

CHAPTER 7. STREETS AND SIDEWALKS

Section 700 – GENERAL PROVISIONS AND DEFINITIONS

700.01 Definitions. Except as otherwise defined in the City Code, or where the context clearly indicates a contrary intent, the words and terms defined in Minn. Stat. Chap. 169, shall be applicable to this Code, Chapters 7, 8 and 9.

700.02 Application. The provisions of this Code, Chapters 7, 8 and 9, are applicable to the drivers of all vehicles and animals upon streets, including but not limited to those owned or operated by the United States, the State of Minnesota, or any county, town, city, district, or other political subdivision.

700.03 Scope and Orders of Officers.

Subd. 1 Scope. The provisions of Chapters 7, 8 and 9 relate exclusively to the streets, alleys and private roads in the City, and the operation and parking of vehicles refer exclusively to the operation and parking of vehicles upon such streets, alleys and private roads.

Subd. 2 Orders of an Officer. It is a misdemeanor for any person to willfully fail or refuse to comply with any lawful order or direction of any police or peace officer invested by law with authority to direct, control or regulate traffic.

700.04 Traffic and Parking Control.

Subd. 1 Council Action. No device, sign or signal shall be erected or maintained for traffic or parking control unless the Council has approved and directed the action, except as otherwise provided in this Section.

Subd. 2 Temporary Restrictions. The City, acting through the Chief of Police, may temporarily restrict traffic or parking for any private, public or experimental purpose. It is the duty of the Chief of Police to so restrict traffic or parking when a hazardous condition arises or is observed.

Subd. 3 Traffic Restrictions and Prohibitions. It is a misdemeanor for any person to drive a vehicle contrary to lane restrictions or prohibitions painted on any street, or contrary to sign-posted, fenced, or barricaded restrictions or prohibitions.

Subd. 4 Parking Restrictions and Prohibitions. It is unlawful for any person to park a vehicle contrary to lane restrictions or prohibitions painted on any curb, or contrary to sign-posted, fenced, or barricaded restrictions or prohibitions.

Subd. 5 Damaging or Moving Markings. It is a misdemeanor for any person to deface, mar, damage, move, remove, or in any way tamper with any structure, work, material, equipment, tools, sign, signal, barricade, fence, painting or appurtenance in any street unless such person has written permission from the City or is an agent, employee or contractor for the City, or other authority having jurisdiction over a particular street, and acting within the authority or scope of a contract with the City or such other authority.

700.05 Limitation on Pedestrian Traffic.

Subd. 1 Pedestrian traffic is unlawful and is prohibited in the traffic and parking lanes of that portion of First Street (Main Street) located south of Boulevard Avenue and north of Oak Avenue.

Subd. 2 Exceptions. The prohibitions set out in Subd. 1 shall not apply to pedestrians who are crossing the affected area of First Street in marked or unmarked pedestrian crossing zones, who are in the immediate act of getting into or out of a motor vehicle, or who are in the street as part of a civic celebration formally permitted by the City.

Section 705 – MAINTENANCE ON AND ABOUT PUBLIC WAYS

705.01 Ice and Snow on Public Sidewalks.

Subd. 1 Ice and Snow a Nuisance. All snow or ice remaining upon public sidewalks is hereby declared to constitute a public nuisance and shall be abated by the owner or tenant of the abutting private property within twenty-four (24) hours after such snow or ice has ceased to be deposited.

Subd. 2 City to Remove Snow and Ice. The City may cause all snow and ice to be removed from all public sidewalks, beginning twenty-four (24) hours after snow or ice has ceased to fall. The City shall keep a record of the cost of such removal and the private property adjacent to where such accumulations were found and removed. The cost of such removal shall be assessed to the adjoining property owner as provided in this Section.

Subd. 3 Cost of Removal to be Assessed. Upon direction of the Council and on receipt of the information provided for in Subd. 2, the City Administrator shall extend the cost of removal of snow or ice as a special assessment against the lots or parcels of ground abutting on walks which were cleared. These special assessments shall be certified to the County Auditor for collection as other special assessments are certified and collected.

Subd. 4 Civil Suit for Cost of Removal. In the alternative to the procedure set out in Subd. 3, the City Administrator shall, upon direction of the Council, bring suit in a court of competent jurisdiction to recover from the persons owning land adjacent to which sidewalks were cleared, for the cost of such clearing and the cost and disbursements of the civil action.

Subd. 5 City Administrator to Report Sidewalks Cleared. The City Administrator shall present a report to the Council at its first meeting after snow or ice has been cleared from the sidewalks as provided for in Subd. 2, and shall request the Council to determine by resolution the manner of collection to be used as provided in Subds. 3 and 4 of this Section. At least once per year, and more frequently if requested by the Council, the City Administrator shall make a report of all unpaid bills issued under this Section.

705.02 Regulation of Grass, Weeds and Trees in Streets, Alleys, Boulevards and Other Public Rights-of-Way.

Subd. 1 City to Control Tree and Shrub Planting (Standards). The City may establish and enforce uniform standards relating to the kinds and types of trees and shrubs not permitted, and shall also have uniform standards for the placement of the planted trees and shrubs. If the City removes a tree or shrub from its public right-of-way, the City shall not recompense the landowner who planted the tree or shrub for the loss or value of that tree or shrub. Any landowner who plants a tree

or shrub in City right-of-way fully assumes the risk of the City removing said tree or shrub without recompense to the person planting the tree or shrub, or anyone thereafter who may claim ownership of the tree or shrub. Once the tree or shrub is planted in public right-of-way, it shall be deemed donated to the City, and the City shall have all right, title, and interest to the tree or shrub. Such planting standards shall be kept on file in the office of the City Administrator and may be revised from time to time by action of the Council.

Subd. 2 Notification Required. It is required that the City Administrator be notified in writing at least 10 days before any person plants or removes trees or other plants upon City property, including rights-of-way, that the City Administrator may determine whether it will permit the planting to occur.

Subd. 3 Duty of Property Owners to Cut Grass and Weeds and Maintain Trees and Shrubs. Every owner of property abutting on any street shall cause the grass and weeds to be cut from the line of such property nearest to such street to the center of such street. If the grass or weeds in such a place attain a height of six (6) inches it shall be prima facie evidence of a failure to comply with this Subdivision. Every owner of property abutting on any street shall trim, cut and otherwise maintain all trees and shrubs from the line of the property nearest to the street to the center of the street. Provided, however, that the duty of abutting property owners under this Subdivision shall not extend to trimming or removing diseased or unsafe trees which shall be done in the discretion and at the expense of the City.

Subd. 4 City May Order Work Done. In cases where landowners have failed to comply with Subd. 3, the City may order its employees, contractors, or agents to bring the property into compliance with the requirements of the Montgomery City Code.

Subd. 5 Assessment. All cost or expense the City incurs pursuant to Subd. 4 herein shall be determined and specially assessed back to the abutting property owner upon the completion of the work. If such maintenance work is performed by the City as set forth in Subd. 4, the City Administrator shall ascertain the cost attributable to each lot, piece or parcel of abutting land upon completion of the work. The City Administrator shall submit a certificate of cost to the Council on an annual basis for Council approval. When such certificate has been approved, the cost shall be extended as a special assessment against the abutting land. The special assessment shall be certified to the County Auditor for collection as other special assessments are certified and collected.

705.03 Obstructions in Streets.

Subd. 1 Obstructions. It is a misdemeanor for any person to place, deposit, display or offer for sale any fence, goods or other obstructions over, upon, across or under any street without first having obtained a written permit from the

Council; and then only in compliance in all respects with the terms and conditions of such permit, and taking precautionary measures for the protection of the public. An electrical cord or device of any kind is hereby included, but not by way of limitation, within the definition of an obstruction.

Subd. 2 Fires. It is a misdemeanor for any person to build or maintain a fire upon a street.

Subd. 3 Dumping in Streets. It is a misdemeanor for any person to throw or deposit on a street any nails, dirt, glass or glassware, cans, discarded cloth or clothing, metal scraps, garbage, leaves, grass or tree limbs, paper or paper products, shreds or rubbish, oil, grease or other petroleum products, or to empty any water containing salt or other injurious chemical on a street or, between the dates of November 1 and March 15, to discharge or permit the discharge of water from a roof, a sump pump, or other ground waters from the premises occupied by the person. It is a violation of this Section to haul any such material, inadequately enclosed or covered, thereby permitting the same to fall upon streets. It is also a violation of this Section to place or store any building materials or waste resulting from building construction or demolition on any street without first obtaining a written permit from the Council.

Subd. 4 Signs and Other Structures. It is a misdemeanor for any person to place or maintain a sign, advertisement, or other structure in any street without first having obtained a written permit from the Council. In a district zoned for commercial or industrial enterprises, special permission allowing an applicant to erect and maintain signs overhanging the street may be granted upon such terms and conditions as may be set forth in the zoning or construction provisions of the City Code.

Subd. 5 Placing Snow or Ice on a Public Street or Alley.

A. Except as otherwise permitted in this subdivision, it is unlawful for any person or business entity to remove snow or ice from private property and place the same in any public street or alley within the City of Montgomery.

B. It is permitted for snow on sidewalks to be shoveled or blown onto the adjacent public street in the downtown area. The downtown area is hereby defined as First Street and one-half block on either side, between 40 feet south of First Street's intersection with Oak Avenue and its intersection with Boulevard Avenue.

C. A person acting under a specific written contract with the City, or with written authority from the City Council may remove snow or ice from the person's private property and place the same in any public street or alley.

Subd. 6 Continuing Violation. Each day that any person continues in violation of this Section shall be a separate offense and punishable as such.

Subd. 7 Condition. Before granting any permit under any of the provisions of this Section, the Council may impose such insurance or bonding conditions on the permit as it deems proper for safeguarding persons and public and private property from projected danger. Such insurance or bond shall also protect the City from any suit, action or cause of action arising by reason of such obstruction.

Section 710 – CONSTRUCTION AND REPAIR OF STREETS AND SIDEWALKS

710.01 Construction and Reconstruction of Roadway Surfacing, Sidewalk, Curb and Gutter.

Subd. 1 Methods of Procedure.

A. Abutting or affected property owners may contract for, construct or reconstruct roadway surfacing, sidewalk or curb and gutter in accordance with this Section if advance payment is made for such construction, or arrangements for payment considered adequate by the City are completed in advance.

B. With or without petition by the methods set forth in the Local Improvement Code of Minnesota Statutes, Chapter 429.

Subd. 2 Permit Required. It is a misdemeanor to construct or reconstruct a sidewalk, curb and gutter, driveway or roadway surfacing in any street or other public property in the City without a written permit from the City Administrator. Application for such permit shall be made on forms approved and provided by the City and shall sufficiently describe the contemplated improvements, the contemplated date of beginning of work, and the length of time required to complete the work. However, no permit shall be required for any improvement ordered installed by the Council. All applications shall be referred by the City Administrator to the Public Works Superintendent and no permit shall be issued until approval has been received from the Public Works Superintendent. All such applications shall contain an agreement by the applicant to be bound by this Chapter, and by plans and specifications consistent with the provisions of this Chapter, and by good engineering practices. A permit from the City shall not relieve the holder from damages to the person or property of another caused by such work.

Subd. 3 Specifications and Standards. All construction and reconstruction of roadway surfacing, sidewalk and curb and gutter improvements, including curb cuts, shall be strictly in accordance with specifications and standards on file in the office of the City Administrator. These standards shall be open to inspection and copying. Such specifications and standards may be amended from time to time by the City, but shall be uniformly enforced.

Subd. 4 Inspection. The Council shall designate a suitable and competent person to perform inspections required in this Section and such other inspection of such work as deemed necessary. Any work not done according to the applicable specifications and standards shall be removed and corrected at the expense of the permit holder. Any work done under this Section may be stopped by the Inspector if found to be unsatisfactory or not in accordance with the specifications

and standards; however, this shall not place a continuing burden upon the City to inspect or supervise such work.

710.02 Street Openings or Excavations. It is a misdemeanor for any person, except a City employee acting within the course and scope of his or her employment or a contractor acting within the course and scope of a contract with the City, to make any excavation, opening or tunnel in, over, across or upon a street or other public property without first having obtained a written permit from the City Administrator as provided in this Subsection.

Subd. 1 Application. Application for a permit to make a street excavation shall described with reasonable particularity the name and address of the applicant; the place, purpose and size of the excavation; and such other information as may be necessary or desirable to facilitate the investigation provided for in Subd. 2. The application shall be filed with the City Administrator.

Subd. 2 Investigation and Payment of Estimated Costs. Upon receipt of such application, the City Administrator shall cause an investigation to be made as the Administrator deems necessary to determine estimated cost of repair such as back-filling, compacting, resurfacing and replacement, manner of procedure and time limitation upon such excavation. The estimated costs shall include permanent and temporary repairs due to weather or other conditions, and the cost of the investigation shall be included in such estimate.

Subd. 3 Issuance of Permit. The City Administrator shall issue a permit after (1) completion of an investigation; (2) payment by the applicant in advance of all estimated costs, or the submission of a performance bond or letter of credit for the full amount of the estimated cost; (3) agreement by the applicant to the conditions of time and manner as applicable; and, (4) agreement in writing by such applicant to pay all actual cost of repairs over and above such estimate, including cost of such investigation.

Subd. 4 Repairs. All temporary and permanent repairs, including back-filling, compacting and resurfacing shall be made, or contracted for, by the City in a manner prescribed by the City Administrator. All compacting will be done at least after each twelve (12) inches of back-fill. An accurate account of costs of repairs shall be kept.

Subd. 5 Cost Adjustment. Within sixty (60) days following completion of permanent repairs the City Administrator shall determine actual costs of repairs, including cost of investigation, and prepare and furnish to the permit holder an itemized statement and claim additional payment from, or make refund to, the permit holder, as the case may be. In the case of a bond or letter of credit, all costs owed to the City shall be first deducted from the bond or letter of credit.

Subd. 6 Alternate Method of Charging. In lieu of the above provisions relating to cost and cost adjustment for street openings, the City may charge on the basis of surface square feet removed, excavated cubic feet, or a combination of surface square feet and excavated cubic feet, on an established unit price uniformly charged.

710.03 Requirement of Sewer and Water Main Service Lateral Installation.

Subd. 1 Requirement of Sewer and Water Laterals. No petition for the improvement of a street shall be considered by the Council if such petition contemplates constructing any part of a pavement or stabilized base, or curb and gutter, unless all sewer and water main installations have been made, including the installation and service laterals to the curb, if the area along such street will be served by such utilities installed in the street.

Subd. 2 Sewer System Service and Water Main Service Laterals. No sewer system shall be hereafter constructed or extended unless service laterals to platted lots and frontage facing thereon shall be extended simultaneously with constructions of mains.

Subd. 3 Waiver. The Council may waive the requirements of this Section only if it finds the effects are burdensome, and upon such notice and hearing as the Council may deem necessary or proper.

710.04 Sidewalk Maintenance and Repair.

Subd. 1 Joint Responsibility. It is the joint responsibility of the City of Montgomery and the owner of property, upon which there is abutting any public sidewalk, to keep and maintain such public sidewalk in safe and serviceable condition.

Subd. 2 Duties of Abutting Property Owners. The property owner abutting an existing sidewalk in the City of Montgomery has the duty to notify the City Administrator, in writing, of any hazardous condition in the abutting sidewalk. Further, except for reasonable wear and tear, the abutting property owner has a duty not to damage the sidewalk. Abutting property owners shall keep the sidewalks clear of all snow and ice in conformance with Montgomery City Ordinance Section 705.01. Abutting property owners shall also keep the sidewalks clear of any other debris which may be a hazard to pedestrians. If the abutting property owner fails to remove debris from the sidewalk, in a timely fashion, the City sidewalk inspector or public works coordinator shall report such failure to the City Administrator and the City Administrator may order such work to be done, with the cost thereof assessed back to the abutting property owner.

Subd. 3 The Duties of the City of Montgomery. The City of Montgomery shall have the duty to inspect, construct, reconstruct or repair all public sidewalks in the

City of Montgomery. The City sidewalk inspector shall inspect or direct the inspection of all public sidewalks within the City on a reasonable, regular basis. All construction, reconstruction or repair of public sidewalks within the City of Montgomery shall be carried out by the City of Montgomery at the sole discretion of the City Council.

Subd. 4 Public Sidewalk Construction, Reconstruction or Repair. The City of Montgomery shall pay for the construction, reconstruction and repair of all public sidewalks within the City limits and this cost shall not be assessed back to the abutting property owner, except in situations where the reconstruction or repair is necessitated by the actions of the abutting property owner, the abutting property owner's employees or agents. In the event the sidewalk reconstruction or repair is necessitated by the actions of the abutting property owner, or the abutting property owner's employees or agents, the cost of the reconstruction or repair shall be assessed back to the abutting property owner.

Subd. 5 Assessments. Any assessment made by the City against an abutting property owner under this Section shall be made a lien upon the premises served. All such charges which are on August 31 of each year more than six (6) months past due, shall be certified by the City Administrator to the County Auditor between the 1st and 10th day of September of each year, and the City Administrator in so certifying such charges to the County Auditor shall specify the amount thereof, the description of the premises served, and the name of the owner thereof. The amount so certified shall be extended by the Auditor on the tax rolls against such premises in the same manner as other taxes, and collected by the County Treasurer, and paid to the City along with other taxes.

Subd. 6 Duty to Inspect. In order to accomplish the purpose of this Section, it shall be the duty of the City sidewalk inspector to inspect public sidewalks within the City, or cause the same to be inspected under the inspector's direction.

Subd. 7 Effective Date. This ordinance shall be effective with the date of publication. This ordinance shall apply only to the construction, reconstruction, and repair of City sidewalks occurring on or after the effective date of the ordinance.

Section 715 – PRIVATE USE OF PUBLIC WAYS

715.01 Curb and Gutter, Street and Sidewalk Painting or Coloring. It is unlawful for any person to paint, letter or color any street, sidewalk or curb and gutter for advertising purposes; or to paint or color any street sidewalk or curb and gutter for any purpose, except as may be done by City employees acting within the course or scope of their employment. Provided, however, that this provision shall not apply to uniformly coloring concrete or other surfacing, or uniformly painted house numbers, as may be approved by the City Administrator.

715.02 Private Use of Public Streets and Parking Lots.

Subd. 1 Authority, Permission and Procedure. Upon an application made to the City Administrator and reviewed and recommended by the Chief of Police, the Council may in its discretion, grant special permission whereby on-street parking or the use of City-owned parking lots or ramps or public sidewalks may be temporarily or restricted for private reasons and purposes (including, but not limited to, establishment of private or “leased” parking, “loading zones”, or display of merchandise on sidewalks) at such places, on such terms and for such compensation as the Council may deem just and equitable. In establishing the amount of compensation to be paid to the City, the Council shall consider the amount of space, location, loss of parking meter revenues, public inconvenience, and hazards to persons or property. Upon complaint of any aggrieved person at any time and by reason of any specific special permission so granted, the Council shall at its next regular meeting after receipt of such complaint, call a hearing to be held after ten (10) days’ written notice to the applicant and the complainant and published notice. After such hearing the Council shall by resolution decide whether to terminate, continue, or redefine the terms of such permission. The Council’s decision shall be final and binding on all persons directly or indirectly interested in the matter except that the Council may, on its own motion, reconsider the same.

Subd. 2 Forbidden Practices. It is unlawful for any person to park or otherwise infringe upon a grant of right under this Section, when clearly and distinctly marked or sign-posted. It is unlawful for any person not granted such right to assert the same, or for any grantee of such right to exceed the rights granted by the City.

715.03 Limiting Speed and Time of Railway-Street Crossing Obstruction. It is a misdemeanor for any person operating or in charge of a railroad train, car, engine, locomotive or other railroad equipment to operate, park, or leave the same standing upon the railroad at its intersection with a street, so as to prevent unobstructed vehicular traffic on such street for a period longer than five (5) minutes, or to so operate it at a speed greater than fifteen (15) miles per hour.

715.04 Parades.

Subd. 1 Definition. The term “parade” means any movement of vehicles, persons or animals, which either moves together and as a body so as to in some way impede or affect the free and unobstructed flow of vehicular or pedestrian traffic, or which moves so that some part thereof is in violation of one or more traffic laws or regulations, if such movement is without a permit issued under this Section.

Subd. 2 Permit Required. It is unlawful to sponsor or participate in a parade for which no permit has been obtained from the City. It is also unlawful to obtain a parade permit and not conduct it in accordance with the permit granted by the City. Application for a permit shall be made to the City Administrator at least forty-five (45) days in advance of the date on which it is to occur. The applicant shall state the sponsoring organization or individual, the route, the length, the estimated time of commencement and termination, and the general composition. The application shall be executed by the individuals applying for it or the duly authorized agent or representative of the sponsoring organization.

Subd. 3 Investigation. The City Administrator shall refer all applications for parades to the Chief of Police for consideration, which shall take no longer than seven (7) days. If any State trunk highways are in the route the Chief of Police shall make all necessary arrangements with the Minnesota Department of Public Safety for alternate routes or whatever may be necessary. If the Chief of Police finds that such a parade will not cause a hazard to persons or property, and will cause no great inconvenience to the public, and if the Chief is able to make arrangements for necessary direction and control of traffic, the Chief shall endorse the application and return it to the City Administrator. If the Chief of Police finds the parade described in the application to be a hazard, a substantial inconvenience, or if the Chief is unable to make adequate arrangements for direction or control of traffic, the Chief shall return the same to the City Administrator with the Chief’s findings.

Subd. 4 Council Action. The City Administrator shall refer the application and results of investigation to the Council at its next regular meeting. The Council may either (1) deny the permit, (2) grant the permit, or (3) grant the permit on condition that a date, time or route are acceptable to applicant which differ from such as stated in the application. Applicant shall have three (3) days within which to communicate acceptance to the City Administrator.

Subd. 5 Unlawful Acts.

A. It is unlawful for any person to hamper, obstruct, or impede or interfere with any parade, parade assembly or any person, animal or vehicle participating in the parade.

B. It is unlawful for any person to drive a vehicle between the vehicles or persons comprising a parade when such parade is in motion.

C. It is unlawful for any person to enter into a parade without prior authorization from the parade chairperson.

Subd. 6 Exceptions. This Section shall not apply to (1) funeral processions, or (2) a governmental agency acting within the scope of its functions.

Section 716 – EQUAL ACCESS TO DOWNTOWN STREETS

716.01 Definitions.

Downtown business district: For the purposes of this Section the downtown business district is defined as: (a) that portion of downtown Montgomery lying north of the intersection of First Street and Oak Avenue, and south of the intersection of First Street and Boulevard Avenue; (b) the downtown business district also includes that portion of Elm Avenue located east of its intersection with Second Street S.W. and west of its intersection with the railroad tracks; (c) that portion of Ash Avenue located east of its intersection with Second Street S.W. and west of its intersection with the railroad right-of-way; and, (d) that part of Oak Avenue located east of its intersection with Second Street S.W. and west of its intersection with the railroad tracks.

Probable cause: A reasonable ground for suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious person in believing that specified offenses or specified behaviors have been committed by members of a group or by individuals.

Police directive: A directive by a licensed peace officer having probable cause to believe that specified offenses or specified behaviors have been committed by members of a group or by individuals so as to constitute an unlawful gathering.

Specified offenses: Violations of the following sections of state statute and City Code shall constitute specified offenses:

- (1) Minn. Stat. Section 340A.503, Underage/Minor Possession or Consumption of Alcohol;
- (2) Minn. Stat. Section 609.68, Littering;
- (3) Minn. Stat. Section 609.72, Disorderly Conduct;
- (4) Ordinance Section 700.05, Limitation on Pedestrian Traffic;
- (5) Ordinance Section 705.03, Obstruction in Streets;
- (6) Ordinance Section 716, Equal Access to Downtown Streets;
- (7) Ordinance Section 810, Bicycles, Skateboards, In-Line Skates;
- (8) Ordinance Section 1005, Dangerous Weapons and Articles;
- (9) Ordinance Section 1020, Curfew;
- (10) Ordinance Section 1025, Unlawful Tobacco Use and Possession;
- (11) Ordinance Section 1030, Trespass and Disorderly Conduct.

Specified behaviors: For the purposes of this ordinance specified behaviors means the following:

- (1) Screaming or yelling at pedestrians or persons in vehicles except where an emergency exists;
- (2) Making offensive hand gestures to persons driving by in vehicles;

(3) Directing profanity at passers-by.

Unlawful gathering: An unlawful gathering is a gathering of three (3) or more people in a public area in the downtown business district in which any of the individuals present engages in any specified offenses or specified behaviors.

(b) If a peace officer has probable cause to believe that any individual or individuals in a gathering have committed specified offenses or specified behaviors, the peace officer may direct the members of the gathering to leave the downtown business district and not return for a minimum of 24 hours.

(c) Whoever is present at an unlawful gathering and refuses to leave in response to a police directive is guilty of a crime.

Section 720 – UNLAWFUL DEPOSIT OF GARBAGE, LITTER, OR LIKE

720.01 Whoever unlawfully deposits garbage, rubbish, offal, or the body of a dead animal, or other litter in or upon any public highway, public waters or the ice thereon, shoreland areas, adjacent to rivers or streams as defined by Section 103F.205, public lands, or, without the consent of the owner, private lands or water or ice thereon, is guilty of a petty misdemeanor.

Section 725 – RIGHT-OF-WAY MANAGEMENT

725.01 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 a state of good repair and free from unnecessary encumbrances.

Accordingly, the City enacts this new Section of this Code relating to right-of-way permits and administration. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the City's rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This Section shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the City and users of the right-of-way. This Section shall also be interpreted consistent with Minnesota Rules 7819.0050-7819-9950 where possible. To the extent that any provision of this Section cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended.

725.02 Election to Manage the Public Rights-of-Way. Pursuant to the authority granted to the City under state and federal statutory, administrative and common law, the City elects pursuant to Minnesota Statutes Section 237.163, Subd. 2(b), to manage rights-of-way within its jurisdiction.

725.03 Definitions. The following definitions apply in this Section of this code. References to "subdivisions" are unless otherwise specified references to subdivisions in this Section.

Subd. 1 "Abandoned 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 or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

Subd. 2 "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

Subd. 3 "City" means the City of Montgomery, Minnesota. For purposes of Section 725.29, city means its elected officials, officers, employees and agents.

Subd. 4 “Commission” means the Minnesota Public Utilities Commission.

Subd. 5 “Congested Right-of-Way” means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes Section 216D.04, Subd. 3, over a continuous length in excess of 500 feet.

Subd. 6 “Construction Performance Bond” means any of the following forms of security provided at permittee’s option:

- A. Individual project bond;
- B. Cash deposit;
- C. Security of a form listed or approved under Minnesota Statutes Section 15.73, Subd.;
- D. Letter of Credit, in a form acceptable to the City;
- E. Self-insurance, in a form acceptable to the City;
- F. A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

Subd. 7 “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.

Subd. 8 “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 in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

Subd. 9 “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 right-of-way caused by the excavation, and which equals the degradation cost.

Subd. 10 “Department” means the department of public works of the City.

Subd. 11 “Department Inspector” means any person authorized by the City to carry out inspections related to the provisions of this Section.

Subd. 12 “Director” means the director of the department of public works of the City, or her or his designee.

Subd. 13 “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.

Subd. 14 “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.

Subd. 15 “Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Subd. 16 “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Subd. 17 “Excavation Permit” means the permit which, pursuant to this Section, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

Subd. 18 “Excavation Subdivision Permit Fee” means money paid to the City by an applicant to cover the costs as provided in Section 725.12.

Subd. 19 “Facility or Facilities” means tangible asset in the public right-of-way 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 Statutes Section 161.45, governing utility facility placement in state trunk highways.

Subd. 20 “Five-Year Project Plan” shows projects adopted by the City for construction within the next five years.

Subd. 21 “High Density Corridor” means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

Subd. 22 “Hole” means an excavation in the right-of-way, with the excavation having a length less than the width of the pavement or adjacent pavement.

Subd. 23 “Local Representative” means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Section.

Subd. 24 “Management Costs” means the actual costs the City incurs in managing its right-of-way, including such costs, if incurred, as those 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 by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to Section 725.31.

Subd. 25 “Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Subd. 26 “Obstruction Permit” means the permit which, pursuant to this Section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein, including a blanket permit for a period of time and for types of work specified by the Director, if deemed appropriate in his discretion.

Subd. 27 “Obstruction Permit Fee” means money paid to the City by a permittee to cover the costs as provided in Section 725.12.

Subd. 28 “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. A patch is considered full restoration only when the pavement is included in the city’s five-year project plan.

Subd. 29 “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.

Subd. 30 “Permit” has the meaning given “right-of-way permit” in Minnesota Statutes Section 237.162.

Subd. 31 “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.

Subd. 32 “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.

Subd. 33 “Public Right-of-Way” has the meaning given it in Minnesota Statutes Section 237.162, Subd. 3.

Subd. 34 “Registrant” means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

Subd. 35 “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.

Subd. 36 “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Section.

Subd. 37 “Right-of-Way User” means (1) a telecommunications right-of-way user as defined by Minnesota Statutes Section 237.162, Subd. 4, or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

Subd. 38 “Service or Utility Service” means and includes (1) services provided by a public utility as defined in Minnesota Statutes Section 216B.02, Subds. 4 and 6, (2) services of a telecommunications right-of-way user, including transporting of voice or data information, (3) services of a cable communications system as defined in Minnesota Statutes Chapter 238.02, Subd. 3, (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 or heating services.

Subd. 39 “Supplementary Application” means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

Subd. 40 “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 two-year plan, in which case it is considered full restoration.

Subd. 41 “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 or adjacent pavement.

Subd. 42 “Telecommunication Right-of-Way User” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in

the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minnesota Statutes Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes Section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes Chapter 308A, are not telecommunications right-of-way users for purposes of this Section.

Subd. 43 “Two-Year Project Plan” shows projects adopted by the City for construction within the next two years.

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

725.05 Utility Coordination Committee. The City may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the City in obtaining information and by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The City may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the City.

725.06 Registration and Right-of-Way Occupancy.

Subd. 1 Registration. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the City. Registration will consist of providing application information and paying a registration fee.

Subd. 2 Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the City.

Subd. 3 Exceptions. Nothing in this Section shall be construed to repeal or amend the provisions of a City ordinance establishing the rights of and limitations placed on persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements under this Section for the following:

A. Planting or maintaining boulevard plantings or gardens;

- B. Other surface landscaping works;
- C. Construction and maintenance of driveway, sidewalks, curb and gutter, or parking lots, except repairs or restoration necessitated by utility cuts or other work;
- D. Construction or maintenance of street furnishings, bus stop benches, shelters, or posts and pillars;
- E. Snow removal activities;
- F. Construction and maintenance of irrigation systems provided that the system does not connect directly to water mains in the right-of-way.

Subd. 4 Gopher One Call. Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes Chapter 216D, Gopher One Call Law.

725.07 Registration Information.

Subd. 1 Information Required. The information provided to the City at the time of registration shall include, but not be limited to:

- A. Each registrant's name, Gopher One Call facility owner code number or other One-Call identifier, address and email address, and telephone and facsimile numbers.
- B. The name, address and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be accessible for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- C. A certificate of insurance or self-insurance:
 - 1. verifying that an insurance policy has been issued to the registrant by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;
 - 2. verifying 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 right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) 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;

3. either naming the City as an additional injured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages or otherwise providing evidence satisfactory to the director that the City is fully covered and will be defended through registrant's insurance for all actions included in Minnesota Rule Part 7819.1250;

4. requiring that the City be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

5. 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.

D. The City may require a copy of the actual insurance policies if necessary to ensure the director that the policy provides adequate third party claim coverage and City indemnity and defense coverage for all actions included in the indemnity required by Minnesota Rule Part 7819.1250.

E. Such evidence as the director may require that the person is authorized to do business in Minnesota.

Subd. 2 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.

725.08 Reporting Obligations.

Subd. 1 Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a 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 the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. If by December 1 the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the City thereafter as soon as it

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

A. 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

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 (in this Section, a “five-year project”).

The term “project” in this Section shall include both next-year projects and five-year projects.

By January 1 of each year and subject to the Minnesota Data Practices Act the City will have available for inspection in the City’s office a composite list of all projects of which the City has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by March 1, each registrant may change any project in its list of next-year projects, and must notify the City and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

Subd. 2 Additional Next-Year Projects. Notwithstanding the foregoing, the City will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

725.09 Permit Requirement.

Subd. 1 Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City to do so.

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

B. Obstruction Permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of the 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.

C. Permits for installation, repair or otherwise work on above-ground facilities within the meaning of Minnesota Statutes Section 237.163, Subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand dug for the purpose of placing a pole type structure.

Subd. 2 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.

Subd. 3 Delay Penalty. In accordance with Minnesota Rule 7819.1000, Subp. 3, 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 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.

Subd. 4 Permit Display. Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

Subd. 5 Routine Obstruction and Excavation. The director may approve a permit plan which, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that last less than eight hours in duration may be included in such a plan.

725.10 Permit Applications.

Subd. 1 Content of Permit. Application for a permit is made to the City. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- 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 owned or operated by the applicant;
- C. Payment of money due the City for:

1. permit fees, estimated restoration costs and other management costs;
2. prior obstructions or excavations;
3. any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City.

D. Payment of undisputed amounts due 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 for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

725.11 Issuance of Permit; Conditions.

Subd. 1 Permit Issuance. If the applicant has satisfied the requirements of this Section, the City shall issue a permit.

Subd. 2 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.

Subd. 3 Screening. The permittee shall screen all above-ground facilities as required by the director. Screening methods shall include the use of shrubs, trees and/or landscape rock or installation using stels or camouflaged forms of the facility.

725.12 Permit Fees.

Subd. 1 Fee Schedule and Fee Allocation. The City's permit fee schedule shall be available to the public and established in advance where reasonably possible. The permit fees shall be designed to recover the City's actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the City.

Subd. 2 Excavation Permit Fee. The City shall establish an excavation permit fee in an amount sufficient to recover the following costs:

- A. The City management costs;

B. Degradation costs, if applicable.

Subd. 3 Obstruction Permit Fee. The City shall establish the obstruction permit fee and shall be in an amount sufficient to recover the City management costs.

Subd. 4 Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The City may allow applicant to pay such fees within thirty (30) days of billing, or on some other payment plan agreed to by the director at his discretion.

Subd. 5 Non-Refundable. Permit fees that were paid for a permit that the City has revoked for a breach as stated in Subd. 22 are not refundable.

Subd. 6 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.

725.13 Right-of-Way Patching and Restoration.

Subd. 1 Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Subd. 16.

Subd. 2 Patch and Restoration. Permittee must patch its own work. The City may choose either to have the permittee restore the surface and subgrading portions of right-of-way or to restore the surface portion of right-of-way itself.

A. City Restoration. 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.

B. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

C. Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate based material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.

Subd. 3 Standards. The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100.

Subd. 4 Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Upon notification from the City, permittee shall correct all restoration work to the extent necessary, using the method required by the City. Unless otherwise agreed to by the director, said work shall be completed within five (5) calendar days of receipt of the notice from the City, 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 under Subd. 16.

Subd. 5 Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City shall notify the permittee in writing of the specified alleged failure or failures and shall allow the permittee ten (10) days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the director. 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.

725.14 Joint Applications.

Subd. 1 Joint Application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subd. 2 Shared Fees. Registrants who apply for permits for the same obstruction or excavation, which the City does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3 With City Projects. Registrants who join in a scheduled obstruction or excavation performed by the City, whether or not it is a joint application by two or more registrants on a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

725.15 Supplementary Applications.

Subd. 1 Limitation on Area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside

the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

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

725.16 Other Obligations.

Subd. 1 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 pay 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 Minnesota Statutes 216D.01-.09. (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with all applicable codes and establishes 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.

Subd. 2 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.

Subd. 3 Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with, unless otherwise approved by the director. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless authorized by the permit.

Subd. 4 Traffic Control. A permittee shall implement traffic control measures in the area of the work and shall 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.

725.17 Denial of Permit. The City may deny a permit for failure to meet the requirements and conditions of this Section or if the City determines that the denial is

necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

725.18 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 7819.1100, 7819.5000 and 7819.5100 and other applicable local requirements, insofar as they are not inconsistent with Minnesota Statutes Sections 237.162 and 237.163.

725.19 Inspection.

Subd. 1 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.

Subd. 2 Site Inspection. Permittee shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd. 3 Authority of Director.

A. 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.

B. The director may issue an order to the permittee to correct any 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 Statutes Section 237.163, Subd. 4(c), the order shall state that 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 corrected within the time period set forth by the director in that order. Such proof shall be provided no later than the next business day following the day of completion. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Section 725.22.

725.20 Work Done Without a Permit.

Subd. 1 Emergency Situations. Each registrant shall immediately notify the director of any event regarding its facilities that the registrant considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring

itself into compliance with this Section for the actions it took in response to the emergency. If the director concludes that a registrant is required to perform work at the facility solely because of an emergency created by another registrant and the work is performed in the immediate area of the emergency work, the director may waive the permit otherwise required by the registrant(s) called to the emergency created by another party.

If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant 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 registrant whose facilities occasioned the emergency.

Subd. 2 Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, 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 of the requirements of this Section.

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

725.22 Revocation of Permits.

Subd. 1 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:

- A. The violation of any material provision of the right-of-way permit;
- B. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- C. Any material misrepresentation of fact in the application for a right-of-way permit;
- D. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or

E. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 19B-19.

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

Subd. 3 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.

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

725.23 Mapping Data.

Subd. 1 Rule. Each registrant and permittee shall provide mapping information in a form required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100.

725.24 Undergrounding.

Subd. 1 Purpose. The purpose of this Section 725.24 is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the City. Location and relocation, installation and reinstallation of facilities in the right-of-way or in or on other public ground must be made in accordance with this Subdivision. This Subdivision is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to Minnesota Statutes Sections 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, U.S.C. Section 253.

Subd. 2 Undergrounding of Facilities. Facilities newly installed, constructed or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this Section and in accordance with applicable

construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. The requirements of this Subdivision shall apply equally outside of the corporate limits of the City coincident with City jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

Subd. 3 Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities. If the City finds that one or more of the purposes set forth in Section 725.24, Subd. 1 would be promoted, the City may require a permanent replacement, relocation or reconstruction of a facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this Section, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the City in connection with (1) the present or future use by the City or other local government unit of the right-of-way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way.

Subd. 4 Exceptions to Undergrounding. The following exceptions to the strict application of this Subdivision shall be allowed upon the conditions stated:

A. Transmission Lines. Above-ground installation, construction, or placement of those facilities commonly referred to as “high voltage transmission lines” shall be allowed unless the Council requires undergrounding of the facilities after providing the right-of-way user notice and an opportunity to be heard. This provision shall not be construed as waiving the requirements of any other ordinance or regulation of the City as the same may apply to any such proposed project.

B. Technical/Economic Feasibility; Promotion of Policy. Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial and industrial areas where the Council, following consideration and recommendation by the planning commission, finds that:

1. underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights; or,
2. underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground facilities placement; or,

3. failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under Section 725.24, Subd. 1 would be advanced by underground placement of facilities on the project in question.

C. Temporary Service. Above-ground installation, construction, or placement of temporary service lines shall only be allowed:

1. during new construction of any project for a period not to exceed twenty-four (24) months;
2. during an emergency in order to safeguard lives or property within the City;
3. for a period of not more than seven (7) months when soil conditions make excavation impractical.

Subd. 5 Retirement of Overhead Facilities. The City Council may determine whether it is in the public interest that all facilities within the City, or facilities within certain districts designated by the City, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to Section 725.24, Subd. 2 of this Code (new facilities) and Section 725.24, Subd. 3 (replacement facilities). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected. (Two weeks published; 30 days written). At the hearing the Council must consider items (1)-(4) in Section 725.24, Subd. 5.B of this Section and make findings. Undergrounding may not take place until City Council has, after hearing and notice, adopted a plan containing items (1)-(6) of Section 725.24, Subd. 5.C of this Section.

A. Public Hearings. A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether facilities in the right-of-way in the City, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under Subds. 24.B and D of this Section.

B. Public Hearing Issues. The issues to be addressed at the public hearings include but are not limited to:

1. the costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way;
2. the feasibility and cost of undergrounding all facilities by a date certain as determined by the City and the affected utilities;

3. the tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the City;
4. alternative financing options available if the City deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either citywide or within districts designated by the City.

C. **Undergrounding Plan.** If the Council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way or in non-right-of-way public ground, the Council must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

1. timetable for the undergrounding;
2. designation of districts for the undergrounding unless the undergrounding plan is citywide;
3. exceptions to the undergrounding requirement and procedure for establishing such exceptions;
4. procedures for the undergrounding process, including but not limited to coordination with City projects and provisions to ensure compliance with non-discrimination requirements under the law;
5. a financing plan for funding of the incremental costs if the City determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility;
6. penalties or other remedies for failure to comply with the undergrounding.

Subd. 6 **Developer Responsibility.** All owners, platters, or developers are responsible for complying with the requirements of this Subdivision, and prior to final approval of any plat or development plan, shall submit to the director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such facilities have been made.

725.25 Location and Relocation of Facilities.

Subd. 1 Rule. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

A. Relocation Notification Procedure: the director shall notify the utility owner at least three months in advance of the need to relocate existing facilities so the owner can plan the relocation. The director shall provide a second notification to the owner one month before the owner needs to begin the relocation. The utility owner shall begin relocation of the facilities within one month of the second notification. To the extent technically feasible, all utilities shall be relocated within one month or in a time frame determined by the director. The director may allow a different schedule if it does not interfere with the City's project. The utility owner shall diligently work to relocate the facilities within the above schedule.

B. Delay to City Project: the director shall notify the utility owner if the owner's progress will not meet the relocation schedule. The City may charge the utility owner for all costs incurred and requested by a contractor working for the City who is delayed because the relocation is not completed in the scheduled time frame and for all costs incurred by the City due to the delay.

C. Joint Trenching: all facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate and no safety hazards are created, all utilities shall be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in separate trenches.

Subd. 2 Corridors. The City may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that are or, pursuant to current technology, the City expects will 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. A typical crossing section of the location for utilities may be on file at the director's office. This Section is not intended to establish "high density corridors".

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City may remain at that location until the City requires facilities relocation to the corridor pursuant to relocation authority granted under Minnesota Rules Part 7819.3100 or other applicable law.

Subd. 3 Limitation of Space. To protect the public health, safety, and welfare or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

725.26 Pre-Excavation Facilities Location. In addition to complying with the requirements of Minnesota Statutes Section 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall be responsible to mark the horizontal placement of all said facilities, to the extent technically feasible. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of their facilities to excavators upon request. Nothing in this Subsection is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in Minnesota Statutes Section 216D.01-.09.

Any registrant whose facilities may be less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish and mark the exact horizontal and vertical location of its facility and the best procedure for excavation.

725.27 Interference by Other Facilities. When the City does work in the right-of-way in its governmental right-of-way management function and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging registrant's facilities, the City shall notify the local representative as early as is reasonably possible. The City costs associated therewith will be billed to that 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 right-of-way which it or its facilities damages.

725.28 Right-of-Way Vacation-Reservation of Right. If the City vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

725.29 Indemnification and Liability. By registering with the City, or by accepting a permit under this Section, a registrant or permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

725.30 Abandoned Facilities.

Subd. 1 Discontinued Operations. A registrant who has decided 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 right-of-way under this Section have been lawfully assumed by another registrant.

Subd. 2 Removal. Any registrant who has abandoned facilities in any right-of-way shall remove them from that right-of-way pursuant to Minnesota Rule Part 7819.3300, unless the requirement is waived by the director.

725.31 Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are not in conformity with Minnesota Statutes Section 237.163, Subd. 6 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 and supported by written findings establishing the reasonableness of the decision.

725.32 Reservation of Regulatory and Police Powers. A permittee's or registrant's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

725.33 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Section 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. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Section or any portion of this Section is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days' written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this Section precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Section 726 – SPECIAL ASSESSMENT POLICY

726.01 Policy Goals. The goals of Montgomery’s special assessment policies and procedures are to:

Subd. 1 Provide a stable, cost effective, and continuing source of funding within the financial capacity of the city to accommodate infrastructure needs for new development, redevelopment and maintenance within the community.

Subd. 2 To be responsive to community needs and desires for health, safety, welfare, accessibility, and mobility provided by new infrastructure and the maintenance of existing assets.

Subd. 3 Provide for and ensure the consistent, uniform, fair, and equitable treatment, insofar as is practical, lawful and possible, of all property owners in regard to the assessment of cost for benefits to properties for the qualifying improvements listed in Chapter 429, Minnesota Statutes.

Subd. 4 Provide the City Council and staff with guidelines and methods to efficiently distribute infrastructure costs to benefitting properties in an equitable and consistent manner thereby enhancing the value of property by assigning a proportionate value of the improvements to the properties deriving from the improvements.

Subd. 5 Provide a comprehensive, well-constructed and well-maintained infrastructure which services individual properties and takes advantage of economies of regional scale and flexibility in the timing of infrastructure development.

Subd. 6 To provide an effective tool for the management of municipal resources and to support a highly functional and well-maintained system of infrastructure which promotes economic development and growth, fosters a sense of pride throughout the community, and facilitates the development and adoption of short and long-range capital improvement plans by identifying the magnitude and sources of funding available.

Subd. 7 Special assessments provide a means of levying charges for public services against property otherwise exempt from taxation.

726.02 Introduction. A special assessment is a levy on a property to defray the cost of public improvements. Chapter 429 of the Minnesota State Statutes grants cities the authority to use special assessments as a mechanism to finance a broad range of public improvements. The special assessments exist to assign as much cost as reasonable to those properties receiving a direct benefit from a public improvement project, thereby reducing the reliance on the general tax levy.

Assessing the property owner for the benefit(s) received from the public improvement prevents or minimizes the possibility that a property owner will reap a financial profit from the improvement at the expense of taxpayers. Special assessments are a valuable tool to cities in that the public improvement costs are assigned to benefiting properties.

While the special assessment goals, policies, and procedures have been identified herein, the City Council has the authority to deviate from this policy when such rationale in equity arises or when the law or statutes require such deviation.

726.03 Definitions. The following definitions apply to this Section of the code.

Subd. 1 “Adjacent or Abutting Property” means a property directly adjacent to public improvements.

Subd. 2 “Access” means a vehicular or pedestrian approach or entry to or exit from property. Properties shall be considered to have access to underground utility improvements when they directly abut and there is reasonable access available.

Subd. 3 “Adjusted Area” means an area of a benefited property that has been modified by an adjustment factor to more accurately represent the actual benefit the property receives from an improvement compared to other properties in the assessment area. Any adjustment must be approved by the Council. Design parameters which may be applied to determine the adjustment factor include, but are not limited to: trip generation; storm water runoff coefficients; water or sanitary sewer use; needed fire flow; or zoning or future land use.

Subd. 4 “Adjusted Frontage” means the assessable front footage of a benefited property modified by an adjustment factor to more accurately represent the true benefits that property receives from an improvement when compared to other properties in the assessment area. The adjustment will be based on the improvement design parameters applicable to that parcel, as approved by the City Council. This is useful for flag lots or other improved properties that have little direct frontage adjacent to the improvement and access is available directly to and from the improvement area. Design parameters which may be used to determine the adjustment factor include, but are not limited to: lot area comparison to surrounding lots to calculate equivalent front footage, trip generation, storm water runoff coefficients, water or sanitary sewer use, needed fire flow, or zoning or future land use.

Subd. 5 “Assessed Cost” means those costs of public improvements which have been determined to benefit specific properties. The assessed cost will be equal to the project cost minus the City cost. Project costs eligible for assessment include all costs associated with the improvements, including, but not limited to, land acquisition, demolition, construction, administration, engineering, legal, financing

and other costs. The financing charges include, but are not limited to, financial consultant's fees, bond counsel attorney's fees and capitalized interest.

Subd. 6 "Assessable Area" means the total area of the benefited properties, when using an area based assessment.

Subd. 7 "Assessable Footage" means the total front footage of all of the benefited properties, calculated by using the front footage method.

Subd. 8 "The Assessment Rate" is determined and annually adopted by the City Council. The Council adopts a unit rate which is associated with a single building lot as defined by City Code. The industrial rate is calculated by multiplying the residential unit rate by 1.2 then dividing by 80, which is the minimum frontage of a residential lot defined by City Code. Commercial and multi-family properties are assessed on a front footage basis, while residential is assessed on a unit basis. If a residential property has frontage allowing for a future lot split or when two or more lots are combined under Chapter 12, Section 1205.042, then each lot would be assessed. The Commercial rates are 1.0 times greater than Residential rates due to the increased use of the improvement.

Subd. 9 "Assessment Unit" means front footage, area, or unit.

Subd. 10 "Benefit" means the increase in property value as a result of a public improvement including, but not limited to, a street, sidewalk, trail, curb and gutter, water main, sanitary sewer, storm sewer, park, or street landscaping.

Subd. 11 "Commercial Property" means property located within the city limits that is zoned B-1, B-2, or B-3 and identified as such on the City's official Zoning Map.

Subd. 12 "Deferment" means a process of postponing the collection of the cost of public improvements and funding them as a system cost with the intention of collecting at a later date.

Subd. 13 "Driveway Approach" means that area which lies between the existing pavement and the right-of-way line, curb cut to curb cut.

Subd. 14 "Front Footage" means the distance measured along the right-of-way line directly abutting an improvement.

Subd. 15 "Industrial Property" means property located within the city limits that is zoned I-1 or I-2 and identified as such on the City's official Zoning Map.

Subd. 16 "Lot" means a separate parcel, tract, or area of land undivided by any public street or private road, which has been established by plat, metes and bounds subdivision, or as otherwise permitted by law, and which is occupied by

or intended to be developed for and occupied by a principal building or group of buildings and accessory buildings, or utilized for a principal use and uses accessory thereof, including such open spaces and yards as are designed and arranged or required by the City's Zoning Code for the building, use or development.

Subd. 17 "Corner Lot" means a lot situated at the junction of, and abutting on two or more intersecting streets.

Subd. 18 "Double Frontage Lot" means if a parcel, other than a corner lot, comprises frontage on two or more streets and is eligible for subdivision, then an adjusted front frontage assessment will be charged along each street. For double frontage lots lacking the necessary depth for subdivision, only a single adjusted front footage will be computed.

Subd. 19 "Irregularly Shaped Lot" means those lots abutting curved streets, cul-de-sacs, or other lots where there is more than five feet of difference in length between the front and back lot lines.

Subd. 20 "Rectangular Lot" means a lot with less than five feet difference in length between the front and back lot lines.

Subd. 21 "Special Case Lot Residential" means a lot which may not directly abut the improvement shall be assessed on a per unit basis if the improvement can be assessed.

Subd. 22 "Special Case Lot Commercial" means a lot which accesses the improvement but may have little or no real properties fronting the improvement. Adjusted frontage shall be considered.

Subd. 23 "Public Improvement" means improvements as allowed by State statute that provides a special benefit to properties, including but not limited to streets, sidewalks, trails, curb, gutter, sanitary sewer systems, storm sewer systems, water treatment and distribution systems.

Subd. 24 "Residential Property" means real property located within the city limits which is identified as such on the City's official Zoning Map as R-R, R-1, R-2, R-3, or as a PUD.

Subd. 25 "Special Assessment" means a legal process whereby the benefited property is charged back all or a portion of the cost of public improvements.

Subd. 26 "Standards for Surface Improvements" means those standards for surface improvements which have been established in the City's Engineering Standards.

Subd. 27 “Street” means a public right of way which affords primary means of access to abutting property, and shall also include avenue, highway, road, or boulevard.

Subd. 28 “Street, Arterial” means a street which serves, or is designed to serve, heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

Subd. 29 “Street, Collector” means a street which serves or is designed to serve as a traffic way for a neighborhood or as a feeder to an arterial street.

Subd. 30 “Street, Cul-De-Sac” means a minor street with only one outlet and having an appropriate turn-around for the safe and convenient reversal of traffic movement.

Subd. 31 “Street, Local” means a street intended to serve primarily as an access to abutting properties.

Subd. 32 “Street, Pavement” means the wearing or exposed surface of the roadway used by vehicular traffic.

Subd. 33 “Street, Width” means the width of the right-of-way, measured at right angles to the centerline of the street. The distance between the right-of-way lines of a street.

Subd. 34 “Street Treatments” are defined as follows:

A. Crack Seal and Seal Coat: Crack sealing involves patching and sealing cracks in the roadway this followed by seal coating, which involves spraying the road with oil and covering it with a layer of small rock. Crack sealing and seal coating generally considered routine roadway maintenance. The recommended interval is 4-8 years with the first application about 5-10 years after new roadway construction.

B. Mill and Overlay: Milling and overlaying consists of grinding off the upper layer off asphalt (typically 1”-3”) and replacing it with a new layer of asphalt. This is generally done on roadways that have a fair amount of cracking and other surface distress, usually at about 60% of the street’s life cycle. This is considered a structural improvement which will renew the street surface and extended its useful life.

C. Rehabilitate/Pavement Replacement: Rehabilitating a roadway consists of grinding up the existing asphalt and mixing it with a portion of the underlying gravel base (typically 4”-8”). This combination of bituminous and gravel is then used as the new road base, and a new asphalt surface is paved over this. This is generally done on roadways that

have a significant amount of distress. This can be a good alternative to reconstructing a road if the existing road base appears to be structurally sufficient.

D. Partial Reconstruction: Partial Reconstruction of a roadway consists of completely removing the existing road and underlying gravel and sand base material, and construction of a new road section. This may also include correcting any poor base material beneath the section, or updating the road to meet design standards such as width and drainage. Partial reconstruction is often done in conjunction with utility repairs/replacement, and generally done on roadways exhibiting signs of major distress such as rutting, cracking, and potholes. To be considered a partial reconstruct under this policy, a majority of existing concrete curb and gutter must be salvaged.

E. Full Reconstruction: Reconstructing a roadway consists of completely removing the existing road, underlying gravel and sand base material beneath the section, or updating the road to meet design standards such as width and drainage. This is often done in conjunction with utility repairs/replacement, and is generally done on roadways that exhibit signs of major distress, such as rutting, cracking, and potholes.

Subd. 35 “System Cost” means that portion of the assessable cost that benefits properties whose assessments are deferred because they qualify for green acres status, are located outside of the City limits, or are unable to make use of the improvements due to factors beyond the property owner’s control. The City may reimburse itself for such system costs from the benefitted properties when the basis for the deferral is no longer valid.

Subd. 36 “Unit” may include, but is not limited to: a household; a parcel/lot; water or sewer main length and size, sidewalk or trail length, width and depth, or infiltration area per parcel/lot.

726.04 Methods of Assessment. All single-dwelling residential properties will be assessed by unit. Multiple-dwelling and commercial properties will be assessed by front-foot.

Subd. 1 Residential Unit Method: This method is used for single dwelling residential properties. A unit shall be defined as one buildable lot consistent with the City of Montgomery’s building ordinances.

A. Corner Lots: A lot located at a street intersection having both front and side-lot footage shall be assessed per unit. If a property abuts both streets and only one street is being improved then the lot will be assessed 50% of the per unit basis.

B. Double Frontage Lots: A lot with access to two separate non-intersecting streets but not a corner lot may be assessed for any street improvement to which it has direct access.

C. Irregularly Shaped Lots: Shall be assessed per unit.

D. Rectangular Lot: Shall be assessed per unit.

E. Special Case Lot Residential: Shall be assessed on a per unit basis if the improvement can be reasonably accessed.

F. Combined Lots: Each lot combined under Montgomery City Code 1205.042 shall be assessed as individual REU's. Example – two lots combined under 1205.042 are counted as 2 REU's for assessment purposes.

Subd. 2 Commercial/Multi-Family Front Footage Method. This method is used for multi-family and commercial properties. The commercial rates are computed by taking the residential unit rate, dividing it by 80 (minimum residential lot width) and multiplying it by 1.0 (commercial properties are assessed at 1.0 times the residential rate).

A. Corner Lots: Lots located at a street intersection having both front and side-lot footage adjacent to improvements shall be assessed for both sides. No assessment would occur for an unimproved side.

B. Double Frontage Lot: A lot with access to two separate non-intersecting or intersecting streets but not a corner lot may be assessed for any street improvement to which it has direct access.

C. Irregularly Shaped Lots: Cul-de-sacs, or other lots where there is more than five feet of difference in length, the front footage shall be calculated using an average or other equitable means such as adjusted frontage.

D. Rectangular Lots: Lots with less than five feet of difference in length between the front and back lot lines shall be assessed based on front feet.

E. Special Case Lot Commercial: A lot which accesses the improvement but may have little or no real property fronting the improvement shall be assessed in a fair and equitable manner consistent with surrounding properties fronting the improvement. Adjusted frontage shall be considered.

Subd. 3 Industrial Front Footage Method. This method is used for industrial properties. The industrial rates are computed by taking the residential unit rate,

dividing it by 80 (minimum residential lot width) and multiplying it by 1.2 (industrial properties are assessed at 1.2 times the residential rate).

A. Corner Lot: Lots located at a street intersection having both front and side-lot footage adjacent to improvements shall be assessed for both sides. No assessment would occur for an unimproved side.

B. Double Frontage Lot: A lot with access to two separate non-intersecting or intersecting streets, but not a corner lot may be assessed for any street improvement which it has direct access.

C. Irregularly Shaped Lots: Cul-de-sacs, or other lots where there is more than five feet of difference in length, the front footage shall be calculated using an average or other equitable means such as adjusted frontage.

D. Rectangular Lots: Lots with less than five feet of difference in length between the front and back lot lines shall be assessed based on front feet.

E. Special Case Lot Industrial: A lot which accesses the improvement but may have little or no real property fronting the improvement shall be assessed in a fair and equitable manner consistent with surrounding properties fronting the improvement. Adjusted frontage shall be considered.

726.05 Assessment Rates.

Public Street Improvement Assessments. The assessment rates under this Section shall be, and hereby are, adopted and made part of the City's fee schedule. The City Council shall, on an annual basis, or with each feasibility study, review the fee schedule and determine if revisions or changes should be made:

	<u>Residential Per Unit</u>	<u>Commercial/ Multi-Family/ Institutional Per Front Foot</u>	<u>Industrial Per Front Foot</u>
Mill and overlay:	TBD	TBD	TBD
Rehabilitate/Pavement Replacement	TBD	TBD	TBD
Partial Reconstruction	TBD	TBD	TBD
Full Reconstruction	TBD	TBD	TBD

Utility Improvement Assessments:

	<u>Residential/Domestic</u>	<u>Larger Services</u>
Water service w/new main construction	TBD	Case by Case
Sewer service w/new main construction	TBD	Case by Case
	<u>Residential/Domestic</u>	<u>Larger Services</u>
Water service w/tap to existing main	Case by Case	Case by Case
Sewer service w/tap to existing main	Case by Case	Case by Case

*Residential is assumed 1" to 1 1/2" water service line and all others will be assessed based on actual construction.

** Sewer services are assumed 4" or 6" service line and all others will be assessed based on actual construction.

726.06 Payment of Special Assessments.

Subd. 1 All Properties. Special assessments for all classifications of properties shall be paid over a term set by the City Council not to exceed fifteen (15) years through certification to property taxes. Interest rates may vary, but shall be 2% above the true interest rate on the bond sale for the project. If there is no bond sale the interest rate will be set at 1.5% by resolution of the City Council. The increased rate covers administration and collection of the assessments over the life of the repayment period.

Subd. 2 Timing of Payments. Property owners may elect to make a payment to the City within the timeframe established by City resolution. Property owners may choose to make a full or partial payment. No interest shall accrue on the assessment from the adoption of the assessment role until the date specified by City resolution. Unpaid balances will be certified to Le Sueur County for payment with property taxes before the end of the year in which the Assessment Hearing was conducted.

Subd. 3 Partial Payment. It should be noted that if only a partial payment is made before certification to Le Sueur County then the remaining assessment balance shall be paid with interest over the term as established by the City Council. The City will accept no more than two (2) payments of at least \$500.00 each, before the City's certification deadline for the assessment.

726.07 Deferred or Delayed Assessments.

Subd. 1 Scope. Chapter 429 of the Minnesota Statute allows for deferred and delayed assessments. This section is only meant to cover the most frequent cases encountered by the City in past years. Minnesota Statutes shall govern in all cases.

Subd. 2 Senior Citizen, Disability, Military, and Other Deferrals. Minnesota Statutes 435.193 authorizes the City Council to enact certain deferrals. Therefore the City Council shall, at its discretion, defer the payment of a special assessment for any homestead property owned by a person for who it would be a hardship to make the payment if the owner is one of the following:

A person 65 years of age or older.

A person retired by virtue of a permanent and total disability.

A member of the Minnesota National Guard or other military reserves ordered into active military service, as defined in Minnesota Statutes Section 190.05, subdivision 5b or 5c, as stated in the person's military orders, for whom it would be a hardship to make the payments.

A person that is unable to meet payment obligations due to proven financial hardship.

Minnesota Statutes Section 273.111, known as the "Green Acres Law", requires deferrals for certain agricultural or specialized use property.

Minnesota Statutes Section 429.061, subdivision 2, allows the City Council to defer special assessments for unimproved property until a designated future year, or until the platting of the property, or the construction of improvements.

In order to determine financial hardship the City Administrator shall review the applicant's income statement. As a general guideline, a financial hardship deferral is automatically met if household adjusted gross income is at or below 125% of the most recently published Federal Poverty Line issued by the Department of Health and Human Services. This financial hardship guideline is intended to make clear the standard basis for financial hardship and remain non-discriminatory in financial hardship reviews. The City Council may approve deferrals where extenuating circumstances exist. A deferred assessment shall accrue interest and payment of such shall be determined in accordance with Section 726.07, Subd. 5 of this Ordinance.

Subd. 3 Deferral of Special Assessments. The City Administrator may record the deferment of special assessments where the following conditions are met:

- A. The applicant must be the owner of the property;
- B. The applicant must occupy the property as a principal place of residence;
- C. The applicant's income from all sources does not exceed the low income as established by the U.S. Department Housing and Urban Development as used in determining the eligibility for Section VIII housing;
- D. As to a deferment based upon age or disability, the applicant must apply for the deferment not later than fourteen (14) calendar days after the assessment is adopted by the City Council;
- E. As to a deferment based upon age or disability, the applicant must be 65 years of age or older, or retired by virtue of permanent disability.

Subd. 4 Deferment Period. The deferment will be granted for as long as the hardship exists and the conditions aforementioned have been met. The applicant must notify the City Administrator of any change in his/her status that would affect eligibility for deferment.

Subd. 5 Loss of Deferment Eligibility. The entire amount of deferred special assessment is due within 60 days after loss of eligibility by the applicant. If the special assessment is not paid within 60 days, the City Administrator shall add thereto interest at the applicable rate for the bond issue for the project. If there is no bond issue for the project, interest will be fixed by resolution of the City Council. The total amount of principal and interest from the due date through December 31 of the following year must be certified to the Le Sueur County Auditor for collection with taxes the following year. If the applicant demonstrates to the satisfaction of the City Council that full repayment of the deferred special assessment would cause the applicant particular undue financial hardship, the City Council may order that the applicant pay within 60 days a sum equal to the number of installments of deferred special assessments outstanding and unpaid to date (including principal and interest) with the balance thereafter paid according to the terms and conditions of the original special assessment.

Subd. 6 Termination of Deferment of Special Assessments. The option to defer the payment of special assessments terminates and all amounts accumulated plus applicable interest becomes due upon the occurrence of any one of the following:

- A. The death of the owner when there is no spouse who is eligible for the deferment;
- B. The sale, transfer, or subdivision of all or any part of the property;

C. Loss of homestead status on the property; or

D. Determination by the City Council for any reason that there would be no hardship to require immediate or partial payment.

726.08 Deferment Interest. The City Council shall indicate by resolution whether interest will accrue and be added to the principal, will be paid annually, or will be forgiven while the assessment is deferred, and the number of installments in which assessments are to be paid when the deferral terminates. However, in no event shall the last installment be paid more than thirty (30) years after the assessment was levied.

726.09 Assessment Considerations. The Council shall take into account the following additional considerations in determining the special assessment:

A. Developers proposing projects that will be public infrastructure upon completion shall be competed as a Public Improvement Project and require the Developer to petition the City for said improvement as in accordance with the Chapter 429 of the Minnesota Statute process. 100% of the total project cost shall be paid by the petitioner(s) unless stipulated otherwise in a Developer Agreement approved by the City Council.

B. All properties benefitted from improvements are subject to the special assessment.

C. The assessment rates listed in Section 726.05 will change year to year depending on Council rate adjustments. Special assessments can be made for improvements listed in Chapter 429 of the Minnesota Statutes and are not limited to those listed in this policy.

D. The special assessment methods described in the policy statement cannot be considered as all inclusive. Unique or unusual circumstances may, at times, justify special consideration. In such situations, the City Council may, from time to time, establish by resolution or as part of a Feasibility Study, amendments to the assessment policy to cover situations that may have been contemplated in this policy.

E. Prior to assessment role adoption, the special assessment levy shall be certified to be at or below that of the benefit received by subject properties. The City Council may consider assessing up to 100% of total project costs or proven benefit whichever is less when such cases are warranted.

Section 799 – PENALTIES

799.01 Misdemeanor Violations. Unless otherwise provided, violation of this Chapter shall constitute a misdemeanor punishable by a fine of up to \$1,000.00 or imprisonment for up to 90 days. A defendant convicted of a misdemeanor violation of this Chapter of the City Code, in addition to the other penalties proscribed by law, shall be made responsible for reimbursing the City its costs of prosecution. This Section is adopted in conformance with Minnesota Statutes Section 412.231, as may be amended from time to time, which the City hereby adopts and incorporates herein.

799.02 Petty Misdemeanor Violations. Violations of Sections 700.04(1), 700.04(4), 700.05(1), 705.01(1), and 715.02, are petty misdemeanors punishable by a fine of up to \$200.00.

799.03 Administrative Remedies. The City may, at its sole discretion, invoke any administrative remedy available to it under the Code in the event a person violates any provision of this Chapter. For the purposes of this Section a person is defined as an individual, a partnership, a corporation, or any other entity.

799.04 Non-Exclusivity of Remedies. Violations of this Chapter of the Montgomery City Code may be remedied by the City, at its sole discretion, administratively or through criminal prosecution. These remedy options are not mutually exclusive and the City may pursue both remedy options simultaneously.

799.05 Continued Violation. As concerns Section 705.03, each violation, and every day in which a violation occurs or continues, shall constitute a separate offense. This continued violation provision shall not apply to any other Section or portion of Chapter 7 of the City Code.