owner's facilities.

§ 9.4.25 RIGHT-OF-WAY VACATION.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules part 7819.3200, as it may be amended from time to time.

§ 9.4.26 INDEMNIFICATION AND LIABILITY.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250, as it may be amended from time to time.

§ 9.4.27 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

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

§ 9.4.28 APPEAL.

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

§ 9.4.29 RESERVATION OF REGULATORY AND LAW ENFORCEMENT POWERS.

A permittee's or registrant's rights are subject to the regulatory and law enforcement powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

