

## CHAPTER 135

# STREET EXCAVATIONS AND MAINTENANCE

135.01 Excavations

135.02 Maintenance of Parking or Terrace

135.03 Failure to Maintain Parking or Terrace

135.04 Driveway Culverts

135.05 Use of Streets

**135.01 EXCAVATIONS.** No person shall dig, excavate, or in any manner disturb any street, parking, or alley except in accordance with the following:

1. Permit Required. No excavation shall be commenced without first obtaining a permit therefor. A written application for such permit shall be filed with the City and shall contain the following:
  - A. An exact description of the property, by lot and street number, in front of or along which it is desired to excavate;
  - B. A statement of the purpose, for whom and by whom the excavation is to be made; and
  - C. The person responsible for the refilling of said excavation and restoration of the street or alley surface.
2. Public Convenience. Streets and alleys shall be opened in the manner which will cause the least inconvenience to the public and admit the uninterrupted passage of water along the gutter on the street.
3. Barricades, Fencing and Lighting. Adequate barricades, fencing and warning lights meeting standards specified by the City shall be so placed as to protect the public from hazard. Any costs incurred by the City in providing or maintaining adequate barricades, fencing or warning lights shall be paid to the City by the permit holder/property owner.
4. Bond Required. The applicant shall post with the City a penal bond in the minimum sum of five thousand dollars (\$5,000.00) issued by a surety company authorized to issue such bonds in the State. The bond shall guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this section. In lieu of a surety bond, a cash deposit of \$5,000.00 may be filed with the City.
5. Insurance Required. Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:
  - A. Bodily Injury - \$250,000.00 per person; \$500,000.00 per accident.
  - B. Property Damage - \$50,000.00 per accident.
6. Restoration of Public Property. Streets, sidewalks, alleys and other public property disturbed in the course of the work shall be restored to the condition of the property prior to the commencement of the work, or in a manner satisfactory to the City, at the expense of the permit holder/property owner.

7. Inspection. All work shall be subject to inspection by the City. Backfill shall not be deemed completed, and no resurfacing of any improved street or alley surface shall begin, until such backfill is inspected and approved by the City. The permit holder/property owner shall provide the City with notice at least twenty-four (24) hours prior to the time when inspection of backfill is desired.
8. Completion by the City. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of twenty-four (24) hours after the approved completion date, or in the event the work is improperly done, the City has the right to finish or correct the excavation work and charge any expenses therefor to the permit holder/property owner.
9. Responsibility for Costs. All costs and expenses incident to the excavation shall be borne by the permit holder and/or property owner. The permit holder and owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation.
10. Notification. At least forty-eight (48) hours prior to the commencement of the excavation, excluding Saturdays, Sundays and legal holidays, the person performing the excavation shall contact the Statewide Notification Center and provide the center with the information required under Section 480.4 of the *Code of Iowa*.
11. Permit Fee. A permit fee in an amount fixed by resolution of the Council shall be payable at the time of filing the application with the City. A separate permit shall be required for each excavation.
12. Permit Issued. Upon approval of the application, filing of bond and insurance certificate, and payment of any required fees, a permit shall be issued.

**135.02 MAINTENANCE OF PARKING OR TERRACE.** It shall be the responsibility of the abutting property owner to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the abutting property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way. Maintenance includes timely mowing, trimming trees and shrubs, and picking up litter.

*(Code of Iowa, Sec. 364.12[2c])*

**135.03 FAILURE TO MAINTAIN PARKING OR TERRACE.** If the abutting property owner does not perform an action required under the above section within a reasonable time, the City may perform the required action and assess the cost against the abutting property for collection in the same manner as a property tax.

*(Code of Iowa, Sec. 364.12[2e])*

**135.04 DRIVEWAY CULVERTS.** The property owner shall, at the owner's expense, install any culvert deemed necessary under any driveway or any other access to the owner's property, and before installing a culvert, permission must first be obtained from the City. In the event repairs are needed at any time with respect to culverts, it shall be the responsibility of the property owner to make such repairs, and, in the event the owner fails to do so, the City shall have the right to make the repairs. If the property owner fails to reimburse the City for the cost of said repairs, the cost shall be certified to the County Treasurer and specially assessed against the property as by law provided.

**135.05 USE OF STREETS.** Section 40.03.06 of this Code of Ordinances contains regulations prohibiting or restricting activities or conditions on and in City streets:

1. Section 40.03.06(1) – Removal of Warning Devices
2. Section 40.03.06(2) – Obstructing or Defacing
3. Section 40.03.06(3) – Placing Debris On
4. Section 40.03.06(4) – Playing In
5. Section 40.03.06(5) – Traveling on Barricaded Street or Alley
6. Section 40.03.06(6) – Use for Business Purposes
7. Section 40.03.06(7) – Washing Vehicles
8. Section 40.03.06(8) – Burning Prohibited

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## CHAPTER 136

# SIDEWALK REGULATIONS

136.01 Definitions	136.11 Barricades and Warning Lights
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**136.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “Broom finish” means a sidewalk finish that is made by sweeping the sidewalk when it is hardening.
2. “Defective sidewalk” means any public sidewalk exhibiting one or more of the following characteristics:
  - A. Vertical separations equal to three-fourths ( $\frac{3}{4}$ ) inch or more.
  - B. Horizontal separations equal to three-fourths ( $\frac{3}{4}$ ) inch or more.
  - C. Holes or depressions equal to three-fourths ( $\frac{3}{4}$ ) inch or more and at least four (4) inches in diameter.
  - D. Spalling over fifty percent (50%) of a single square of the sidewalk with one or more depressions equal to one-half ( $\frac{1}{2}$ ) inch or more.
  - E. Spalling over less than fifty percent (50%) of a single square of the sidewalk with one or more depressions equal to three-fourths ( $\frac{3}{4}$ ) inch or more.
  - F. A single square of sidewalk cracked in such a manner that no part thereof has a piece greater than one square foot.
  - G. A sidewalk with any part thereof missing to the full depth.
  - H. A change from the design or construction grade equal to or greater than three-fourths ( $\frac{3}{4}$ ) inch per foot.
3. “Established grade” means that grade established by the City for the particular area in which a sidewalk is to be constructed.
4. “One-course construction” means that the full thickness of the concrete is placed at one time, using the same mixture throughout.
5. “Owner” means the person owning the fee title to property abutting any sidewalk and includes any contract purchaser for purposes of notification required herein. For all other purposes, “owner” includes the lessee, if any.
6. “Portland cement” means any type of cement except bituminous cement.

7. “Sidewalk” means all permanent public walks in business, residential or suburban areas.
8. “Sidewalk improvements” means the construction, reconstruction, repair, replacement, or removal, of a public sidewalk and/or the excavating, filling or depositing of material in the public right-of-way in connection therewith.
9. “Wood float finish” means a sidewalk finish that is made by smoothing the surface of the sidewalk with a wooden trowel.

**136.02 REMOVAL OF SNOW, ICE, AND ACCUMULATIONS.** It is the responsibility of the abutting property owners to remove snow, ice, and accumulations promptly from sidewalks. If a property owner does not remove snow, ice, or accumulations within 48 hours, the Superintendent may have the natural accumulations of snow or ice removed without notice to the property owner. The Superintendent shall give the Council an itemized and verified statement of the costs and a legal description of the property. The costs shall be assessed against the property as taxes.

*(Code of Iowa, Sec. 364.12[2b & e])*

**136.03 RESPONSIBILITY FOR MAINTENANCE.** It is the responsibility of the abutting property owners to repair, replace or reconstruct, or cause to be repaired, replaced, or reconstructed, all broken or defective sidewalks and to maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or traveled portion of the public street.

*(Code of Iowa, Sec. 364.12[2c])*

**136.04 CITY MAY ORDER REPAIRS.** If the abutting property owner does not maintain sidewalks as required, the Superintendent may serve notice on such owner, by certified mail, requiring the owner to repair, replace or reconstruct sidewalks within a reasonable time and if such action is not completed within the time stated in the notice, the Superintendent may require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax.

*(Code of Iowa, Sec. 364.12[2d & e])*

**136.05 NOTICE OF INABILITY TO REPAIR OR BARRICADE.** It is the duty of the owner of the property abutting the sidewalk (or of the contractor or agent of the owner) to notify the City immediately in the event the owner is unable to make necessary sidewalk improvements or to install or erect warnings and barricades as required by this chapter.

**136.06 SIDEWALK CONSTRUCTION ORDERED.** The Council may order the construction of permanent sidewalks upon any street or court in the City and may specially assess the cost of such improvement to abutting property owners in accordance with the provisions of Chapter 384 of the *Code of Iowa*.

*(Code of Iowa, Sec. 384.38)*

**136.07 STANDARD SIDEWALK SPECIFICATIONS.** The Superintendent of Public Works shall prepare complete plans and specifications for the construction, reconstruction, and repair of sidewalks and driveway crossings in sidewalks, which, upon approval of the Council, shall be kept on file in the office of the Clerk. The specifications shall include descriptions and location of barricades and warning lights. All sidewalk improvements on public property, whether performed by the owner of the abutting property or by the City, shall

be performed under the supervision of and subject to inspection by the Superintendent, and in accordance with the plans and specifications adopted in accordance with this chapter.

**136.08 PERMITS FOR CONSTRUCTION OR REPAIR.** No person shall make any sidewalk improvements unless such person shall obtain a permit from the Superintendent. The permit shall state that the person will comply with the ordinances of the City and with the specification for sidewalks adopted by the City. The permit also shall state that the work will be done under the direction and approval of the Superintendent. All such permits shall be issued upon payment of sidewalk construction or repair fee. A copy of such permit shall be filed and preserved in the office of the Superintendent. The permit shall state when the work is to be commenced and when the work is to be completed. The time of completion for the sidewalk improvements may be extended by the City Engineer. All permits for sidewalk improvements not ordered by resolution of the City Council shall be issued in compliance with this chapter. The Superintendent may withhold the issuance of any permit for any sidewalk improvements for a sufficient period to determine the necessity for the proposed improvements or when weather conditions will adversely affect the sidewalk improvements. The person who makes a sidewalk construction or repair permit application shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

**136.09 FAILURE TO OBTAIN PERMIT; REMEDIES.** Whenever any sidewalk improvements are made that do not conform to the provisions of this chapter and with the specifications, or when any sidewalk improvements are made without a permit, the Superintendent shall serve notice to obtain a permit upon the property owner and upon the contractor doing the work. If the sidewalk is in the course of construction, the notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the sidewalk work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five days from receipt of the permit. If the owner fails to comply with this notice, the Superintendent shall have the work completed and the costs assessed to the property owner.

**136.10 INSPECTION AND APPROVAL.** Upon final completion, the Superintendent shall inspect the work. The Superintendent may order corrections if the work does not meet specifications. When the work does meet all requirements of this chapter, the specifications, and the permit, the Superintendent shall indicate this on both copies of the permit.

**136.11 BARRICADES AND WARNING LIGHTS.** Whenever any material of any kind is deposited on any street, avenue, highway, passageway or alley when sidewalk improvements are being made or when any sidewalk is in a dangerous condition, it shall be the duty of all persons having an interest therein, either as the contractor or the owner, agent, or lessee of the property in front of or along which such material may be deposited, or such dangerous condition exists, to put in conspicuous places at each end of such sidewalk and at each end of any pile of material deposited in the street, a sufficient number of approved warning lights or flares, and to keep them lighted during the entire night and to erect sufficient barricades both at night and in the daytime to secure the same. The party or parties using the street for any of the purposes specified in this chapter shall be liable for all injuries or damage to persons or property arising from any wrongful act or negligence of the party or parties, or

their agents or employees or for any misuse of the privileges conferred by this chapter or of any failure to comply with provisions hereof.

**136.12 INTERFERENCE WITH SIDEWALK IMPROVEMENTS.** No person shall knowingly or willfully drive any vehicle upon any portion of any sidewalk or approach thereto while in the process of being improved or upon any portion of any completed sidewalk or approach thereto, or shall remove or destroy any part or all of any sidewalk or approach thereto, or shall remove, destroy, mar or deface any sidewalk at any time or destroy, mar, remove or deface any notice provided by this chapter.

**136.13 ENCROACHING STEPS.** It is unlawful for a person to erect or maintain any stairs or steps to any building upon any part of any sidewalk without permission by resolution of the Council.

**136.14 OPENINGS AND ENCLOSURES.** It is unlawful for a person to:

1. Stairs and Railings. Construct or build a stairway or passageway to any cellar or basement by occupying any part of the sidewalk, or to enclose any portion of a sidewalk with a railing without permission by resolution of the Council.
2. Openings. Keep open any cellar door, grating, or cover to any vault on any sidewalk except while in actual use with adequate guards to protect the public.
3. Protect Openings. Neglect to properly protect or barricade all openings on or within six (6) feet of any sidewalk.

**136.15 FIRES OR FUEL ON SIDEWALKS.** It is unlawful for a person to make a fire of any kind on any sidewalk or to place or allow any fuel to remain upon any sidewalk.

**136.16 DEFACING.** It is unlawful for a person to scatter or place any paste, paint, or writing on any sidewalk.

*(Code of Iowa, Sec. 716.1)*

**136.17 DEBRIS ON SIDEWALKS.** It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any substance likely to injure any person, animal, or vehicle.

*(Code of Iowa, Sec. 364.12[2])*

**136.18 MERCHANDISE DISPLAY.** It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three (3) feet of the sidewalk next to the building be occupied for such purposes.

**136.19 SALES STANDS.** It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council.

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## CHAPTER 137

# VACATION AND DISPOSAL OF STREETS

137.01 Power to Vacate

137.02 Planning and Zoning Commission

137.03 Notice of Vacation Hearing

137.04 Findings Required

137.05 Disposal of Vacated Streets or Alleys

137.06 Disposal by Gift Limited

**137.01 POWER TO VACATE.** When, in the judgment of the Council, it would be in the best interest of the City to vacate a street, alley, portion thereof, or any public grounds, the Council may do so by ordinance in accordance with the provisions of this chapter.

*(Code of Iowa, Sec. 364.12[2a])*

**137.02 PLANNING AND ZONING COMMISSION.** Any proposal to vacate a street, alley, portion thereof, or any public grounds shall be referred by the Council to the Planning and Zoning Commission for its study and recommendation prior to further consideration by the Council. The Commission shall submit a written report including recommendations to the Council within thirty (30) days after the date the proposed vacation is referred to the Commission.

*(Code of Iowa, Sec. 392.1)*

**137.03 NOTICE OF VACATION HEARING.** The Council shall cause to be published a notice of public hearing of the time at which the proposal to vacate shall be considered.

**137.04 FINDINGS REQUIRED.** No street, alley, portion thereof, or any public grounds shall be vacated unless the Council finds that:

1. Public Use. The street, alley, portion thereof, or any public ground proposed to be vacated is not needed for the use of the public, and therefore, its maintenance at public expense is no longer justified.
2. Abutting Property. The proposed vacation will not deny owners of property abutting on the street or alley reasonable access to their property.

**137.05 DISPOSAL OF VACATED STREETS OR ALLEYS.** When in the judgment of the Council it would be in the best interest of the City to dispose of a vacated street or alley, portion thereof or public ground, the Council may do so in accordance with the provisions of Section 364.7, *Code of Iowa*.

*(Code of Iowa, Sec. 364.7)*

**137.06 DISPOSAL BY GIFT LIMITED.** The City may not dispose of real property by gift except to a governmental body for a public purpose or to a fair.

*(Code of Iowa, Sec. 364.7[3])*





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## CHAPTER 139

# NAMING OF STREETS

139.01 Naming New Streets  
139.02 Changing Name of Street  
139.03 Recording Street Names

139.04 Official Street Name Map  
139.05 Revision of Street Name Map

**139.01 NAMING NEW STREETS.** New streets shall be assigned names in accordance with the following:

1. Extension of Existing Street. Streets added to the City that are natural extensions of existing streets shall be assigned the name of the existing street.
2. Resolution. All street names, except streets named as a part of a subdivision or platting procedure, shall be named by resolution.
3. Planning and Zoning Commission. Proposed street names shall be referred to the Planning and Zoning Commission for review and recommendation.

**139.02 CHANGING NAME OF STREET.** The Council may, by resolution, change the name of a street.

**139.03 RECORDING STREET NAMES.** Following official action naming or changing the name of a street, the Clerk shall file a copy thereof with the County Recorder, County Auditor and County Assessor.

*(Code of Iowa, Sec. 354.26)*

**139.04 OFFICIAL STREET NAME MAP.** Streets within the City are named as shown on the Official Street Name Map which is hereby adopted by reference and declared to be a part of this chapter. The Official Street Name Map shall be identified by the signature of the Mayor, and bearing the seal of the City under the following words: "This is to certify that this is the Official Street Name Map referred to in Section 139.04 of the Code of Ordinances of Windsor Heights, Iowa."

**139.05 REVISION OF STREET NAME MAP.** If in accordance with the provisions of this chapter, changes are made in street names, such changes shall be entered on the Official Street Name Map promptly after the change has been approved by the Council with an entry on the Official Street Name Map as follows: "On (date), by official action of the City Council, the following changes were made in the Official Street Name Map: (brief description)," which entry shall be signed by the Mayor and attested by the Clerk.

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## CHAPTER 140

# DRIVEWAY REGULATIONS

140.01 Definitions

140.02 Permit

140.03 Permit Fee

140.04 Standard Driveway Specifications

140.05 Driveway Requirements

140.06 Grade Variances

140.07 Failure to Obtain Permit; Remedies

140.08 Inspection and Approval

140.09 Repairing Defective Driveways

**140.01 DEFINITIONS.** As used in this chapter, the following terms have these meanings:

1. “Driveway” means that part of any approach for motor vehicles to private property that provides access to a public street, highway, or alley.
2. “Owner” means the person owning the fee title or the contract purchaser.
3. “Portland cement” means any type of cement except bituminous cement.

**140.02 PERMIT.** Before any person shall construct, repair, reconstruct, or replace a driveway, said person shall obtain a written permit from the City Administrator. A written application for the permit shall be filed with the City Administrator. The application shall include the street address or legal description of the property, the name of the owner, the name and address of the person performing the work, and the proposed plan of construction or repair. The plan of construction or repair must include the depth, width, and type of surface used. The City Administrator shall issue the permit if the proposed plan meets all the requirements of this chapter, including any specifications contained herein, if the fee is paid, and if the construction or repair as planned will not create any substantial hazard in the use of the street for public travel or drainage. A permit shall expire six (6) months after the date of issuance, if not constructed at that time.

**140.03 PERMIT FEE.** The applicant for a driveway construction or repair permit shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator and shall be open to inspection during regular business hours.

**140.04 STANDARD DRIVEWAY SPECIFICATIONS.** The Superintendent of Public Works shall prepare complete plans and specifications for the construction, reconstruction, and repair of driveways, which, upon approval of the Council, shall be kept on file in the office of the City Administrator. The specifications shall include descriptions in the use and placement of barricades and warning lights. All driveway repairs or construction on public property, whether performed by the owner of the abutting property or by the City, shall be performed under the supervision of and subject to inspection by the Superintendent. All such work must be performed in accordance with the plans and specifications adopted by the City.

**140.05 DRIVEWAY REQUIREMENTS.** All driveways constructed at any place where no sidewalk exists shall conform to the appropriate standards or specifications adopted by the Superintendent of Public Works and approved by resolution of the City Council. All

driveways shall be constructed of Portland cement from the street to the property line. All driveways shall be constructed of Portland cement or asphalt at any location beyond the property line. All driveways shall be constructed so that the normal flow of drainage in the adjoining street will not be diverted or obstructed. In the event any person is unable to construct a driveway to grade, the owner must sign a waiver agreeing to indemnify the City from all liability arising from the maintenance and construction of the driveway.

**140.06 GRADE VARIANCES.** In any case where it appears that a steeper driveway grade than that specified in this section is necessary or desirable because of existing terrain conditions, a driveway may be constructed (in any place where no sidewalk exists) at such steeper grade. It shall be a condition to the granting of any permit to construct a driveway at a grade other than that specified that all rights acquired by virtue of such permit shall be subject to the right of the City to construct sidewalks at the established grade. In any place where sidewalks have, prior to July 28, 1958, been constructed at a different grade than that specified in this section, driveways may conform to the grade of the existing sidewalks. Nothing herein shall permit the construction of any driveway so as to divert or obstruct the normal flow of drainage in the adjoining street.

**140.07 FAILURE TO OBTAIN PERMIT; REMEDIES.** Whenever any driveway construction or repair is made that does not conform to the provisions of this chapter and with the specifications, or when any driveway construction, or repair is made without a permit, the City Administrator shall serve notice to the property owner and the contractor doing the work that a permit must be obtained. If the driveway is in the course of construction or repair, the notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the driveway work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five (5) days after receipt of the permit. If the owner fails to comply with this notice, the City Administrator shall have the work completed by an outside contractor and assess the costs to the property owner as provided in Section 140.09 of this chapter.

**140.08 INSPECTION AND APPROVAL.** Upon final completion, the Superintendent of Public Works shall inspect the work. The Superintendent of Public Works may order corrections in the work if it does not meet specifications.

**140.09 REPAIRING DEFECTIVE DRIVEWAYS.** It shall be the duty of the abutting property owner at any time, or upon receipt of thirty (30) days' notice from the City, to repair, replace, or reconstruct all broken or defective driveways in the City right-of-way abutting said property owner's property. If, after the expiration of the thirty (30) days as provided in the notice, the required work has not been done or is not in the process of completion, the Superintendent of Public Works shall proceed to repair, replace, or reconstruct the driveway. Upon completion of work, the Superintendent of Public Works shall submit to the Council an itemized and verified statement of expenditures for material, labor, and the legal description of the property abutting the driveway on which work has been performed. These costs shall be assessed to the property as taxes.

**CHAPTER 141**

**FIBER OPTIC CABLE LICENSE**

- 141.01 Definitions**
- 141.02 Basic Grant**
- 141.03 Construction and Repair of Network**
- 141.04 Excavation**
- 141.05 Work by Others, Alteration to conform with Public Improvements**
- 141.06 Licensee Contractors**
- 141.07 Condition of Street Occupancy**
- 141.08 Powers of City**
- 141.09 Plans and Coordination**
- 141.10 Liability and Indemnification**
- 141.11 Assignment**

**SECTION 141.01** DEFINITIONS. The following words and phrases, when used in this chapter, have the meanings ascribed to them in this section:

1. "City" shall mean the City of Windsor Heights, Iowa and includes its officers, employees, contractors, subcontractors and agents.
2. "Public Improvements" shall mean any improvements on Public Property, including but not limited to paving, sidewalks, grass, vegetation, trees, street lights, traffic signals, water mains, sewers, electric transmission lines and equipment related thereto.
3. "Public Property" shall mean City-owned or controlled public rights-of-way, easements, bridges, squares and commons.
4. "Licensee" shall mean the "Applicant" named in the Application for Fiber Optic Cable License and shall include all equipment owned, operated, leased or subleased in connection with the operation of the network, and shall include but not be limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, and other structures or appurtenances.

**SECTION 141.02** BASIC GRANT. Upon approval of an application hereunder by the City, and for a period of two years unless otherwise terminated, subject to the terms and conditions of this chapter, Licensee is hereby granted a license to construct, maintain, inspect, protect, repair, replace, retain a communications system in, under, upon, along and across the Public Property shown and identified in the plans and specifications submitted to City with Licensee's Application, subject to the regulatory powers of the city and subject to the conditions hereinafter set forth, as may be amended from time to time by the City Council in its sole and absolute discretion. Licensee will be required to pay a license application submittal and annual license fee. Fees shall be established by the City Council by resolution, which is on file with the City Clerk.

**SECTION 141.03** CONSTRUCTION AND REPAIR OF NETWORK. In the process of location, construction, reconstruction, replacement, or repair of any system component, the excavation or obstruction made or placed in public property at any time or for any purpose by the Licensee shall, protect the public and to assure the safe and efficient

movement of traffic, be properly barricaded to comply, at a minimum, with requirements set forth in the Manual on Uniform Traffic Control Devices. All pavement taken up or damaged shall be properly and speedily replaced in accordance with the City's Regulations. As a condition to use of Public Property, the Licensee shall at its own expense, repair any private property, public utility system component, public improvement, or Public Property damaged by such location, construction, reconstruction, replacement or repair work, in a manner reasonably acceptable to City. If the Licensee fails to repair or arrange with the City for the proper repair of any Public Property after excavations have been made, and after ten days' notice in writing to do so is given to its designated representative, then the City may make such repairs at the expense of the Licensee.

**SECTION 141.04 EXCAVATIONS.** The Licensee is authorized to make excavations in City streets, avenues, alleys and public places for purposes of routine repair, replacement, and maintenance of poles, wire, or other system components associated with the Licensee. In making such excavations, the Licensee shall obtain a permit pursuant to City Ordinances and Regulations, shall not unnecessarily obstruct the use of streets, avenues, alleys or public places, shall provide the Public Works Director with 24 hours notice prior to the actual commencement of the work and shall comply with all provisions, requirements, and regulations in performing such work. In emergencies which require immediate excavation, the Licensee may proceed with the work without first applying for or obtaining the permit, provided, however, that the Licensee shall apply for and obtain the permit as soon as possible after commencing such emergency work.

If the Licensee fails to comply with the provisions of this Section the City may; Repair or restore the public property to a condition at least as good as the condition of the property prior to the disturbance by the Licensee. The Licensee shall pay the costs of such repair or restoration. The Licensee shall pay to the City its costs and charges for such work within thirty days after receipt of the City's billing.

**SECTION 141.05 WORK BY OTHERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS.** The City reserves the right to lay, and permit to be laid, wires, pipes, cables, conduits, ducts, manholes and other appurtenances, and to do, or permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over or under any public property occupied by the Licensee and to change any curb or sidewalk or the grade off any street. In permitting others to do such work the City shall not be liable to the Licensee for any damages arising out of the performance of such work by other parties. Nothing in this Agreement shall be construed as to relieve any other person or corporation from liability for damage to the Licensee's facilities.

**SECTION 141.06 LICENSEE CONTRACTORS.** The requirements of this Licensee shall apply to all persons, firms or corporations performing work for the Licensee under a contract, subcontract or other type of work order.

**SECTION 141.07 CONDITIONS OF PUBLIC PROPERTY OCCUPANCY.** The fiber optic cable systems and other components of the facilities erected by the Licensee within the City shall conform to established grades of streets, alleys, and sidewalks, and be so located as to cause minimum interference with other public utilities located in or upon public property, and to cause minimum interference with the rights or reasonable convenience of property

owners who adjoin public property.

The Licensee shall conduct its work hereunder in such manner as to cause as little interference as possible with pedestrian and vehicular traffic, and shall abide by scheduling directions, if any, given by the Director of Public Works. Prior to undertaking any work in the area licensed hereunder, in addition to consulting records maintained by the City, if any, Licensee shall be responsible for locating any and all existing facilities located at or near the site that may, in any way, be impacted by licensee's work hereunder. Licensee shall indemnify and hold harmless City for any and all damages in any way related to activities undertaken by licensee hereunder, regardless of any alleged negligence by the City.

The Licensee shall, upon 60 notice and at its sole cost and expense, remove, locate and relocate its facilities in, on, over or under public property in such manner as the City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair or change in grade of any public improvement on, in or about any such public property, for the purpose of promoting the efficient operation of any such improvement, or for the purposes of facilitating the vacation and/or redevelopment of public right-of-way by the City, as it deems appropriate in its sole discretion. In the event the Licensee fails to act as directed hereunder within the time prescribed in the notice, the license issued to licensee shall be deemed terminated immediately, without further action of the City. The City may proceed as it so desires, including but not limited to, removing, destroying, or burying the facilities, as the City deems appropriate.. Licensee releases, indemnifies and holds the City harmless for any and all actions undertaken by the City hereunder.

The Licensee shall not place its facilities in the public property where the same will interfere with the normal use or maintenance of any public improvement including but not limited to streets, alleys, sidewalks, traffic control devices, sanitary sewers, storm sewers, storm drains or water mains, or electrical transmission lines, or any public utility facility.

Upon request, the Licensee agrees to assist in locating underground facilities which are part of its system. Such assistance will be provided in a timely manner, but not more than forty-eight hours after the time of request.

As a condition of this Agreement the Licensee shall enroll as a member of the "One-Call System" and shall respond to all requests and notifications placed to the toll free "One-Call" number.

Installation, repair, or replacement work completed by the Licensee on any facilities requiring excavation of public property or public right-of-way shall require restoration and replacement of surface vegetation with sod in conformance with City ordinances and in accordance with standard local practices for placing sod.

**SECTION 141.08 POWERS OF CITY.** Nothing in this Chapter shall be construed to abridge the right or power of the City to make further regulations relative to the use of the streets, alleys and public grounds by anyone using the same for the erection and maintenance of utility systems,.

**SECTION 141.09 PLANS AND COORDINATION.** The Licensee shall keep complete and accurate maps and records on the locations and operations of its facilities in connection with license and provide a full, completed construction copy to the City.

**SECTION 141.10 REMOVAL OF LICENSEE FACILITIES.**

The license granted pursuant to this chapter shall expire upon the conclusion of the term specified in this chapter, unless previously terminated. At least 7 days prior to the expiration or termination of the license granted hereunder, Licensee shall be responsible for removing its facilities and equipment from Public Property and restoration of Public Property affected as part of the removal in the manner set forth in this Chapter, at its sole cost and expense. In the event Licensee fails to remove its facilities and equipment prior to the expiration or termination date of the license, any facilities or equipment shall be deemed abandoned. Any facilities, equipment or other property remaining anywhere on public property after the expiration or termination of the license may be destroyed, removed or otherwise disposed of by the City in any manner whatsoever and Licensee shall hold harmless the City from any and all liability in any way occasioned by the actions of the City hereunder.

**SECTION 141.11 LIABILITY AND INDEMNIFICATION.** The Licensee covenants to indemnify, defend, and save the City, and its officers, agents and employees, harmless from any and all damages arising directly from the exercise of the rights granted herein, including but not limited to attorney's fees. The Licensee agrees to require contractors and subcontractors engaged in work for the Licensee within the public rights-of-way or on public property to maintain in effect during the term of work liability insurance in comprehensive form and in the amounts to be set by the City. Licensee agrees to accept the risk of having its communications systems and equipment upon the public right-of-way, including the possible risk of damage or injury to its system or equipment, and agrees to release and discharge the City of any liability for damage or injury to Licensee's equipment.. In no event shall the City be liable for any consequential damages arising out of any damage or injury to Licensee's equipment placed in the right-of-way.

**SECTION 141.12 NOTICES TO LICENSEE.** Licensee shall be responsible for keeping the City apprised of the address to which notices should be sent throughout effective term of the license. Notices sent by the City pursuant to this chapter shall be sent to the address of licensee identified on the application, or any address identified in writing addressed to the City Clerks Office by Licensee thereafter. Notice shall be deemed given by the City by mailing notice to the address provided by licensee hereunder by ordinary mail.

**SECTION 141.13 ASSIGNMENT.** Neither party shall assign or otherwise transfer this agreement or any of its rights and interest to any firm, corporation or individual, without the prior written consent of the other party, except either party shall have the right to assign, convey or otherwise transfer its rights, title, interest and obligations under this agreement, in whole or in part, to any entity controlled by, controlling or under common control with a party hereto, or any entity into which a party may be merged or consolidated or which purchases all or substantially all of the assets of such party.

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