

## CHAPTER 135

# EXCAVATIONS OF PUBLIC PROPERTY

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**135.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “Applicant” means any person making written application to the Clerk for an excavation permit under this chapter.
2. “City” means the City of Windsor Heights, Iowa, and where appropriate, shall include its officers, employees and agents.
3. “Excavation work” means the excavation and other work permitted under an excavation permit and required to be performed under this chapter.
4. “Permittee” means any person who has been granted and has in full force and effect an excavation permit issued under this chapter.
5. “Public Improvements” means 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.
6. “Public Property” means City owned property or City controlled easements.
7. “Public Rights-of-Way” means the area on, below or above a public roadway, highway, street, bridge, cart-way, bicycle lane or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and public easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcasts service.
8. “Street” means any street, highway, sidewalk, alley, avenue or other public right-of -way or public grounds in the City.
9. “Licensee” means a company providing utility services by wire, or through conduit, pipe or similar structure, device or apparatus, and all equipment owned, operated, leased or subleased in connection with the operation of the utility business, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables and other structures or appurtenances.

**135.02 RESERVATIONS.** A licensee or permittee shall construct, maintain, inspect, protect, repair, replace, retain a system in, under, upon, along and across the public rights-of-way or public property, subject to the federal, state and city regulatory powers, and subject to the conditions hereinafter set forth.

**135.03 PERMITS, FEE, INSPECTIONS AND REQUIREMENTS.**

1. No person shall make any excavation or fill any excavation in any city street, avenue, alley, sidewalk, public right-of-way and other similar property dedicated to public use without first obtaining a permit from the City. The application for a permit shall be in writing and completed by the applicant or their agent. A permit shall not be required for a single commercial or residential service connection within a public right-of-way for a franchise licensee. However, a permit shall be required if such connection requires a street cut, curb or sidewalk. A permit shall not be required for a single pole or single transformer change out, or a single street light change out.

2. After the City reviews, approves and issues a permit, the permittee shall provide the City with forty-eight (48) hour's notice, excluding Saturdays, Sundays and legal holidays, prior to the actual commencement of the work; shall not unnecessarily obstruct the use of streets, avenues, alleys or public places; shall not endanger the safety of workers or passerby; shall prevent traffic backup during construction; and shall comply with all provisions, requirements and regulations in performing such work. An applicant's installation shall not interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property.

3. The licensee or applicant shall submit its permit application and, maps, plans and/or specifications for a proposed utility plan, and other notices as may be appropriate, to the following city office for the initial permit review, permit findings (approval, denial, resubmission), fee assessment and other activities as may be appropriate:

Director of Public Services  
City of Windsor Heights  
6800 School Street  
Windsor Heights, IA 50324  
Phone: (515) 279-3662

4. The licensee or applicant shall pay the City the following rates:

A. A per permit fee, as set by resolution as approved by the City Council, for the review of the applications and proposed plans and specifications, is due at the time the permit application is submitted. Franchise licensees will only be required to pay if a hard surface is being cut such as a curb, street or sidewalk.

B. An hourly rate for any inspection services will be required in connection with the applicants work, including, but not limited to, the personnel cost of an inspector's salary and benefits, vehicle and mileage, administrative overhead, with payment due within 30 days of the City's submittal of an invoice to the applicant.

5. The applicants permit will show the exact location of the work including street or house number and the direction and length the trench will run.

6. If the applicant plans to do extensive digging, a blanket permit may be issued, however, the party performing the work must notify all other utilities concerned as to the location and time that work will take place so that the others may locate their property.

7. The applicant shall post with the City a surety bond in the amount of ten thousand dollars (\$10,000.00) or one and a half times the estimated cost of the excavation and restoration, whichever is greater, issued by a surety company authorized to issue such bonds in the State before excavating or opening any public street, sidewalk, ditch, alley or public right-of-way. 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 \$10,000.00, or one and a half times the estimated cost of the excavation and restoration, whichever is greater, may be deposited with the City. Duration of the bond or cash deposit shall be for a period of one (1) year commencing with the completion of the excavation and restoration. Upon approved completions of the excavation the cash deposit may be substituted for a one-year maintenance bond and upon satisfactory completion of a one (1) year period, the City shall release any and all bonds and deposit requirements.

8. The applicant shall 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 - \$1,000,000.00 per person; \$1,000,000.00 per accident.
- B. Property Damage - \$2,000,000.00 per accident.

9. All work shall be subject to inspection by the City. Backfill of openings 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.

10. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of twenty-four (24) hours or in the event the work is improperly done, the City has the right to finish or correct the excavation work, keep an account of the expense thereof, and charge such expenses to the permit holder/property owner. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

11. All work by permittee shall be performed in accordance with the current standard specifications adopted by the City at the time. Any damaged curb, gutter, sidewalk or grass covered area shall be restored to the same or better condition prior to damage.

12. All costs and expenses incident to the excavation shall be borne by the permit holder and/or property owner. The permittee and owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation. The applicant will fill up and place in good and safe condition all excavations and openings made in the street, and will replace and restore the pavement over any opening they may make to the same or better condition than it was prior to excavation to the satisfaction of the Director of Public Services for a period of one (1) year.

13. The applicant will pay all fines or forfeitures imposed upon them for any violation of any rule, regulation or ordinance governing street openings or drain laying adopted by the Council and will repair any damage done to existing improvements during progress of the excavation in accordance with the ordinances, rules and regulations of the City. Such bond shall also guarantee that, if the City shall elect to

make the street repair, the applicant opening the street will pay all costs of making such repair and of maintaining the same for one (1) year, recovery on such bond for any accident, injury, violation of law, ordinance, rule or regulation shall not exhaust the bond but it shall cover any and all accidents, injuries or violation of law during the period of excavation for which it is given.

14. Faulty work or materials shall be immediately replaced by the permittee upon notice by the City. Failure to correct deficiencies in a timely manner shall result in a minimum one (1) year revocation of the right to obtain a street opening permit. The Director of Public Services shall repair the deficiencies and bill the permittee for all labor, materials and equipment used plus administration costs.

15. The permittee who does such restoration shall be responsible therefor for one (1) year from the date of the completion of the work and shall file a written guarantee from a banking institution or surety bond to that effect with the City.

16. If the Council shall find that any such work has become defective within one (1) year of the date of completion of the said project, it shall give written notice thereof to the applicant or to their surety stating the defect, the work to be done, the cost thereof and the period of time deemed by the Council to be reasonably necessary to complete said work. After receipt of such notice, the applicant or the surety must, within the time specified, repair the defect or indemnify the City for the cost of doing the work as set forth in the notice.

17. All excavation and restoration shall be completed in a prompt manner as determined by the Director of Public Services.

#### **135.04 UTILITY MAP, PLAN AND SPECIFICATION.**

1. Before commencing any extension or expansion of its Utility system, or any major repair work, or the installation of any new system in the City's public rights-of-way or public property, the applicant shall file with the City a written statement verifying the public rights-of-way or public property under which or upon which it proposes to extend, expand, install or repair its system. The City shall require that the statement be accompanied by a map, plan or specifications showing the proposed location of the system components with reference to streets and alleys, the size and dimensions of all public utilities, and the distance beneath the surface of the ground.

2. All existing public utilities must be shown on the map, plan or specifications. If the proposed locations of any facilities shall interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property, the City shall within a reasonable time after the filing of such plan, map or specifications, note the changes necessary, eliminate all interference with a public improvement or existing City owned public utility system facility and refer the same back to the utility business for amendment.

3. Maps, plans or specifications, when properly changed and corrected, shall be filed with the City and, after the approval of the same by the City, a permit shall be issued authorizing utility business to proceed in accordance with the approved maps, plans or specifications.

4. No such excavation, construction or erection shall be commenced before the issuance of the permit herein provided for, unless it is an emergency as described in

section 135.07, and all work shall be in accordance with the approved maps, plans or specifications, or work being performed by a licensed franchise not requiring a permit.

**135.05 CONDITIONS, CONSTRUCTION AND REPAIR.**

1. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15th and April 15th except where it is determined by the Director of Public Services or their designee to be an emergency excavation.
2. 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 utility business or permittee 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 *Uniform Manual for Traffic Control*. Sufficient warning lights shall be kept on from sunrise to sunset. No open flame warning devices shall be used. Except by special permission for the Director of Public Services, no trench shall be excavated more than two hundred fifty (250) feet in advance of pipe or conduit laying nor left unfilled more than five hundred (500) feet from where pipe or conduit has been laid. All pavement removed or damaged shall be properly and speedily replaced in accordance with the City's specifications, which may be obtained at the Public Works Department.
3. Upon request, a licensee agrees to assist in locating underground facilities which are part of its system prior to excavation. As a condition of this chapter, a licensee shall enroll as a member of the "Iowa One-Call System" and shall respond to all requests and notifications placed to the toll free "One-Call" number.
4. All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of work. Each permittee making such openings shall be held liable for all damages, including costs incurred by the City in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or their employees of any necessary precaution against injury or damage to persons, vehicles or property of any kind.
5. Unless otherwise approved, a minimum of one (1) lane of traffic in each direction shall be provided. Every effort shall be made on the part of the permittee to provide reasonable access to all properties adjacent to their project. In the event traffic is limited to less than one (1) lane in each direction, a flagman or temporary traffic control signal shall be provided so as to safely cycle traffic in each direction past the work area and the City must be notified regarding the dates/times applicable.
6. Removal of existing pavement shall be to neat, straight lines. The permittee shall make a final saw cut in the existing pavement after backfilling. Excavations shall be kept to the minimum possible and acceptable for the convenience and safe performance of the permittee's work and in accordance with all applicable codes and regulations.
7. If the pavement is damaged during excavation beyond the original saw cut lines, it shall be saw cut again along neat, straight lines. The finished saw cut shall leave a regular rectangular section for pavement replacement. Should the street opening occur within adjacent or close to an existing patch or require more than one (1) opening within a short distance, the permittee shall identify and locate the existing patches or additional openings on the permit application form. The Director of Public

Services or their designee shall, on the basis of an on-site inspection, approximate the boundaries of the pavement replacement area.

8. Pavement replacement areas with the long dimension in the direction of travel shall have the long dimension parallel with the curb line or the direction of travel. Pavement replacement areas in concrete pavements shall be parallel with or at right angles to the direction of travel.

9. The Director of Public Services or their designee may order the permittee to remove and replace up to one (1) full lane width of pavement along the patched or excavated area. Special care shall be taken with concrete pavement to produce a vertical face on the existing concrete at the point of the saw cut to insure a full depth of concrete at the joint.

10. All excavated material shall be piled in a manner such that pedestrian and motor traffic is not unnecessarily disrupted. Gutters shall be kept clear or other satisfactory provisions made for street drainage, and natural watercourses shall not be obstructed. As little as possible of the trench must be dug until the slant of junction-piece of the sewer, water, gas main, electric cables, telephone lines or fuel line is found. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the City shall have the authority to require the permittee to haul the excavated material to a storage site and then re-haul it to the trench site at the time of backfilling.

11. All conduits, sewers, pipes, wires or other means of transmission of utility services within the City, if to be placed underground, shall, in addition to all of the requirements of this Section, be dug at least thirty (30) inches below the normal ground level whenever said utility service will cross under a highway, City street, sidewalk, alley or other public right-of-way within the City of Windsor Heights.

12. Excavated material to be used for backfilling of the trench must be so handled and placed as to be of as little inconvenience as practical to public travel and adjoining tenants.

13. All backfill material shall be free from cinders, hot mix fragments, ashes, refuse, vegetable or organic matter, boulders, rocks or stones greater than eight (8) inches in their greatest dimension, frozen lumps or other material which in, in the opinion of the Director of Public Services or their designee, is unsuitable. All non-compactable material will be placed, upon excavation, in an area where removal from site will be made readily possible.

14. In refilling the excavation, if there is not sufficient material excavated suitable for refilling, the deficiency shall be made up with material, approved prior to use by the Director of Public Services or their designee, hauled in, or refilled by the City.

15. Wherever an excavation crosses an existing utility, pipe or other structure, backfill shall be carefully compacted in stages from the bottom of the excavation. Any sanitary sewer, storm sewer, water, telephone, natural gas or other service shall not be interrupted by the permittee. It shall be the permittee's responsibility to have the various utilities locate and mark their facilities prior to excavation.

16. Mechanical compaction or puddling shall be used on all materials used for trench backfill. Each layer (12-inch maximum) shall be uniformly compacted. Compaction or consolidation by flooding shall not be permitted. Earth must be puddled or laid in layers not more than twelve (12) inches in depth and each layer

rammed and tamped to prevent settling. The Public Works Department will test the fill to meet the City's specifications. Contractors will be instructed by the City's inspector, if they meet the specifications, to proceed to fill the opening.

17. All excavations shall be subject to testing by the City. Backfilled material not achieving the above compaction requirements shall be removed and re-compacted by the permittee. The cost of any retesting shall be paid by the permittee.

18. When the sides of the trench will not stand perpendicular, sheathing and braces shall be used to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. At no time shall any street pavements, be permitted to overhang the excavation. When caving occurs, all the street support thus disturbed must be restored to the same or better condition prior as though it was an excavation or a trench.

19. Concrete pavement shall be placed to the full depth of the existing pavement or seven (7) inches, whichever is greater. Concrete used shall not contain calcium chloride. The surface shall be given a light broom finish. The edges shall be tooled to prevent spalling at the saw cut edge. The surface shall be evenly and completely sealed with a white pigmented curing compound. The surface shall be protected from traffic for a minimum of three (3) days. Tie bars shall be installed as directed by the Director of Public Services or their designee.

20. All permanent restoration of street, curb and gutter shall be of the same type and thickness as the curb and gutter which abuts. The grade of the restored curb and gutter shall conform with the grade of the existing adjacent curb and gutter.

21. All permanent restoration of driveways and sidewalks shall conform to the manner of construction as originally placed and to the lines and grades as given by the City Engineer. No patching of concrete driveway areas will be allowed between joints or dummy joints.

#### **135.06 RESTORATION.**

1. As a condition of the permit, the permittee shall at its own expense, repair or cause repair to any private property, public utility system component, public improvement, vegetation, public rights-of-way or public property damaged by such location, construction, reconstruction, replacement or repair work, to the same or better condition than it was prior to the excavation.

2. The permittee shall restore with sod (unless seed is approved by the City) all such property to its previous condition at its expense. If multiple utilities are involved in the restoration, the City Engineer or Director of Public Services shall assess the restoration cost equally or proportionately to the parties involved.

3. If the permittee fails to repair or arrange with the City for the proper repair of any public property after excavations or damage to the surface has been made, and after 30 days' notice in writing to do so given to its designated representative, then the City may make such repairs at the expense of the permittee. The City shall keep an account of all such expenses and invoice the permittee for the same. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

**135.07 EMERGENCIES.**

1. In the event of any emergency, the permittee shall remove or relocate its installations within forty-eight (48) hours of notification from the City.
2. In emergencies which require immediate excavation to remedy dangerous conditions for the protection of property, life, health or safety, a licensee may proceed with the work without first applying for or obtaining the permit, provided, however, that the utility business shall apply for and obtain the permit within forty-eight (48) hours after commencing such emergency work.

**135.08 WORK BY OTHERS.**

1. 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 utility business, and to change any curb or sidewalk or the grade of any street.
2. In permitting others to do such work, the City shall not be liable to utility business for any damages arising out of the performance of such work by other parties, except those arising out of or resulting from negligence of the City.
3. Nothing in this chapter shall be construed as to relieve any other person or corporation from liability for damage to utility business' facilities.

**135.09 UTILITY BUSINESS CONTRACTORS.** The requirements of this chapter shall apply to all persons, firms or corporations performing work for a utility business under a contract, subcontract or other type of work order.

**135.10 POWERS OF THE 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, alley and public grounds by anyone using the same for the erection and maintenance of utility systems.

**135.11 VIOLATIONS.**

1. Upon evidence being received or observed by the City that a violation or breach of this chapter or codes lawfully regulating utility business in the operation of its facilities, or in the use of public property therefore, is occurring, or has occurred, the City shall cause an investigation to be made.
2. If the City finds that a violation exists or has occurred, the City may take appropriate steps to secure compliance with the terms of this chapter.
3. The City shall notify the utility business or permittee of the violation and the utility business or permittee shall cure such violation within 30 days after receipt of such notice.
4. If a permittee fails to cure a violation within the time allowed, the City shall have the right to:
  - A. Revoke the permit;
  - B. Seek specific performance;

- C. Seek damages for such default; and/or
- D. Any combination of division (4)(A) and (4)(C) above.

**135.12 LIABILITY, INDEMNIFICATION AND INSURANCE.** The permittee 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, except those arising out of or resulting from negligence of the City. The permittee agrees to require contractors and subcontractors engaged in work for the permittee with 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.

*(Ch. 135 – Ord. 15-05 – Oct. 15 Supp.)*

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## CHAPTER 136

# SIDEWALK REGULATIONS

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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.** The abutting property owner shall remove snow, ice, and accumulations promptly from sidewalks. If a property owner does not remove snow, ice, or accumulations within 48 hours, the Public Works Director may have the natural accumulations of snow or ice removed without notice to the property owner. The Public Works Director 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. The abutting property owner may be liable for damages caused by failure to remove snow, ice, and accumulations promptly from the sidewalk.

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

**136.03 PROPERTY OWNER’S RESPONSIBILITY FOR MAINTENANCE.** The abutting property owner shall repair, replace, or reconstruct, or cause to be repaired, replaced, or reconstructed, all broken or defective sidewalks and maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or, in the absence of a curb, any sidewalk between the property line and that portion of the public street used or improved for vehicular purposes. The abutting property owner may be liable for damages caused by failure to maintain the sidewalk.

*(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 Public Works Director 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 Public Works Director 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 Public Works Director 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 Public Works Director, 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 Public Works Director. 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 Public Works Director. 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 Public Works Director. 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 Public Works Director 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 Public Works Director 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 Public Works Director shall have the work completed and the costs assessed to the property owner.

**136.10 INSPECTION AND APPROVAL.** Upon final completion, the Public Works Director shall inspect the work. The Public Works Director 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 Public Works Director 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. 174.15[2] & 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 Public Works Director 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 Public Works Director. 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 Public Works Director 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 Public Works Director shall inspect the work. The Public Works Director 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 Public Works Director shall proceed to repair, replace, or reconstruct the driveway. Upon completion of work, the Public Works Director 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.

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## CHAPTER 141

# FIBER OPTIC CABLE LICENSE

141.01 Definitions	141.07 Conditions of Public Property Occupancy
141.02 Basic Grant	141.08 Powers of City
141.03 Construction and Repair of Network	141.09 Plans and Coordination
141.04 Excavations	141.10 Removal of Licensee Facilities
141.05 Work by Others; Alteration to Conform with Public Improvements	141.11 Liability and Indemnification
141.06 Licensee Contractors	141.12 Notices to Licensee
	141.13 Assignment

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

1. “Public improvements” means 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.
2. “Public property” means City-owned or controlled public rights-of-way, easements, bridges, squares, and commons.
3. “Licensee” means the applicant named in the application for fiber optic cable license and includes all equipment owned, operated, leased, or subleased in connection with the operation of the network, and includes (but is not limited to) poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, and other structures or appurtenances.

**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, the 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 the City with the 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. The 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.

**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.

**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 that require immediate excavation, the licensee may proceed with the work without first applying for or obtaining the permit; provided, however, 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 30 days after receipt of the City's billing.

**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 of 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 chapter shall be construed as to relieve any other person or corporation from liability for damage to the licensee's facilities.

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

**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 Public Works Director. Prior to undertaking any work in the area licensed hereunder, in addition to consulting records maintained by the City, if any, the 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 the licensee's work hereunder. The licensee shall indemnify and hold harmless the City for any and all damages in any way related to activities undertaken by the licensee hereunder, regardless of any alleged negligence by the City. The licensee shall, upon 60 days' 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. The 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 48 hours after the time of request. As a condition of the 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.

**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.

**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.

**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 seven days prior to the expiration or termination of the license granted hereunder, the 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 the licensee shall hold harmless the City from any and all liability in any way occasioned by the actions of the City hereunder.

**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 the licensee's equipment. In no event shall the City be liable for any consequential damages arising out of any damage or injury to the licensee's equipment placed in the right-of-way.

**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 Clerk's Office by the licensee thereafter. Notice shall be deemed given by the City by mailing notice to the address provided by licensee hereunder by ordinary mail.

**141.13 ASSIGNMENT.** Neither party shall assign or otherwise transfer the 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 the agreement, in whole or in part, to any entity controlled by, controlling or under common control with a party thereto, 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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