

Section 310 - Use of Public Property

310.01 Definitions. The following terms, phrases, words and their derivatives shall have the meaning given them in this subsection. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

310.01.1. “City” shall mean the City of Hermantown, Minnesota.

310.01.2. “City Attorney” shall mean that person designated by the City Council as the City Attorney.

310.01.3. “City Council” shall mean the City Council of the City of Hermantown.

310.01.4. “City Engineer” shall mean that person designated by the City Council as the City Engineer.

310.01.5. “City Superintendent” shall mean that person designated by the City Council as the City Street Superintendent.

310.01.6. “Excavating contractor” shall mean any person who shall be issued an excavating contractor license pursuant to this section.

310.01.7. “Excavating contractor license” shall mean the annual license required to be obtained by an excavating contractor under this section.

310.01.8. “Excavating permit” shall mean the permit required to be obtained by a licensed excavating contractor under this section before the excavating contractor performs any work in any City street.

310.01.9. "Person" shall mean any corporation, partnership, proprietorship or any natural person.

310.01.10. "Public property" shall mean any real property owned by the City or any other governmental unit, other than a street.

310.01.11. "Public utility" shall mean Minnesota Power, Northern Minnesota Utilities, Triax and Northwestern Bell Telephone.

310.01.12. "Street" shall mean the surface of and the space above and below any public street, road, cartway, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by the City.

310.02 Excavating Contractor License and Excavating Permits Required.

No person shall make any excavation for any purpose or perform any other construction work in any street or on any public property without first having applied for and obtained an excavating contractor license and an excavating

permit covering the work to be performed. Notwithstanding anything to the contrary contained in this section, no excavating contractor's license or permit shall be required for any work performed on behalf of the City by any employee of the City; any work performed by any person for the purpose of completing a contract awarded by the City; or work performed by or on behalf of any public utility, provided that the public utility shall have complied with all other applicable ordinances, regulations and franchise or other agreements between the public utility and the City.

310.03 Fees.

310.03.1 Excavating Contractor License. The fee for an excavating contractor license shall be set by the Fee Schedule, as it may be amended from time to time. License fees shall not be prorated for fractions of a year.

310.03.2 Excavating Permit Fee. The fee for an excavating permit shall be set by the Fee Schedule, as it may be amended from time to time for each excavating permit issued by the City Superintendent under this section.

310.03.3 City Engineer Fee. Where any work done pursuant to an excavating permit requires an inspection from the City Engineer, the excavating contractor, as a condition to the issuance of an excavating permit, shall agree to pay the cost incurred by the City in connection with the City Engineer inspecting the work. The City Superintendent may require, as a condition to issuing an excavating permit to an excavating contractor in such situation, that the excavating contractor deposit an amount of cash equal to an estimate made by the City Engineer of the costs of inspecting the work.

(Am. Ord. 2008-11, passed 12-15-08)

310.04 Excavating Contractor License.

310.04.1 Application. Any person desiring to obtain an excavating contractor's license shall make written application to the City Superintendent for the license on a form provided by the City Superintendent.

310.04.2 Procedure. Upon presentation to the City Superintendent of an application for an excavating contractor license, the City Superintendent

shall issue the excavating contractor license to the applicant upon the applicant filing with the City Superintendent the bond and insurance certificates required under this section in form and substance acceptable to the City Attorney, and paying the required license fee.

310.04.3 Excavations Permitted. An excavating contractor license shall entitle the holder thereof to engage in the business of making excavations or performing other work in any street or public property, subject to the provisions of this section and subject to the provisions of other applicable ordinances, laws, rules and regulations.

310.04.4 Excavating Permit Required. The holder of an excavating contractor license shall be required to obtain an excavating permit for any excavation or work performed in any street or public property, in addition to the excavating contractor license.

310.04.5 Bond Required.

310.04.5.1. With each application for an excavating contractor license, the applicant shall file with the City Superintendent a surety bond in the amount of \$5,000 in favor of the City. The required surety bond shall be:

310.04.5.1.1. With good and sufficient surety by a surety company authorized to do business in the State of Minnesota;

310.04.5.1.2. Satisfactory to the City Attorney in form and substance;

310.04.5.1.3. Conditioned that the applicant shall faithfully comply with all the terms and conditions of this section; all other applicable rules, regulations and requirements of the City or any other governmental body;

310.04.5.1.4. Conditioned that the applicant shall secure and hold the City and its officers harmless against any and all claims, judgments or other costs arising out of any work performed pursuant to the excavating contractor license or any excavating permit issued to the applicant pursuant to this section or for which the City, the City Council or any City officer or employee may be made liable by reason of any accident or injury to persons or property through the fault of the applicant;

310.04.5.1.5. Conditioned that the applicant in all material, equipment and appliances furnished by him or her, and in all work done or performed by him or her, or all work to be performed, which shall be subject to the provision of this section, shall fully conform to the revisions of this section.

310.04.5.2. With each application for an excavating contractor license, the applicant shall file with the City Superintendent a certificate of an insurance company duly authorized by the laws of

the state to transact business as an insurance company, duly certifying to the fact that the applicant shall have in force with the company a comprehensive general liability policy, including completed operations, products liability coverage and collapse and underground property damage coverage to cover applicant's operations under the excavating contractor license. If any excavating permit is issued that authorizes blasting, the insurance policy shall have explosion, collapse and underground property damage coverage in addition to the coverage stated above. All policies shall have a combined single limit of coverage of at least the same as the statutory tort liability limits of the city or \$1,000,000 for any one incident and shall name the City of Hermantown as an additional insured.

310.04.5.3. The certificates of insurance shall be approved as to form, correctiveness and validity by the City Attorney.

310.04.6 Cancellation Requirements of Bond; Insurance.

310.04.6.1. The insurance certificates required shall contain the following provision: "The above-described policies shall not be canceled, materially altered or not renewed unless 30 days written notice of the cancellation, material alteration or non-renewal shall be given to the City."

310.04.6.2. The bond required by this section shall be non-cancellable and shall be for a term extending one year beyond the expiration date of the excavating contractor license for which the bond was filed.

310.04.7 Expiration of Licenses. All excavating contractor licenses issued pursuant to this section shall expire on the 31st day of December of the year for which it was issued.

310.04.8 Use of Licenses; Subletting.

310.04.8.1. No person licensed under this section who has been issued an excavating permit for a particular job shall sublet or assign any work contemplated by the excavating permit to any person not licensed under this section, and any such attempted subletting or assignment shall be void.

310.04.8.2. In the event the person holding any excavating permit sublets any portion of the work to be done under the excavating permit to any other person holding an excavating contractor license, the person holding the excavating permit shall remain responsible for the completion of all work under the excavating permit in accordance with the provisions of this section, and he or she and the person so doing the work shall be subject to prosecution for the violation of any provision of this section.

310.04.9 Maintenance of Bond and Insurance. If any person to whom an excavating contractor license has been issued pursuant to this section

fails to maintain in full force and effect the bond and insurance required by this section, the excavating contractor license issued to the person shall become void immediately upon the bond or insurance ceasing to be in full force and effect.

310.04.10 Fraud or Error in Issuance. Any excavating contractor license issued shall be null and void if the license was obtained through fraud or error.

310.05 Excavating Permit.

310.05.1 Permits. Any person holding an excavating contractor license issued pursuant to this section shall obtain all required permits from the City and other appropriate government units before commencing any work on any street or public property.

310.05.2 Procedure for Excavating Permit.

310.05.2.1 Application. Any person holding an excavating contractor license who desires to obtain an excavating permit shall make written application to the City Superintendent for the permit on a form provided for such purpose by the City Superintendent.

310.05.2.2 Procedure. Upon presentation to the City Superintendent of an application for an excavating permit, the City Superintendent shall issue the permit to the applicant if the applicant has an excavating contractor license in full force and effect, pays the required permit fee and if the work to be done pursuant to the permit complies with all applicable codes, rules and regulations.

310.05.2.3 Excavation Permit. An excavating permit shall entitle the holder thereof to perform the work described on the permit.

310.05.2.4 Other Requirements; Card with Permit Number; Posting.

310.05.2.4.1. The City Superintendent, before granting an excavating permit, may require the applicant to furnish a drawing of the area proposed to be excavated, occupied or obstructed in any street or public property and an estimate of the length of time of the excavation, occupation or obstruction.

310.05.2.4.2. The City Superintendent, at the time of granting an excavating permit, shall assign to the applicant a number, and shall give to the applicant a card or board upon which shall be plainly written or printed, in letters at least one inch high, the following: "Street Department Permit No. _____ Expires _____." In the first blank space shall be inserted the number of the permit. After the word "Expires," the time when the permit expires shall be stated. Any person receiving the permit shall keep posted in a conspicuous place at the excavation or obstruction the card or board. No

person or his or her agents shall misstate upon any such board or card the number of the permit or the time when the permit expires.

310.05.2.5 Additional Authorization Required for Work on Water and Sewer Mains. If the application for an excavating permit under this section is for excavations to be used for the purpose of making water or sewer connections to City water or sewer mains, the City Superintendent shall not issue the excavating permit unless the applicant shall first make application to the Hermantown Utilities Commission for the making of the connection. All work done and materials used in installing the connections shall conform to the rules, regulations and specifications of the Hermantown Utilities Commission in force as of the date of the commencement of the work.

310.05.2.6 Blasting. If blasting is to be performed in conjunction with any excavating or work performed pursuant to an excavating permit issued pursuant to this section, the excavating permit shall state on the face of the permit that the permit authorizes blasting

provided other required permits have been obtained from all other appropriate governmental units and agencies.

310.06 Regulations for Public Safety.

310.06.1 Traffic Control Requirements. Before commencing any excavation, the person to whom an excavating permit for a project was issued shall set up an effective system to protect vehicular traffic and pedestrians from the excavation, to safely guide vehicular traffic and pedestrians through the construction area or detour them where necessary as determined by the City Superintendent and the Chief of Police, and to provide for the public safety in general. For this purpose, the person to whom an excavating permit was issued for the project shall utilize signs, flags, flashers, barricades, flag persons and such other methods or devices as shall be deemed necessary by the City Superintendent and the Chief of Police to adequately warn the public of the hazards involved, to allow adequate time for vehicle drivers to react and make the necessary adjustment in speed or course, and to efficiently conduct traffic through or around the construction area.

310.06.2 Detours. Whenever possible, excavations shall be made in such a manner as to allow traffic to pass through the construction area. If it is not practicable to allow traffic to pass, a suitable detour shall be established on a route approved by the City Superintendent and the Chief of Police. Notice of any such detour shall be given to the Chief of the Hermantown Volunteer Fire Department, the City Superintendent and the Chief of Police before the detour shall be established.

310.06.3 Blasting. If blasting is to be performed in conjunction with any excavating or work performed pursuant to an excavating permit issued pursuant to this section, the excavating permit shall state on the face of the permit that the permit authorizes blasting provided other required permits have been obtained from all other appropriate governmental units and agencies.

310.07 Regulations for Protection of Existing Improvements.

310.07.1 Existing Improvements Defined. The person to whom an excavating permit for a project was issued shall be responsible for the

protection, repair or replacement of all improvements which exist within the limits of the construction area. For the purposes of this section, the term "improvements" shall include, but shall not be limited to, the following: water lines, sanitary and storm sewer lines, street lighting, traffic signal systems, traffic signs, topsoil, sod, trees, public utility lines and systems and street improvements, including subgrade, base, pavement or other surfacing, curbs, gutters, medians, sidewalks and all of the various appurtenances of these improvements.

310.07.2 Permit Holder's Responsibility as to Improvements. Before commencing any excavation, the person to whom an excavating permit was issued shall determine what improvements exist within the limits of the construction area and shall make detailed arrangements with the owners thereof for the protection or replacement of the improvements.

310.07.3 Installation of Underground Pipes. Installation of pipes under any street shall be done by jacking or boring. When installing pipes by jacking or boring, extreme care shall be exercised to assure that the soil surrounding the pipe remains in place so as to prevent the formation of a

void which shall result in the settlement or cave-in of the material surrounding the pipe.

310.07.4 Protection of Improved Streets. Where an excavation shall be made in an improved street, which shall be hereby defined as any bituminous-surfaced street with curbs or curbs and gutters, any bituminous-surfaced street having three inches or more of bituminous surfacing with or without curbs or gutters, or any street having a concrete pavement with or without curbs or gutters, the excavation shall be cribbed with continuous sheeting to the full depth of the excavation to a point at least five feet beyond the curb or beyond the edge of the surfacing or pavement. Provided, however, that, in the event it shall be determined to be impossible or unnecessary to utilize sheeting because of unusual soil conditions, any alternate method of protecting the improvements shall meet the approval of the City Engineer.

310.07.5 Protection of Non-excavated Roadway Surfaces. The excavation of materials from any surfaced roadway shall be accomplished either by hand or by the use of equipment. Where any piece of equipment

is used, adequate provision shall be employed to assure that those portions of the street surface which shall not be removed shall not be damaged. This shall be accomplished with the use of protective planking, pads or other method meeting the approval of the City Superintendent. In the event any portion is damaged as a result of the operations of the person to whom the permit was issued for the project, the person shall be responsible for the repair or replacement thereof in accordance with the directions of the City Superintendent.

310.07.6 Excavated Materials. When making excavations, the various materials excavated shall be piled separately. All concrete and bituminous materials, any soils which cannot be properly compacted, and all other deleterious materials shall be removed from the construction site.

310.07.7 Backfill; Generally. All materials used for backfilling shall be compatible so as to assure stability of the backfilled area. No snow or ice shall be permitted in the backfill. No frozen lumps and no stones exceeding three inches in greatest dimension shall be permitted within 12 inches of any pipe, conduit or cable, or within 18 inches of the street surfaces. No

stones, frozen lumps and no items exceeding six inches in greatest dimension shall be permitted in the backfill.

310.07.8 Backfill; Near Roadway Surface. All backfill material shall comply with all applicable Minnesota Highway Department specifications and such other specifications as may be determined by the City Engineer.

310.07.9 Backfill; Layers and Compacting. All backfill shall be placed in accordance with all applicable Minnesota Highway Department specifications and such other specifications as may be determined by the City Engineer.

310.08 Restoration of Right-of-Way.

310.08.1 Restoration of Improvements. Following completion of the excavation and backfill operations, the person to whom the excavating permit was issued for the project shall be responsible for restoring all improvements which were damaged or destroyed by his or her operations to a condition equal to or better than their original condition.

310.08.2 Restoration of Road Surface or Shoulder, Unpaved. Any unpaved road surface or shoulder shall be restored in accordance with all applicable Minnesota Highway Department specifications and such other specifications as may be determined by the City Engineer.

310.08.3 Restoration of Paved Surface, Curbs, Gutters, Sidewalks. All replacement concrete or bituminous street surfacing, concrete curbs or curbs and gutters, sidewalks, and the like, shall be constructed in accordance with the current standards for the construction as used by the City on its construction projects and the special requirements established by the City Engineer.

310.08.4 Restoration of Topsoil and Sod. All topsoil and sod removed by the person to whom the excavating permit for the work was issued shall be replaced. The minimum depth of topsoil used on any boulevard, shoulder, ditch or slope within the right-of-way shall be five inches. Where sod is required, it shall be the contractor's responsibility to maintain the sod for a period of 60 days (that is, 60 "growing days") following placement thereof.

310.08.5 Removal of Surplus Materials. All surplus materials or debris shall be removed from the right-of-way immediately following completion of the work permitted by the excavating permit.

310.08.6 Settlement of Excavation. If settlement occurs at the site of the excavation, or adjacent thereto, at any time within one year from the date of final completion of the original restoration, the person to whom the excavating permit for the work was issued shall be responsible for repairing the failure in accordance with the directions of the City Superintendent. In addition, the person to whom the excavating permit for the work was issued shall be responsible for reimbursing the City for any expenses incurred in the placement of warning devices and barricades for the protection of traffic.

310.09 City to Have Right to Complete Work.

310.09.1 Expeditious Completion of Work. All work covered under this section shall be accomplished expeditiously until completion in order to avoid unnecessary inconvenience to traffic, to pedestrians, and for the protection of other public interests.

310.09.2 Estimate of Time to Complete Work. The person to whom an excavating permit was issued shall state, in the person's application for permit, the time which the person estimates shall be required to complete the work. Upon review of the application, the City Superintendent shall have the right to amend the time requested and issue the permit so as to allow the minimum amount of time which he or she determines shall reasonably be required for the work. The time within which the work authorized by the excavating permit shall be stated on the face of the permit.

310.09.3 Extension of Time for Completion. The time allowed for completion may be extended by the City Superintendent as necessary if it shall be found that it is not reasonably possible to complete the work within the time allowed.

310.09.4 City Notice and Completion. In the event that the work is not being accomplished expeditiously, or if work on an excavation is ceased or abandoned without due cause, the City Superintendent may, if this failure creates a hazard to the public safety, without written notice to the person

to whom the excavating permit was issued for the work of the City's intention to do so, have the City correct the work, backfill the excavation and effect all restoration as shall be required by this section. If the failure does not create a hazard to the public safety, the City Superintendent may, after ten days written notice to the person to whom the excavating permit was issued for the week, the Superintendent may have the city correct the work, backfill the excavation and effect all restoration as shall be required by this section.

310.09.5 City Restoration of Settlement. In the event settlement of an excavation occurs within one year of the date of final restoration and the person to whom the excavating permit was issued for the work shall be notified of the settlement, the person shall accomplish the required restoration or repair within a time limit specified by the City Superintendent. Thereafter, if the work has not been accomplished, the City Superintendent may have the City accomplish the work required.

310.09.6 City Restoration; Costs. In the event the City accomplishes work in accordance with either 310.09.4 or 310.09.5, the entire cost of the

work, including any materials used therefor, shall be the liability of the person to whom the excavating permit was issued for the work. Thereafter, if payment therefor is not made within 30 days of the billing date, no additional excavating permits shall be issued to the person until payment has been made to the City by the person or by the person's bonding company.

310.10 Regulations Regarding Installation of Water and Sewer Services.

310.10.1 Plumbing Code Applicable. All installations of water and/or sanitary sewer service connections shall be accomplished in accordance with all applicable plumbing regulations regarding size, alignment, depth, grade, and the like, of the service connections.

310.10.2 Taps by City; Fees. All taps to water mains shall be made by the City. No tap to a City water main shall be made until all of the requirements of this section and all other applicable ordinances and regulations shall have been met. A schedule of charges for the making of the taps shall be established by the Hermantown Utility Commission.

Payment for the making of the taps shall be made by the person to whom an excavating permit shall be issued at the time the person secures an excavating permit unless payment therefor has already been made by the homeowner.

310.10.3 Sanitary Sewer Service Connections. All sanitary sewer service connections shall be made to existing ways, tees or risers where the connection points shall be available at a reasonably convenient location. No connection to a City sewer main shall be made until all of the requirements of this section and all other applicable ordinances and regulations shall have been met and the City Superintendent is present to observe the connection. Where no such connection points exist at a reasonably convenient location, the person to whom an excavating permit is issued shall make the necessary tap utilizing a mechanical tapping machine which saws the required opening in the main sewer pipe in such a manner as to accomplish a smooth cut without cracking the pipe, and the person shall then make the service connection utilizing a pipe saddle. The pipe saddle shall be designed for use with the size of main sewer pipe which is being tapped and shall be of a design which shall prohibit any protrusion

beyond the inside wall of the main sewer. Pipe saddles used on vitrified clay pipe or polyvinyl chloride pipe sewers shall be cemented to the main sewers utilizing an epoxy cement or other water-tight cementing agent approved by the City Superintendent. Pipe saddles on types of sewer pipe shall be attached in a manner which accomplishes a rigid and water-tight connection meeting the approval of the City Superintendent. The pipe saddle used on any particular installation shall be designed specifically for use with the same type of gaskets as are used on the balance of the sewer service pipe.

310.10.4 Depth of Water and Sewer Connections. All water service and sewer service connections shall be installed with a minimum of seven feet of earth cover within the street right-of-way, unless the depth of the existing main lines shall make it impossible to install the service connections at such depth. Where it is impossible to provide seven feet of cover at any point within the street right-of-way, the service connections shall be protected by insulation in a manner approved by the City Superintendent.

310.10.5 Inspection Before Excavation Covered. Installation of water and or sanitary sewer service lines shall not be backfilled until the City Superintendent has inspected the installation and connections to the City mains.

310.11 Suspension and Revocation of Licenses. Upon notice to the City Council that a person holding an excavating contractor license has been convicted of a violation of this section, and that the conviction has become final, the City Council may suspend the person's excavating contractor license for such period of time as the City Council may deem proper under the circumstances, or the City Council may revoke said excavating contractor license and order that no new excavating contractor license shall be granted to the person for a period not to exceed six months from the date that the action is ordered by the Council.

310.12 Notice of Hearing upon Revocation. Before the City Council shall revoke any excavating contractor licenser, the person holding the excavating contractor license shall be entitled to a hearing by the City Council upon ten days written notice to the person holding the excavating contractor license by regular

mail addressed to that person's place of business, or by serving notice upon the person holding the excavating contractor license in the manner prescribed by statute for serving summons in the district court.

310.13 Hold Harmless Agreement. The person holding any excavating contractor license or excavating permit shall defend, indemnify and secure and hold the City and its officers harmless against any and all claims, judgments or other costs arising from the excavation and other work covered by an excavating permit issued to the person to whom the permit was issued or for which the City, the City Council or any City officer or employee may be made liable by reason of any accident or injury to persons or property through the fault of the person to whom the excavating permit was issued for the work giving rise to the injury or damage either in not properly guarding the excavation or for any other injury resulting from the negligence of the person to whom the excavating permit was issued. In the event of any suit or claim against the City by reason of the negligence or default of the person to whom the excavating permit was issued for the work giving rise to the injury or damage, upon the City giving written notice to the person to whom the excavating permit was issued for the work giving rise

to the injury or damage of the suit or claim, any final judgment against the City requiring it to pay for the damage shall be conclusive upon the person to whom the excavating permit was issued for the work giving rise to the injury or damage.

310.14 City Liability. This section shall not be construed as imposing upon the City or any official or employee of the City of any liability or responsibility for damages to any person imposed by the performance of any work for which an excavating permit shall be issued under this section; nor shall the City or any official or employee of the City be deemed to have assumed any such liability or responsibility by reason of any inspections authorized under this section or the issuance of any licenses or permits under this section.