

CHAPTER VIII

STREETS, SIDEWALKS, ALLEYS

Section 800 – Excavations

Section 800:00. Definitions. For the purposes of this section, the following terms, phrases, words and their derivations shall have the meaning given herein. 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 word “shall” is always mandatory and not merely directory.

Subd. 1. “Applicant” is any person making written application to the city for an excavation permit hereunder.

Subd. 2. “Excavation work” is all work described in Section 800:02 of this ordinance for which an excavation permit is required.

Subd. 3. “Permittee” is any person who has been granted and has in full force and effect an excavation permit issued hereunder.

Subd. 4. “Person” is any individual, firm, partnership, association or organization of any kind.

Subd. 5. “Public utility” is any investor-owned utility, cooperative or governmental body or agency providing gas, electric, telephone, water or steam service to the public.

Subd. 6. “Street” is any street, highway, sidewalk, alley, avenue, or other public way or grounds or public easements in the city of Foley.

Section 800:02. Excavation Permit. Except as hereinafter provided, it shall be unlawful for any person to dig up, break, excavate, tunnel, drill, bore, undermine or in any manner break up any street or to make or cause to be made any excavation in or under the surface of any street, or to place, deposit or leave upon any street any earth or excavated material obstructing or tending to interfere with the free use of the street unless such person shall first have obtained an excavation permit therefor from the city as herein provided. Erection of utility poles or anchors by or on behalf of a public utility shall not be considered an excavation hereunder and no permit hereunder is required for such construction.

Section 800:04. Application for Permit. No excavation permit shall be issued unless a written application for the issuance of an excavation permit, on forms provided for that purpose, is submitted to the clerk. The written application shall state the name and address of

the applicant, the nature, location and purpose of the excavation, the date of commencement and the estimated date of completion of the excavation, and other data as may be reasonably required by the clerk. If required by the clerk, the application shall be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to said excavation and of the proposed excavated surfaces, the location of the excavation work, and such other information as may be prescribed by the clerk.

Section 800:06. Permit Fee. The permit fee shall be the amount determined by the council from time to time. Upon approval of the application for the excavation permit by the clerk, the applicant shall pay the prescribed fee to the clerk to cover the reasonable costs for the issuance of the permit.

Section 800:08. Excavation Placard. The clerk shall provide each permittee, at the time the permit is issued, a suitable placard which shall state the permittee's name, the permit number and the date of expiration. It shall be the duty of any permittee hereunder to keep the placard posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit or to misrepresent the permit number or the date of expiration.

Section 800:10. Surety Bond. Before an excavation permit is issued, the applicant, unless he is a bonded plumber, shall deposit with the clerk a surety bond in the amount of \$1,000 in favor of the city. The required surety bond must be:

- (a) With good and sufficient surety by a surety company authorized to do business in the State of Minnesota.
- (b) Satisfactory to the city attorney in form and substance.
- (c) Conditioned that the applicant will faithfully comply with all the terms and conditions of this ordinance and all rules, regulations and requirements pursuant thereto.
- (d) Conditioned that the applicant will secure and hold the city and its officers harmless against any and all claims, judgments, or other costs arising from the excavation permit or for which the city, the council or any city officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee.

Recovery on such surety bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given.

In the event of any suit or claim against the city by reason of the negligence or default of the permittee, upon the city giving written notice to the permittee of such suit or claim, any final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety.

An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified herein and in other respects as specified herein but applicable as to all excavation work in streets by the permittee during the term of one year from said date.

Section 800:12.       Standards.     Excavation shall be performed in accordance with provisions of the Occupational Safety and Health Act.

Section 800:14.       Emergency Action.   In the event of any emergency in which a main, conduit, or utility facility in or under any street breaks, bursts, or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling such main, conduit, or utility facility, without first applying for and obtaining an excavation permit or giving notice hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall comply with the applicable provisions of the ordinance before proceeding with permanent repairs.

Section 800:16.       Backfill Materials.   It shall be unlawful to backfill any excavation in any streets with materials of lesser quality than that set forth in Class Five (5) of the governing specifications - State of Minnesota, Department of Highways - Standard Specifications for Highway Construction, a copy of which shall be available for the inspection of the public in the office of the clerk.

Section 800:18.       Compacting.     Upon commencing backfill operations, the material shall be compacted at intervals of no less than eight (8) inches.

Section 800:20.       Non-completion or Abandonment.   Work shall progress in an expeditious manner until completion in order to avoid unnecessary inconvenience to the general public. In the event that the work shall not be performed in accordance with the provisions of this ordinance, or shall cease or be abandoned without cause, the city may, after six hours' notice in writing to the permittee or public utility of intent to do so, correct said work or fill the excavation, and repair the street, and in any such event the entire cost to the city of such work shall be a liability of and shall be paid by the permittee or his surety or the public utility.

Section 800:22.       Insurance.     A permittee, prior to commencement of excavation work hereunder, shall furnish the clerk satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than \$50,000 for any one person and \$100,000 for any one accident and property damage insurance of not less than \$10,000 duly issued by an insurance company authorized to do business in the State of Minnesota and on which policy the city is named as co-insured.

Section 800:24. Indemnification. The permittee, which term, for the purposes of this Section 800:24, also encompasses any public utility exempt from the permit requirement, shall indemnify, keep and hold the city free and harmless from liability on account of injury or damage to persons or property arising or growing out of the permittee's negligence in making any street excavation. In the event that suit shall be brought against the city, either independently or jointly with the permittee on account of such negligence, the permittee, upon notice to it by the city, shall defend the city in any suit at the cost of the permittee. The foregoing provision is not, as to third parties, a waiver of any defense or immunity otherwise available to the permittee, and the permittee, in defending any action on behalf of the city, shall be entitled to assert in any such action every defense or immunity that the city could assert in its own behalf.

Section 800:26. Exemption of Public Utilities. Public utilities are exempt from the requirements hereunder for permits, surety bonds and insurance; however, they shall comply with Section 800:16 regarding backfill materials, Section 800:18 regarding compacting and Section 800:28 regarding notice.

Section 800:28. Notice by Exempt Public Utilities. At least twenty-four (24) hours prior to the commencement of an excavation for which a nonexempt person would need an excavation permit hereunder, an exempt public utility shall give notice to the clerk. The notice shall provide the name and address of the utility, the nature, location and purpose of the excavation, and the date of commencement and the estimated date of completion of the excavation. If requested by the clerk, such notice shall be confirmed in writing by the public utility.

Section 800:30. Notice to Public Utilities. Whereas the severing of any underground utility line is detrimental to public health and welfare, it shall be unlawful for any person to excavate (to dig up, break, tunnel, drill, bore, undermine, or in any manner change the surface elevation more than 14 inches) any ground within the corporate limits of this municipality without first determining whether there are underground utility lines in the excavation area. All public utilities operating within the city shall provide the clerk with the current address and telephone number the public utility desires inquiries relating to its underground facilities within the municipality to be directed to. No person shall excavate any ground within the city without first making inquiries from said public utilities as to the location, if any, of any of its underground facilities in the area to be excavated. If a public utility has underground lines within the area to be excavated, it shall with reasonable promptness locate the same for the party planning the excavation. In any excavation for which an application for a permit is required under Section 800:04, the applicant shall list on the application what public utilities have been contacted under this section and what, if any, underground utility facilities are located within the proposed excavation area.

Section 800:32. Refusal of Permits. If any person shall fail, refuse or neglect to comply with the provisions of this ordinance, the city may refuse to issue further permits to such person until such conditions or orders are complied with.