

## CHAPTER 4

### PUBLIC PROPERTY AND INFRASTRUCTURE

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## SECTION 1

### RIGHT-OF-WAY MANAGEMENT

Section:

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**4-1-1: FINDINGS, PURPOSE, AND INTENT.**

- A. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

- B. Accordingly, the City hereby enacts this Section relating to right-of-way permits and administration. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this Section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.
- C. This Section shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the City and users of the right-of-way. This Section shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this Section cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This Section shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. (Ordinance #31, adopted December 9, 2008)

**4-1-2: ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAYS:** Pursuant to the authority granted to the City under state and federal statutory, administrative and common law, the City hereby elects, pursuant Minn. Stat. 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction. (Ordinance #31, adopted December 9, 2008)

**4-1-3: DEFINITIONS:** The following definitions apply in this Section. References hereafter to "sections" are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms, whether or not capitalized.

**Abandoned Facility:** means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

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

**City:** means the City of Nowthen, Anoka County, Minnesota. For purposes of Section 4-1-28, "city" means its elected officials, officers, employees and agents.

**Commission:** means the State Public Utilities Commission.

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

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

- A. Individual project bond;
- B. Cash deposit;
- C. Security of a form listed or approved under Minn. Stat. Sec. 15.73, subd. 3;
- D. Letter of Credit, in a form acceptable to the City;
- E. Self-insurance, in a form acceptable to the City;
- F. A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

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

**Degradation Cost:** subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration, as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

**Degradation Fee:** means the estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

**Department:** means the public works maintenance department.

**Department Inspector:** means any person authorized by the City to carry out inspections related to the provisions of this Section.

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

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

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

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

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

**Excavation permit fee:** means money paid to the City by an applicant to cover the costs as provided in Section 4-1-12 of this Section.

**Facility” or “Facilities:** means any tangible asset in the right-of-way required to provide Utility Service.

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

**Hole:** means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

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

**Management Costs:** means the actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any Section enacted under those sections, or the City fees and costs related to appeals taken pursuant to Section 4-1-30 of this Section.

**Obstruct:** means to place any tangible object in a right-of-way so as to hinder free and

open passage over that or any part of the right-of-way.

**Obstruction Permit:** means the permit which, pursuant to this Section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

**Obstruction Permit Fee:** means money paid to the City by a permittee to cover the costs as provided in Section 4-12 of this Section

**Patch or Patching:** means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's five-year project plan.

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

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

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

**Person:** means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

**Public Right-of-Way:** means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

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

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

**Restoration Cost:** means the amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

**Right-of-Way Permit:** means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Section.

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

**Service or Utility Service:** includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. Chapter. 238; (4) natural gas or electric energy or telecommunications services provided by the City; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; and (6) water, and sewer, including service laterals, steam, cooling or heating services.

**Service Lateral:** means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

**Supplementary Application:** means an application made to excavate or obstruct more of the right-of-way than allowed by, or to extend, a permit that had already been issued.

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

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

**Telecommunication right-of-way user:** means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association

organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this ordinance. (Ordinance #31, adopted December 9, 2008)

**4-1-4: ADMINISTRATION:** The City Council is responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Council may delegate any or all of the duties hereunder. (Ordinance #31, adopted December 9, 2008)

**4-1-5: RESERVED.**

**4-1-6: REGISTRATION AND RIGHT-OF-WAY OCCUPANCY:**

- A. Registration. Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the City. Registration will consist of providing application information and paying a registration fee.
- B. Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the City.
- C. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Section. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. Chap. 216D, Gopher One Call Law. (Ordinance #31, adopted December 9, 2008)

**4-1-7: REGISTRATION INFORMATION:**

- A. Information Required. The information provided to the City at the time of registration shall include, but not be limited to:
  - 1. Each registrant's name, Gopher One-Call registration certification number, address and email address, if applicable, and telephone and facsimile numbers.

2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
3. A certificate of insurance or self-insurance:
  - a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;
  - b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
  - c. Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
  - d. Requiring that the City be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and
  - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Section.
4. The City may require a copy of the actual insurance policies.
5. If the person is a corporation, a copy of the certificate is required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.
6. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

- B. Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the City information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change. (Ordinance #31, adopted December 9, 2008)

**4-1-8: RESERVED.**

**4-1-9: PERMIT REQUIRED.**

- A. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City to do so.
  - 1. Excavation Permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
  - 2. Obstruction Permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- B. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:
  - 1. Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and
  - 2. A new permit or permit extension is granted.
- C. Delay Penalty. In accordance with Minnesota Rule 7819.1000 subp. 3 and notwithstanding subsection B of this Section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.
- D. Permit Display. Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City. (Ordinance #31, adopted December 9, 2008)

**4-1-10: PERMIT APPLICATIONS:** Application for a permit is made to the City. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

- A. Registration with the City pursuant to this Section;
- B. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- C. Payment of money due the City for:
  - 1. Permit fees, estimated restoration costs and other management costs;
  - 2. Prior obstructions or excavations;
  - 3. Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;
  - 4. Franchise fees or other charges, if applicable.
  - 5. Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
  - 6. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards. (Ordinance #31, adopted December 9, 2008)

**4-1-11: ISSUANCE OF PERMIT, CONDITIONS:**

- A. Permit Issuance. If the applicant has satisfied the requirements of this Section, the City shall issue a permit.
- B. Conditions. The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. (Ordinance #31, adopted December 9, 2008)

**4-1-12: PERMIT FEES:**

- A. Excavation Permit Fee. The City shall establish an Excavation permit fee in an amount sufficient to recover the following costs:
  - 1. The City management costs;
  - 2. Degradation costs, if applicable.
- B. Obstruction Permit Fee. The City shall establish the obstruction permit fee on a case by case basis and shall be in an amount sufficient to recover the City management costs.
- C. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The permit fees will be due at the time of application.
- D. Non Refundable. Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 4-1-22 are not refundable.
- E. Application to Franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise. (Ordinance #31, adopted December 9, 2008)

**4-1-13: RIGHT-OF-WAY PATCHING AND RESTORATION:**

- A. Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 4-1-16.
- B. Patch and Restoration. Permittee shall patch its own work. The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
  - 1. City Restoration. If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with correcting the defective work.
  - 2. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction

performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

- C. Standards. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100.
- D. Duty to Correct Defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances beyond permittees reasonable control or when work is prohibited as unseasonable or unreasonable under Section 4-1-16.
- E. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond. (Ordinance #31, adopted December 9, 2008)

**4-1-14: JOINT APPLICATIONS:**

- A. Joint application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- B. Shared fees. Registrants who apply for permits for the same obstruction or excavation, which the City does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- C. With City projects. Registrants who join in a scheduled obstruction or excavation performed by the City, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required. (Ordinance #31, adopted December 9, 2008)

#### **4-1-15: SUPPLEMENTARY APPLICATIONS:**

- A. Limitation on Area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.
- B. Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date. (Ordinance #31, adopted December 9, 2008)

#### **4-1-16: OTHER OBLIGATIONS:**

- A. Compliance With Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- B. Prohibited Work. Except in an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- D. Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal

Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City. (Ordinance #31, adopted December 9, 2008)

**4-1-17: DENIAL OF PERMIT:** The City may deny a permit for failure to meet the requirements and conditions of this Section or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. (Ordinance #31, adopted December 9, 2008)

**4-1-18: INSTALLATION REQUIREMENTS:** The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these Sections. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and/or agreements referenced in Section 4-1-23.B of this Section. (Ordinance #31, adopted December 9, 2008)

**4-1-19: INSPECTION:**

- A. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.
- B. Site Inspection. Permittee shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- C. Authority of City.
  - 1. At the time of inspection, the City or their designee may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
  - 2. The City or their designee may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City that the violation has been corrected. If such proof has not been presented

within the required time, the City may revoke the permit pursuant to Sec. 4-1-22 of this Section. (Ordinance #31, adopted December 9, 2008)

**4-1-20: WORK DONE WITHOUT A PERMIT:**

A. Emergency Situations.

1. Each registrant shall immediately notify the City of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Section for the actions it took in response to the emergency.
2. If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

B. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the City Code, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Section. (Ordinance #31, adopted December 9, 2008)

**4-1-21: SUPPLEMENTARY NOTIFICATION:** If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known. (Ordinance #31, adopted December 9, 2008)

**4-1-22: REVOCATION OF PERMITS:**

- A. Substantial Breach. The City reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material

condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

1. The violation of any material provision of the right-of-way permit;
  2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
  3. Any material misrepresentation of fact in the application for a right-of-way permit;
  4. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
  5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.19.
- B. **Written Notice of Breach.** If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- C. **Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. Permittee's failure to so contact the City, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- D. **Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation. (Ordinance #31, adopted December 9, 2008)

**4-1-23: MAPPING DATA:**

- A. **Information Required.** Each registrant and permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the City accurate maps and

drawings certifying the “as-built” location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City’s electronic mapping system, when practical or as a condition imposed by the City. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder’s registration.

- B. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the City reasonably requires it. Permittees or their subcontractors shall submit to the City evidence satisfactory to the City of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any City approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The City shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors. (Ordinance #31, adopted December 9, 2008)

**4-1-24: LOCATION AND RELOCATION OF FACILITIES:**

- A. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- B. Corridors:
  - 1. The City may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
  - 2. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City shall, no later than at

the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

- C. Nuisance. One (1) year after the passage of this Section, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.
- D. Limitation of Space. To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest. (Ordinance #31, adopted December 9, 2008)

**4-1-25: PRE-EXCAVATION FACILITIES LOCATION:** In addition to complying with the requirements of Minn. Stat. 216D.01-.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation. (Ordinance #31, adopted December 9, 2008)

**4-1-26: DAMAGE TO OTHER FACILITIES:** When the City does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the City shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities. (Ordinance #31, adopted December 9, 2008)

**4-1-27: RIGHT-OF-WAY VACATION:** If the City vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200. (Ordinance #31, adopted December 9, 2008)

**4-1-28: INDEMNIFICATION AND LIABILITY:** By registering with the City, or by accepting a permit under this ordinance, a registrant or permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250. (Ordinance #31, adopted December 9, 2008)

**4-1-29: ABANDONED AND UNUSEABLE FACILITIES:**

- A. Discontinued Operations. A registrant who has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the registrant's obligations for its facilities in the right-of-way under this Section have been lawfully assumed by another registrant.
- B. Removal. Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City. (Ordinance #31, adopted December 9, 2008)

**4-1-30: APPEAL:** A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6; or (5) disputes a determination of the City regarding Section 1.23 subd. 2 of this Section may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision. (Ordinance #31, adopted December 9, 2008)

**4-1-31: SEVERABILITY:** If any portion of this Section is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this Section precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein. (Ordinance #31, adopted December 9, 2008)



## SECTION 2

### CENTERPOINT ENERGY GAS FRANCHISE

Section:

4-2-1	Definitions
4-2-2	Adoption of Franchise
4-2-3	Location, Other Regulations
4-2-4	Relocations
4-2-5	Indemnification
4-2-6	Vacation of Public Ways and Public Grounds
4-2-7	Change in Form of Government
4-2-8	Franchise Fee
4-2-9	Abandoned Facilities
4-2-10	Provisions of Ordinance
4-2-11	Amendment Procedure

**3-5-2: DEFINITIONS:** For purposes of this Section, the following capitalized terms listed in alphabetical order shall have the following meanings:

**City:** The City of Nowthen, County of Anoka, State of Minnesota.

**City Utility System:** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

**Commission:** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate gas retail rates now vested in the Minnesota Public Utilities Commission.

**Company:** CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas ("CenterPoint Energy") its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this Franchise.

**Gas Energy:** Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.

**Gas Facilities:** Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.

**Notice:** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. Notice to the City shall be mailed to City Clerk, City of Nowthen, 19800 Nowthen Blvd. N.W., Anoka, Minnesota 55303. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.

**Public Way:** Any highway, street, alley or other public right-of-way within the City.

**Public Ground:** Land owned or otherwise controlled by the City for utility easements, park, trail, walkway, open space or other public property, which is held for use in common by the public or for public benefit.

**Section:** This gas franchise ordinance, also referred to as the Franchise.

#### **4-2-2: ADOPTION OF FRANCHISE:**

- A. Grant of Franchise. City hereby grants Company, for a period of 20 years from the date this Section is passed and approved by the City, the right to import, manufacture, distribute and sell Gas Energy for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to a public right-of-way ordinance or permit requirements adopted consistent with state law.
- B. Effective Date; Written Acceptance. This Franchise shall be in force and effect from and after the passage of this Section and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within sixty (60) days after the date the City Council adopts this Section, or otherwise inform the City, at any time, that the Company does not accept this Franchise, the City Council by resolution shall revoke this Franchise.
- C. Service and Gas Rates. The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the exclusive jurisdiction of the Commission.
- D. Publication Expense. Company shall pay the expense of publication of this Section.

- E. Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within thirty (30) days of the written Notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this Franchise or for such other relief as may be permitted by law or equity.
  
- F. Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the 20-year term set forth in Section 4-2-2.A of this Section.

**4-2-3: LOCATION, OTHER REGULATIONS:**

- A. Location of Facilities. Gas Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds in a location selected by the City. The location and relocation of Gas Facilities shall be subject to reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Franchise.
  
- B. Street Openings. Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee, unless the City is receiving a franchise fee pursuant to this Section, in which case all permit fees will be waived. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public-right-of-way users for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

- C. Restoration. After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Ways or Public Grounds in accordance with Minnesota Rules, 7819.1100. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration of the Public Ways or Public Grounds at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. The Company shall not be required to post a construction performance bond.
- D. Avoid Damage to Gas Facilities. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable Notice by the City of such work prior to its commencement.
- E. Notice of Improvements to Streets. The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Grounds is involved, the order in which the work is to proceed. The Notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.
- F. Mapping Information. If requested by City, the Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.
- G. Emergency Response. As emergency first-responders, when a public safety concern exists both the City and Company shall respond to gas emergencies within the City without additional direct fee or expense to either City or Company.

**4-2-4: RELOCATIONS:**

- A. Relocation in Public Ways and Public Grounds. The Company and City shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the Company to relocate Gas Facilities located in either Public Ways or Public Grounds.
- B. Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Sections 161.45 and 161.46.

**4-1-5: INDEMNIFICATION:**

- A. Indemnity of City. Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.
- B. Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written Notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such Notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

**4-2-6: VACATION OF PUBLIC WAYS AND PUBLIC GROUNDS:** The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with Minnesota Rules 7819.3200 with respect to any request for vacation.

**4-2-7: CHANGE IN FORM OF GOVERNMENT:** Any change in the form of government of the City shall not affect the validity of this Section. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Section.

**4-2-8 : FRANCHISE FEE :**

- A. Form. During the term of the franchise hereby granted, the City may charge the Company a franchise fee. The Company will administer the collection and payment of franchise fees to City in lieu of permit fees, or other fees that may otherwise be imposed on the Company in relation to its operations as a public utility in the City. The franchise fee will be collected on a flat per meter basis, or by some other method that is mutually acceptable to both City and Company for each retail customer within the corporate limits of the City. The amount of the fee collected may differ for each customer class. The City will use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company will provide a formula that will produce a substantially similar fee amount to the City. If the City and Company are unable to agree, the disagreement shall be subject to the Dispute Resolution provisions of this Section.
- B. Separate Ordinance. The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days after written Notice enclosing such proposed ordinance has been served upon the Company by certified mail. The Company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the Company notifies the City Council of the same within the sixty (60) day period.
- C. Condition of Fee. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of energy within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through an agreed-upon franchise.
- D. Collection of Fee. The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed from time to time, however, the change shall meet the same Notice and acceptance requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer

refunds incurred by the Company. The Company shall not be responsible to pay City fees that Company is unable to collect under Commission rules or order. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

- E. Continuation of Franchise Fee. If this Franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this Franchise expires, will remain in effect until a new franchise is agreed upon. However, the franchise fee will not remain in effect for more than one (1) year after the franchise expires as stated in Section 4-2-2.F of this Section. If for any reason the franchise terminates, the franchise fee will terminate at the same time.

**4-2-9: ABANDONED FACILITIES:** The Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways and Public Grounds. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Gas Facilities, including abandoned and retired Gas Facilities not located in Public Ways and Public Grounds.

**4-2-10: PROVISIONS OF ORDINANCE:**

- A. Severability. Every section, provision, or part of this Section is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Section, the provisions of this Ordinance shall prevail.
- B. Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties. No provisions herein shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of this Section or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

**4-2-11: AMENDMENT-PROCEDURE:** Either party may propose at any time that this Franchise Ordinance be amended. Franchise Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within sixty (60) days after the

effective date of the amendatory ordinance. If the Company does not consent to the amendment, the ordinance containing the amendment shall be revoked by City.

## SECTION 3

### ILLICIT DISCHARGE

Section:

4-3-1	Purpose
4-3-2	Definitions
4-3-3	Applicability
4-3-4	Administration
4-3-5	Ultimate Responsibility
4-3-6	Discharge Prohibitions
4-3-7	Suspension of MS4 Access
4-3-8	Industrial or Construction Activity Discharges
4-3-9	Monitoring of Discharges
4-3-10	Best Management Practices
4-3-11	Watercourse Protection
4-3-12	Notification of Spills
4-3-13	Enforcement
4-3-14	Severability

**4-3-1: PURPOSE:** The purpose of this Section is to provide for the health, safety and general welfare of the residents and environment of the City of Nowthen through regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Section are:

- A. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- B. To prohibit Illicit Connections and Discharges to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Section.
- D. To establish responsibility for failure and remediation, if necessary. (Ordinance #32, adopted July 13, 2010)

**4-3-2: DEFINITIONS:** For the purposes of this Section, the following terms shall mean:

**Best Management Practices (BMPs):** schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

**Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. ' 1251 et seq.), and any subsequent amendments thereto.

**Construction Activity:** Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

**Hazardous Materials:** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

**Illegal Discharge:** Any direct or indirect non-storm water discharge to the storm drain system.

**Illicit Connections:** An illicit connection is defined as either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or,
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**Industrial Activity:** Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit:** A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC ' 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**Non-Storm Water Discharge:** Any discharge to the storm drain system that is not composed entirely of storm water.

**Person:** means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

**Pollutant:** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, Sections, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

**Premises:** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Storm Drainage System:** Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

**Storm Water:** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**Stormwater Pollution Prevention Plan (SWPPP):** A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**Wastewater:** Any water or other liquid, other than uncontaminated storm water, discharged from a facility. (Ordinance #32, adopted July 13, 2010)

**4-3-3: APPLICABILITY:** This Section shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Nowthen. (Ordinance #32, adopted July 13, 2010)

**4-3-4: ADMINISTRATON:** The City of Nowthen shall administer, implement, and enforce the provisions of this Section. Any powers granted or duties imposed upon the City of Nowthen may be delegated by the City Council of the City of Nowthen to persons or entities acting in the beneficial interest of or in the employ of the City. (Ordinance #32, adopted July 13, 2010)

**4-3-5: ULTIMATE RESPONSIBILITY:** The standards set forth herein and promulgated pursuant to this Section are minimum standards; therefore this Section does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants. (Ordinance #32, adopted July 13, 2010)

**4-3-6: DISCHARGE PROHIBITIONS:**

- A. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.
- B. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
  - 1. The following discharges are exempt from discharge prohibitions established by this Section: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
  - 2. Discharges specified in writing by the City of Nowthen as being necessary to protect public health and safety.
  - 3. Dye testing is an allowable discharge, but requires a verbal notification to the City of Nowthen prior to the time of the test.
  - 4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other

applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

C. Prohibit of Illicit Connections:

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this Section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue. (Ordinance #32, adopted July 13, 2010)

**4-3-7: SUSPENSION OF MS4 ACCESS:**

A. Suspension due to Illicit Discharges in Emergency Situations:

1. The City of Nowthen may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States.
2. If the violator fails to comply with a suspension order issued in an emergency, the City of Nowthen may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge:

1. Any person discharging to the MS4 in violation of this Section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Nowthen will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Nowthen for a reconsideration and hearing.
2. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Nowthen. (Ordinance #32, adopted July 13, 2010)

**4-3-8: INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES:** Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Nowthen prior to the allowing of discharges to the MS4. (Ordinance #32, adopted July 13, 2010)

**4-3-9: MONITORING OF DISCHARGES:**

- A. Applicability. This Section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
- B. Access to Facilities:
  - 1. The City of Nowthen shall be permitted to enter and inspect facilities subject to regulation under this Section as often as may be necessary to determine compliance with this Section. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.
  - 2. Facility operators shall allow the City of Nowthen ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
  - 3. The City of Nowthen shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Nowthen to conduct monitoring and/or sampling of the facility's storm water discharge.
  - 4. The City of Nowthen has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
  - 5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Nowthen and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Unreasonable delays in allowing the City of Nowthen access to a permitted facility shall be a violation of a storm water discharge permit and of this Section. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City of Nowthen reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Section.
7. If the City of Nowthen has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Section, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Section or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City of Nowthen may seek issuance of a search warrant from any court of competent jurisdiction. (Ordinance #32, adopted July 13, 2010)

**4-3-10: BEST MANAGEMENT PRACTICES:**

- A. The City of Nowthen shall adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States.
- B. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs.
- C. Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- D. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this Section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit. (Ordinance #32, adopted July 13, 2010)

**4-3-11: WATERCOURSE PROTECTION:** Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part

of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. (Ordinance #32, adopted July 13, 2010)

**4-3-12: NOTIFICATION OF SPILLS:**

- A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- B. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
- C. In the event of a release of non-hazardous materials, said person shall notify the City of Nowthen in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Nowthen within three (3) business days of the phone notice.
- D. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years. (Ordinance #32, adopted July 13, 2010)

**4-3-13: ENFORCEMENT:**

- A. Notice. Whenever the City of Nowthen finds that a person has violated a prohibition or failed to meet a requirement of this Section, the City of Nowthen may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
  - 1. The performance of monitoring, analyses, and reporting;
  - 2. The elimination of illicit connections or discharges;

3. That violating discharges, practices, or operations shall cease and desist;
  4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
  5. Payment of all expenses incurred by the City of Nowthen related to administrative and remediation costs; and
  6. The implementation of source control or treatment BMPs.
- B. **Action Required.** If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- C. **Appeal.** Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or their designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.
- D. **Post Appeal Enforcement.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten (10) days of the decision of the City of Nowthen upholding the decision of the authorized enforcement agency, then representatives of the City of Nowthen shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
- E. **Abatement Costs.** Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment according to State Statute. If the amount due is not paid within a timely manner as determined by the decision of the City of Nowthen or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.
- F. **Injunctive Relief.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Section. If a person has violated or

continues to violate the provisions of this Section, the City of Nowthen may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

- G. **Compensatory Actions.** In lieu of enforcement proceedings, penalties, and remedies authorized by this Section, the City of Nowthen may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup or other actions approved by the City Council.
- H. **Violations Deemed a Public Nuisance.** In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Section is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
- I. **Criminal Prosecution.** Any person violating any provision of this Section shall be punished pursuant to applicable State Statute regarding misdemeanor penalties, as amended, plus the costs of prosecution.
- K. **Remedies Not Exclusive.** The remedies listed in this Section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Nowthen to seek cumulative remedies. (Ordinance #32, adopted July 13, 2010)

**4-3-14: SEVERABILITY:** The provisions of this Section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Section. (Ordinance #32, adopted July 13, 2010)

## SECTION 4

### PARK RULES AND REGULATIONS

Section:

4-4-1	Definitions
4-4-2	Public Use
4-4-3	General Conduct – Personal Behavior
4-4-4	Recreational Activity
4-4-5	Motorized Vehicles and Parking
4-4-6	Enforcement

**4-4-1: DEFINITIONS:** For the purposes of this Section, the following definitions shall apply:

**Alcoholic Beverage:** Includes any intoxicating beverage as defined by Minnesota law and includes beer and wine as further defined in this ordinance.

**Beach:** Means that part of a body of water and shore designated for swimming.

**Controlled Substance:** Means any drug substance or immediate precursor in schedules 1 through 5 of Minnesota Statutes, Section 152.02

**Facility Use Permit:** The written permission that must be obtained from the City of Nowthen to carry out a given activity.

**Motorized Recreational Vehicle:** Any self-propelled, off the road or all-terrain vehicle including, but not limited to, snowmobile, mini-bike, amphibious vehicle, motorcycle, go-cart, trail bike, dune buggy, motorized skateboard or all-terrain cycle.

**Motorized Vehicle:** Any self-propelled vehicle designed and originally manufactured to operate primarily upon public roads and highways, and not operated exclusively upon railroad tracks. It does not include snowmobiles, manufactured homes, or park trailers.

**Parks, Open Space and Waterways:** Any area located in the City which is reserved, designed, or used for active or passive recreation, and which is owned, operated, or controlled by the City.

**Person:** Any person, firm, partnership, association, corporation, company or organization of any kind.

**Semi:** Means a vehicle of the trailer type so designed and used in conjunction with a truck-tractor that a considerable part of its own weight or that of its load rests upon and

is carried by the truck-tractor and shall include a trailer drawn by a truck-tractor semi trailer combination. For the purpose of registration, trailers coupled with a truck-tractor, semi trailer combination are semi trailers. (Ord. #20, adopted December 12, 2006)

**4-4-2: PUBLIC USE:**

A. Park Hours.

1. Parks shall be open to the public daily from 6:00 a.m. to 10:00 p.m.
2. It shall be unlawful for any person to enter or remain in a park after the closing hour.
3. The closing hour for activities may be modified by the City.
4. The City Council may by resolution further limit the hours for the conduct of specific activities within the parks.

B. Permits:

1. Park facilities are open to the public use on a first come first serve basis, unless in possession of an approved permit.
2. Whenever any group, association, or organization desires to reserve park facilities for a particular purpose, such as picnics, sporting activities, parties, or theatrical or entertainment performance, the representative of said group, association or organization shall first obtain a Facility Use Permit from the City for such purposes.
3. The city shall grant the application if it appears that the group, association, or organization will not interfere with the general use of the park or the individual members of the public, and if said group, association, or organization meets all other conditions contained in the application.
4. Restroom Facilities will be closed and water will be shut off on October 1<sup>st</sup>.
5. It shall be unlawful for a person to violate any provisions of a permit.
6. All groups are required to clean up the park and the facilities which they use and to leave the park and the facilities in the same condition in which they found them, normal wear and tear excepted.
7. The clean-up security deposit check shall be returned to the group's representative only after the park has been favorably inspected by a City official. The costs of clean-up after an unfavorable inspection shall be

deducted from the deposit and the balance, if any, shall be refunded to the group.

- C. Use Fee, Failure to Pay: It shall be unlawful for any person to use, without payment, any facility or area for which a fee is charged, unless the payment is waived by permit. The City Council will set the use fee annually pursuant to Section 1-2-2 of the City Code.
- D. Bottles or Glass: No bottles or glass containers allowed in the beach area. (Ord. #20, adopted December 12, 2006)

**4-4-3: GENERAL CONDUCT - PERSONAL BEHAVIOR:**

- A. Alcoholic, Intoxicating Beverages and Drugs. It shall be unlawful for any person to:
  - 1. Serve, possess or consume any alcoholic beverage, except beer and wine.
  - 2. Use, manufacture, possess, constructively possess, sell, give away, barter, exchange, distribute or otherwise transfer any controlled substance within a City Park.
  - 3. Sell, barter, furnish or give alcoholic beverages to a person under twenty one (21) years of age.
  - 4. Possess or bring beer or wine into a park in kegs or barrels.
- B. Public Nuisance – Personal Conduct: It shall be unlawful for any person to:
  - 1. Intentionally expose his or her genitals, pubic area, buttocks or female breast below the top of the areola, with less than a fully opaque covering while wading, swimming or using any beach or other areas within a park, if five (5) years of age or older.
  - 2. No person or group of persons shall use threatening, abusive, insulting, obscene or indecent language or commit, perform or engage in any lewd, lascivious, obscene or indecent act in any park.
  - 3. No person or group of person shall engage in fighting, quarreling, wrangling, riotous clamor, or tumult in any park.
  - 4. No person or group of person shall disturb, harass or interfere with any user or the user's property in any park.

- C. Littering/Dumping: It shall be unlawful for any person to:
1. Deposit, scatter, drop, dispose or abandon in a park: bottles, cans, broken glass, hot coals, ashes, sewage, waste or other material, except in receptacles provided for such purposes; or
  2. Dispose of any household or yard waste or commercial waste in a City Park.
- D. Possession and Use of Firearms / Dangerous Weapons / Fireworks / Hunting: It shall be unlawful for any person to:
1. Have in their possession, fire, discharge or cause to be fired or discharged across, in or into any portion of a park, any gun or firearm, spear, bow and arrow, crossbow, sling shot, air or gas weapon, or any other dangerous weapon or projectile, except in areas and at times designated by the City Council for such use, or with a permit; or
  2. Possess, set off or attempt to set off or ignite any firecracker, fireworks, smoke bombs, rockets, black powder guns or other pyrotechnics without authorization from the City Council.
  3. Engage in hunting or the taking of wild animals as defined in Minnesota Statute 97A, subdivision 55, 47 and 26, within any park, without having a permit from the City Council.
- E. Pets in Parks: It shall be unlawful for any person to:
1. Permit a pet, except service dogs trained and certified to assist persons with disabilities, to enter or be in a park except in parking lots, on approved trails unattended and leashed.
  2. Bring a pet into a park unless controlled on a leash.
  3. Permit a pet to disturb, harass or interfere with any park visitor a park visitor's property, property of a park employee, contractor of the city, or park wildlife; or,
  4. Have custody or control of any dog or domestic pet in a park without possessing an appropriate device for cleaning up pet feces and disposing of the feces in a sanitary manner; or,
  5. For any person to intentionally abandon or release any animal, living or deceased, within the boundaries of any Nowthen parks.

- F. Destruction / Defacement of Park Property and Signs: It shall be unlawful for any person to:
1. Intentionally deface, vandalize or otherwise cause destruction to park property; or,
  2. Intentionally deface, destroy, cover, damage or remove any placard, notice or sign, or parts thereof, whether permanent or temporary, posted or exhibited by the City. (Ord. #20, adopted December 12, 2006)

**4-4-4: RECREATONAL ACTIVITY:**

- A. Camping. It shall be unlawful for any person to camp or set up tents, shacks, trailers or any other temporary shelter for the purposes of camping in any town park or open space without special permission for the City Council.
- B. Picnicking: It shall be unlawful for any person to assume use of a picnic shelter if the area is reserved by a permitted group
- C. Horseback Riding: It shall be unlawful for any person to:
1. Ride, lead or allow a horse within all City parks, except on designated areas or trails at designated hours; or,
  2. Ride, lead or allow a horse on any hard surface, roadway or trail except at designated trail crossings; or,
  3. Ride a horse in a reckless manner so as to create a nuisance or endanger the safety or property of any park visitor; or,
  4. Tether a horse to a tree, other plant, building or park equipment in situations likely to endanger natural habitat; or,
  5. Allow a horse to graze on growing grasses or browse on seedlings, trees, shrubs or bushes.
- D. Motorized Recreational/Off-Road Vehicles: It shall be unlawful for any person to operate any recreational/off road vehicles, such as go carts, snowmobiles and all terrain vehicles (ATV's), within the City parks. (Ord. #20, adopted December 12, 2006)

**4-4-5:            **MOTORIZED VEHICLES AND PARKING:****

A.     Motorized vehicles: It shall be unlawful to:

1.     Operate any motorized vehicles within a park except upon roadways, parking areas or other designated locations; or,
2.     Operate a vehicle at a speed in excess of twenty (20) miles per hour or posted speed limits.

B.     Parking: It shall be unlawful to:

1.     Park or leave a vehicle standing except in a designated area and then only in a manner so as not to restrict normal traffic flow, unless authorized by the City Council; or
2.     Leave a vehicle standing after posted closing hours; or
3.     Drive or park any semi within any City park.   (Ord. #20, adopted December 12, 2006)

**4-4-6:            **ENFORCEMENT:****

A.     Banishment.   The City shall have the authority to remove, eject or banish from the park any person acting in violation of this Section.

B.     Seizure of Property.   The City shall have the authority to seize and impound any property, thing or device in the park, used in violation of this Section.

C.     Fines and Penalties.   Any person guilty of violating any provision of this Section shall be guilty of a misdemeanor and may be punished by a fine and/or by imprisonment. In no case shall this penalty provision be interpreted to prohibit the City from seeking civil damages for damage or destruction to park facilities. (Ord. #20, adopted December 12, 2006)