

## Chapter # 3. PUBLIC WORKS

### *Part 1. GENERAL PROVISIONS*

#### **301.01. Definitions.**

Subd. 1. **Company, Grantee, and Franchisee.** Any public utility system to which a franchise has been granted by the city.

Subd. 2. **Consumer and Customer.** Any user of a utility.

Subd. 3. **Municipal Utility.** Any city-owned utility system, including, but not by way of limitation, sewerage service.

Subd. 4. **Service.** Providing a particular utility to a customer or consumer.

Subd. 5. **Utility.** All utility services, whether the same be public city-owned facilities or furnished by public utility companies.

#### **301.02. Fixing Rates and One Time Charges.**

Subd. 1. **Rates.** All rates and charges for municipal utilities, including, but not by way of limitation, rates for service, permit fees, deposit, connection and meter testing fees, disconnection fees, re-connection fees, including penalties for non-payment, if any, shall be fixed, determined and amended by the Council and adopted by resolution. The resolution, containing the effective date thereof, shall be kept on file and open to inspection in the office of the City Clerk-Treasurer and shall be uniformly enforced. For the purpose of fixing the rates and charges, the Council may categorize and classify under the various types of service, provided, that the categorization and classification shall be included in the resolution authorized by this chapter.

#### **301.03. Contractual Contents.**

Subd. 1. **Contracts.** The Provisions of this chapter relating to municipal utilities shall constitute portions of the contract between the city and all consumers of municipal utility services, and every consumer shall be deemed to assist to the same.

Subd. 2. **Term.** An assessment can be paid on the date of issuance of a building permit, or the unit owner can elect to pay the assessment over a specified number of years, as determined by the City Administrator and/or City Council. Assessments shall be certified to the County Auditor and shall be added to the county real estate tax rolls to run for the length of assessment district at a rate of interest set by Council action.

Subd. 3. **Sale.** Assessments resulting from but not limited to utility and road improvements certified onto tax forfeit parcels or parcels which since the certification went forfeit shall be due payable at the time of sale or acquisition which removes the parcel from tax forfeit status. The owner of the real property does have the option to elect spreading the outstanding assessment over the remaining number of years associated with the improvement project for which the assessment(s) occurred.

**Part 2. PUBLIC IMPROVEMENTS**

**302.01. Permits.** No person, except an authorized city employee or a contractor performing work under a contract with the city, shall make any excavation in a street, alley, sidewalk, or public ground without first having provided notification to the City of Pierz and secured a permit therefor from the City Public Works Operator.

**302.02. Application and Regulations.** The Public Works Operator shall prepare the necessary application forms and permits required under Section I. The Operator shall also prepare such rules and regulations with respect to excavations as the Operator finds necessary to protect the public from injury, prevent damage to public or private property, and minimize interference with the public use of streets, alleys, sidewalks, and public grounds. Any person making an excavation covered by this section shall comply with such rules and regulations.

**302.03. Bond.** Any permittee, except a public utility corporation or a bonded plumber, shall file with the City a corporate surety bond, cash deposit, or certified check in the amount of \$10,000, conditioned that the permittee will:

- a. Perform work in connection with the excavation in accordance with applicable ordinances and regulations;
- b. Indemnify the city and hold it harmless from all damage caused in the execution of such work; and
- c. Pay all costs and damages suffered by the city by reason of the failure of the permittee to observe the terms of applicable ordinances and regulations or because of negligence in the execution of the work;
- d. The bond shall be approved as to form and legality by the city attorney.
- e. Any permittee except a public utility corporation shall furnish proof that the permittee has in existence an insurance policy protecting the permittee from liability to the public, including the city, to an amount equal to the maximum claim the city might be required to pay.

**302.04 Permit Denial.** Failure to comply with the conditions of this part of the code shall be grounds for denial of future permits.

**302.05. General Regulations for Excavations.** Street openings shall be made in a manner that will cause the least inconvenience to the public. Provision shall be made for the passage of water along the gutters and at least one-half of the traveled portion of the street shall be left open and in good condition for the safe passage of vehicles. Open excavations shall be guarded with substantial barriers and marked with red flags and at night with red lights or flashing devices. Pipes or mains exposed to freezing temperatures shall be protected so as to prevent freezing. Any person responsible for exposing a water/sewer main or pipe so that it might be damaged by freezing shall be liable to Rich Prairie Sewer Water District for all damages caused by such freezing and all damages sustained by others by such freezing for which the city may be liable.

**302.06. Refilling Excavations.** Every street excavation shall be refilled as soon as possible after the work is completed and paving, sidewalks, and appurtenances shall be replaced in at least as good condition as before the excavation to the satisfaction of the city Public Works Operator. All dirt and debris shall be removed immediately. Any person who fails to

comply with these requirements within 24 hours after notice from the city shall be liable to the city for the full cost incurred by the city in remedying the defect and restoring the street, sidewalk, alley, or public ground to its proper condition. The cost shall be an obligation of the surety on the bond of the permittee.

- 302.07. Assessable Current Services.** The term "current service" as used in this part of the code means one or more of the following: snow, ice, or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in Minn. Stat. 463.15-463.26; street sprinkling, street flushing, light street oiling, or other dust treatment of streets; repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect infected trees from the public streets or private property; and the operation of street lighting system.
- 302.08. Damage to Public Property.** Any person driving any vehicle, equipment, object, or contrivance upon any street, road, highway, or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of such vehicle, equipment, or object of contrivance; or as a result of operating, driving, or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When such driver is not the owner of such vehicle, equipment, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who, willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under Minn. Stat. 514.67.
- 302.09. Assessment.** On or before September 1 of each year, the clerk shall list the total unpaid charges for each type of current service and charges under section 302.07 against each separate lot or parcel to which they are attributable under this ordinance. The council may then spread the charges against property benefitted as a special assessment under Minn. Stat. 429 and other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the council may determine in each case.

### ***Part 3. LOCAL IMPROVEMENT POLICY.***

- 303.01. Cut-off date for petitions.** Petitions for construction of curb and gutter, asphalt surfacing, and sewer or water conduit shall be filed with the city clerk on or before April 1 of the year of requested construction.
- 303.02. Classification of projects.** In general, public improvements are divided into the three classes specified in the following subdivisions according to their respective benefit to the whole city and to property specially served by the improvement and taking into account past city practice consistent with an equitable system of paying and collecting for the costs of improvements.

- 303.03. Class A.** Class A improvements are those which are of general benefit to the city at large, including: 1) public buildings, except a building which is part of an improvement described in one of the following subdivisions; 2) any public park, playground, or recreational facility; 3) the installation and maintenance of street lighting systems; and 4) any improvement not described in Minn. Stat. 429. Any such improvement shall be financed from general city funds and not from special assessments.
- 303.04. Class B.** Class B improvements are those which are of both general benefit and special benefit to abutting or nearby property. Class B improvements include: 1) trunk water mains larger than six inches; 2) trunk sanitary sewer mains larger than eight inches; 3) permanently surfacing arterial streets; 4) storm sewers; 5) the construction of off-street parking facilities.
- 303.05. Class C.** Class C improvements are those which are primarily if not exclusively of benefit to property abutting or in the area of the improvement, including: 1) the construction of sidewalks; 2) the construction of water mains no larger than six inches in diameter; 3) the construction of sanitary sewer mains no larger than eight inches in diameter; 4) the construction of curbs and gutters; 5) permanently surfacing residential streets; 6) abatement of nuisances and the draining of swamps, marches, and ponds on public or private property and filling the same.
- 303.06. Life of Improvements.** Roadways shall have an expected service life of 15 years. Sanitary sewer and water mains shall have an expected service life of 30 years. Reconstruction of assessed improvements which have reached or exceeded the expected service life shall be eligible for new assessments. Improvements which need reconstruction prior to reaching their expected service life shall provide a credit to assessed properties which is prorated based on actual life as compared to expected service life and shall be applied to the original principle amount of the assessment with no consideration for inflation or interest.
- 303.07. Federal, state and county aid use.** If the city receives financial assistance from the federal government, the state, or the county to defray a portion of the cost of a street improvement project, such aid shall be used first to reduce the share of the project cost which would be met from general city funds according to the assessment policy mentioned in this ordinance. If such aid is more than the amount of the improvement cost to be borne by the city, the remainder shall be used to reduce each individual assessment proportionately.
- 303.08. Financing Class B & C improvements.** It is the policy of the city to finance Class B & C improvements by the methods prescribed in 303.03, 303.04, and 303.05. The apportionment of the cost between benefitted property and the city at large and the method of levying assessments prescribed in those sections shall be followed in each case unless the council, by resolution, finds that because of special circumstances stated in the resolution, a different policy is necessary or desirable in the particular case. Any local improvement described in Minn. Stat. 429 and not placed in Class A, B or C shall be financed as the council determines to be most feasible and equitable in each case. In each case the council shall examine the assessment role before approval and adjust any assessments which exceed the benefit received by the property assessed.
- 303.09. Certification of assessments.** After the adoption of any special assessment by the council, the clerk shall transmit a certified duplicate of the assessment roll with each installment, including interest, set forth separately to the county auditor to be extended on the proper tax lists of the county.

**303.10. Interest Rates.** Rates will be set at one percent (1.0%) above the rate the City pays for financing of improvement bonds for the project.

**303.11. Assessment Procedures.** The procedure for calculating any assessments will be held on a case by case basis by the City Engineer, dependent on the Class of the project, cost of the project, number of property owners, and determination of front footage.

**303.12. Determination of Front Footage.**

In many cases, the front footage of a lot is not immediately apparent. Therefore, it is necessary to determine an equivalent front footage which will maintain an equitable distribution of costs. The following rules will be used to determine an equivalent front footage:

- a. On all lots of a generally square or rectangular shape – straight front footage shall be used.
- b. On cul-de-sacs, sharply curved streets, and irregular shaped lots – front footage shall be measured at a point 30’ from the property line.
- c. On “pie shaped lots” and irregular shaped lots where other rules don’t apply – equivalent front footage shall be calculated by dividing the square footage of the lot by the general lot depth of the subdivision.
- d. On curves so configured as to give a lot the general appearance of a corner lot – the lot will be considered as a corner lot and equivalent front footage as well as side footage, if appropriate, determined on the basis of an irregular shaped lot.
- e. On a combination of rectangular and pie shaped and/or irregular shaped lot – equivalent front footage will be determined using straight front footage plus the remainder in accordance with applicable rules.

***Part 4. UTILITY MANAGEMENT AND CONTROL***

**304.01 Purpose.** The City of Pierz has the authority to proceed with collections of overdue electrical bills in the following manner:

Subd. 1 **Non-Payment.** Electrical service can be disconnected to property for nonpayment of electrical bills 60 days after billing date or violation of rules and regulations affecting utility service after notice and an opportunity for a hearing have been afforded the Customer affected. The notice shall be served by certified mail after the Customer has been delinquent 30 days and shall state that if full payment is not made by the date stated in the notice (not less than 15 days after the date on which notice is given) the electrical utility to the premises shall be shut off. Should a Customer dispute, as being unjustified, the Customer’s utility billing or subsequent notice of disconnection, the Customer must contact City Hall in writing within 10 days from the date of said billing or notice to arrange for a hearing. Said hearing shall be with the Electric Committee, whose decision in such hearings shall be a recommendation to the City Council, whose decision shall be the final.

Subd. 2. **Collection of Unpaid Bills.** The City has the right to collection of unpaid final bills. 30 days after the final bill has become delinquent, a notice will be given of delinquent account. Failure to respond within 30 days after notice, gives the City the right to pursue the MN Revenue Recapture program pursuant to the MN. Stat. 270A.07. The City will then intend to apply Customers tax refund to the debt until the debt is paid, cancelled, or the statute of limitations has expired. The Customer has the right to appeal the claim with the electric committee per request. Unpaid final account balances will not be the responsibility of the new customer.

The City also reserves the right on January 1<sup>st</sup> of the year past due and delinquent balances, can be certified to the County Auditor as taxes or assessment on the real estate, when allowed by law. The City also reserves the right to file suit in a civil action to collect such amounts as are delinquent and due against the Customer, and shall additionally collect all attorney's fees incurred by the City in filing the civil action. Such attorney's fees shall be fixed by order of the court. In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the Customer shall be liable for a late fee equal to 1.5% per month on all delinquent balances.

**304.02. Definition of Customer.** All residential electrical billings for all properties billed by the City of Pierz will be the responsibility of the Property Owners. This shall include but not be limited to multiple apartment rentals, apartments and duplexes in private homes, and mobile homes. The owner of said property may choose to have the renter be the Customer on the account. At that time, the owner forfeits their right to know the account status at any time. Notice will be given to the landlord that disconnection is set to occur, however, no further details will be provided.

**304.03. Electric Meter Deposits.** A deposit shall be charged to any renter, where the owner has not requested service, in the City of Pierz for an electric meter.

**304.04. Utility Rates.** Utility rates can be found on the most current fee schedule.

**304.05. Maintenance.** For the purpose of providing electrical service, the City of Pierz shall have the rights and privileges to constructing, placing, operating, maintaining, reconstructing, replacing, relocating, changing, rebuilding, upgrading, removing, inspecting, patrolling, and repairing the utility services when on public or private property.

**304.06. Property of Utility Services.** All poles, wires, cables, circuits, appurtenances, facilities, appliances, and equipment installed upon any electrical utility services shall at all times remain the property of the City of Pierz. The City will have full discretion of the use of these said properties.

More information can be found in the City's electric policy.

## ***Part 5. SOLID WASTE, RECYCLING, MANAGEMENT AND CONTROL***

### **305.01. General Provisions.**

Subd. 1. **Ordinance.** An Ordinance authorizing and providing for the City of Pierz solid waste and recycling management, establishing powers and duties in the collections therewith, establishing standards for and regulating the collection of solid waste and recyclables with the City of Pierz; embodying minimum standards and requirements established by the regulation of the Minnesota Pollution Control Agency and Morrison County; providing for enforcement of said requirements; requiring the separation, collection of recyclable materials and solid waste disposal; requiring the control of litter; and imposing penalties for failure to comply with these provisions; in the purpose and object to promote the health, welfare and safety of the public and protect resources of water, air and land pursuant to Minnesota Statutes, Chapters 115, 116 and 400, and the Morrison County Solid Waste Ordinance.

### **305.02 Definitions.**

- Subd. 1. **Household Hazardous Waste.** This includes household chemicals that have the potential to pollute the environment. The characteristics of the substances will be considered hazardous if the substance could : catch fire; become acidic or caustic; become toxic either long or short term from exposure; produce toxic leachate; become explosive or reactive; or develop the potential to initiate fires.
- Subd.2. **Industrial Waste.** This is waste that is generated by business or industry.
- Subd. 3. **Littering.** Defined as the placing of refuse, debris, waste or similar material, hereafter referred to as litter materials, on properties, roadways and right-of-ways other than that owned by the owner or carrier of said litter, either by deliberate act or by being dropped or blown from a vehicle while being transported due to failure to take proper safeguards to prevent the same.
- Subd. 4. **Putrescible Material or Garbage.** Solid waste which is capable of becoming rotten or which may reach foul state of decay or decomposition.
- Subd. 5. **Recyclables.** Those materials named by resolution and accepted by the recycling collection service to be separated from the solid waste stream.
- Subd. 6. **Recycling Collection Service.** Any commercial or business established to collect, transport, process, store, redeem or dispose of recyclables.
- Subd. 7. **Refuse.** Any putrescible and non-putrescible solid wastes, including but not limited to garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, market and industrial solid wastes, and sewage treatment wastes which are in a dry form.
- Subd. 8. **Residential Property.** All occupied single family residence, multiple residential unit apartments, mobile homes, mobile home parks and residential nursing homes.
- Subd. 9. **Solid Waste.** Garbage, refuse and other discarded solid materials, including solid waste materials resulting from industrial, commercial, agricultural operations, residential uses, and community activities, but does not include earthen fill, boulders, rock and other materials normally handled in construction operations, animal waste used as fertilizer, any permitted material disposed of as soil amendment, solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, wastewater effluent, dissolved materials, suspended solids in irrigation return flows, or other water pollutants.
- Subd. 10. **Solid Waste Collection Service.** Collection and transporting of solid waste generated in Pierz by a Morrison County licensed hauling service contracted by the City.
- Subd. 11. **Toxic or Hazardous Wastes.** Substances, whether in liquid, gaseous or solid form, which when collected, stored, transported, or disposed of, may be acutely toxic to humans, or other animals, or plant life, or be directly damaging to property including, but not limited to, pesticides, acids, caustics, pathological wastes, radioactive materials, flammable or explosive materials, and similar noxious substances.
- Subd. 12. **White Goods.** Such household items as stoves, refrigerators, washers, dryers, hot water heaters, furnaces, air conditioners, dishwashers, and freezers.

Subd. 13. **Yard Waste.** Leaves, trees (branches, twigs, stumps, roots, trucks), garden waste and grass clippings.

**305.03 Mandatory Collection of Recyclables and Garbage.** Mandatory collection and separation of recyclable material from garbage and refuse. Commencing May 1, 1991 the occupants of each residence and residential unit to include but not limited to: single family residence, multiple residence unit apartments, mobile homes, mobile home parks and residential nursing homes, shall participate in mandatory collection of garbage, refuse and those recyclable materials designated by Council Resolution to be included as a part of this Ordinance. Whether participating or not, residents will be required to pay a drive by fee, established in contract by the City of Pierz Council by Resolution.

Subd. 1. **Separated.** All recyclable material shall be separated from other garbage and refuse and handled in the manner described in the Resolution on mandatory recycling.

Subd. 2. **Non-Recyclable.** All non-recyclable material (i.e. mixed municipal solid waste) shall be grouped together and placed in one or more containers, the size, style and provision for which shall be described in the Resolution on Recycling and Solid Waste Management attached to this Ordinance, for the mandatory collection by a Morrison County permitted and licensed solid waste collection service. Non-recyclable material shall be distinguished as being identical to the Minnesota Pollution Control Agency's definition of solid waste refuse, putrescibles and garbage.

Subd. 3. **Levy.** The power to establish levy's and assessment fees to procure services for the City of Pierz to ensure the proper management of solid waste and recyclables through mandatory collection is authorized through this Ordinance.

- a. The City of Pierz will bill the residential property tenant. In the event that the tenant fails to pay for services the property owner will be assessed on the yearly property tax statement.
- b. A variable rate of household service fees will be described by Resolution

Subd. 4. **Contract.** The solid waste collection service contracted by the City of Pierz will be responsible for the collecting of solid waste and will transport the waste to the Greater Morrison Sanitary Landfill or to another Minnesota Pollution Control Agency permitted disposal site as directed by the Morrison County Solid Waste Management Plan.

Subd. 5. **Recycling.** The recycling material collection service contracted by the City of Pierz will be responsible for the collection of the recyclable material and for the disposal of the recyclable material.

Subd. 6. **Exclusions.** Mixed municipal solid waste excludes tires, oil, batteries, white goods, yard waste, household hazardous waste, infectious waste, hazardous waste and industrial waste, as defined by the Minnesota Pollution Control Agency (MPCA). It shall be illegal for any person to put the above items in containers used for collection of mixed municipal solid waste.

Subd. 7. **Materials Ownership.** All recyclable materials and solid waste placed for collection shall be owned by, and be the responsibility of, the occupants of the residential properties (residents) until they are collected by the Contractor. The recyclable materials become the property and responsibility of the contractor upon the Contractor's acceptance and collection of said items. Theft of this property will be considered a misdemeanor.

Subd. 8. **Responsible Party.** The City has the power to name a party responsible for enforcement of this Ordinance by Resolution.

Subd. 9. **Landlords.** Landlords in the City of Pierz who use their property primarily for rental purpose will be excluded from being required to participate in the mandatory solid waste collection involving a drive by fee. They will be required to participate in mandatory solid waste and recycling collection, but may do so independently.

**305.04 Littering.** In order to promote public safety, health, peace, and welfare by regulating the hauling and transportation of garbage and other waste material, the City Council of Pierz, Minnesota does ordain:

Subd. 1. **Law.** It shall be unlawful for anyone to litter within the city limits of Pierz and vehicles used to transport shall be loaded and moved in such a manner that said litter will not fall, leak or spill there from, and shall be covered to prevent the blowing of material. Where spillage does occur, the material shall be picked up immediately by the transporter and returned to the vehicle and/or container, and the area properly cleaned.

Subd. 2. **Transport.** All vehicles and container used for the collection and transportation of toxic or hazardous wastes shall be durable, enclosed and leak proof and shall be constructed, loaded, moved and unloaded in a safe manner and in compliance with the applicable regulations or Federal, State and local governments and their regulatory agencies.

**305.05 Violations.** Violations of the Ordinance shall be considered a misdemeanor.

**305.05 Minimum Standards.** Where the conditions imposed by any provision of this Ordinance are either more restrictive or less restrictive, than comparable conditions imposed by any other provision of this Ordinance or any other applicable law, ordinance, rule and regulation, the provision which establishes the higher standards for the promotion and protection of the public health, safety and general welfare shall prevail.

**305.06 Repeal.** The passage and publication of this Ordinance effectively repeals any and all prior ordinances pertaining to Solid Waste and Recycling.

#### ***Part 6. STORM WATER UTILITY MANAGEMENT AND CONTROL***

**306.01 Purpose.** The purpose of this ordinance is to provide a funding mechanism for the following services:

- a. The administration, installation, operation, maintenance, and replacement of public drainage systems.
- b. The administration, planning, implementation, and maintenance of storm water Best Management Practices (BMP's) to reduce the introduction of sediment and other pollutants into local water resources.
- c. Other education, engineering, inspection, monitoring, testing and enforcement activities are necessary to maintain compliance with local, state and federal storm water requirements.

**306.02 Establishment of a Storm Water Utility and Storm Water Utility District.** There is hereby established a public utility to be known as the Storm Water Utility for the City of Pierz. The Storm

Water utility shall be operated as a public utility pursuant to the City Code and applicable Minnesota Statutes. The revenues derived there from shall be subject to provisions of this Section and Minnesota Statutes Section 444.075. This Ordinance shall apply to the entire City of Pierz, which shall be considered the Storm Water Utility District. The District shall include the City of Pierz, as it presently exists and including accessions thereto through annexation. There is hereby created a Storm Water Utility Fund into which all charges, when collected, and all monies received from the sale of any related facilities or equipment or any byproducts shall be placed. These monies shall be used first to pay the normal, reasonable and current costs of operating and maintaining the facilities.

**306.03 Definitions.** Unless the context specifically indicates otherwise, the following terms, as used in this ordinance, shall have the meanings hereinafter designated.

Subd. 1. **Surface Area.** “Surface Area”, referred to herein as “SA”, shall be the area of the parcel in acres, subject to any standardization, adjustments or exceptions outlined in this ordinance.

Subd. 2. **Land Use.** The “Land Use” for a given parcel shall be the “tax classification” for that parcel on record at the Morrison County Recorder’s office, or other land use classification that is updated by the City Administrator.

Subd. 3. **Residential Equivalency Factor.** “Residential Equivalency Factor”, referred to herein as “REF”, is the ratio of the volume of runoff generated by the Surface Area of a particular land use to the Surface Area of a detached single-family land use. Runoff determination shall be used on a 2-inch rainfall and Natural Resources Conservation Services (NRCS) “Type B” soil conditions. The REF for various land uses within the City shall be as set forth in the table below.

<u>Land Use</u>	<u>REF</u>
Single-Family Residential	1.00
Multi-Family residential, Church property	2.72
Institutional: Schools	3.30
Industrial	3.30
Commercial	4.23
Public	4.23
Parks, Open Spaces, Cemeteries, Vacant	Exempt
Road Right-of-Way	Exempt
Lakes, Streams, Wetlands	Exempt
Agriculture, Undeveloped	Exempt

The REF for Land Uses not listed above shall be determined by the City Engineer based on probable hydrologic response

Subd. 4. **Unit Rate.** “Unit Rate”, referred to herein as “UR”, is the rate in dollars per acre to be charged per one (1) REF.

**306.04 Rates and Charges.**

Subd. 1. **Establishing Unit Rates:** The City Council shall from time to time, by resolution, establish the Unit Rate for each REF. The Unit Rate so established shall be on file with the City Administrator and shall be used to compute the charges for a given parcel of land based on the following formula:

$$\text{Storm Water Charges} = (\text{UR}) \times (\text{REF}) \times (\text{SA})$$

Subd. 2. **Standardized Charges.** The following rules shall apply for the purpose of simplifying and equalizing charges:

- a Standard SA of 0.45 shall be used for detached single-family homes.
- b Parcels subject to these standardized charges are not eligible for adjustment to charges or adjustment to area as set forth elsewhere herein.

Subd. 3. **Adjustments (Credits) to Charges.** A system of credits, which may reduce the stormwater charge that is imposed, as provided for above, is hereby established. A credit shall be granted for developed or undeveloped property pursuant to the rules provided for herein. The city engineer shall, pursuant to the rules provided for herein, grant a credit to those owners or non-owner users of properties, against which storm water charges are imposed, who employ structural or non-structural BMPs or other storm water management practices on-site that significantly reduce the quantity or improve the quality of storm water runoff from their property that enters the system. The city engineer shall propose rules providing guidelines for the awarding of credits. The Council shall approve, or approve as modified, these rules for the awarding of credits. The rules shall be consistent with this section. The City Council may by resolution adopt policies providing for the adjustment of charges for parcels or groups of parcels based upon hydrologic response substantially different from REF being used for the parcel or parcels. Such adjustment shall be made only after receiving the recommendation of the City Engineer, and shall not be made effective retroactively. If the adjustment would have the effect of changing the REF for all or substantially all the land uses in a particular classification, such adjustment shall be accomplished by amending the REF table in Subdivision 2 of this ordinance.

Subd. 4. **Adjustment to Area.** The total parcel area as shown in the City Assessor's records will be used to calculate the Surface Area for a given parcel, except that apparent errors in the recorded values may be subject to recalculation by the City. It is the responsibility of the owner or manager of any parcel to provide the City with necessary surveys, and other information as the City may reasonably request, to determine if a parcel, or portion of a parcel, qualifies for an exception or area adjustment. Requests for exceptions and/or area adjustments will be reviewed after receipt of all requested information. Exceptions and/or adjustments must be approved by the City Engineer, and shall become effective the beginning of the next billing cycle following approval.

Subd. 5. **Exceptions.** The following land uses are exempt from the Storm Water Utility Fees established herein: 1) public street right-of-way, 2) wetlands and public waters as defined by state law, 3) ponds designated and used exclusively for storm water retentions or treatment purposes up to the 100-year flood elevation, 4) undeveloped parcels, 5) publicly owned park lands, natural areas, and recreational fields, 6) railroad right of way, and 7) cemeteries.

Subd. 6. **Falsification of Information.** Willful failure to provide information that the City may reasonably request related to the use, development and area of a premise, or falsification of such information, shall constitute a violation of this Ordinance.

Subd. 7. **Estimated Charges.** If, for any reason, precise information related to the use, development or area of a premises is not available, then Storm Water Utility Charges for such premise shall be estimated, and billed, based upon information then available to the City.

Subd. 8. **Billing Method.** Storm Water Utility Fees will be computed and collected by the City together with other City utility fees, in accordance with the procedures set forth in this Code.

Subd. 9. **Delinquent Accounts.** Delinquent and unpaid storm water utility fees may be certified to the County Auditor for collection with real estate taxes during the following year or any year thereafter in the manner prescribed in this Code, pursuant to Minnesota Statute 444.075, Subdivision 3.

Subd. 10. **Appeal.** If a property owner believes that the fee charged a particular property is incorrect, she/he may request review and re-computation of said fee.

Subd. 11. **Availability Charges.** Any new (new or replacement of existing) construction within the City of Pierz will carry an availability charge for the development of storm water utilities. This applies to ALL new construction, including but not limited to single-family residential, multi-family residential, and commercial or industrial buildings. This availability charge will be applied to the building permit that is applied for for each type of construction. The fees will be as follows:

- a. \$500.00 One time charge per new single-family residential structure
- b. \$800.00 One time charge per new multi-family residential structure
- c. \$1200.00 One time charge per commercial or industrial structure (maximum of one charge per relative project and/or relative business, at the discretion of the City)

Subd. 12. **Minimum Charges.** All residential, commercial, multi-family, industrial, and institutional storm water utility fees will carry a \$3.50 minimum charge.

**306.05. Storm Water Extension.** Any residential, commercial, multi-family, industrial, institutional, or other form of development that may add to the current storm water flow will require a permit from the City of Pierz, as well as approved engineered plans for grading and run-off.

Subd. 1. **Permit.** Permits for additions or extensions may be acquired at City Hall. Permits will require engineered plans in order to be approved.

## **Part 7. STREETS AND SIDEWALKS**

### **307.01. Findings, Purpose, and Intent.**

Subd. 1. Purpose. 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.

Subd. 2. Intent. Accordingly, the city hereby enacts this new chapter of this code relating to right-of-way permits and administration. This chapter 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 chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

Subd. 3. Law. This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086, as they may be amended from time to time, (the “Act”) and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 - 7819.9950 where possible. To the extent any provision of this chapter 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 chapter 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.

**307.02. Election to Manage Public Right of Way.** Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant M.S. § 237.163 Subd. 2(b), as it may be amended from time to time, to manage rights-of-way within its jurisdiction.

**307.03. Definitions.** For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Abandoned Facility.” 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.” Any person who applies to the City for permission to excavate or obstruct a right-of-way, or to use City-owned infrastructure or right-of-way to provide wireless service or transporting telecommunications or other voice or data information, except for cable communications systems regulated under Minnesota Statutes Chapter 238.

“Attachment.” Any antenna, transceiver, amplifier, repeater, or other device or equipment of a user supported by, affixed to, contained in, or placed on or in a unit of City-owned infrastructure or on or in a wireless support structure.

“Commission.” The State Public Utilities Commission.

“Congested Right of Way.” 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 M.S. § 216D.04. Subd. 3, as it may be amended from time to time, over a continuous length in excess of 500 feet.

“Construction Performance Bond.” 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 M.S. § 15.73, Subd. 3, as it may be amended from time to time;
- 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.” 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.

“Cost.” Subject to Minnesota Rules 7819.1100, 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 one (1) to thirteen (13), set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

“Degradation Fee.” 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.” The Department of Public Works of the city.

“Department Inspector.” Any person authorized by the city to carry out inspections related to the provisions of this chapter.

“Delayed Penalty.” The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

“Emergency.” A condition that:

- a. Poses a danger to life or health or of a significant loss of property; or
- b. Requires immediate repair or replacement of facilities in order to restore service to a customer.

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

“Excavate.” To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

“Permit.” The permit which, pursuant to this chapter, 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.” Money paid to the city by an applicant to cover the costs of permit.

“Facility.” Any tangible asset in the right-of-way required to provide utility service.

“Five (5) Year Project Plan.” Shows projects adopted by the city for construction within the next five (5) years.

“High Density Corridor.” 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.” An excavation in the pavement, with the excavation having a length less than the width of the pavement.

“Local Representative.” 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 chapter.

“Management Costs.” 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 M.S. §§ 237.162 or 237.163, as they may be amended from time to time; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to these ordinances.

“Micro Wireless Facility.” A small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

“Obstruct.” 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.” The permit which, pursuant to this chapter, 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.” Money paid to the city by a permittee to cover the costs as provided in ordinances.

“Patch or Patching.” A method of pavement replacement that is temporary in nature. A patch consists of:

- a. The compaction of the subbase and aggregate base; and
- b. The replacement, in kind, of the existing pavement for a minimum of two (2) 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 (5) year project plan.

“Pavement.” 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 M.S. § 237.162, as it may be amended from time to time.

“Permittee.” Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

“Probation.” The status of a person that has not complied with the conditions of this chapter.

“Probationary Period.” One (1) year from the date that a person has been notified in writing that they have been put on probation.

“Property Owner Maintenance Permit.” The permit which, pursuant to this chapter, must be obtained by a non-registrant before a person may perform certain work in the right-of-way.

“Property Owner Maintenance Permit Fee.” Money paid to the city by an applicant to cover the costs as provided in ordinances.

“Public Right of Way.” 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.” Any person who:

- a. Has or seeks to have its equipment or facilities located in any right-of-way; or
- b. 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.” 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.” The amount of money paid to the city by a permittee to achieve the level of restoration according to plates one (1) to thirteen (13) of Minnesota Public Utilities Commission rules.

“Right of Way Permit.” Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

“Right of Way User.”

- a. A telecommunications right-of-way user as defined by M.S. § 237.162, Subd. 4, as it may be amended from time to time; or
- b. 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.
- c. A person who has been granted the right to install an Attachment in the public right-of-way.

“Service or Utility Service.”

- a. Those services provided by a public utility as defined in M.S. § 216B.02, Subds. 4 and 6, as it may be amended from time to time;
- b. Services of a telecommunications right-of-way user, including transporting of voice or data information;
- c. Services of a cable communications systems as defined in M.S. Chapter 238, as it may be amended from time to time;
- d. Natural gas or electric energy or telecommunications services provided by the city;
- e. Services provided by a cooperative electric association organized under M.S. Chapter 308A, as it may be amended from time to time; and
- f. Water, and sewer, including service laterals, steam, cooling or heating services.

“Service Lateral.” 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.

“Small Wireless Facility.” A wireless facility that meets the following qualifications: (1) each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that

has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet; and (2) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunication demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view, is in aggregate no more than 28 cubic feet.

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

“Temporary Surface.” 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 (2) year plan, in which case it is considered full restoration.

“Trench.” An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

“Telecommunicating Right of Way User.” 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 providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under M.S. Chapter 238, as it may be amended from time to time, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in M.S. § 216B.02, as it may be amended from time to time, a municipality, a municipal gas or power agency organized under M.S. Chapters 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under M.S. Chapter 308A, as it may be amended from time to time, are not telecommunications right-of-way users for purposes of this chapter, except to the extent these entities are offering wireless services.”

“Two Year Project Plan.” Projects adopted by the city for construction within the next two (2) years.

“Wireless Support Structure.” A new or existing structure in a public right of way designed to support or capable of supporting small wireless facilities.

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

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

**307.06. Registration and Right of Way Occupancy.**

Subd. 1. Registration. Each person who occupies or uses, or seeks to occupy or use, the right-of-way or places any equipment, facilities, attachments, or wireless support structures in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment,

must register with the city. Registration will consist of providing application information and paying a registration fee.

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

Subd. 3. Exceptions. Nothing 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 chapter. However, nothing herein relieves a person from complying with the provisions of the M.S. Chapter 216D, Gopher One Call Law, as it may be amended from time to time.

Subd. 2. Notice of changes. The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

### **307.08. Reporting Obligations.**

Subd. 1. Operations.

a. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. The plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:

1. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a “next-year project”); and
2. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five (5) years following the next calendar year (in this section, a “five (5) year project”).

b. The term “project” in this section shall include both next-year projects and five (5) year projects. By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

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

### **307.09. Permit Requirement.**

Subd. 1. Permit required. Except as otherwise provided in this code, no person may obstruct, excavate, or place any attachment, small wireless facility, or wireless support structure in any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.

Subd. 2. 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.

Subd. 3. 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.

Subd. 4. Small Wireless Facility Permit. Any person using, occupying or seeking to place a new Wireless Support Structure or collocate a Small Wireless Facility within the public right-of-way shall first obtain a Small Wireless Facility Permit, as well as any necessary excavation permits. In addition to the required information for registration, an applicant for a Small Wireless Facility Permit must also provide the City with the following information:

- a. Proposed location and permit term;
- b. Proof of consent if the application involves use of a Wireless Support Structure not owned by the City;
- c. Specifications for the Small Wireless Facility; and,
- d. A structural engineering analysis by a Minnesota registered professional engineer certifying that the structure proposed can reasonably support the proposed attachment considering the conditions of the right-of-way and the traffic, weather and other considers reasonably anticipated in the proposed location.

Subd. 5. Consolidated Small Wireless Facility Permit Application. An applicant may file a consolidated permit application to collocate up to fifteen (15) Small Wireless Facilities provided that all of the facilities are located within a two (2) mile radius, consist of substantially similar equipment, and are to be placed on substantially similar Wireless Support Structures. The City may approve a consolidated permit in whole or in part.

Subd. 6. Exempt Activities. The following activities shall not require a Small Wireless Facility Permit:

- a. Routine maintenance of a Small Wireless Facility;
- b. Replacement of an existing Small Wireless Facility with a new facility that is substantially similar or smaller in size, weight, height and wind or structural loading than the smaller wireless facility being replaced; or,
- c. Installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

Subd. 7. Property owner maintenance permit. A property owner maintenance permit is required by a non-registrant for work in the right-of-way that benefits a single property or a limited number of properties.

- a. A property owner maintenance permit shall be required for the following activities:
  1. Sidewalk installation or repair;

2. Curb and gutter installation and repair;
3. Curb cuts or driveways;
4. Water or sanitary sewer service lines;
5. Paving;
6. Irrigation systems;
7. Mailboxes;
8. Tree planting;
9. Other similar activities that place permanent improvements in the public right-of-way.

b. Property owner maintenance permit shall not be required for the following activities:

1. Landscaping;
2. Snow removal;
3. Movable street furnishings (such as, benches, planters, vending machines);
4. Other similar activities that do not place permanent improvements in the public right-of-way.

Subd. 8. Permit extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

Subd. 9. Delay penalty. In accordance with Minnesota Rule 7819.1000 subpart 3 and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

Subd. 10. Permit display. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

**307.10. 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 chapter;

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.

d. Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least one hundred ten percent (110%) of the amount owing.

e. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

### **307.11. Issuance of Permit.**

Subd. 1. Permit issuance. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

Subd. 2. Conditions. The city may condition permit approval upon compliance with the following:

- a. Any generally applicable health, safety and welfare regulations;
- b. When necessary to protect the right-of-way and its current use;
- c. Reasonable accommodation of the decorative standards for Wireless Support Structures or signs; and,
- d. Reasonable restocking, replacement or relocation requirements when a new Wireless Support Structure is placed in a public right of way.

### **307.12. Permit Fees, Rents, Maintenance Charges and Additional Costs**

Subd. 1. Excavation permit fee. The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

- a. The city management costs;
- b. Degradation costs, if applicable.

Subd. 2. Obstruction permit fee. The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

Subd. 3. Property owner maintenance permit fee. The city shall establish the property owner maintenance permit fee in an amount sufficient to recover the city management costs.

Subd. 4. Payment of permit fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

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

Subd. 6. Application to franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

Subd. 7. Small Wireless Facility permit fees, rent and maintenance charges. Small Wireless Facility permit fees, rent and maintenance charges for use of City owned infrastructure shall be established by the Council from time to time in accordance with the limits established under M.S. § 237.163, Subd. 6, as amended.

Subd. 8. Additional Costs. The Applicant is responsible for all costs as determined by the City to replace, enlarge, or upgrade City-owned infrastructure to accommodate the Applicant's proposed Attachment. Examples may include, but are not limited to, a new pole to support new wireless device, wire and conduit connections, service cabinet changes, etc. Any engineering work shall be provided by the Applicant.

### **307.13. Right of Way Patching and Restoration.**

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

Subd. 2. Patch and restoration. The 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.

Subd. 3. City restoration. If the city restores the right-of-way, the permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to the 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.

Subd. 4. Permittee restoration. If the permittee restores the right-of-way itself, it shall at the time of application for a permit post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

Subd. 5. Degradation fee in lieu of restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

Subd. 6. 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.

Subd. 7. Duty to correct defects. The permittee shall correct defects in patching or restoration performed by the permittee or its agents. The permittee, upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. The 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 constituting force majeure or days when work is prohibited as unseasonable or unreasonable.

Subd. 8. 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.

### **307.14. Other Obligations.**

Subd. 1. Compliance with other laws. Obtaining a right-of-way permit does not relieve the 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 M.S. §§ 216D.01 - 216D.09, as they may be amended from time to time, (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.

Subd. 2. Prohibited work. Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. Interference with right-of-way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. 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.

Subd. 4. 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 M.S. Chapter 216D, and it may be amended from time to time and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Director.

**307.15. Denial of Permit.** The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that:

- (1) the denial is necessary to protect health, safety, and welfare;
- (2) the denial is necessary to protect the right-of-way and its current use;
- (3) if approval would impair the city's ability to operate or maintain city-owned infrastructure in a reasonable manner; or,
- (4) if there is insufficient capacity or place of the Attachment would violate the National Electric Safety Code or the city's standard design criteria and the city's infrastructure cannot reasonably be modified or enlarged at the cost of the Applicant.

**307.16. 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 M.S. §§ 237.162 and 237.163, as they may be amended from time to time. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements.

**307.17. Inspection.**

Subd. 1. 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.

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

Subd. 3. Authority of Director.

- a. The Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

b. The Director may issue an order to the permittee 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 Director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit.

### **307.18. Work Done without a Permit.**

Subd. 1. Emergency situations.

a. Each registrant shall immediately notify the Director 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 chapter for the actions it took in response to the emergency.

b. If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

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

**307.19. 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.

### **307.20. Revocation of Permits.**

Subd. 1. 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:

- a. The violation of any material provision of the right-of-way permit;
- b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- c. Any material misrepresentation of fact in the application for a right-of-way permit;

- d. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued.

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

Subd. 3. Response to notice of breach. Within twenty-four (24) hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to timely submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

Subd. 4. Cause for probation. From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

Subd. 5. Automatic revocation. If a permittee, while on probation, commits a breach as outlined above, the permittee's permit will automatically be revoked and the permittee will not be allowed further permits for one (1) full year, except for emergency repairs.

Subd. 6. 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.

### **307.21. Mapping Data.**

Subd. 1. 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 Director accurate maps and drawings certifying the "as-built" location of all equipment installed, owed, and maintained by the permittee. The 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 Director. Failure to provide maps and drawings pursuant to this division shall be grounds for revoking the permit holder's registration.

Subd. 2. 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 Director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the Director of the installed service lateral locations. Compliance with this division and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any city approval necessary for payments to contractors working on a public improvement project including those under M.S. Chapter 429, as it may be amended from time to time, and city approval of performance under development agreements, or other subdivision or site plan approval under M.S. Chapter 462, as it may be amended from time to time. The Director 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.

### **307.22. Location of Facilities.**

Subd. 1. Compliance. 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

Subd. 2. Corridors. The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that 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 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.

Subd. 3. Nuisance. One (1) year after the passage of this chapter, 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.

Subd. 4. 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.

**307.23. Pre-Excavation Location.** In addition to complying with the requirements of M.S. §§ 216D.01 - 216D.09, as they may be amended from time to time, ("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.

**307.24. Damage to the 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.

**307.25. 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.

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

**307.27. Appeal.** A right-of-way user that has been denied registration; has been denied a permit; has had a permit revoked; believes that the fees imposed are not in conformity with M.S. § 237.163, as it may be amended from time to time; or disputes a determination of the Director of this chapter 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.

**307.28. Sidewalks.** The City shall keep the public sidewalk, in the right of way, in proper repair. All repairs/replacement are to be conducted and initiated by the City of Pierz.

**307.29. Inspection of Sidewalks.** The Public Works Director or any other official designated by him or her shall periodically inspect the public sidewalks within the city to determine that they are kept in proper repair and safe for pedestrians. If he or she finds that a sidewalk abutting on private property is unsafe and in need of repairs, he or she shall cause a notice to be served on the record owner of the property and the occupant either by registered or certified mail or by personal service. This notice shall state how much sidewalk will be replaced and the total cost of the project. Upon the contractor completing the work, the property owner will be invoiced from the City of Pierz for the property owner's share of the repair/replacement cost. . If the invoice is not paid by the owner, it will be made a special assessment against the property concerned.

**307.30. Sidewalk Policy.** The City Council of the City of Pierz have adopted a Sidewalk Policy and should be referenced at all times when pertaining to sidewalks in the right of way.

**307.31. Supervision of Repairs.** The Council shall require inspection and supervision of all work done whether by order of the Council or pursuant to permits. All work not done according to permit specifications shall be corrected or removed at the owner's expense and all unsatisfactory work shall be stopped by the inspector when discovered.

**307.32. Snow, Ice, and Rubbish Removal.** All snow, ice, dirt and rubbish remaining on a public sidewalk more than twelve (12) hours after its deposit thereon is a public nuisance. The owner and the occupant of any property adjacent to a public sidewalk shall use due diligence to keep the walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt or rubbish to remain on the sidewalk longer than twelve (12) hours after its deposit thereon.

**307.33. Removal of Snow and the likes by the City.** The Public Works Director shall cause to be removed from all public sidewalks all snow, ice, dirt and rubbish beginning twelve (12) hours after such matter has been deposited thereon or after the snow has ceased to fall. The Public Works Director shall keep a record showing the cost of the removal adjacent to each separate lot and parcel and shall report the information to the Council.

**307.34. Personal Liability.** The owner of property on which or adjacent to which work has been performed under this subchapter shall be personally liable for the cost of the work pursuant to this code.

**307.35. Assessment.** Unpaid charges may be collected pursuant to this code.

**307.36. Unloading on Street or Sidewalk.** No person shall unload any heavy material in the streets of the city by throwing or letting the material fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.

**307.37. Street and Sidewalk Obstruction.** No person shall obstruct any street, alley, sidewalk, or other public way within the city by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

**307.38. Materials on Street or Sidewalk.** No person shall encumber any street or sidewalk. No owner, occupant, or person having the care of any building or lot of land, bordering on any street or sidewalk, shall permit it to be encumbered with barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof.

## ***Part 8. PARKS.***

**308.01. Definitions.** For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

Subd. 1. **PARKS.** A park, reservation, playground, beach, cemetery or other area in the city owned, leased or used, wholly or in part, by the city for those purposes or which is designated by the City Council as a **PARK**.

**308.02. Regulations.** The following regulations shall apply to all city parks:

Subd. 1. No person shall drive or operate a motor vehicle in any park except on roads or designated parking areas or such other areas as the Police Chief shall designate, and no person shall operate a motor vehicle within a park at a speed in excess of fifteen (15) miles per hour.

Subd. 2. No person shall park any motor vehicle in any place in public parks between the hours of 10:00 p.m. and one (1) hour before sunrise. During the hours when parking is permitted, the vehicles

must be parked only in designated parking areas. Any unoccupied or abandoned vehicle found in violation of park regulations may be removed and impounded by any police officer at the owner's expense.

Subd. 3. No fires shall be lighted or made in any park except in places provided for those purposes, and except for fires lighted by city employees engaged in cleaning the area.

Subd. 4. No person shall discharge any firearm in any park without the written permission of the Police Chief or discharge any fireworks in any park without the written permission of the Fire Chief.

Subd. 5. No person shall scatter about or litter the grounds of any park with any form of waste material.

Subd. 6. No person shall commit any nuisance or any offense against decency or public morals in a public park.

Subd. 7. No person shall possess, display, consume or use intoxicating liquors in any park. No person shall possess, display, consume or use nonintoxicating malt liquors in any park except in designated picnic areas.

Subd. 8. No person shall sell any article whatsoever in any park unless he or she has a permit, lease or concession granted by the city.

Subd. 9. No person shall play any game of baseball or football or other game in any park so close to any playground or picnic area so as to endanger or otherwise disturb children using any playground or persons using any picnic area.

Subd. 10. No dogs shall be allowed in any park except on a leash and under the control of its owner.

Subd. 11. All parks shall close at 10:00 p.m. each day, and no person shall remain in any park after that time, unless written permission shall have been given by the Police Chief for parties to remain longer therein.

Subd. 12. No person shall write upon, mark or deface, in any manner, or use in any improper way any property or thing pertaining to or in the parks.

Subd. 13. No person shall break, cut, mutilate, injure, remove or carry away any tree, plant, flower, shrub, rock, soil, sand, fence, bench or any other property in any park.

**308.03. Violation.** Any person violating any provision of this subchapter shall be guilty of a misdemeanor.

