



AGENDA OF THE REGULAR MEETING OF  
THE CITY COUNCIL  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
April 11, 2023  
6:45 P.M.

NOTE: Due to Open Meeting Law restrictions, the City Council may be discussing agenda items for the first time. Your patience and understanding is appreciated during this process.

**PLEDGE OF ALLEGIANCE**

**APPROVE AGENDA**

**OPEN PUBLIC FORUM**

**ANNOUNCEMENTS**

- A. April 27, 2023, Planning Commission Meeting: Public Forum for Variance 23-02-VB (127 Wildwood) and Variance 23-3-VB (529 Lake)

**CONSENT AGENDA**

- A. Approve March 14, 2023, Meeting Minutes\* (pp. 4-11)
- B. Approve March 14, 2023, Closed Meeting Minutes\* (p. 12)
- C. Approve RESOLUTION 2023-27 Authorizing Hiring of Deputy Clerk\* (p. 13)
- D. Approve Treasurer's Report\* (pp. 14-39)
- E. Approve Building in the City of Birchwood Village\* (pp. 40-48)
- F. Approve Parks Committee Bylaws\* (pp. 49-52)
- G. Approve Engineers Review of Hall's Marsh Priebe Lake Outfall Project\* (p. 53)
- H. Approve City Engineer Contract\* (pp. 116-130)
- I. Approve City Planner Contract\* (pp. 131-137)

**CITY BUSINESS – OLD BUSINESS**

- A. Second Reading ORDINANCE 2023-03-01 (608 609) Firearms and Trapping \* (pp. 54-63)
  - a. Public Hearing
  - b. Council Deliberation & Approval
  - c. Approve RESOLUTION 2023-23 Approving Summary Publication Ord. 2023-3-01

*Time Budget: 10 Minutes*

- B. Second Reading ORDINANCE 2023-03-02 (610) Curfew, Firearms, Tobacco\* \* (pp. 64-69)
  - a. Public Hearing
  - b. Council Deliberation & Approval
  - c. Approve RESOLUTION 2023-24 Approving Summary Publication Ord. 2023-3-02  
*Time Budget: 10 Minutes*
  
- C. Second Reading ORDINANCE 2023-03-03 (201) Water Meters\* (pp. 70-74)
  - a. Public Hearing
  - b. Council Deliberation & Approval
  - c. Approve RESOLUTION 2023-25 Approving Summary Publication Ord. 2023-3-03  
*Time Budget: 10 Minutes*

**CITY BUSINESS – NEW BUSINESS**

- A. First Reading ORDINANCE 2023-04-01 (304.035) Variances\* (pp. 75-77)
  - a. Planning Commission Review
  - b. First Reading and Council Deliberation
  - c. Order Second Reading and Public Hearing  
*Time Budget: 10 Minutes*
  
- B. Right of Way Code Revisions\* (pp. 78-115)
  - a. First Reading ORDINANCE 2023-04-02 Fee Schedule\* (pp. 82-85)
    - i. Planning Commission Review
    - ii. First Reading and Council Deliberation
    - iii. Order Second Reading and Public Hearing  
*Time Budget: 10 Minutes*
  
  - b. First Reading ORDINANCE 2023-04-03 (615) Exterior Storage\* (pp. 86-87)
    - i. Planning Commission Review
    - ii. First Reading and Council Deliberation
    - iii. Order Second Reading and Public Hearing  
*Time Budget: 10 Minutes*

- c. First Reading ORDINANCE 2023-04-04 (208/309) Regulating Public Rights of Way\* (pp. 88-114)
  - i. Planning Commission Review
  - ii. First Reading and Council Deliberation
  - iii. Order Second Reading and Public Hearing

*Time Budget: 10 Minutes*
  
- C. RESOLUTION 2023-26 Councilmembers Declining Salaries\* (p. 115)
  
- D. Margaret Ford Update on the Century Ave Coalition Meeting
  
- E. Administrator Updates
  - a. Potential Tree Removal Delays in Polly's Park due to Weather
  - b. 2023 Tree Inspection
  - c. 2023 Canoe / Kayak Rack Non-Resident Rentals
  - d. May City Council Meeting Administrator Training Conflict

*Time Budget: 5 Minutes*

**ADJOURN**

**CITY OF BIRCHWOOD VILLAGE  
207 BIRCHWOOD AVENUE  
BIRCHWOOD, MINNESOTA**

**MINUTES OF THE CITY COUNCIL MEETING  
MARCH 14, 2023, 6:45 P.M.**

**MEMBERS:**

Margaret Ford	Mayor
Mark Foster	Councilmember
Ryan Hankins	Councilmember
Justin McCarthy	Councilmember
Katherine Weier	Councilmember (via teleconference)

**STAFF:**

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

**GUESTS:**

Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from a video recording.

**1. CALL TO ORDER**

Mayor Ford called the meeting to order at 6:45 p.m.

**2. PLEDGE OF ALLEGIANCE**

**3. APPROVAL OF AGENDA**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve the agenda as amended. All in favor; motion carried.**

Mayor Ford requested the removal of the following item from the agenda:

- Section 7, City Business, Item D, Lake Links Trail

**4. OPEN PUBLIC FORUM**

**Barton Winter, 1 Five Oaks Lane**, expressed concern regarding snow on the roof of the warming house posing a safety hazard, comments made by Kevin Woolstencroft at the previous open public forum, and the performance of the city's maintenance work as it pertains to the skating rink. He requested an update on the petition he submitted in January 2023 to replace the city's maintenance worker with either himself or Joe Wormwood.

**Councilmember Foster** noted the skating rink is closed for the season, and reported more compliments regarding the skating rink during the 2022-2023 winter season than ever before.

**Councilmember Hankins** requested that Barton Winter submit a plan to improve the roof of the warming house to the City Administrator for the Council's review. Councilmember Hankins reiterated his support of the city's employees.

**On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to close the open public forum. All in favor; motion carried.**

**5. ANNOUNCEMENTS**

- a. **Music in the Park Schedule:** The schedule has been finalized for the summer of 2023.
- b. **Canoe and Kayak Assignments:** The rack assignments are scheduled for the beginning of April 2023.
- c. **Spring Birchwood Dock Association (BDA) Meeting:** The meeting is scheduled for April 1, 2023, at 10:00 a.m.
- d. **Board of Appeals Meeting:** The meeting is scheduled for April 11, 2023, at 6:00 p.m.
- e. **Lift Station Bids:** The bids will be posted by April 30, 2023.

**6. CITY BUSINESS – CONSENT AGENDA (0:08:30)**

- a. **On a motion made by Councilmember Weier, seconded by Councilmember McCarthy, it was resolved to approve the consent agenda with the exception of items C, D, and G. All in favor; motion carried.**
- b. **Approval of the Acceptance of the Ricecreek Watershed District (RCWD) Lift Station Grant**
- c. **Approval of Resolution 2023-18 – Delegating Treasurer Authority to EFT**
- d. **Approval of Resolution 2023-19 – \$500 Expense Approval (2:58:05):**

**On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to adopt Resolution 2023-19. All in favor; motion carried.**

Mayor Ford reported that, historically, the Mayor and City Administrator were provided a \$500 discretionary allowance for city business expenses as needed. It was suggested by the City Treasurer and City Administrator to memorialize the expense approval. The Council reported that the city also has an existing interim spending policy of \$500.

- e. **Approval of Resolution 2023-20 – Cancelling Annual Deer Hunt (3:02:15):** *ACTION – Becky Kellen will issue a notice to residents requesting any final comments or feedback regarding the annual deer hunt before the Council makes a decision at the next meeting.*

Councilmember McCarthy expressed concern regarding the administrative burden on city staff given the ineffectiveness of reducing the deer population through the deer hunt. He noted the Minnesota Bowhunters Association requires 90-day notice prior to canceling the deer hunt. The Council suggested allocating some of the administrative work to volunteers. Further discussion was deferred to the next meeting.

- f. **Approval of the February Council Meeting Minutes:** The minutes of the closed Council meeting held on February 14, 2023, were provided for the Council’s review and approval.

**g. Approval of the Removal of the Resident Engineering Fees**

**h. Approval of the Treasurer's Report (3:08:13):**

**On a motion made by Councilmember Weier, seconded by Councilmember McCarthy, it was resolved to approve the Treasurer's Report for the period ending March 7, 2023, with the exception of checks No. 32272, No. 32273, No. 32274, No. 32275, and No. 32276 for Kevin Woolstencroft, Justin McCarthy, Mark Foster, Jon Fleck, and Mary Wingfield, respectively, and check #EFT12302022 for Mary Wingfield. All in favor; motion carried.**

*ACTION – Becky Kellen will obtain a quote to secure the antenna from damage by squirrels.*

The Treasurer's report for the period ending Mach 7, 2023, was provided for the Council's review and approval.

Becky Kellen reported the \$850 service line repair from Dynamic Earth & Civil LLC resulted when the contractor discovered that the city's curb stop was damaged and required repairs. As the contractor already had access to the curb stop, the repairs were more cost-effective and confirmed through a proposal obtained from a second contractor at a cost of \$3,750.

The Council reported the city code states that residents are responsible for the curb stop. The Council agreed to cover the cost as advance notice of the repairs, and the cost was not provided to the resident; however, moving forward, the cost will be charged to residents.

H. Alan Kantrud advised that the Council is able to approve a resolution to accept all donations from the Artist Group at the end of the year instead of monthly.

**i. Approval of Resolution 2023-21 – Minnesota Municipal Clerks Institute Training**

**7. CITY BUSINESS**

**a. City Engineer and City Planner Proposals (0:09:40)**

- i. Candidate Presentations:** Presentations for both, or either, of the City Engineer and City Planner positions were provided by WSB, Bolton & Menk, Graef, SRF, TKDA, and Ben Wikstrom.

All vendors confirmed they will only charge for meetings in which they are required to attend as per the Council's request.

Becky Kellen clarified that the city will require 70 to 80 hours of engineering services and 10 hours of planning services.

- ii. Council Discussion:**

**On a motion made by Councilmember Foster, seconded by Mayor Ford, it was resolved to proceed with a conditional approval of Ben Wikstrom for the City Planner position pending a review of a proposal for planning services with a revised monthly retainer. All in favor; motion carried.**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to proceed with a conditional approval of Bolton & Menk for the City Engineer position pending a review of the engineering services contract. All in favor; motion carried.**

Becky Kellen recommended Ben Wikstrom for the City Planner position as he scheduled an informational interview to obtain more information on the city's needs. She reported WSB did the same, and recommended proceeding with WSB for the City Engineer position or, alternatively, Graef based on the firm's response regarding Hall's Marsh. She preferred to separate the engineering and planning services.

Councilmember McCarthy agreed with Ben Wikstrom as the City Planner noting that a monthly retainer is a good structure given the city's fee schedule. He noted travel expenses may be a challenge as it would be a 50-mile roundtrip for Ben Wikstrom, at an estimated cost of \$65 per trip. He expressed concern regarding additional charges related to escrows for WSB, and the firm's working relationship with the city of Mahtomedi.

Councilmember McCarthy reported a preference for an independent and unbiased engineer as it relates to Hall's Marsh, and recommended Bolton & Menk based on a reasonable monthly rate, access to a water resource team, and no potential conflicts of interest.

Councilmember Weier also preferred Bolton & Menk for engineering services as the firm's proposal discussed wetlands, water remediation that might help with Tighe-Schmitz, and grant opportunities, which she anticipates the city will require given the projected expenses to address the issues with Hall's Marsh.

Councilmember Foster deferred to Becky Kellen's preferences as she will be working with the City Engineer and City Planner. He reported a previous working relationship with Graef and noted that the firm is very responsive.

Mayor Ford reported a preference for Graef or Bolton & Menk; however, she expressed concern regarding the cost of engineering services with Graef.

Councilmember Hankins requested time for the Planning Commission to review the proposals as there is a civil engineer and an architect on the Commission who can provide feedback on the candidates.

Councilmember Foster noted the urgency to engage an engineer and planner as Steve Thatcher will be exiting on April 22, 2023. Councilmember Foster emphasized the Council is responsible for making hiring decisions for the city and should not be consulting with the Planning Commission. The Council agreed budgetary constraints should also be considered when making a selection.

H. Alan Kantrud recommended a special meeting to review the revised retainers and contracts proposed by the selected planner and engineer before final approval. He confirmed that, in his experience, the larger engineering firms will appoint a singular contact person to engage with the Council.

- iii. **Next Steps:** *ACTION – Becky Kellen will request an updated proposal with a revised monthly retainer for planning services from Ben Wikstrom.*

*ACTION – Becky Kellen will arrange a special meeting for the Council to review the revised retainer and proposed contracts for City Planner and City Engineer for final approval.*

**b. Attorney General's Opinion Regarding City Council Salary (1:31:50)**

**On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to disallow checks No. 32272, No. 32273, No. 32274, No. 32275, and No. 32276 for Kevin Woolstencroft, Justin McCarthy, Mark Foster, Jon Fleck, and Mary Wingfield, respectively, and check #EFT12302022 for Mary Wingfield, to direct the City Attorney to send a letter to the previous Council members requesting repayment of the salary overpayments, and to engage with the city's auditor to confirm the action that Council should take regarding investigating the base salary for Council.**

**In favor: Councilmember Hankins, Councilmember McCarthy, Councilmember Weier**

**Abstained: Councilmember Foster, Mayor Ford**

**Motion carried.**

**On a motion made by Mayor Ford, seconded by Councilmember Weier, it was resolved to direct the City Attorney to obtain a legal opinion from the League of Minnesota Cities regarding the legality of the Council pay raise based on the same information package provided to the Attorney General's office. All in favor; motion carried.**

*ACTION – Becky Kellen will confirm with the City Treasurer the amounts owed by the previous Council members in light of the Attorney General's opinion regarding the Council pay raise.*

*ACTION – H. Alan Kantrud will issue a letter to the previous Council members requesting repayment of the salary overpayments for 2021 and 2022 by a designated deadline and will offer a payment plan as needed.*

*ACTION – H. Alan Kantrud will confirm whether the League of Minnesota Cities has a statute of limitations regarding the Council pay raise issue.*

H. Alan Kantrud reported that, in January 2023, the Council requested he obtain an opinion from the Attorney General regarding the Council pay raise initiated in 2020. He noted municipal government laws state that any pay raise cannot take effect until after the next municipal election.

Based on when the pay raises in question were initiated and passed, it was suggested that the pay raises should not have gone into effect until January 2023. The previous Council ratified and approved the pay raise for 2021 and 2022; however, some Council members repaid the salary overpayments in an effort to correct the issue.

The Attorney General referred to a previous opinion issued by the office in 1970 and concluded the Council pay raises should not have taken effect until January 2023, and any payments received prior were unlawful. The opinion was sent to the previous Council members who are no longer sitting on the Council.

Councilmember Foster queried whether the Attorney General was made aware that the previous Council held a first hearing and passed a motion regarding the Council pay raise in September 2020. H. Alan Kantrud reported providing the Attorney General's office with a package including the agenda and minutes of every meeting discussing the matter leading up to the resolution made in December 2022.



Councilmember McCarthy reported the proposed Council pay raise was included on the November 2020 consent agenda for approval, thus, nulling the suggestion that it was passed in September 2020. He noted that, by policy, the Council would have had to approve the Council pay raise through a second hearing and not the consent agenda.

Mayor Ford queried how the comparison of the 1970 case referenced by the Attorney General determined that the previous Council's failure to follow protocol made the salary pay raises unlawful. H. Alan Kantrud reported that, based on his understanding, in the 1970s, it was a case of minor housekeeping errors that were deemed insufficient to invalidate the pay raises.

Councilmember Hankins acknowledged the impact on Councilmember Foster and Councilmember McCarthy for errors made by the previous Council.

H. Alan Kantrud recommended the Council proceed with requesting the repayment of any outstanding salary overpayments for 2021 and 2022. If the funds are not returned, it would be deemed illegal conduct to hold the funds and the Council would make a referral to the county attorney for prosecution.

Councilmember McCarthy expressed concern regarding the city presumably having never paid Council through a salary ordinance, and the implications on Councilmember Foster and Councilmember McCarthy as tax season approaches. He noted the issue is not the money owed, but rather the legality of the pay raise and reiterated that Council should take any action that is legally obligated to avoid criminal charges.

Councilmember Foster expressed concern regarding the amount of Council time and effort and legal fees incurred to reclaim the salary overpayments from previous Council members.

H. Alan Kantrud suggested obtaining an opinion from the city's auditor regarding how far back in the city's records the City Administrator should investigate for a resolution or ordinance allowing any Council pay. In the interim, a letter should be sent to the previous Council members requesting the return of the salary overpayments.

Mayor Ford requested clarification on the Attorney General's opinion and that a legal opinion be obtained from another legal entity. For this reason, Mayor Ford abstained from the vote to disallow the checks and request repayment. Councilmember Foster also abstained from the same vote due to personal implications.

**c. Deputy Clerk Position Applicant Review (2:26:15)**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to designate Mayor Ford, Councilmember Weier, Becky Kellen, and Mary Cahill to review the candidates for deputy clerk and provide a recommendation to the Council. All in favor; motion carried.**

**d. Radon Test Results and Action (2:29:45)**

**On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to direct city staff to:**

- **Purchase the Radonova Radtrak long-term test;**
- **Conduct the test over at least three months in the location of the previous 4.7 pCi/l reading;**

- **Report the results to the Council via e-mail and in the next regular meeting agenda. All in favor; motion carried.**

The Council noted the radon test results in the utility room do not pose an imminent threat; however, the levels warrant long-term testing for monitoring.

**e. Section 609 Firearms (2:31:50)**

**On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the first reading of an Ordinance replacing Ordinance No. 609 titled “Firearms” and repealing Ordinance No. 608 titled “Trapping Prohibited”. All in favor; motion carried.**

**On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the first reading of an Ordinance repealing and replacing Ordinance No. 610 titled “Curfew for Minors; Firearms; Tobacco”. All in favor; motion carried.**

The Council referred to Section 610.045 Use of Tobacco and agreed to remove the references to the dock of the dock association, and any boat at a dock, boat lift, or boat hoist at a public lake tract.

**f. Section 201 Water Meters (2:44:35)**

**On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the first reading of an Ordinance amending Section 201.080 of Ordinance No. 201 titled “City Water Systems”. All in favor; motion carried.**

**g. Administrator Updates (2:48:58)**

- i. Village Hall Security Keypad: ACTION – Becky Kellen will explore additional lock systems for the Village Hall including a keypad and lockbox system.**

Becky Kellen reported the smart lock system suggested by Council requires a connection to a cellular phone. She recommended continuing to use a regular lock and key system noting that additional security measures have since been implemented at Village Hall. Committees and residents using the Village Hall would be required to obtain the key from city staff during office hours or by appointment.

The Council discussed alternative options such as a keypad lock with code access that can be changed as needed, or a lockbox for the keys to the Village Hall. Further discussion was deferred to the next meeting.

- ii. Leaf Pick-up: Leaf pick-up services have been discontinued due to the administrative strain on city staff and low utilization by residents. Joe Wormwood, the leaf pick-up contractor, agreed with discontinuing the service as maintained by the city.**

**8. CITY BUSINESS – PENDING BUSINESS**

A list of pending items was included in the meeting package but not discussed.

9. **ADJOURNMENT**

**On a motion made by Councilmember Foster, seconded by Mayor Ford and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 10:17 p.m. by Mayor Ford.**

**DISCLAIMER**

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting. This document shall not be considered a verbatim copy of every word spoken at the meeting.

\_\_\_\_\_  
Mayor Margaret Ford

\_\_\_\_\_  
City Administrator Becky Kellen

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**MINUTES  
CLOSED COUNCIL MEETING  
CITY OF BIRCHWOOD VILLAGE  
March 14, 2023  
6:15pm**

**CALL TO ORDER:**

Mayor Ford calls the meeting to order at 6:18 PM.

**MEMBERS PRESENT:** Mayor Margaret Ford, Councilmembers: Mark Foster, Justin McCarthy, Ryan Hankins,

**STAFF PRESENT:** City Administrator Rebecca Kellen

**OTHERS PRESENT:** City Attorney Alan Kantrud, LMC (League of Minnesota Cities) Attorney Paul Merwin, City Engineer Steven Thatcher

Mayor Ford moved to hold a closed meeting of the Birchwood City Council under MN STAT. 13D.05 Subd. 3(b) which permits a meeting to be closed to the public when an attorney-client privileged matter is discussed. The purpose of the meeting was to receive advice from Attorney Paul Merwin regarding active litigation in the Nicklaus v. City of Birchwood case.

Council member McCarthy asked a clarifying question of Paul Merwin regarding the limits of discussion regarding any permits pending before the City. Mr Merwin stated that no decisions or actions would be taken during the closed meeting on permits.

Mayor Ford made a motion to close the meeting. Council member McCarthy seconded the motion to close the meeting. All present approved.

**MEETING ADJOUNED AT 6:45 PM.**

**ATTEST**

\_\_\_\_\_  
**MAYOR MARGARET FORD**

\_\_\_\_\_  
**CITY CLERK REBECCA KELLEN**

**RESOLUTION  
2023-27**

**CITY OF BIRCHWOOD  
VILLAGE WASHINGTON  
COUNTY, MINNESOTA**

**A Resolution Authorizing the hiring of Deputy Clerk for City Staff.**

**WHEREAS**, the City Staff has identified the need for additional staff to support and handle the workload of the City, and

**WHEREAS**, the City interviewed several candidates for the position and made its recommendation to the City Council, and

**WHEREAS**, the City has identified Therese Bellinger for the position and would like to extend an offer of employment to her, and

**WHEREAS**, the City Staff desires to offer the position of Deputy Clerk to Ms. Bellinger as the hourly rate of \$30.00 per hour as an at-will employee.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Birchwood Village hereby authorizes the following:

1. Hiring of Therese Bellinger for the position of Deputy City Clerk as an at-will part-time employee of the City with the offered rate of pay of \$30.00 per hour. Said offer contingent on clear background check and acceptance.

Passed by the City Council of The City of Birchwood Village, Minnesota this 11<sup>th</sup> day of April, 2023.

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Margaret Ford, Mayor

Attest:

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Rebecca Kellen, City Administrator

## Treasurer report for April

Mary Cahill <Mary.Cahill@cityofbirchwood.com>

Wed 4/5/2023 1:44 PM

To: Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>

I have some items to call out concerning this month's treasurer report.

1. Two checks from prior years were voided. Since they are from a prior year, I will need to update the beginning balance to account for these checks. #31037, for \$16.70 and CK 31956 for \$137.48. CK # 31037 was voided per resident instruction and reissued. CK # 31956 was voided and will not be reissued as it was issued twice in error. (2021 and 2022)
2. Council member McCarthy requests CK # 32273 for council salary net pay (\$1385.25) to be voided. I finished the report for April, so I will do so for May meeting. 2022 year is closed in CTAS, I will need to update the beginning balance for this amount as well.
3. I paid the quarterly building permit surcharge by check versus EFT. (my mistake, but rather than VOID and complete EFT, I elected to keep as a check.
4. Invoices for the first water main breakage on 3/7, include Water Conservation Service, \$ 525.55, Manship, \$240.00, and Capra's Utilities, Inc \$ 9246.50. I have not received any invoices for the recent main breakage in April.
5. Air Fresh for our portable restrooms is now LRS Portables.
6. Annual Building inspection payment of \$50,708.99 to Croix Valley Inspections (Jack Kramer)
7. I voided ck # 32352 , \$48.52, issued on 3/6/23, as it was issued to Menard's Maplewood in error. It should have been issued to Menard's Oakdale. The check was not cashed and a stop payment was placed. I reissued to Menard's Oakdale.

Questions? Please contact me.

Mary Cahill

Treasurer

City of Birchwood Village, MN

email: [mary.cahill@cityofbirchwood.com](mailto:mary.cahill@cityofbirchwood.com)

website: <http://www.cityofbirchwood.com>



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For the Period : 3/8/2023 To 4/5/2023

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>	<u>Less Deposits In Transit</u>	<u>Plus Outstanding Checks</u>	<u>Total Per Bank Statement</u>
General Fund	\$645,162.40	\$19,354.37	\$88,721.15	\$575,795.62	\$5,494.69	\$84,344.70	\$654,645.63
Road and Bridge	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other Federal Programs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Comp Plan Grant	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Tree Canopy Care	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Special Rev Projects	\$3,420.69	\$15,750.00	\$0.00	\$19,170.69	\$15,750.00	\$0.00	\$3,420.69
Spec Rev - Warm House	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
REIMBURSED CONTRACTED SERVICES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Birchwood In Re-hab Bond	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Re-hab Debt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
CAPITAL PROJECT FUNDS (401 through 499)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
General Capital Projects	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Capital Project PW	\$111,711.31	\$0.00	\$0.00	\$111,711.31	\$0.00	\$0.00	\$111,711.31
Water	\$69,383.25	\$8,912.96	\$22,450.47	\$55,845.74	\$0.00	\$22,381.41	\$78,227.15
Sewer	\$89,341.66	\$9,342.58	\$17,555.22	\$81,129.02	\$0.00	\$17,012.33	\$98,141.35
Transit System	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Infrastructure	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Water Meter Upgrade Fees	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
American Rescue Act Proceeds	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Engineering Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$919,019.31</b>	<b>\$53,359.91</b>	<b>\$128,726.84</b>	<b>\$843,652.38</b>	<b>\$21,244.69</b>	<b>\$123,738.44</b>	<b>\$946,146.13</b>

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>	<u>Less Deposits In Transit</u>	<u>Plus Outstanding Checks</u>	<u>Total Per Bank Statement</u>
Justin R. McCarthy	City Council/Town Board						Date
Katherine A Weier	City Council/Town Board						Date
Margaret Arola Ford	City Council/Town Board, Mayor						Date
Robert Mark Foster	City Council/Town Board						Date
Ryan A Hankins	City Council/Town Board						Date



Fund Name: All Funds

Date Range: 03/08/2023 To 04/05/2023

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
03/16/2023	Payroll Period Ending 03/16/2023	32372	Payroll- Rebecca Kellen, City Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,998.27
	<b>Total For Check</b>	<b>32372</b>					<b>\$ 1,998.27</b>
03/21/2023	Xcel Energy	EFT03212023A*	210 Birchwood Tower, 1/22-2/21 electricity charge	N	Water Utility	601-43180-380-	\$ 15.56
	<b>Total For Check</b>	<b>EFT03212023A</b>					<b>\$ 15.56</b>
03/21/2023	Xcel Energy	EFT03212023B*	407 Lake Lift Station, gas service 1/22-2/21	N	Sewer Utility	605-43190-380-	\$ 38.56
	<b>Total For Check</b>	<b>EFT03212023B</b>					<b>\$ 38.56</b>
03/21/2023	Xcel Energy	EFT03212023C*	407 Lake Lift Station, gas service 1/22-2/21	N	Sewer Utility	605-43190-380-	\$ 41.98
	<b>Total For Check</b>	<b>EFT03212023C</b>					<b>\$ 41.98</b>
03/21/2023	Xcel Energy	EFT03212023D*	202 Wildwood Ave Lift , 207 Hall gas/electricity , 407 1/2 lift, 423 Lake Ice Rink	N	General Government Buildings and Plant	100-41940-380-	\$ 499.10
		EFT03212023D*			Parks	100-45207-380-	\$ 104.35
		EFT03212023D*			Sewer Utility	605-43190-380-	\$ 127.84
		EFT03212023D*				605-43190-380-	\$ 334.51
	<b>Total For Check</b>	<b>EFT03212023D</b>					<b>\$ 1,065.80</b>
03/23/2023	A T & T Mobility	EFT03232023A*	Wireless for water tower- Mar-Apr 1, 2023	N	Water Utility	601-43180-382-	\$ 53.50
	<b>Total For Check</b>	<b>EFT03232023A</b>					<b>\$ 53.50</b>
03/30/2023	Payroll Period Ending 03/31/2023	32373	Payroll- Rebecca Kellen, City Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,998.27
	<b>Total For Check</b>	<b>32373</b>					<b>\$ 1,998.27</b>
03/30/2023	PERA	EFT03202023A*	Retirement funds- Becky Kellen, City Administrator	N	Clerk - Treasurer	100-41401-121-	\$ 366.13
	<b>Total For Check</b>	<b>EFT03202023A</b>					<b>\$ 366.13</b>
03/30/2023	PERA	EFT03302023A*	Retirement funds- Becky Kellen, City Administrator	N	Clerk - Treasurer	100-41401-121-	\$ 366.13
	<b>Total For Check</b>	<b>EFT03302023A</b>					<b>\$ 366.13</b>

Fund Name: All Funds

Date Range: 03/08/2023 To 04/05/2023

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
03/30/2023	Xcel Energy	EFT03302023B*	Street lighting	N	Street Lighting	100-43160-380-	\$ 1,361.10
	<b>Total For Check</b>	<b>EFT03302023B</b>					<b>\$ 1,361.10</b>
04/05/2023	Payroll Period Ending 04/05/2023	32374	Payroll Mary Cahill- Treasurer	N	Clerk - Treasurer	100-41401-100-	\$ 267.36
	<b>Total For Check</b>	<b>32374</b>					<b>\$ 267.36</b>
04/05/2023	Payroll Period Ending 04/05/2023	32375	Payroll, Jim Rydeen, Maintenance	N	Parks	100-45207-100-	\$ 618.73
	<b>Total For Check</b>	<b>32375</b>					<b>\$ 618.73</b>
04/05/2023	City of White Bear Lake Fire	32381	Fire Srvc -Mar 2023	N	Fire	100-42201-314-	\$ 3,049.17
	<b>Total For Check</b>	<b>32381</b>					<b>\$ 3,049.17</b>
04/05/2023	H.A. Kantrud, P.A.	32382	Attorney Services -Mar 2023	N	Legal Services	100-41601-300-	\$ 1,500.00
	<b>Total For Check</b>	<b>32382</b>					<b>\$ 1,500.00</b>
04/05/2023	MN Department of Labor and Industry	32383	Building Permit Surcharge - Q1-2023	N	Building Inspections Administration	100-42401-437-	\$ 113.84
	<b>Total For Check</b>	<b>32383</b>					<b>\$ 113.84</b>
04/05/2023	Companion Animal Control LLC	32384	Animal Control Services -Mar	N	Animal Control	100-41916-314-	\$ 80.00
	<b>Total For Check</b>	<b>32384</b>					<b>\$ 80.00</b>
04/05/2023	Gopher State One Call	32385*	Email tickets- March	N	Utility Locates	605-42805-314-	\$ 6.75
	<b>Total For Check</b>	<b>32385</b>					<b>\$ 6.75</b>
04/05/2023	Stoltzman, Cris	32386	Videography - Council Mtgs, 3/14/2023 4.5 hrs	N	Cable Eqpmt and Service	100-41950-314-	\$ 112.50
	<b>Total For Check</b>	<b>32386</b>					<b>\$ 112.50</b>
04/05/2023	Water Conservation Service Inc.	32387*	Water Main Leak Locates - 3/7/2023	N	Wtr/Swr Emergency	601-43185-300-	\$ 525.55
	<b>Total For Check</b>	<b>32387</b>					<b>\$ 525.55</b>
04/05/2023	Manship Plumbing & Heating Inc	32388	Standby -March, water main break, testing with state and mtgs for locations water/sewer	N	Water Utility	601-43180-314-	\$ 700.00
		32388				601-43180-314-	\$ 720.00
		32388				601-43180-314-	\$ 120.00
		32388				601-43180-314-	\$ 240.00
	<b>Total For Check</b>	<b>32388</b>					<b>\$ 1,780.00</b>

Fund Name: All Funds

Date Range: 03/08/2023 To 04/05/2023

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
04/05/2023	White Bear Lk Conservation District	32389	Annual Community Assessment	N	Water Resources	100-46101-437-	\$ 1,100.18
	<b>Total For Check</b>	<b>32389</b>					<b>\$ 1,100.18</b>
04/05/2023	Minutes Solutions	32390*	Minutes for Feb 14 meeting	N	MISCELLANEOUS	100-49001-300-	\$ 200.00
	<b>Total For Check</b>	<b>32390</b>					<b>\$ 200.00</b>
04/05/2023	Metropolitan Council - Env. Service	32391*	Wastewater Service- April	N	Sewer Utility	605-43190-217-	\$ 4,968.70
	<b>Total For Check</b>	<b>32391</b>					<b>\$ 4,968.70</b>
04/05/2023	BrightView Landscapes, LLC.	32392	3/1, 3/6, 3/9, 3/11, 3/16 Deicing Services, 3/6, 3/9, 3/11, 3/16 snow removal	N	Ice and Snow Removal	100-43125-210-	\$ 13,454.00
		32392				100-43125-314-	\$ 4,647.50
	<b>Total For Check</b>	<b>32392</b>					<b>\$ 18,101.50</b>
04/05/2023	Kellen, Rebecca	32393	Zoom, radon test, training	N	Office Operations Supplies	100-41911-200-	\$ 39.98
		32393			City Training and Development	100-41914-310-	\$ 510.00
		32393			Unallocated Expenditures	100-49201-320-	\$ 16.09
	<b>Total For Check</b>	<b>32393</b>					<b>\$ 566.07</b>
04/05/2023	Metro - INET	32394*	IT Charges April	N	General Government Buildings and Plant	100-41940-320-	\$ 513.00
	<b>Total For Check</b>	<b>32394</b>					<b>\$ 513.00</b>
04/05/2023	City of White Bear Lake	32395	Quarterly Water Billing 12/13/22-3/14/23	N	Water Utility	601-43180-314-	\$ 10,829.36
	<b>Total For Check</b>	<b>32395</b>					<b>\$ 10,829.36</b>
04/05/2023	TSE, Inc. Work Account	32396*	Janitorial Services - 2/16, 2/26, 3/16	N	General Government Buildings and Plant	100-41940-314-	\$ 25.00
		32396*				100-41940-314-	\$ 25.00
		32396*				100-41940-314-	\$ 26.88
	<b>Total For Check</b>	<b>32396</b>					<b>\$ 76.88</b>
04/05/2023	LRS Portables, LLC	32397*	Portable Restrooms- Mar Billing	N	Parks	100-45207-314-	\$ 162.50
	<b>Total For Check</b>	<b>32397</b>					<b>\$ 162.50</b>
04/05/2023	CAPRA'S UTILITIES, INC	32398*	Water Main Break @ 411 Wildwood Ave	N	Wtr/Swr Emergency	601-43185-314-	\$ 9,246.50
	<b>Total For Check</b>	<b>32398</b>					<b>\$ 9,246.50</b>
04/05/2023	Toshiba America Business Solutions	32399	Printer Maintenance -3/9-4/8	N	Office Operations Supplies	100-41911-314-	\$ 10.62

Fund Name: All Funds

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<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
		<b>Total For Check</b>					<b>\$ 10.62</b>
04/05/2023	USS Minnesota One MT LLC	32400	Energy Charges - Feb	N	General Government Buildings and Plant	100-41940-380-	\$ 78.34
		32400			Sewer Utility	605-43190-380-	\$ 208.89
		32400				605-43190-380-	\$ 378.62
		<b>Total For Check</b>					<b>\$ 665.85</b>
04/05/2023	White Bear Township	32401*	Contracted Services - Feb 2023	N	Sewer Utility	605-43190-314-	\$ 299.37
		<b>Total For Check</b>					<b>\$ 299.37</b>
04/05/2023	Croix Valley Inspections Inc	32402	Inspection Fees - 2022 Calendar Year	N	Building Inspections Administration	100-42401-314-	\$ 50,708.99
		<b>Total For Check</b>					<b>\$ 50,708.99</b>
04/05/2023	Thatcher Engineering, Inc	32403*	City Engineer -engineering services, Wildwood Lift station,ROW permits 21-22, 117 Wildwood	N	Engineer Service	100-41650-300-	\$ 200.00
		32403*				100-41650-300-	\$ 250.00
		32403*				100-41650-300-	\$ 1,350.00
		32403*				605-41650-300-	\$ 11,150.00
		<b>Total For Check</b>					<b>\$ 12,950.00</b>
04/05/2023	MENARD'S - OAKDALE	32404*	Supplies-Letter signs for Beach, batteries, tape for park signs, less rebate 5.65	N	General Government Buildings and Plant	100-41940-200-	\$ 5.29
		32404*			Parks	100-45207-400-	\$ 9.43
		32404*				100-45207-400-	\$(5.65)
		32404*				100-45207-400-	\$ 11.75
		<b>Total For Check</b>					<b>\$ 20.82</b>
04/05/2023	Rydeen, Jim	32405	TP,diesel,rink sign,spring for snow blower,office keys, park keys,easement tags, misc,gas	N	Office Operations Supplies	100-41911-200-	\$ 27.04
		32405				100-41911-200-	\$ 23.55
		32405			Parks	100-45207-220-	\$ 18.67
		32405				100-45207-220-	\$ 93.92
		32405				100-45207-220-	\$ 18.76
		32405				100-45207-220-	\$ 38.33
		32405				100-45207-220-	\$ 38.80
		32405				100-45207-220-	\$ 4.18

Fund Name: All Funds

Date Range: 03/08/2023 To 04/05/2023

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		32405				100-45207-220-	\$ 3.49
		<b>Total For Check</b>	<b>32405</b>				<b>\$ 266.74</b>
04/05/2023	Belisle, Kim	32406	VOID check #31037 per resident, reissue for overpymt of final utility payment	N	Unallocated Expenditures	100-49201-430-	\$ 16.70
		<b>Total For Check</b>	<b>32406</b>				<b>\$ 16.70</b>
04/05/2023	MENARD'S - OAKDALE	32407*	Seafoam, screws, padlock, furnance filters	N	General Government Buildings and Plant	100-41940-200-	\$ 19.56
		32407*			Parks	100-45207-400-	\$ 28.96
		<b>Total For Check</b>	<b>32407</b>				<b>\$ 48.52</b>
04/05/2023	IRS - US Treasury	EFT04052023A*	Federal Taxes - Q1 2023 -Mar Payment	N	Clerk - Treasurer	100-41401-100-	\$ 1,301.72
		EFT04052023A*				100-41401-100-	\$ 304.44
		EFT04052023A*				100-41401-100-	\$ 376.20
		<b>Total For Check</b>	<b>EFT04052023A</b>				<b>\$ 1,982.36</b>
04/05/2023	MN Department of Revenue	EFT04052023B*	MN State Tax eFiling - Q1 2023 Mar pymt	N	Clerk - Treasurer	100-41401-115-	\$ 529.10
		<b>Total For Check</b>	<b>EFT04052023B</b>				<b>\$ 529.10</b>
04/05/2023	PERA	EFT04052023C*	Retirement funds- Jim Rydeen, Maintenance	N	Clerk - Treasurer	100-41401-121-	\$ 103.88
		<b>Total For Check</b>	<b>EFT04052023C</b>				<b>\$ 103.88</b>
<b>Total For Selected Checks</b>							<b>\$ 128,726.84</b>

Fund Name: All Funds

Date Range: 03/08/2023 To 04/05/2023

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
03/10/2023	MN Management & Budget	171735748*	Fines	(03/10/2023) -	N	Court Fines	100-35101-	\$ 263.30
								\$ 263.30
03/16/2023	Barthel	171735749*	Outstanding Engineering fees from VB app 21-06, 22-01, 23-01 VB, 469 Lake	(03/17/2023) -	N	Building Permits	100-32211-	\$ 9,285.00
								\$ 9,285.00
03/16/2023	Myran, Jessica	171735750*	Hall Rental 3/16/23	(03/17/2023) -	N	City/Town Hall Rent	100-34101-	\$ 25.00
								\$ 25.00
03/28/2023	McQuillan Brothers	171735753*	BP # 2023-19, 531 Hall Ave	(03/28/2023) -	N	Building Permits	100-32211-	\$ 151.00
								\$ 151.00
03/28/2023	4 Seasons Air Specialists	171735754*	BP# 2023-20, 404 Birchwood	(03/28/2023) -	N	Building Permits	100-32211-	\$ 151.00
								\$ 151.00
03/28/2023	Master Gas Fitters	171735755*	BP#2023-21, 30 Birchwood Lane	(03/28/2023) -	N	Building Permits	100-32211-	\$ 151.00
								\$ 151.00
03/31/2023	4 M Fund	171735751	March interest	(03/31/2023) -	N	Interest Earning	100-36210-	\$ 3,832.17
								\$ 3,832.17
03/31/2023	Residents - via St Anthony Village	171735752	Utility Billing-Mar	(03/31/2023) -	N	Leaf Collection	100-34408-	\$ 1.13
						Leaf Collection	100-34408-5	\$ 0.08
						Water Consumption	601-37111-	\$ 4,486.19
						Water Utility User Fee	601-37112-	\$ 3,864.38
						Water Utility User Fee	601-37112-	\$ 50.00
						Water Main-break Surcharge	601-37113-	\$ 152.68
						Special Water Charges	601-37115-	\$ 50.00
						State Surcharge	601-37116-	\$ 271.71
						Penalties and Forfeited Discounts	601-37160-	\$ 38.00
						Sewer Consumption	605-37211-	\$ 4,991.13

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<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
						Sewer Minimum Charge	605-37212-	\$ 4,333.13
						Penalties and Forfeited Discounts	605-37260-	\$ 18.32
								<b>\$ 18,256.75</b>
04/05/2023	Plummer, Judy	171735756*	2 Kayak permits	(04/06/2023) -	1	N Kayak/Canoe Permits	100-32212-	\$ 60.00
								<b>\$ 60.00</b>
04/05/2023	Creagh, Ben	171735757*	Canoe Permit	(04/06/2023) -	1	N Kayak/Canoe Permits	100-32212-	\$ 30.00
								<b>\$ 30.00</b>
04/05/2023	Klimp, Lori	171735758*	2 Kayak permits	(04/06/2023) -	1	N Kayak/Canoe Permits	100-32212-	\$ 60.00
								<b>\$ 60.00</b>
04/05/2023	Westphal, Cynthia	171735759*	Kayak permit	(04/06/2023) -		N Kayak/Canoe Permits	100-32212-	\$ 30.00
				1				<b>\$ 30.00</b>
04/05/2023	Cavanor, Katherine	171735760*	Kayak/Canoe Permit	(04/06/2023) -		N Kayak/Canoe Permits	100-32212-	\$ 30.00
				1				<b>\$ 30.00</b>
04/05/2023	Loosbrock, Jeremy	171735761*	Kayak permit	(04/06/2023) -	1	N Kayak/Canoe Permits	100-32212-	\$ 30.00
								<b>\$ 30.00</b>
04/05/2023	Corliss, Katherine	171735762*	2 kayak permits	(04/06/2023) -	1	N Kayak/Canoe Permits	100-32212-	\$ 60.00
								<b>\$ 60.00</b>
04/05/2023	McKiernan, Maureen	171735763*	Kayak/Canoe Permit	(04/06/2023) -		N Kayak/Canoe Permits	100-32212-	\$ 30.00
				1				<b>\$ 30.00</b>
04/05/2023	Cummins, Robert	171735764*	Canoe/Kayak Permit	(04/06/2023) -		N Kayak/Canoe Permits	100-32212-	\$ 30.00
				1				<b>\$ 30.00</b>
04/05/2023	Malles, Kathy	171735765*	Canoe/Kayak Permit	(04/06/2023) -		N Kayak/Canoe Permits	100-32212-	\$ 30.00
				1				<b>\$ 30.00</b>

Fund Name: All Funds

Date Range: 03/08/2023 To 04/05/2023

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
04/05/2023	Wandmacher, Cathryn	171735766*	Kayak Rack	(04/06/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								<hr/> <b>\$ 30.00</b>
04/05/2023	Felt, Jacqueline	171735767*	2 Kayak Permits	(04/06/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								<hr/> <b>\$ 60.00</b>
04/05/2023	Johnson, Gretchen	171735768*	canoe/kayak permit	(04/06/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								<hr/> <b>\$ 30.00</b>
04/05/2023	Bergeron, Chris	171735769*	2 Kayak permits	(04/06/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								<hr/> <b>\$ 60.00</b>
04/05/2023	Schaffhausen, Mark	171735770*	3 Kayak permits	(04/06/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 90.00
								<hr/> <b>\$ 90.00</b>
04/05/2023	Lafoy, Randy	171735771*	kayak permit	(04/06/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								<hr/> <b>\$ 30.00</b>
04/05/2023	White, Trilby	171735772*	2 Kayak permits	(04/06/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								<hr/> <b>\$ 60.00</b>
04/05/2023	Buerkle, Sandra	171735773*	VB-2023-3, 529 Lake Ave, partial pymt variance fee	(04/06/2023) - 1	N	Building Permits	100-32211-	\$ 140.00
								<hr/> <b>\$ 140.00</b>
04/05/2023	Birchwood Dock Association	171735774*	BDA Boat Slip Payment- 18 slips	(04/06/2023) - 1	N	Dock/Lift Permit Fee	210-32260-	\$ 15,750.00
								<hr/> <b>\$ 15,750.00</b>
04/05/2023	Ramsey/Washington Cable Commission	171735775*	Reimbursement for microphone expense paid by council member Ryan Hankins	(04/06/2023) - 1	N	Refund-Reimbursemnt-Dividend	100-36240-	\$ 366.15



Fund Name: All Funds

Date Range: 03/08/2023 To 04/05/2023

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
								<u>\$ 366.15</u>
04/05/2023	Husnik Homes, Inc	171735776*	VB-2023-3, 529 Lake Ave, Partial payment variance fee and full escrow	(04/06/2023) - 1	N	Building Permits	100-32211-	\$ 460.00
						Escrow Deposits	100-36245-8	\$ 3,000.00
								<u>\$ 3,460.00</u>
04/05/2023	Hankins, Ryan	171735777*	Reimbursement for key lock purchased for city/returned as council voted to not use	(04/06/2023) - 1	N	Miscellaneous	100-36140-	\$ 257.69
								<u>\$ 257.69</u>
04/05/2023	Lindus Construction	171735778*	BP # 2023-18, 327 Wildwood	(04/06/2023) - 1	N	Building Permits	100-32211-	\$ 520.85
								<u>\$ 520.85</u>
<b>Total for Selected Receipts</b>								<u><u>\$ 53,359.91</u></u>

As on 4/5/2023

Special Rev Projects

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Dock/Lift Permit Fee	0.00	15,750.00	15,750.00
<b>Total Acct 322</b>	<b>0.00</b>	<b>15,750.00</b>	<b>15,750.00</b>
<b>Total Revenues</b>	<b>0.00</b>	<b>15,750.00</b>	<b>15,750.00</b>
<b>Other Financing Sources:</b>			
<b>Total Other Financing Sources</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Disbursements:</b>			
<b>Total Disbursements</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Other Financing Uses:</b>			
<b>Total Other Financing Uses</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Beginning Cash Balance</b>		<b>3,420.69</b>	
<b>Total Receipts and Other Financing Sources</b>		<b>15,750.00</b>	
<b>Total Disbursements and Other Financing Uses</b>		<b>0.00</b>	
<b>Cash Balance as of 04/05/2023</b>		<b>19,170.69</b>	

As on 4/5/2023

Capital Project PW

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Total Revenues	0.00	0.00	0.00
<b>Other Financing Sources:</b>			
Total Other Financing Sources	0.00	0.00	0.00
<b>Disbursements:</b>			
Total Disbursements	0.00	0.00	0.00
<b>Other Financing Uses:</b>			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		111,711.31	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 04/05/2023		111,711.31	

As on 4/5/2023

## Water

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Water Consumption	0.00	25,227.08	25,227.08
Water Utility User Fee	0.00	11,399.15	11,399.15
Water Main-break Surcharge	0.00	7,141.63	7,141.63
Special Water Charges	0.00	55.00	55.00
State Surcharge	0.00	980.05	980.05
Administrative Fee Move/Out	0.00	100.00	100.00
Penalties and Forfeited Discounts	0.00	245.24	245.24
<b>Total Acct 371</b>	<b>0.00</b>	<b>45,148.15</b>	<b>45,148.15</b>
<b>Total Revenues</b>	<b>0.00</b>	<b>45,148.15</b>	<b>45,148.15</b>
<b>Other Financing Sources:</b>			
<b>Total Other Financing Sources</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Disbursements:</b>			
Financial Administration			
Contracted Services	0.00	2,250.81	(2,250.81)
<b>Total Acct 415</b>	<b>0.00</b>	<b>2,250.81</b>	<b>(2,250.81)</b>
Newsletter			
Printing and Binding (351 through 359)	0.00	180.96	(180.96)
<b>Total Acct 419</b>	<b>0.00</b>	<b>180.96</b>	<b>(180.96)</b>
Water Utility			
Contracted Services	0.00	25,170.34	(25,170.34)
Utility Services (381 through 389)	0.00	2,507.82	(2,507.82)
Utility Services: Water	0.00	160.50	(160.50)
Fees	0.00	817.00	(817.00)
Wtr/Swr Emergency			
PROFESSIONAL SERVICES (301 through 319)	0.00	525.55	(525.55)
Contracted Services	0.00	9,246.50	(9,246.50)
<b>Total Acct 431</b>	<b>0.00</b>	<b>38,427.71</b>	<b>(38,427.71)</b>
<b>Total Disbursements</b>	<b>0.00</b>	<b>40,859.48</b>	<b>(40,859.48)</b>
<b>Other Financing Uses:</b>			
<b>Total Other Financing Uses</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Beginning Cash Balance</b>		<b>51,557.07</b>	
<b>Total Receipts and Other Financing Sources</b>		<b>45,148.15</b>	
<b>Total Disbursements and Other Financing Uses</b>		<b>40,859.48</b>	
<b>Cash Balance as of 04/05/2023</b>		<b>55,845.74</b>	

As on 4/5/2023

## Sewer

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Sewer Consumption	0.00	19,670.20	19,670.20
Sewer Minimum Charge	0.00	15,677.45	15,677.45
Penalties and Forfeited Discounts	0.00	105.49	105.49
<b>Total Acct 372</b>	<b>0.00</b>	<b>35,453.14</b>	<b>35,453.14</b>
<b>Total Revenues</b>	<b>0.00</b>	<b>35,453.14</b>	<b>35,453.14</b>
<b>Other Financing Sources:</b>			
<b>Total Other Financing Sources</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Disbursements:</b>			
Postage/Postal Permits			
Refunds and Reimbursements	0.00	896.25	(896.25)
<b>Total Acct 414</b>	<b>0.00</b>	<b>896.25</b>	<b>(896.25)</b>
Engineer Service			
PROFESSIONAL SERVICES (301 through 319)	0.00	24,350.00	(24,350.00)
<b>Total Acct 416</b>	<b>0.00</b>	<b>24,350.00</b>	<b>(24,350.00)</b>
Utility Locates			
Contracted Services	0.00	74.30	(74.30)
<b>Total Acct 428</b>	<b>0.00</b>	<b>74.30</b>	<b>(74.30)</b>
Sewer Utility			
Sewer - Wastewater Charge	0.00	19,874.80	(19,874.80)
Contracted Services	0.00	1,570.97	(1,570.97)
Utility Services (381 through 389)	0.00	2,611.01	(2,611.01)
<b>Total Acct 431</b>	<b>0.00</b>	<b>24,056.78</b>	<b>(24,056.78)</b>
<b>Total Disbursements</b>	<b>0.00</b>	<b>49,377.33</b>	<b>(49,377.33)</b>
<b>Other Financing Uses:</b>			
<b>Total Other Financing Uses</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Beginning Cash Balance</b>		<b>95,053.21</b>	
<b>Total Receipts and Other Financing Sources</b>		<b>35,453.14</b>	
<b>Total Disbursements and Other Financing Uses</b>		<b>49,377.33</b>	
<b>Cash Balance as of 04/05/2023</b>		<b>81,129.02</b>	

Date Range : 3/5/2023 To 4/5/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/05/2023	City of White Bear Lake Fire	Fire Srvc -Mar 2023	6389	\$3,049.17	100-42201-314-	Fire	\$3,049.17
04/05/2023	H.A. Kantrud, P.A.	Attorney Services -Mar 2023	6390	\$1,500.00	100-41601-300-	Legal Services	\$1,500.00
04/05/2023	MN Department of Labor and Industry	Building Permit Surcharge - Q1- 2023	6391	\$113.84	100-42401-437-	Building Inspections Administration	\$113.84
04/05/2023	Companion Animal Control LLC	Animal Control Services -Mar	6392	\$80.00	100-41916-314-	Animal Control	\$80.00
04/05/2023	Gopher State One Call	Email tickets- March	6393*	\$6.75	605-42805-314-	Utility Locates	\$6.75
04/05/2023	Stoltzman, Cris	Videography - Council Mtgs, 3/14/2023 4.5 hrs	6394	\$112.50	100-41950-314-	Cable Eqpmt and Service	\$112.50
04/05/2023	Water Conservation Service Inc.	Water Main Leak Locates - 3/7/2023	6395*	\$525.55	601-43185-300-	Wtr/Swr Emergency	\$525.55
04/05/2023	Manship Plumbing & Heating Inc	Standby -March, water main break, testing with state and mtgs for locations water/sewer	6396	\$1,780.00	601-43180-314- 601-43180-314- 601-43180-314- 601-43180-314-	Water Utility Water Utility Water Utility Water Utility	\$700.00 \$720.00 \$120.00 \$240.00
04/05/2023	White Bear Lk Conservation District	Annual Community Assessment	6397	\$1,100.18	100-46101-437-	Water Resources	\$1,100.18
04/05/2023	Minutes Solutions	Minutes for Feb 14 meeting	6398*	\$200.00			

Date Range : 3/5/2023 To 4/5/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
					100-49001-300-	MISCELLANEOUS	\$200.00
04/05/2023	Metropolitan Council - Env. Service	Wastewater Service- April	6399*	\$4,968.70			
					605-43190-217-	Sewer Utility	\$4,968.70
04/05/2023	BrightView Landscapes, LLC.	3/1, 3/6, 3/9, 3/11, 3/16 Deicing Services, 3/6, 3/9, 3/11, 3/16 snow removal	6400	\$18,101.50			
					100-43125-210-	Ice and Snow Removal	\$13,454.00
					100-43125-314-	Ice and Snow Removal	\$4,647.50
04/05/2023	Kellen, Rebecca	Zoom, radon test, training	6401	\$566.07			
					100-41911-200-	Office Operations Supplies	\$39.98
					100-41914-310-	City Training and Development	\$510.00
					100-49201-320-	Unallocated Expenditures	\$16.09
04/05/2023	Metro - INET	IT Charges April	6402*	\$513.00			
					100-41940-320-	General Government Buildings and Plant	\$513.00
04/05/2023	City of White Bear Lake	Quarterly Water Billing 12/13/22-3/14/23	6403	\$10,829.36			
					601-43180-314-	Water Utility	\$10,829.36
04/05/2023	TSE, Inc. Work Account	Janitorial Services - 2/16, 2/26, 3/16	6404*	\$76.88			
					100-41940-314-	General Government Buildings and Plant	\$25.00
					100-41940-314-	General Government Buildings and Plant	\$25.00
					100-41940-314-	General Government Buildings and Plant	\$26.88
04/05/2023	LRS Portables, LLC	Portable Restrooms- Mar Billing	6405*	\$162.50			
					100-45207-314-	Parks	\$162.50
04/05/2023	CAPRA'S UTILITIES, INC	Water Main Break @ 411 Wildwood Ave	6406*	\$9,246.50			
					601-43185-314-	Wtr/Swr Emergency	\$9,246.50

Date Range : 3/5/2023 To 4/5/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/05/2023	Toshiba America Business Solutions	Printer Maintenance -3/9-4/8	6407	\$10.62	100-41911-314-	Office Operations Supplies	\$10.62
04/05/2023	USS Minnesota One MT LLC	Energy Charges - Feb	6408	\$665.85	605-43190-380- 100-41940-380- 605-43190-380-	Sewer Utility General Government Buildings and Plant Sewer Utility	\$378.62 \$78.34 \$208.89
04/05/2023	White Bear Township	Contracted Services - Feb 2023	6409*	\$299.37	605-43190-314-	Sewer Utility	\$299.37
04/05/2023	Croix Valley Inspections Inc	Inspection Fees - 2022 Calendar Year	6410	\$50,708.99	100-42401-314-	Building Inspections Administration	\$50,708.99
04/05/2023	Thatcher Engineering, Inc	City Engineer -engineering services, Wildwood Lift station,ROW permits 21-22, 117 Wildwood	6411*	\$12,950.00	605-41650-300- 100-41650-300- 100-41650-300- 100-41650-300-	Engineer Service Engineer Service Engineer Service Engineer Service	\$11,150.00 \$200.00 \$250.00 \$1,350.00
04/05/2023	MENARD'S - OAKDALE	Supplies-Letter signs for Beach, batteries, tape for park signs, less rebate 5.65	6412*	\$20.82	100-45207-400- 100-41940-200- 100-45207-400- 100-45207-400-	Parks General Government Buildings and Plant Parks Parks	\$11.75 \$5.29 \$9.43 (\$5.65)



Date Range : 3/5/2023 To 4/5/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/05/2023	Rydeen, Jim	TP,diesel,rink sign,spring for snow blower,office keys, park keys,easement tags, misc,gas	6413	\$266.74			
					100-41911-200-	Office Operations Supplies	\$27.04
					100-45207-220-	Parks	\$38.80
					100-45207-220-	Parks	\$4.18
					100-45207-220-	Parks	\$3.49
					100-41911-200-	Office Operations Supplies	\$23.55
					100-45207-220-	Parks	\$18.67
					100-45207-220-	Parks	\$93.92
					100-45207-220-	Parks	\$18.76
					100-45207-220-	Parks	\$38.33
04/05/2023	Belisle, Kim	VOID check #31037 per resident, reissue for overpymt of final utility payment	6414	\$16.70			
					100-49201-430-	Unallocated Expenditures	\$16.70
04/05/2023	MENARD'S - OAKDALE	Seafoam, screws, padlock, furnance filters	6415*	\$48.52			
					100-41940-200-	General Government Buildings and Plant	\$19.56
					100-45207-400-	Parks	\$28.96
<b>Total For Selected Claims</b>				<b>\$117,920.11</b>			<b>\$117,920.11</b>

Date Range : 3/5/2023 To 4/5/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
	Justin R. McCarthy		City Council/Town Board				Date
	Katherine A Weier		City Council/Town Board				Date
	Margaret Arola Ford		City Council/Town Board, Mayor				Date
	Robert Mark Foster		City Council/Town Board				Date
	Ryan A Hankins		City Council/Town Board				Date

Date Range : 3/1/2023 To 3/31/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
03/20/2023	PERA	Retirement funds- Becky Kellen, City Administrator	6381*	\$366.13	100-41401-121-	Clerk - Treasurer	\$366.13
03/30/2023	PERA	Retirement funds- Becky Kellen, City Administrator	6382*	\$366.13	100-41401-121-	Clerk - Treasurer	\$366.13
<b>Total For Selected Claims</b>				<b>\$732.26</b>			<b>\$732.26</b>

Justin R. McCarthy	City Council/Town Board	Date
Katherine A Weier	City Council/Town Board	Date
Margaret Arola Ford	City Council/Town Board, Mayor	Date
Robert Mark Foster	City Council/Town Board	Date
Ryan A Hankins	City Council/Town Board	Date

Date Range : 2/23/2023 To 3/23/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
03/22/2023	A T & T Mobility	Wireless for water tower- Mar- Apr 1, 2023	6383*	\$53.50	601-43180-382-	Water Utility	\$53.50
<b>Total For Selected Claims</b>				<b>\$53.50</b>			<b>\$53.50</b>

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Justin R. McCarthy

City Council/Town Board

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Date

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Katherine A Weier

City Council/Town Board

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Date

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Margaret Arola Ford

City Council/Town Board, Mayor

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Date

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Robert Mark Foster

City Council/Town Board

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Date

---

Ryan A Hankins

City Council/Town Board

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Date

Date Range : 3/3/2023 To 4/3/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
03/30/2023	Xcel Energy	Street lighting	6384*	\$1,361.10	100-43160-380-	Street Lighting	\$1,361.10
03/21/2023	Xcel Energy	210 Birchwood Tower, 1/22-2/21 electricity charge	6385*	\$15.56	601-43180-380-	Water Utility	\$15.56
03/21/2023	Xcel Energy	407 Lake Lift Station, gas service 1/22-2/21	6386*	\$41.98	605-43190-380-	Sewer Utility	\$41.98
03/21/2023	Xcel Energy	407 Lake Lift Station, gas service 1/22-2/21	6387*	\$38.56	605-43190-380-	Sewer Utility	\$38.56
03/21/2023	Xcel Energy	202 Wildwood Ave Lift , 207 Hall gas/electricity , 407 1/2 lift, 423 Lake Ice Rink	6388*	\$1,065.80	605-43190-380- 100-41940-380- 605-43190-380- 100-45207-380-	Sewer Utility General Government Buildings and Plant Sewer Utility Parks	\$334.51 \$499.10 \$127.84 \$104.35
<b>Total For Selected Claims</b>				<b>\$2,523.00</b>			<b>\$2,523.00</b>

Date Range : 3/3/2023 To 4/3/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
	Justin R. McCarthy		City Council/Town Board				Date
	Katherine A Weier		City Council/Town Board				Date
	Margaret Arola Ford		City Council/Town Board, Mayor				Date
	Robert Mark Foster		City Council/Town Board				Date
	Ryan A Hankins		City Council/Town Board				Date

Date Range : 3/5/2023 To 4/5/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/05/2023	IRS - US Treasury	Federal Taxes - Q1 2023 -Mar Payment	6416*	\$1,982.36			
					100-41401-100-	Clerk - Treasurer	\$1,301.72
					100-41401-100-	Clerk - Treasurer	\$304.44
					100-41401-100-	Clerk - Treasurer	\$376.20
04/05/2023	MN Department of Revenue	MN State Tax eFiling - Q1 2023 Mar pymt	6417*	\$529.10			
					100-41401-115-	Clerk - Treasurer	\$529.10
04/05/2023	PERA	Retirement funds- Jim Rydeen, Maintenance	6418*	\$103.88			
					100-41401-121-	Clerk - Treasurer	\$103.88
<b>Total For Selected Claims</b>				<b>\$2,615.34</b>			<b>\$2,615.34</b>

Justin R. McCarthy	City Council/Town Board	Date
Katherine A Weier	City Council/Town Board	Date
Margaret Arola Ford	City Council/Town Board, Mayor	Date
Robert Mark Foster	City Council/Town Board	Date
Ryan A Hankins	City Council/Town Board	Date

To: Birchwood City Council  
From: Ryan Hankins  
Re: Building in the City of Birchwood Village Document

In consultation with the Planning Commission, Joe Evans has revised a document with helpful advice for residents and their advisors contemplating construction projects.

I move that the council direct city staff to convert the document to a web page and post it on <a href="http://cityofbirchwood.com">cityofbirchwood.com</a> for residents to review.
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# Building in the City of Birchwood Village

Use this document to

- Know your rights and responsibilities
- Understand the rights of your neighbors
- Help you get the permits you need

*Your guide to improving your property while respecting your neighbors and observing the requirements of the City Building and Zoning laws.*

## Responsible Development Starts With Planning!

Planning is necessary for a successful outcome. Take time before you begin any work to be sure you will meet the requirements of the City building and zoning regulations.

Here is a summary.

### 1. **Building Regulations**

All construction must meet City building code regulations. These regulations are found in the [Minnesota State Building Code](#) and in Chapter [203](#) of the Birchwood Code.

Design professionals can help you navigate construction requirements.

### 2. **Land disturbance regulation**

Excavation and filling must meet the regulations found in Chapters [302](#) and [306](#) of the Birchwood Code.

### 3. **Zoning Regulations**

All construction must meet the zoning standards found in Chapter [302](#) of the Birchwood Code. The standards govern:

- Minimum lot size
- Setbacks and location of structures
- Elevation above high water
- Occupancy requirements
- Structure Height
- Impervious surface area
- Storm water runoff

Let your neighbors know what will be happening. Involve them early in the process, and use the plan to keep the lines of communication open.

## Apply For Permit(s).

### 1. **Building Permit**

For most projects, you'll need a building permit. With a few exceptions, any work that you or a contractor do to build, repair, or extend structural elements on your property will require a building permit. Separate permits are also required for plumbing, mechanical and electrical work.

## 2. **Conditional Use Permit**

For a few types of projects, you may need a conditional use permit:

- Grading/filling/excavating near lakes and wetlands where slope is toward lake or wetland.
- Larger landscaping projects and grading/filling/excavating greater than 400 square feet or 50 cubic yards
  - Smaller land disturbance activities may need a Zoning Permit.
- Swimming pools
- Tennis courts
- Solar energy systems

## 3. **Zoning Permit**

You'll need only a Zoning permit for projects involving these types of structures:

- Retaining walls
- Sheds and accessory buildings greater than 144 square feet
- Driveways
- Fences (also need to notify neighbors)
- New or enlarged sidewalks, patios or driveways
- Low, unattached decks or platforms
- Small landscaping or land disturbance activities
- Stairs or lifts to the lake.
- Beach Sand Replacement

*To apply for a permit, go to the website [www.cityofbirchwood.com](http://www.cityofbirchwood.com), complete the application and send it in along with the plans and checklist to City Hall. They are then forwarded to the appropriate staff.*

207 Birchwood Ave.

Birchwood, MN 55110

Phone: 651-426-3403 Fax: 651-426-7747

Email: [info@cityofbirchwood.com](mailto:info@cityofbirchwood.com)

## **Obtain Permit Approval**

1. **Building Permit** For most projects, you'll need a building permit. If your permit consists of only interior work, it will be reviewed by the city building official. If you plan on adding onto the outside of your home, it will then be reviewed by the City Planner. The City Planner will check all setbacks, height restrictions and lot coverage. The City Engineer will check grade elevations and any runoff issues. The Building Inspector will review the construction of the structure. Separate permits are also required for plumbing, mechanical and for electrical work.

The [fee for this service varies](#) depending on the valuation of work being done.

2. **Conditional use permit** City staff will verify your application is complete, then will forward it to the Birchwood Planning Commission. The [Birchwood Planning Commission](#) will hold a public hearing and make a recommendation. The [City Council](#) will then make a decision on whether to grant a Conditional Use permit. The fee for this service is listed in the [city fee schedule](#).
3. **Zoning Permit-**  
City staff will verify your application is complete, then will forward it to the Building, Planning and Engineering Departments for review. City staff will inform you if your plan does not meet zoning standards and will work with you on alternatives. If the plan meets all zoning standards, city staff will contact you, and issue a permit upon payment of fees. The fee for this service is listed in the [city fee schedule](#).

## Zoning Variances

If your project does not meet Birchwood zoning standards, you may apply to the City for a variance. You can get help starting this process from city staff at Birchwood City Hall.

Many lots in Birchwood are odd sizes, and over a century of development means that there is substantial variation in lots and structures. Variances are required when you are unable to improve your property within the Birchwood codes without practical difficulty. To obtain a variance, you must first apply for a permit.

A variance may be granted where enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner practical difficulties. Whether the landowner would have practical difficulties depends on whether the proposed use is reasonable; whether the landowner's problem is due to circumstances unique to the property that are not caused by the landowner; and finally, whether the variance, if granted, would not alter the essential character of the locality.

The fee to [apply for a variance](#) is listed in the [city fee schedule](#).

When completing the variance application form, you should specify the specific code provision(s) to which a variance is requested.

Example Variance types	Birchwood City Code
Impervious surface requirements	<a href="#">302.050</a>
Front, back and side setback requirements	<a href="#">302.020(2)</a>
Height requirements	<a href="#">302.045</a>

You should describe what modification to each code provision must be made for the variance application. For example, you would explain that the required side setback must be reduced by one foot for your proposed design.

Prior to variance application, you should seek to minimize any non-conformity with city codes, and to reduce any existing non-conformity. Thorough analysis and detail in the application can reduce the amount of time and expense of redesigning needed to get a variance if you thoroughly evaluate all alternatives and clearly explain why the design you have proposed cannot be changed in a way that reduces non-conformity.

## **Meeting with the Planning Commission and City Council**

The Birchwood Planning Commission meets monthly to evaluate and make recommendations on variances, use and zoning permits. Building permits that do not require a variance from city codes are not evaluated by the planning commission.

When evaluating variances, the Planning Commission may consider alternative designs and recommend variances for approval to the City Council only in cases where there is no conforming alternative that overcomes practical difficulties. The Planning Commission's goal is to minimize the non-conformance with existing code. For example, a design that requires a one-foot reduction in side setbacks, even at additional owner expense, is preferable to a design that requires a larger variation from code.

Once the Planning Commission makes a recommendation on a finding of fact of the details of the variance application, the City Council considers the application at its next meeting, and acts on the variance application. An application that the City Council denies can be appealed. The appeal procedure is described in City Code Section [304](#).

## **Frequently Asked Questions**

### **What are my rights and responsibilities?**

You can use and improve your property as long as you meet the City's code for building and use of land.

### **Where do I find these regulations?**

The City Code contains the regulations. You can review a copy at the Birchwood City Hall or on the [Birchwood web site](#).

### **What is regulated?**

Land disturbance activities greater than 100 square feet or greater than ten cubic yards are regulated. Walls, fences and structures are also regulated. Permits are required for new buildings, additions, residential alterations or renovations (decks, garage, basement finishes, kitchen expansion, roofs, pools, siding, sheds, patios, etc.), building or interior demolition, electrical, plumbing and HVAC/mechanical. If you are wondering if your project requires a permit, contact the city at 651-426-3403

## **What work does *not* require a permit?**

- Cosmetic maintenance or updates
  - Painting, wallpaper
  - Carpet or tile flooring
  - Cabinet or countertop replacement
  - Storm doors
  - Gutters
  - Trim
- Tool and storage sheds under 144 square feet
- Residential playground equipment
- Gardens

## **Why are property improvements regulated?**

Regulations and standards have been adopted by the City to promote the basic health, safety and welfare, to safeguard lakes and wetlands, and to implement Birchwood's [comprehensive plan](#).

## **What are my neighbor's rights?**

Just as you would like to know about activity on nearby property that affects you, your neighbor has the right to be notified and to comment if you are making changes that might impact sight lines, views, runoff, drainage, changes on foliage, traffic, noise and air circulation

## **Where do I start?**

1. Review City Code as it pertains to your project.
2. Download or request permit application forms to see what is required to meet permitting and code requirements.
3. Contact the city with questions about your project.
4. Develop the drawings required by the permit.
5. Submit your application and documents, and review them with city staff.

## **Who should apply for the permit?**

The person who requests the permit is responsible for meeting the conditions of codes and permits, so the contractor or resident who is doing the work should request the permit.

## **What requirements should my contractor meet?**

Contractors that work in Birchwood must provide \$1,000,000 in general liability insurance, and must name the city of Birchwood as additional insured (301.055(1))

Construction, remodeling, electrical, plumbing, fire suppression, house moving and sewer and water installation contractors must be licensed by the state. You can validate state licenses at the [Minnesota Department of Labor and Industry](#).

### What documents do I need to submit with my permit application?

Permit and variance applications should include all the required documents on the permit application form. Plans must show current structures on adjacent lots and the height and layout of structures on the plat. For remodeling or reconstruction, permit applications must show both existing and new construction.

### Where should I look in the building codes for more information?

<i>I want to...</i>	<i>You may need...</i>	<i>You should review...</i>
build a <b>swimming pool</b>	a conditional use permit	<a href="#">203.040</a> , <a href="#">306.040</a> , <a href="#">301.070</a>
build a <b>fence</b>	a zoning permit	<a href="#">301.080.1.b</a> , <a href="#">302.070</a> , <a href="#">307.010</a>
build a <b>retaining wall</b>	a zoning permit	<a href="#">302.070</a> , <a href="#">307.010</a>
build a <b>sidewalk, driveway or patio</b>	a zoning permit if the area is more than 100 square feet.  Sidewalks, decks and patios must adhere to impervious surface restrictions	<a href="#">302.050</a> , <a href="#">307.010</a>
build a <b>deck</b>	a building permit or  a zoning permit if the deck is less than 30 inches above grade, not attached to a structure with frost footings.	<a href="#">307.010</a>
build a <b>tennis court</b>	a conditional use permit	<a href="#">306.050</a>
install a <b>solar energy system</b>	a conditional use permit	<a href="#">306.060</a>
replace a <b>roof</b>	A roofing permit	
replace <b>beach sand</b>	a zoning permit	<a href="#">301.080</a> , <a href="#">307.010</a>
build or remodel a <b>house or garage</b> structurally	a building permit	<a href="#">301.060</a> <a href="#">302</a>

<p>Land Disturbance Activities:</p> <p>Any land change that may result in soil erosion from water or wind and the movement of sediments including, but not limited to, grading, excavating, and filling of land, and removal of vegetation. EXCEPTION: Gardening or the planting of trees or shrubs shall not be considered to be a land disturbance activity.</p>	<p>a zoning permit a conditional use permit a building permit</p> <p>Permits from the <a href="#">Minnesota DNR</a>, <a href="#">Rice Creek Watershed District</a>, <a href="#">White Bear Lake Conservation District</a>.</p>	<p><a href="#">306.030</a> <a href="#">301.070</a> <a href="#">307.010</a></p>
<p><b>stairs</b> to a lake or water body</p>	<p>a zoning permit</p>	<p><a href="#">302.080</a>, <a href="#">307.010</a></p>
<p>remove a <b>tree</b></p>	<p>to replace significant trees removed. Significant trees are conifers greater than six feet or higher and deciduous trees 8 inches or more in diameter.</p>	<p><a href="#">302.055(2)(d)</a></p>
<p>Install or modify <b>sewer, plumbing, or water</b></p>	<p>a <a href="#">plumbing permit</a></p>	<p><a href="#">203</a></p>
<p>Install or modify <b>heating, ventilation or air conditioning</b> (HVAC) systems</p>	<p>an <a href="#">HVAC permit</a></p>	<p><a href="#">203</a></p>
<p>do <b>electrical</b> work</p>	<p>Minnesota State Permit</p>	<p><a href="#">Minnesota Department of Labor and Industry</a> requirements.</p>

### What is impervious surface and what are the requirements?

Impervious surface is defined in Chapter [300](#) in detail. In general, impervious surface includes ground surfaces that limit the amount of water that can enter the soil. Limiting impervious surface is important to allow runoff to filter through the soil before it reaches lakes, wetlands, or neighboring property.

Generally, Birchwood code limits impervious surface to 25 percent of lot area, unless certain conditions are met. Those conditions are described in Chapter [302.050](#). With a variance, stormwater management methods, such as rain gardens, may be used to handle water on sites, in cases where meeting the 25 percent impervious requirement is infeasible. A design professional can help you evaluate materials and their effect on your impervious surface.

**Where can I get more information?**

You can bring your questions to a [Planning Commission](#) meeting or you can call the city.



# PARKS AND NATURAL RESOURCES COMMITTEE

## BYLAWS

### I. NAME OF THE COMMITTEE

The name of the committee shall be the Parks and Natural Resources Committee.

### II. PURPOSE OF THE COMMITTEE

The purpose of the Parks and Natural Resources Committee is to advise the City Council on the parks and open spaces within the city limits of Birchwood, including advising on maintenance, upgrades, and repair of these facilities and the funding of all such work.

### III. COMMITTEE MEMBERSHIP

- A. Members.** The committee shall consist of up to sevenfive members appointed by the City Council, with two non-voting members being City Council members liasons. Members must be residents of Birchwood Village.
- B. Terms.** The terms of each member shall be for two years. A person may be reappointed to the committee by the Council and serve more than one term. Terms shall run from February to February. Any new member appointed in months other than February shall end his/her term two years after her/his appointed month. The initial terms of members shall be staggered with 2 members serving one year terms and 3 members serving two year terms.
- C. Resignation.** Any member of the committee may resign before his or her term expires by providing written notice of such intent to the City Council. The resignation shall be effective upon receipt of the written notification, unless the member identifies a later date.
- D. Removal.** The City Council may remove any member from the committee prior to expiration of the member's term with a majority vote.
- E. Vacancy.** In the event of a vacancy through resignation or vacancy through removal, the City Council shall appoint a person to serve the remainder of the term of the person who resigned or was removed. The person appointed to fill a vacancy may be appointed to a full two year term upon expiration of the filled term.
- F. Council Liaison.** Two members of the City Council shall serve as non-voting the liaisons to the committee. The Council liaisons shall be voting members of the committee and may participate in committee functions and meetings, but may not vote as part of the committee. as well as vote on all matters before the Council involving the committee.
- G. List of Members.** The City Clerk shall maintain a list of the members of the committee and the date of each member's term and shall post the same information on the City webpage.

### IV. COMMITTEE OFFICERS

- A. Chair.** The committee shall elect a Chair of the committee. The Chair shall be elected for a one year term. The term shall run from February to February. The Chair may serve up to three consecutive terms.
- B. Secretary.** The committee shall also elect a Secretary. The term shall run from February to February. The Secretary may serve up to three consecutive terms.
- C. Majority Vote.** All officers shall be elected by a simple majority vote.
- D. Resignation.** Any officer may resign his or her position by providing written notice of the resignation to the City Clerk and the Mayor. The resignation shall be effective upon receipt of the notice or upon such later date, not to exceed three months, that the officer designates. The officer may resign only their officer position, but not their position on the committee, or they may resign both their officer position and their position on the committee.
- E. Vacancy.** Upon a vacancy in the position of one of the officers, the committee shall elect another member to serve the remainder of the vacated term.

## **V. COMMITTEE MEETINGS**

- A. Scheduling.** The committee shall meet on a regularly set time monthly. The Chair of the committee may call for a special meeting of the committee. Three committee members may call for a special meeting.
- B. Open Meeting and Notice.** All meetings of the Parks and Natural Resources Committee shall be open to the public. Notice of all committee meetings shall be given at least three days in advance by posting notice on the City's webpage and by posting a notice on the bulletin board outside city hall, along with a draft agenda.

**C. Quorum and Taking of Actions.** The committee can meet regardless of how many members are in attendance at the meeting. A quorum is not necessary for the committee to hold a meeting. However, a quorum shall be necessary to take action. A quorum is a majority of voting members of the committee. The committee cannot take any action unless a majority of all the members vote in favor of the action.

**D. Minutes.** The committee shall keep Minutes of all its meetings. The Secretary or other person shall be responsible for keeping the Minutes of each meeting. Upon approval of the Minutes by the committee, the Chair shall forward the approved Minutes to the City Administrator and the Council and the approved Minutes shall be posted on the city webpage.

## VI. COMMITTEE ACTION

**A. Recommendations to the City Council.** The committee shall make recommendations to the City Council and the City Administrator on the maintenance, upgrade, repair, and other work on any parks or other open spaces or any facility therein within the city limits of Birchwood. These recommendations may be requested by the Council, or may be first raised by the committee. The committee shall also make recommendations regarding the funding of any of the work recommended by the committee. The committee may file both a majority report and a minority report with the Council on any recommendation.

### **B. Authority.**

~~The committee shall have no authority to make final decisions with regard to any work other than providing a report to the City Administrator on maintenance issues of any park or open space that needs to be addressed. The City Administrator will either direct City staff to handle the issues, or will bring the issue to the attention of the Council at her discretion. All final decisions shall be made by the Council. The committee does not have authority to make final decisions that permanently affect any public space within the City, such as cutting down trees, buying or selling land, removing structures, installing rain gardens, or similar. When in doubt, the committee shall bring the matter to the attention of the Council for approval. Notwithstanding the above, the Council, may upon the vote of its members, delegate the authority to the Parks Committee to make final decisions on specific matters affecting the parks and open spaces. The Council must detail, in a resolution, and with specificity, the decision that the Parks committee is authorized to make.~~

**C. Expenses and Budget.** The committee shall not incur any expenses without the approval of the City Council. The committee may request the City Council to budget funds for the work of the committee. The committee shall submit any budget requests to the Council by ~~October~~July 1 of the year previous to the year for which funding is requested.

**D. Report to the Council.** Upon the request of the City Council, the Chair or another member shall report to the Council on the activities of the committee.

## VII. COMMITTEE CONTINUATION

The committee shall continue in existence until terminated by action of the Council.

**VIII. COMPENSATION**

Members of the Parks and Natural Resources Committee shall receive no compensation for their service on the committee.

**IX. AMENDMENT OF BYLAWS**

These bylaws may be amended at any time by action of the City Council. The committee may recommend changes to the Council.

Adopted this \_\_\_\_ day of \_\_\_\_\_,  
2023

\_\_\_\_\_  
Margaret Ford, Mayor

Attest

\_\_\_\_\_  
Rebecca Kellen City Administrator

## For april's meeting

Justin McCarthy <justin.mccarthy@cityofbirchwood.com>

Wed 4/5/2023 10:20 AM

To: Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>

Becky,

Please add an agenda item for Hall's Marsh discussion.

### Description:

I would recommend that we engage our engineers in a review of the Hall's Marsh Priebe Lake Outfall Project (PLOP) to provide guidance to the City in dealing with RCWD. We need to understand what we should be asking RCWD for with respect to the long term health of the Marsh. I would recommend we authorize up to \$1500.00 of engineering time for this project.

Thanks

Justin

To: Birchwood City Council  
From: Ryan Hankins  
Re: Firearms, Curfews and Tobacco

Four documents follow:

1. [ACTION] Proposed ordinance for Firearms, which also repeals Trapping Prohibited
2. [ACTION] Proposed ordinance for Tobacco.
3. [REFERENCE] Existing Trapping Prohibited ordinance.
4. [REFERENCE] Existing Firearms ordinance.
5. [REFERENCE] Existing Curfews ordinance.

Please see the “Findings and Purpose” sections for a discussion of the changes proposed.

### **Smoking Signs**

At the March meeting, there was some discussion of whether the council could obtain a grant for signs.

Sign order form:

<https://www.ansrmn.org/wp-content/uploads/2021/04/Ecig-Property-Sign-Order-Form.pdf>

Technical Assistance:

<https://www.ansrmn.org/our-programs/technical-assistance/mn-technical-assistance/>

Requirements:

Association for Non Smokers-MN (ANSR) has 12” x 18” permanent outdoor metal signs available for grantees that need assistance in promoting their tobacco-free policy. These signs are FREE, but all orders require a copy of tobacco-free policy that includes electronic cigarettes on the policy and was adopted in 2014 or later. To receive the FREE signs, the tobacco-free policy must be a formal written policy that states that all forms of tobacco use are prohibited on the whole property or lists the facilities covered under the policy.

The signs are very beautiful.



A new firearms ordinance is proposed, adhering to what Minnesota Statute §471.633 allows.

Per council discussion in January, I have removed the prohibition on smoking in streets and added an exception for a deer hunt. Because bows are not firearms and are not regulated in our code, we allow exceptions for hunting and trapping.

Mahtomedi simply uses the Washington county curfew. White Bear Lake has its own curfew. I propose we repeal our own curfew and rely on that of Washington County.

Ramsey County recently passed an ordinance prohibiting smoking on all county-owned areas across the county and garnered some controversy for its limits on tobacco use in vehicles on county-owned land; this proposal does not do so.

**Washington County:**

(A) It is unlawful for a juvenile under the age of 12 to be present in any public place or establishment within Washington County:

1. any time between 9:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday and 5:00 a.m. of the following day.
2. any time between 10:00 p.m. on any Friday or Saturday and 5:00 a.m. on the following day.

(B) It is unlawful for a juvenile, from age 12 through 14, to be present in any public place or establishment within Washington County:

1. any time between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday and 5:00 a.m. of the following day.
2. any time between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. on any Saturday or Sunday of the following day.

(C) It is unlawful for a juvenile, ages 15 and 16, to be present in any public place or establishment within Washington County:

1. any time between 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday and 5:00 a.m. of the following day.
2. any time between 12:01 a.m. and 5:00 a.m. on any Saturday or Sunday.

**White Bear Lake:**

Under the age of 16 years is 10:00 p.m. - 5:00 a.m., 7 days a week.

16 and 17 years is 12:00 a.m. - 5:00 a.m., 7 days a week.



## ORDINANCE NO. 2023-03-01

### AN ORDINANCE REPLACING ORDINANCE NO. 609 TITLED “FIREARMS” AND REPEALING ORDINANCE NO. 608 TITLED “TRAPPING PROHIBITED.”

#### **Findings and Purpose:**

*Birchwood is very limited in how it can regulate firearms. Our current code may not be enforceable. The League of Minnesota Cities writes:*

Since 1985, the state legislature has explicitly preempted all cities, counties, towns and other governmental subdivision from regulating “firearms, ammunition or their respective components,” with two exceptions. A governmental subdivision such as a city may regulate the discharge of firearms and it may adopt regulations identical to state law.

The term “firearm” is not defined for the purposes of the law. However, in the context of criminal law, Minnesota courts have relied on a statutory definition pertaining to fish and game. Under this definition, a firearm is “a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air.”

Using this definition, case law has provided that neither BB guns nor paintball guns are considered firearms for purposes of criminal law. Due to the state preemption, Minnesota cities have no authority to ban assault weapons, high capacity magazines or any other firearm, ammunition or component thereof unless already banned by state law. Whether BB guns and paintball guns may be banned because they are not “firearms” within the context of criminal law is less clear.

*This change makes the definition of firearm match that which Minnesota courts use, and makes this regulation more likely to be enforceable. It also makes explicit that exceptions to § 609.020 are to the discharge of firearms, not to hunting, and that attempted discharge is also included.*

*Because the City has sometimes hosted veteran’s groups that have provided gun salutes for Independence Day, an exception for this purpose is provided.*

*The code allows for a suspension of hunting and trapping provisions related to the code.*

*Our trapping code can be consolidated into this section, because it is very brief and because the prohibition may also be suspended under § 609.020; the section prohibiting the sale of traps is removed.*

## **Section 1.**

Ordinance No. 608, and titled “TRAPPING PROHIBITED” is hereby repealed.

## **Section 2.**

Ordinance No. 609, and titled “FIREARMS” is hereby repealed and replaced with the following:

### **609. FIREARMS, HUNTING AND TRAPPING**

#### **609.010. DEFINITIONS.**

1. Firearm. A gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air. A bow is not a firearm.
2. Trapping. The setting, laying, using, or having in possession of any mechanical device or snare which seeks to hold, capture or kill an animal.

#### **609.020. FIREARM DISCHARGE PROHIBITED.** No person shall discharge or attempt to discharge any firearm in the City, except:

1. in lawful defense of person or property against an unlawful act; or
2. by peace officers or military personnel in the course of their duties and in necessary connection with enforcement of the laws; or
3. for the discharge of a blank cartridge pistol or rifle in connection with an event hosted by the City and by arrangement with the City.

#### **609.030. HUNTING PROHIBITED.** No person shall hunt any bird or animal by any means within the City.

#### **609.040. TRAPPING PROHIBITED.** No person shall engage in trapping, except:

1. for the use of live traps which are tended to at least every 12 hours and which are employed for the control of nuisance animals; and
2. for the purposes of trapping rats, mice, gophers and moles.

609.050. HUNTING AND TRAPPING EXCEPTIONS. The City Council may, by resolution, provide for limited and temporary suspensions of § 609.030 and/or § 609.040.

609.100. PENALTIES. Any person violating any of the provisions of this ordinance is guilty of a misdemeanor.

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this 11th day of April, 2023

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Margaret Ford, Mayor

Attest:

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Rebecca Kellen, City Administrator-Clerk

## 608. TRAPPING PROHIBITED

### 608.010. TRAPPING PROHIBITED.

1. Trapping anywhere in the City is prohibited.
2. The sale of traps within the City is prohibited.

608.020. DEFINITIONS. For the purpose of this Chapter, certain words are defined as follows:

1. Trap. Any mechanical device or snare which seeks to hold, capture or kill an animal.
2. Trapping. The setting, laying, using, or having in possession, except at their own home or in their own motor vehicle.

608.030. This code shall not apply to traps specifically designed to kill rats, mice, gophers or moles, nor does it apply to cage type live traps employed for the control of nuisance animals as long as such traps are tended to each 12 hours.

## 609. FIREARMS

### 609.010. DEFINITIONS.

1. Firearms. Any device from which is propelled any projectile or bullet by means of explosions or gas and shall include but not be limited to B-B guns, air rifles, and air pistols.

609.020. SHOOTING RESTRICTED. No person shall discharge any firearm or engage in hunting of any game birds or animal by any means within the City of Birchwood Village except:

1. Unless discharged in lawful defense of person or property; or
2. By a duly authorized law enforcement officer in the performance of his duty.

**RESOLUTION 2023-23**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION APPROVING SUMMARY PUBLICATION OF  
ORDINANCE NO. 2023-03-01, AN ORDINANCE REPLACING ORDINANCE NO. 609  
TITLED “FIREARMS” AND REPEALING ORDINANCE NO. 608 TITLED  
“TRAPPING PROHIBITED.”**

**WHEREAS**, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, the City has adopted Ordinance No. 2023-03-01, which amends the language of City Code Section 608 and 609; and

**WHEREAS**, the new ordinance is lengthy and would be costly for the City to publish in its entirety as required by law for the adoption of an ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Birchwood Village, Minnesota, as follows:

1. Because the terms of Ordinance 2022-03-01 are lengthy, the City may publish the attached summary of the Ordinance as allowed by statute, and need not publish the entire ordinance. The attached summary clearly informs the public of the intent and effect of the Ordinance. Summary publication has been approved by at least a 4/5 vote of the City Council.
2. The effective date of the Ordinance amendments shall be upon their publication by summary as required by law.

Resolution duly seconded and passed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Margaret Ford, Mayor

Attest:

\_\_\_\_\_  
Rebecca Kellen, City Administrator-Clerk

Please be advised that the City of Birchwood has duly-passed the following ORDINANCE:

AN ORDINANCE REPLACING SECTION 609 AND REPEALING SECTION 608 OF THE BIRCHWOOD CITY CODE.

The following is a SUMMARY of the Ordinance:

On April 11, 2023 the City adopted an Ordinance (2023-03-01) replacing Section 609 (regarding firearms) and repealing Section 608 (regarding trapping) to better mirror State law and to prohibit trapping in the same, combined, section.

PLEASE BE ADVISED, this is not the full text of the Ordinance passed and the published material is only a summary. The full text is available for public inspection at the City of Birchwood, 207 Birchwood Avenue, Birchwood, Minnesota 55110 or delivered upon request electronically or by U.S. Mail.

*Summary complies with Minn. Stat. §§ 331A.05 subd. 8. & 412.191 subd 4.*

**ORDINANCE NO. 2023-03-02**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 610 AND  
TITLED “CURFEW FOR MINORS; FIREARMS; TOBACCO.”**

**Findings and Purpose:**

*Firearms are regulated in Chapter §609, so duplicate code is removed.*

*Consistency with Mahtomedi, which depends on Washington County for curfews and with state statute prohibiting youth tobacco, e-cigarette possession and use and on enforcement at the county level make the most sense for a small City, so our separate sections of core are repealed.*

*This change also promotes public health by banning the use of tobacco at public property; the state already forbids tobacco use indoors. It does not forbid smoking on city streets in general, but does so during City events, such as the Fourth of July parade.*

*Regulation of medical cannabis is not necessary because of the requirements of Minnesota Statute §152.23. The City may adopt regulations for the public welfare and for smoking pursuant to Minnesota Statutes §§ 144.417 subd. 4(a) and 412.22 subd. 32.*

**The City Council of The City of Birchwood Village, Minnesota ordains:**

**Section 1.**

Ordinance No. 610, and titled “**CURFEW FOR MINORS; FIREARMS; TOBACCO**” is repealed and replaced with the following:

**610. TOBACCO**

610.045. USE OF TOBACCO. No person shall use any form of tobacco or e-cigarettes at or on any public open space, restroom, beach, public lake tract, park, warming house, athletic court or field, ice rink, picnic shelter or path, nor shall any person use any form of tobacco or e-cigarettes at any event on any City street, road or parkway that is open to the public and hosted by the City.

610.060. PENALTIES. Any person who violates this chapter shall be guilty of a misdemeanor.



EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this 11th day of April, 2023

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Margaret Ford, Mayor

Attest:

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Rebecca Kellen, City Administrator-Clerk

## 610. CURFEW FOR MINORS; FIREARMS; TOBACCO

610.010. DEFINITIONS. For the purpose of this Chapter, the following words shall be defined as follows:

1. Minor. A minor is any unemancipated person under the age of eighteen (18).
2. Adult. An adult is any person over the age of eighteen (18).
3. Tobacco. Tobacco means cigarettes, cigars and tobacco in any other form suitable for chewing or smoking.
4. Tobacco-related devices. Tobacco-related devices means cigarette papers and pipes for smoking.

### 610.020 CURFEW.

1. It shall be unlawful for any minor to be present on the public streets, highways, roads, alleys, parks, playgrounds, or other public places or on vacant lots within the City of Birchwood Village during the following hours:
  - a. Between 10:00 p.m. and 5:00 a.m. if the minor is under the age of sixteen (16).
  - b. Between 12:00 midnight and 5:00 a.m. if the minor is sixteen (16) or seventeen (17).
2. It shall be unlawful for the parent of a minor to knowingly allow the minor to engage in conduct prohibited by this Chapter.

610.030 EXCEPTIONS TO CURFEW. A minor may engage in the conduct prohibited under part 610.020 if the minor is accompanied by a parent or an adult authorized by the parent to accompany the minor, is on an emergency errand, is traveling directly to or from a place of employment, or has another legitimate reason to be out after curfew.

### 610.040. DANGEROUS WEAPONS.

1. No minor shall handle, have in his or her possession, or have under his or her control any firearm, ammunition, slingshot, sling, air-gun, or other similar weapon within the City of Birchwood Village, unless accompanied by the minor's parent or guardian.

2. No person other than the parent or guardian shall give, sell, or otherwise furnish any of the objects described in this part to a minor.

610.050. POSSESSION OF TOBACCO. No minor shall use, purchase, or possess tobacco or tobacco-related devices within the City of Birchwood Village.

610.060. PENALTIES. Any person who shall violate Sections 610.020 or 610.040(1) shall be guilty of a misdemeanor. Any person who violates Section 610.050 shall be guilty of a petty misdemeanor. A violation of Section 601.040(2) shall be a felony as provided in Minnesota Statutes Section 609.66, Subd. 1(b).

“AMENDED BY ORDINANCE 2001-1; April 10, 2001”

“AMENDED BY ORDINANCE 2001-2; September 11, 2001”

**RESOLUTION 2023-24**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION APPROVING SUMMARY PUBLICATION OF  
ORDINANCE NO. 2023-03-02, AN ORDINANCE REPEALING AND REPLACING  
ORDINANCE NO. 610 AND TITLED “CURFEW FOR MINORS; FIREARMS; TOBACCO.”**

**WHEREAS**, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, the City has adopted Ordinance No. 2023-03-02, which amends the language of City Code Section 610; and

**WHEREAS**, the new ordinance is lengthy and would be costly for the City to publish in its entirety as required by law for the adoption of an ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Birchwood Village, Minnesota, as follows:

1. Because the terms of Ordinance 2022-03-02 are lengthy, the City may publish the attached summary of the Ordinance as allowed by statute, and need not publish the entire ordinance. The attached summary clearly informs the public of the intent and effect of the Ordinance. Summary publication has been approved by at least a 4/5 vote of the City Council.
2. The effective date of the Ordinance amendments shall be upon their publication by summary as required by law.

Resolution duly seconded and passed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Margaret Ford, Mayor

Attest:

\_\_\_\_\_  
Rebecca Kellen, City Administrator-Clerk

Please be advised that the City of Birchwood has duly-passed the following ORDINANCE:

AN ORDINANCE REPEALING AND REPLACING SECTION 610 REGARDING TOBACCO, CURFEWS AND REGULATION OF FIREARMS IN BIRCHWOOD CITY CODE.

The following is a SUMMARY of the Ordinance:

On April 11, 2023 the City adopted an Ordinance (2023-03-02) repealing and replacing Section 610 to streamline curfews and better define restrictions on tobacco and nicotine-products and eliminate references to firearms that are addressed elsewhere in the Code.

PLEASE BE ADVISED, this is not the full text of the Ordinance passed and the published material is only a summary. The full text is available for public inspection at the City of Birchwood, 207 Birchwood Avenue, Birchwood, Minnesota 55110 or delivered upon request electronically or by U.S. Mail.

*Summary complies with Minn. Stat. §§ 331A.05 subd. 8. & 412.191 subd 4.*

To: Birchwood City Council  
From: Ryan Hankins  
Re: Fixing an inconsistency in the water meter code

In the January meeting, I proposed an amendment to the city water code, even though the fee schedule lists the amount of a fee that I added to the ordinance itself; this repairs that and removes a repeated sentence.

**ORDINANCE NO. 2023-03-03**

**AN ORDINANCE AMENDING SECTION 201.080 OF ORDINANCE NO. 201, AND TITLED “CITY WATER SYSTEMS.”**

**The City Council of The City of Birchwood Village, Minnesota ordains:**

**Findings and Purpose:**

*This change makes our water meter code refer to the fee schedule and removes a duplicated sentence.*

**Section 1.** Section 201.080 of Ordinance No. 201 and titled “City Water Systems” is amended to read:

201.080.     METERS.

1. The City will monitor water usage by consumers through a water meter furnished by Kamstrup Electronic Water Meters designated by the Council. Every household or other final consumer of City water must have its own meter. A suitable place, safe from frost and other damage, and accessible for examination and reading must be provided at the expense of the consumer.

2. Meters shall be installed by the City at the owner's expense. All meters shall be under the control and supervision of the City and shall be sealed by the proper City employees. No person other than City employees or other person designated by the City in charge of said work shall break said seals.

3. Non-Kamstrup Electronic Water Meters

1. Any water meter that is not the designated Kamstrup Electronic Water Meter will require manual readings and ~~thea~~ quarterly ~~\$100.00~~Non-electronic water meter fee. For any water meter that is not the designated Kamstrup Electronic Water Meter, a legible timestamped photo of the resident's current meter reading must be emailed by the resident to the City’s designee between the first and the fifteenth of February, May, August and November or ~~thea \$100.00 Non-Submission Fee~~Non-submission of emailed photo of non-electronic water meter fee listed in the fee schedule will be imposed.

2. Failure to timely report any water meter reading two times in any four-quarter period is a violation of this code and is a misdemeanor. Submitting an intentionally erroneous reading is also a violation of this code and is a misdemeanor. ~~Submitting an intentionally erroneous reading is a violation of this code and is a misdemeanor.~~ Failure to

timely produce a legible timestamped photo of the current reading shall results in double the fee set in the fee schedule. -

3. Upon the sale of any property in the City the Kamstrup Electronic Water Meter must be installed.

4. Consumers must keep their service pipes, attachments, and meters in order, and must protect them from frost.

5. In case of the breakage or stoppage of any meter, the consumer shall immediately notify the City. Any repairs necessary shall be made at the expense of the owner, except in the case of normal wear and tear.

6. In cases where the meters are difficult to access by the officers of the City, or are exposed to danger from frost, the water shall be shut off from such premises until the obstruction is removed or the danger is avoided.

**Section 2.** This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of The City of Birchwood Village Minnesota this \_\_\_\_\_ day of Month, Year.

\_\_\_\_\_  
Mayor

Attested:

\_\_\_\_\_  
City Clerk



**RESOLUTION 2023-25**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION APPROVING SUMMARY PUBLICATION OF  
ORDINANCE NO. 2023-03-03: AN ORDINANCE AMENDING SECTION 201.080 OF  
ORDINANCE NO. 201, AND TITLED “CITY WATER SYSTEMS.”**

**WHEREAS**, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, the City has adopted Ordinance No. 2023-03-03, which amends the language of City Code Section 201; and

**WHEREAS**, the new ordinance is lengthy and would be costly for the City to publish in its entirety as required by law for the adoption of an ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Birchwood Village, Minnesota, as follows:

1. Because the terms of Ordinance 2022-03-03 are lengthy, the City may publish the attached summary of the Ordinance as allowed by statute, and need not publish the entire ordinance. The attached summary clearly informs the public of the intent and effect of the Ordinance. Summary publication has been approved by at least a 4/5 vote of the City Council.
2. The effective date of the Ordinance amendments shall be upon their publication by summary as required by law.

Resolution duly seconded and passed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Margaret Ford, Mayor

Attest:

\_\_\_\_\_  
Rebecca Kellen, City Administrator-Clerk

Please be advised that the City of Birchwood has duly-passed the following ORDINANCE:

AN ORDINANCE REPEALING AND REPLACING SECTION 201 REGARDING WATER METERS IN BIRCHWOOD CITY CODE.

The following is a SUMMARY of the Ordinance:

On April 11, 2023 the City adopted an Ordinance (2023-03-03) amending Section 201 to refer to the City's Fee Schedule and remove duplicated text.

PLEASE BE ADVISED, this is not the full text of the Ordinance passed and the published material is only a summary. The full text is available for public inspection at the City of Birchwood, 207 Birchwood Avenue, Birchwood, Minnesota 55110 or delivered upon request electronically or by U.S. Mail.

*Summary complies with Minn. Stat. §§ 331A.05 subd. 8. & 412.191 subd 4.*

To: Birchwood City Council  
From: Ryan Hankins  
Re: Variance time extension

Four documents follow:

1. [ACTION] Proposed ordinance amendment for Variances

A discussion of the ordinance is included in the “Findings and Purpose” section.

## Planning Commission Review for ORDINANCE 2023-04-01 (304.035) Variances

### MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 3/23/2023

Submitted by Michael Kraemer – secretary

#### 5. 304.035 Variances

##### *a. **Commission Action:***

- i.* Advisory motion by Sorenson, 2<sup>nd</sup> by Maiers-Atakpu to support the adoption of the proposed ordinance amending the existing variance ordinance section 304.035 Revocation and Termination of Variances to allow for a potential one-year extension of variance duration. Vote: Yes – 5, No – 0. Motion passed.

**ORDINANCE NO. 2023-04-01**

**AN ORDINANCE AMENDING ORDINANCE NO. 304 ADOPTED ON MARCH 8, 2022,  
AND TITLED “VARIANCES.”**

**The City Council of Birchwood Village, Minnesota ordains:**

**Section 1.** Findings and Purpose.

*Construction projects that require variances often last longer than one year. Because construction work usually cannot begin until a variance is granted, construction at a typical pace risks overshooting the expiration of a variance. Construction projects are often completed more than one year after the grant, and providing that longer limit affords applicants some assurance that a variance will remain valid until it can be used. The council maintains the prerogative to lengthen the expiration in its discretion, but may now also shorten the expiration.*

**Section 2.** Section 304.035 Ordinance No. 304 adopted on March 8, 2022 and titled “VARIANCES” is amended to read:

304.035      **Revocation and Termination of Variances.** A violation of any condition set forth or required in granting a variance shall be a violation of the Code and automatically terminates the variance. Unless the City Council prescribes another expiration, a variance shall become void two years after it was granted, unless the use for which it is was granted has been established. The City Council may extend the expiration of a variance not more than once by one year, but only if an application for an extension is made in writing to the City Administrator before expiration.

This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of Birchwood Village, Minnesota, Minnesota this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Margaret Ford, Mayor

Attested:

\_\_\_\_\_  
Rebecca Kellen, City Administrator

To: Birchwood City Council  
From: Ryan Hankins  
Re: Righting and Rewriting the right-of-way-code

Our existing right-of-way code is from a previous version of the right-of-way code derived from the League of Minnesota Cities model ordinance. The model ordinance has been updated since that time, or else our current ordinance underwent many changes. Since CenturyLink/Lumen appears to be upgrading facilities, revision is appropriate.

The purpose of Right-of-Way regulation is largely to ensure that the city can regulate utilities and telecommunications as permitted by statute only if the city exercises its powers to do so in an ordinance. LMC indicates that a recital is necessary, which our existing code lacks:

Cities must “opt in” by exercising the authority given to them in state law. A recital in the preamble of the ordinance is necessary, and is included in the model right-of-way ordinances provided.

Because this section of code is large, complex, and the LMC model is constructed with consideration for federal and state laws and regulations and case law, it makes sense for our ordinance to hew as closely as possible to the model; this proposal modifies the model to make it appropriate for Birchwood, while keeping section numbers similar, making reference to the current model and adaptation to a similar future model easier.

Significant portions of the current right-of-way code have sections that go beyond the statutory powers of the city; our current code could be unenforceable, and utility or telecommunications companies might not be as forgiving as we’d hope.

In order to minimize the changes from the model, a previous modification to Birchwood’s ordinance regulating dumpsters and portable storage units is better placed in Chapter 615 relating to Exterior Storage, and a change to that Chapter is proposed here.

This ordinance also fits better in the 2xx section relating to city services and building regulation, with chapters regulating gas and electric utilities.

White Bear Lake has a section similar to §208A.060, without additional exceptions. §208A.060(3) does have a section exempting gardens.

Additionally, the “exceptions” section of our existing ordinance is broad:

**309.044 EXCEPTIONS.** The following are not subject to the requirements of this Section:

1. Person or Persons planting or maintaining pre-approved boulevard surface plantings or gardens.
2. Person or Persons installing mail boxes or private sidewalk from street or curb to dwelling or commercial structure.
3. Person or Persons engaged in commercial or private snow removal activities.
4. Person or Persons installing street furnishings.
5. Person or Persons installing irrigation systems.
6. City of Birchwood Village.
7. Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this Section.

Because any subsurface work in a right-of-way risks harm to facilities, current exemptions are tantamount to exempting government vehicles from stopping at stop signs.

I asked Kyle Hartnett at the League of Minnesota Cities this question and he responded:

Typically, a driveway would require a right of way permit because the applicant would be excavating the right of way. Annual registration is typically required for “facilities” placed in the ROW. Typically, the ordinance will note that facilities relate to telecommunication assets. Therefore, a mailbox or driveway would not be required to annually report to the city.

I made the following modifications to the model to make clearer that registration applies to work on *facilities* in right-of-way, not *right-of-way* itself.

Registration. Each person authorized to occupy or use, or who seeks to occupy or use, the right-of-way to ~~or~~ place any equipment or facilities ~~in or on the right-of-way~~, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information.

Registration Prior to Work. No person may, in any right-of-way, 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.

The existing communications code has several sections relating to traffic management: flaggers, notice of traffic closure, and parking prohibited. These sections are covered in other code or may be unnecessary.

Because this code repeals a section of zoning code, Minnesota Statute §462.357 Subd. 4. requires a referral to the planning commission for its recommendation.

Four documents follow:

1. Amendment to fee schedule.
2. Amendment to Chapter 615.
3. Repeal of Chapter 208 and 309, and enactment of Chapter 208A.
4. LMC Recommendation for Summary Publication of Ordinance 208A.

Today:

I move to place this item on the Planning Commission's agenda for its next meeting, and request that it consider this memo, provide advice to the City Council, and make a recommendation on the repeal of Chapter 309, as required by Minnesota Statute §462.357 Subd. 4.

Future:

Direct staff to generate a permit form for:

1. Excavation.
2. Obstruction.
3. Small Wireless Facility



## Planning Commission Review for ORDINANCE 2023-04-02 Fee Schedule

### MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 3/23/2023

Submitted by Michael Kraemer – secretary

- e. Item E – Code Item 208A: Right of Way Code Revision Discussion
  - i. Item 1 - Discuss Proposed Ordinance regarding fee schedule.
    - 1. **Commission Action:**
      - a. Advisory motion by Maiers-Atakpu, 2<sup>nd</sup> by Sorenson to support the Fee Schedule as presented **with the recommended addition** of a fee item under RIGHT OF WAY FEES table, entitled Right of Way Degradation Escrow in the amount of \$3000.
        - i. Right of Way Degradation is identified in the proposed changes to Right of Way Code 208A under Section 208A and specifically section 208A.130 PERMIT FEES -1. Excavation Permit Fees, Item b. Degradation costs if applicable.
        - ii. It is opinion of Commission that adding this fee item 208A.130.1.b warrants consideration since damage can occur to pavement and/or right of way due to actions of equipment even if there is no Excavation occurring.
        - iii. Advisory motion vote to support the proposed fee schedule and the addition of the Right of Way Degradation Escrow in the amount of \$3000. Vote: Yes- 5, No – 0 Motion passed.

**ORDINANCE 2023-04-02**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING THE FEE SCHEDULE**

The City Council of the City of Birchwood Village hereby ordains that the Fee Schedule of the Municipal Code of the City of Birchwood Village is amended to read as specified in EXHIBIT A.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_  
2023

\_\_\_\_\_  
Margaret Ford, Mayor

Attest:

\_\_\_\_\_  
Rebecca Kellen, City Administrator

EXHIBIT A.

PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS *subject to additional fees, in that section of the fee schedule. All planning and zoning	Conditional Use Permit (CUP) Application or Amendment *	306.010	\$460.00	
	Refundable Conditional Use Permit or CUP Amendment Escrow for permitting costs incurred by city		\$3,000.00	
	Interim Use Permit Application *	305.020, 305.040(6)	\$400.00	
	Refundable Interim Use Permit Escrow for permitting costs incurred by city	302.050	\$3,000.00	
	Street Vacation Application *		\$300.00	

permits require an additional refundable permit escrow when listed.

	Refundable Street Vacation Escrow for permitting costs incurred by city	302.050	\$3,000.00	
	Variance Application *	304.020	\$600.00	
	Refundable Variance Escrow for staff review time incurred by city	302.050	\$3,000.00	
	Subdivision: Lot Split Application *	308.121	\$225.00	
	Refundable Lot Split Escrow for permitting costs incurred by City	301.055(2)	\$1,000.00	
	Subdivision: Preliminary Plat Application *	308.040(3)	\$1,000.00	
	Subdivision: Refundable Preliminary Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	
	Subdivision: Final Plat Application *	308.050	\$1,000.00	
	Subdivision: Refundable Final Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	
	Zoning Permit *	307.010	\$50.00	
	Refundable Zoning Permit Escrow for permitting costs incurred by city	301.055(2)	\$3,000.00	
	<del>Right of Way (ROW) Permit Application Fee *</del>	<del>309.061</del>	<del>\$300.00 + \$100.00/hour for plan review after two hours</del>	
	<del>Refundable ROW Permit Escrow for permitting costs incurred by city</del>	<del>301.055(2)</del>	<del>\$3,000.00</del>	
	<del>Right of Way Degradation Fee</del>	<del>309.080</del>	<del>Permit holder responsible for actual costs</del>	
	Move a building from its present location in Birchwood to any other site, whether or not the new site is within the City. *		\$500.00	
	Refundable building move escrow for permitting costs incurred by city	301.055(2)	\$1,000.00	
	Certificate of occupancy		\$25.00	

Public Property Access Limited License	607.235	\$50.00	
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<u>RIGHT OF WAY FEES</u>	<u>Refundable ROW Excavation Permit Deposit</u>	<u>301.055(2)</u>	<u>\$3,000.00</u>	
	<u>Obstruction Permit</u>	<u>208 B.06 (2)</u>	<u>\$200</u>	
	<u>Excavation permit</u>	<u>208 B.06 0(1)</u>	<u>\$200</u>	
	<u>Small Wireless Facility Permit</u>	<u>208 B.06 0(3)</u>	<u>\$500.00 up to 5 sites, \$100.00 for each additional</u>	
	<u>Delay Penalty</u>	<u>208 A.09 0(3)</u>	<u>\$60 plus \$20 / day each day late over 3 days</u>	
	<u>Refundable Right-of-Way Non-Excavation Damage Deposit</u>	<u>208A.100(6)</u>	<u>\$3,000.00</u>	

<u>COMMUNICATIONS FEES</u>	<u>Permit to install, repair, remove or relocate communications facilities<sup>*,**</sup></u>	<u>208.020</u>	<u>\$50.00</u>	<u>12/2022</u>
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**Planning Commission Review for ORDINANCE 2023-04-03 (615) Exterior Storage**

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 3/23/2023

Submitted by Michael Kraemer – secretary

- i. Item 2 – Discuss Proposed Ordinance RE: City Code 615
  - 1. The repeal of Chapter 309 removes the prohibition of roll-off or portable, on-demand storage containers in streets. It is felt that the prohibition is still in the best interest of the City and suggest adding this prohibition to Chapter 615 of City Code.
  - 2. **Commission Action:**
    - a. Advisory motion by McKenzie, 2<sup>nd</sup> by Evans to supporting the addition of Item 615.060 TEMPORARY OUTDOOR STORAGE CONTAINERS prohibition as presented. Vote: Yes – 5, No – 0.

**ORDINANCE NO. 2023-04-03**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE ADOPTING SECTION 060 OF ORDINANCE NO. 615 ADOPTED ON JULY 11, 1995, AND TITLED “EXTERIOR STORAGE.”**

**Section 1.** Findings and Purpose.

*The repeal of Chapter 309 removes a prohibition on roll-off or portable, on-demand storage containers in streets. The City has a public interest in allowing the free flow of traffic and preventing obstructions in streets, but this section is better placed in Chapter 615 of the City Code, because that chapter relates more closely to exterior storage than right-of-way issues.*

**Section 2.** Enactment.

Section 615.060, Ordinance No. 615 of the City Code is hereby adopted, to read as follows:

615.060        TEMPORARY OUTDOOR STORAGE CONTAINERS. Temporary outdoor storage containers include, but are not limited to, portable on-demand storage units and roll-off dumpsters. All temporary outdoor storage containers shall be regulated by this section. No person shall allow any temporary outdoor storage container to be placed or to remain in any street, roadway, parkway or alley.

Passed by the City Council of The City of Birchwood Village, Minnesota this \_\_\_\_ day of \_\_\_\_\_, 2023.

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Margaret Ford, Mayor

Attest:

\_\_\_\_\_  
Rebecca Kellen, City Administrator-Clerk

**Planning Commission Review for ORDINANCE 2023-04-04 (208/309) Regulating Public Rights of Way**

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 3/23/2023

Submitted by Michael Kraemer – secretary

- i.* Item 3 - Discuss Proposed Ordinance RE: Enacting City Code 208A
  - 1. Discussion: Repeal Chapters 208 and 309 of the City Code and replace them with a new Chapter 208A dealing with right of way activity permitting, in particular as it relates to installation and maintenance of public utilities and communication systems.
    - a.* This new Chapter 208A being proposed is modeled to better reflect Minnesota Statutes 237 (the “Act”) and is proposed to be interpreted consistently with Minn. R. 7819.0050=7819.9950 and Minn. R., ch 7560.
  - 2. **Commission Action:**
    - a.* Advisory motion by Sorenson, 2<sup>nd</sup> by Maiers-Atakpu to support adoption of Chapter 208A as proposed. Advisory Vote: Yes – 5, No – 0 Motion passed.

**ORDINANCE NO. 2023-04-04**

**CITY OF BIRCHWOOD VILLAGE, WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE TO ENACT A NEW CHAPTER OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE PUBLIC INTEREST, TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS AND TO REPEAL SECTIONS 208 TITLED “COMMUNICATIONS” AND 309 TITLED “PUBLIC RIGHT-OF-WAY” OF THE CITY CODE**

**THE CITY COUNCIL OF THE CITY OF BIRCHWOOD VILLAGE, WASHINGTON COUNTY, MINNESOTA ORDAINS:**

**Section 1.** Repeal.

Chapters 208 and 309 of the City Code are hereby repealed in their entirety.

**Section 2.** Enactment.

Chapter 208A of the Code of Ordinances is hereby enacted, to read as follows:

**Chapter 208A**

**Right-of-way Management**

208A.010. FINDINGS, PURPOSE, AND INTENT. 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.

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.

This chapter shall be interpreted consistently with Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing



applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minn. R. 7819.0050–7819.9950 and Minn. R., ch. 7560 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.

208A.020. ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY. Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant to Minn. Stat. 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

208A.030. DEFINITIONS. The following definitions apply in this chapter of this code. References hereafter to “sections” are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms, whether or not capitalized.

1. 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.
2. Applicant. Any person requesting permission to excavate, obstruct, or otherwise place facilities in a right-of-way.
3. City. The city of Birchwood Village, Minnesota. For purposes of section 208A.290, city also means the city’s elected officials, officers, employees, and agents.
4. Collocate or Collocation. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.
5. Commission. The State of Minnesota Public Utilities Commission.
6. Construction Performance Bond. Any of the following forms of security provided at permittee’s option:
  - Individual project bond;
  - Cash deposit;
  - Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
  - Letter of Credit, in a form acceptable to the city;

- Self-insurance, in a form acceptable to the city;
  - 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.
7. 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.
  8. Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.
  9. 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.
  10. Delay Penalty. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.
  11. Emergency. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
  12. Equipment. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.
  13. Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
  14. Excavation 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.
  15. Excavation Permit Fee. Money paid to the city by an applicant to cover the costs as provided in Section 208A.130.
  16. Facility or Facilities. Any tangible asset in the right-of-way used to provide Utility or Telecommunications Service.

17. Five-Year Project Plan. Shows projects adopted by the city for construction within the next five years.
18. 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.
19. 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 or small wireless facility 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 or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 208A.310 of this chapter.
20. 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, or so as to hinder maintenance of any city asset.
21. 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.
22. Obstruction Permit Fee. Money paid to the city by a permittee to cover the costs as provided in Section 208A.130.
23. Patch or Patching. A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

24. 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.
25. Permit. Has the meaning given “right-of-way permit” in this ordinance.
26. Permittee. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.
27. Person. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.
28. Probation. The status of a person that has not complied with the conditions of this chapter.
29. Probationary Period. One year from the date that a person has been notified in writing that they have been put on probation.
30. Registrant. Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.
31. 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.
32. Restoration Cost. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.
33. Public Right-of-Way or 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 non-wire telecommunications or broadcast service.

34. Right-of-Way Permit. Either the excavation permit, the obstruction permit, the small cell permit or any combination thereof depending on the context, required by this chapter.
35. Right-of-Way User. (1) A telecommunications right-of-way user as defined by Minn. Stat. 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
36. Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.
37. 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.
38. Small Wireless Facility. A wireless facility that meets both of the following qualifications:
1. each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
  2. all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications 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 within or behind an existing structure or concealment.

39. Supplementary Application. 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.
40. 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-year plan, in which case it is considered full restoration.
41. Trench. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
42. Telecommunications 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 Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.
43. Two Year Project Plan. Shows projects adopted by the city for construction within the next two years.
44. Utility Pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.
45. Wireless Facility. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

46. Wireless Service. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

47. Wireless Support Structure. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

208A.040. ADMINISTRATION. The City Engineer is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Engineer or City Council may delegate any or all of the duties hereunder.

208A.060. REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

1. Registration. Each person authorized to occupy or use, or who seeks to occupy or use the right-of-way to place any equipment or facilities, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information.
2. Registration Prior to Work. No person may, in any right-of-way, construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, without first being registered with the city.
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 Minn. Stat. ch. 216D, Gopher One Call Law.

208A.070. REGISTRATION INFORMATION.

1. Information Required. Registration shall be requested on an application form produced by the city. The information provided to the city at the time of registration shall include, but not be limited to:

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



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.

#### 208A.080. REPORTING OBLIGATIONS.

1. Operations. 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. Such 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.
  - a. The plan shall include, but not be limited to, the following information:
  - b. 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
  - c. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a “five-year project”).

The term “project” in this section shall include both next-year projects and five-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.

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.

#### 208A.090. PERMIT REQUIREMENT.

1. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so.
  - a. 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.
  - b. 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.
  - c. Small Wireless Facility Permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
2. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.
3. Delay Penalty. In accordance with Minn. Rule 7819.1000 subp. 3 and notwithstanding 208A.090(2) 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.
4. 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.

208A.100. PERMIT APPLICATIONS. Application for a permit is made to the city on forms approved by the city or the city's designee. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

1. Registration with the city pursuant to this chapter.

2. 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 and all other information deemed relevant by the City Engineer.
3. Payment of money due the city for:
  - a. permit fees, estimated restoration costs, and other management costs;
  - b. prior obstructions or excavations;
  - c. 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; and
  - d. franchise fees or other charges, if applicable.
4. Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
5. 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.
6. Posting a construction performance bond deposit for right-of-way work on facilities that does not involve excavation, or depositing into an escrow account the amount in the fee schedule.

208A.110. ISSUANCE OF PERMIT; CONDITIONS.

1. Permit Issuance. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.
2. Conditions. The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.
3. Small Wireless Facility Conditions. In addition to 208A.110(2), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

- a. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
  - b. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
  - c. No wireless facility may extend more than 10 feet above its wireless support structure.
  - d. Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
  - e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, such equipment shall be consistent with the city's aesthetic standards regarding wireless equipment as adopted by the city. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the city shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit.
  - f. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
  - g. A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit.
4. Small Wireless Facility Agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:
1. Up to \$150 per year for rent to collocate on the city structure; and
  2. \$25 per year for maintenance associated with the collocation; and
  3. A monthly fee for electrical service as follows:
    - a. \$73 per radio node less than or equal to 100 maximum watts;

- b. \$182 per radio node over 100 maximum watts; or
- c. The actual costs of electricity, if the actual costs exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant,

208A.120. ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS.

1. Deadline for Action. The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application or within any timeline established by state law. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
2. Consolidated Applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
  - a. are located within a two-mile radius;
  - b. consist of substantially similar equipment; and
  - c. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

3. Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:
  - a. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension; or
  - b. the applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information; or

- c. the city and a small wireless facility applicant agree in writing to toll the review period.

#### 208A.130. PERMIT FEES.

1. Excavation Permit Fee. The city shall set in the fee schedule and impose an excavation permit fee in an amount sufficient to recover the following costs:
  - a. the city management costs;
  - b. degradation costs, if applicable.
2. Obstruction Permit Fee. The city shall set in the fee schedule and impose an obstruction permit fee in an amount sufficient to recover the city management costs.
3. Small Wireless Facility Permit Fee. The city shall set in the fee schedule and impose a small wireless facility permit fee in an amount sufficient to recover:
4. Payment of Permit Fees. No excavation permit, obstruction permit, or small cell permit shall be issued without payment of all required fees. The city may allow the applicant to pay such fees within thirty (30) days of billing.
5. Non Refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 208A.230 are not refundable.
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.

#### 208A.140. RIGHT-OF-WAY PATCHING AND RESTORATION.

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 under Section 208A.170.
2. Patch and Restoration. Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
  - a. City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall

pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.

- b. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.
  - c. 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.
3. 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 Minn. Rule 7819.1100.
  4. Duty to Correct Defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 208A.170.
  5. 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.

#### 208A.150. JOINT APPLICATIONS.

1. Joint application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
2. Shared fees. Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

3. With city projects. Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

#### 208A.160. SUPPLEMENTARY APPLICATIONS.

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

#### 208A.170. OTHER OBLIGATIONS.

1. Compliance with Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 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.
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.
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.

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 Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city engineer.

#### 208A.180. DENIAL OR REVOCATION OF PERMIT.

1. Reasons for Denial. The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use and any city asset or facility.
2. Procedural Requirements. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

208A.190. INSTALLATION REQUIREMENTS. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat., §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 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 referenced in Section 208A.240(2) of this ordinance.

#### 208A.200. INSPECTION.

1. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300 or other as built documentation as deemed necessary by the city.

2. Site Inspection. Permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. Authority of the City.
  - a. At the time of inspection, the city 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 city may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to Section 208A.230.

#### 208A.210. WORK DONE WITHOUT A PERMIT.

1. Emergency Situations. Each registrant shall immediately notify the city of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

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.

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.

208A.220. 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.

208A.230. REVOCAION OF PERMITS.

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.
  - e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to 208A.200.
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.
3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

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

#### 208A.240. MAPPING DATA.

1. Information Required. Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the city accurate maps and drawings certifying the "as-built" location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as a condition imposed by the city. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.
2. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence satisfactory to the city of the installed service lateral locations. Compliance with this 208A.240(2) and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any city approval necessary for:
  - a. payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429; and
  - b. city approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The City Engineer 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 future permits to the offending permittee or its subcontractors.

208A.250. LOCATION AND RELOCATION OF FACILITIES.

1. Placement. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, with other applicable standards adopted by the city engineer, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
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 facility 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.
3. Nuisance. One 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 usable condition.
4. Limitation of Space. To protect the health, safety, and welfare of the public, 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.

208A.260. PRE-EXCAVATION FACILITIES LOCATION. In addition to complying with the requirements of Minn. Stat. 216D.01-.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

208A.270. DAMAGE TO OTHER FACILITIES. When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant’s facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city’s response to an emergency occasioned by that registrant’s facilities.

208A.280. RIGHT-OF-WAY VACATION. Reservation of right. 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 Minn. R. 7819.3200.

208A.290. 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 Minn. Rule 7819.1250.

208A.300. ABANDONED AND UNUSABLE FACILITIES.

1. Discontinued Operations. A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant’s obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.
2. Removal. Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

208A.310. APPEAL. A right-of-way user that:

1. has been denied registration;
2. has been denied a permit;
3. has had a permit revoked;

4. believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6;  
or
5. disputes a determination of the city regarding Section 208A.230(2) of this ordinance,

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.

208A.320 RESERVATION OF REGULATORY AND POLICE POWERS. A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.

208A.330 SEVERABILITY. If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Passed by the City Council of The City of Birchwood Village this \_\_\_\_ day of \_\_\_\_\_, 2023.

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Margaret Ford, Mayor

Attest:

\_\_\_\_\_  
Rebecca Kellen, City Administrator-Clerk

## **CITY OF BIRCHWOOD VILLAGE, WASHINGTON COUNTY, MINNESOTA**

### **A summary of an ordinance to enact a new Chapter of the City of Birchwood Village Code of Ordinances to administer and regulate the public rights of way in the public interest, and to provide for the issuance and regulation of right-of-way permits.**

1. The City Council has adopted a lengthy ordinance administering and regulating the public rights of way in the public interest and providing for issuance and regulation of right-of-way permits. The purpose of this summary is to inform the public of the intent and effect of the ordinance and to publish only a summary of the ordinance pursuant to Minnesota Statutes, section 412.191, with the full ordinance being on file in the office of the City Clerk during regular office hours.

2. The City of Birchwood Village Code of Ordinances is amended by adding a new chapter, Chapter 208A. The new chapter provides essentially as follows:

#### **Sec. 208A.010. Findings, Purpose, and Intent.**

States the reason and the need for the city to more effectively manage the public rights of way.

#### **Sec. 208A.020. Election to Manage the Public Rights of Way.**

States the intent of the Council to manage the public right of way pursuant to and in accordance with the authority given to it under state and federal statutory, administrative, and common law.

#### **Sec. 208A.030. Definitions.**

Certain words in the ordinance are defined here. This section also incorporates definitions adopted by the Minnesota Public Utilities Commission in state rules.

#### **Sec. 208A.040. Administration.**

Names the principal city official responsible for the administration of the city right-of-way ordinance.

#### **Sec. 208A.060. Registration and Right-of-Way Occupancy and Sec. 208A.070. Registration Information.**

Requires those using and occupying the public rights of way to register with the city and provide basic essential information.

#### **Sec. 208A.080. Reporting Obligations.**

Defines some minimum reporting obligations for utilities planning to do work in the public rights of way, including schedules for anticipated work.



**Secs. 208A.090. Permit Requirement; 208A.100, Permit Applications; 208A.110, Issuance of Permit Conditions; and 208A.120, Action on Small Wireless Facility Permit Applications, and 208A.130, Permit Fees.**

Describes the requirements for obtaining a permit and paying appropriate permit fees before excavating or in any way obstructing the public rights of way.

**Sec. 208A.140. Right-of-Way Patching and Restoration.**

Contains the requirements for restoring the public rights of way after excavation, and adopts the restoration standards contained in Minnesota Public Utilities Commission rules.

**Sec. 208A.150. Joint Applications.**

**Sec. 208A.160. Supplementary Applications.**

**Sec. 208A.170. Other Obligations.**

**Sec. 208A.180. Denial of Permit.**

Specifies the grounds for denying a right-of-way permit.

**Sec. 208A.190. Installation Requirements.**

Specifies that the installation of utility facilities in the public rights of way shall comply with city requirements and applicable rules of the Minnesota Public Utilities Commission.

**Sec. 208A.200. Inspection.**

**Sec. 208A.210. Work Done Without a Permit.**

**Sec. 208A.220. Supplementary Notification.**

**Sec. 208A.230. Revocation of Permits.**

Describes the grounds and procedures for revoking right-of-way permits.

**Sec. 208A.240. Mapping Data.**

Adopts rules of the Minnesota Public Utilities Commission describing the mapping information that must be provided by those placing utility facilities in the public rights of way.

**Sec. 208A.250. Location and Relocation of Facilities.**

Describes the requirement regarding location of utilities and further adopts Minnesota Public Utilities Commission rules regarding the circumstances when utilities can be forced to relocate their facilities.

**Sec. 208A.260. Pre-Excavation Facilities Location.**

**Sec. 208A.270. Damage to Other Facilities.**

**Sec. 208A.280. Right-of-Way Vacation.**

**Sec. 208A.290. Indemnification and Liability.**

Specifies the circumstances in which those placing facilities in the public rights of way will be required to defend and indemnify the city for actions brought against the city.

**Sec. 208A.300. Abandoned and Unusable Facilities.**

**Sec. 208A.310. Appeal.**

Describes the process for challenging a city's decision involving application of this ordinance.

**Section 208A.320 Reservation of Regulatory and Police Powers.**

**Sec. 208A.330. Severability.**

3. The City Council has determined that publication of the title and summary of the rights-of-way management ordinance as set forth in this summary will clearly inform the public of the intention and effect of the ordinance. The Council also directs that only the title and this summary be published. A copy of the entire text of the ordinance shall be posted in the \_\_\_\_\_ library.

**RESOLUTION NO. 2023-26**

**RESOLUTION ALLOWING COUNCILMEMBERS TO  
VOLUNTARILY DECLINE THEIR OWN SALARIES IF THEY  
CHOOSE**

**WHEREAS**, Birchwood Village Ordinance #806 affixes Council and Mayor Salaries,  
and

**WHEREAS**, certain members of the City Council and/or Mayor may wish to  
voluntarily decline their own salaries, and

**WHEREAS**, questions were previously raised as to whether Councilmembers and/or  
the Mayor may voluntarily decline their own salary.

**NOW THEREFORE BE IT RESOLVED**, by the City Council of the City of  
Birchwood Village that Councilmembers and/or the Mayor may, at any time, decline  
their own salary by submitting a written request to the City Administrator or Treasurer.  
This includes pay paid out for 2021 and 2022. For pay paid out in 2021 and 2022; City  
staff and the Councilmember / Mayor are to work together to recover taxes already paid  
to the IRS by issuing updated tax documents.

I certify that the City of Birchwood Village adopted the above Resolution

on this 11th day of April, 2023

ATTEST:

\_\_\_\_\_  
Margaret Ford, Mayor

\_\_\_\_\_  
Rebecca Kellen, City Administrator

## **AGREEMENT FOR DESIGNATED CITY ENGINEER AND PROEJCT TASK ORDERS**

### **CITY OF BIRCHWOOD VILLAGE and BOLTON & MENK, INC.**

This Agreement made this 21<sup>ST</sup> day of March 2023, by and between the City of Birchwood Village, 207 Birchwood Avenue, Birchwood Village, MN 55110, (“CLIENT” or “City”), and BOLTON & MENK, INC., 3507 High Point Drive North, Bldg. 1 Suite E130, Oakdale, MN 55128, (“CONSULTANT”).

WITNESS, whereas the CLIENT requires professional services for: 1) general municipal engineering matters, including designation of a licensed professional engineer for CLIENT’S City Engineer position, and 2) various project specific assignments or tasks; and whereas the CONSULTANT agrees to furnish the necessary professional services required and assigned as needed by the CLIENT.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

#### **SECTION 1- CONSULTANT'S SERVICES**

- A. The CONSULTANT agrees to perform the various professional general and project engineering services as hereinafter described.
- B. GENERAL AND DESIGNATED CITY ENGINEER SERVICES
  - 1. The CONSULTANT shall serve in the position as City Engineer under the direction of the City Administrator and provide the following City Engineer Services.
    - a. The CONSULTANT agrees to assign an experienced licensed professional engineer from its staff to be the designated City Engineer and perform the required services and to provide such other staff as may be appropriate or necessary to complete requested services.
    - b. For calendar year 2023, CONSULTANT and CITY hereby designate and appoint Marcus Johnson P.E. as the designated City Engineer.
    - c. Except as may be otherwise specifically required for oversight and administration of CLIENT’S state aid transportation program, the term "City Engineer" as used herein shall refer to the designated City Engineer or the CONSULTANT staff performing requested services under the direct supervision of the designated City Engineer.
  - 2. The City Engineer shall attend City council and planning commission meetings as requested and shall assist CLIENT staff on engineering related issues.
  - 3. Not Used this Agreement.
  - 4. The City Engineer shall advise and provide engineering services to CLIENT staff and Council for general engineering matters in which the City becomes involved.
  - 5. General and Designated City Engineer Services shall be compensated on the following basis:

- a. General and Designated City Engineer compensation will be made as set forth in Section 3.A on a \$300 lump sum basis to attend city council and planning commission meetings, and an hourly rate of \$149/hour for other City Engineer services.
- b. General and Designated City Engineer Services assigned in Section I.B to CONSULTANT staff other than the Designated City Engineer, will be compensated as Additional Services on an hourly basis at the Schedule of Fees rates listed in Section 3.A.

6. Not used This Agreement.

7. Upon request by CLIENT staff, the City Engineer, or its qualified CONSULTANT staff designee, shall review building and site plans and other documents for conformance with CLIENT engineering standards. CONSULTANT is entitled to rely on accuracy of documents as furnished for review without independent verification or calculation. Such reviews are solely for the information and benefit of the CLIENT as a professional opinion limited to consideration of CLIENT's established review criteria. CONSULTANT's services shall not be construed as verification, approval or acceptance of any third-party design or documents. If additional review, beyond that described herein, is desired by CLIENT, such services will be performed as Additional Services.

8. Not used This Agreement.

9. Other specific assigned duties of City Engineer under this agreement.

#### C. PROJECT SPECIFIC SERVICES

1. Engineering and other professional services requested for specific project related studies, surveys, design, plan and specification preparation and construction administration may be authorized as Project Specific Services by separate Task Order or Addendum for each assignment and in connection with each proposed project (referred to as "Project" or "project") associated with that Task Order or Addendum. A sample Task Order form (Exhibit A) is attached at the end of this Agreement.
2. Scope, schedule, and compensation for each Project Specific Services assignment shall be documented by a separate Task Order or Addendum and invoiced under a separate project or task number for each assignment. Upon acceptance of the Task Order or Addendum, the CONSULTANT agrees to perform the required services for the assignment.
3. Project Specific Services shall be compensated in accordance with Section 3.A and as expressly set forth in the applicable Task Order or Addendum for such Services.

#### D. ADDITIONAL SERVICES

1. Upon mutual agreement of the parties, Additional Services may be authorized as described in Paragraph 4.B. Additional Services will be compensated as set forth in Section 3.A.

## SECTION 2- THE CLIENT'S RESPONSIBILITIES

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section 3 of this Agreement.
- B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include, but is not limited to: boundary surveys, topographic surveys, utility information, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.
- C. The CLIENT will guarantee access to and make all provisions for entry upon public portions of the project and reasonable efforts to provide access to private portions and pertinent adjoining properties.
- D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.
- E. The City Administrator is the designated liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret, and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.
- F. The CONSULTANT'S services do not include legal, insurance counseling, accounting, independent cost estimating, financial advisory or "municipal advisor" (as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 and the municipal advisor registration rules issued by the SEC) professional services and the CLIENT shall provide such services as may be required for completion of the project described in this Agreement.
- G. The CLIENT will obtain all regulatory permits required for the proper and legal execution of the Project. CONSULTANT will assist CLIENT with permit preparation and documentation to the extent described in the appropriate Task Order.
- H. The CLIENT may hire, at its discretion, when requested by the CONSULTANT, an independent test company to perform laboratory and material testing services, and soil investigation that can be justified for the proper design and construction of the project. The CONSULTANT shall assist the CLIENT in selecting a testing company. Payment for testing services shall be made directly to the testing company by the CLIENT and is not part of this Agreement. If CLIENT elects not to hire an independent test company, CLIENT shall provide CONSULTANT with guidance and direction on completing those aspects of design and construction that require additional testing data.

## SECTION 3 - COMPENSATION FOR SERVICES

- A. FEES.
  - 1. The CLIENT will compensate the CONSULTANT in accordance with the attached Exhibit B Schedule of Fees ("Schedule of Fees") for the time spent in performance of Agreement services

or as otherwise explicitly described in the Task Order or Addendum for the specific assignment.

2. Additional services as outlined in Section 1.D will vary depending upon project conditions and will be billed on an hourly basis at the rates described in Exhibit B, or as that Exhibit may subsequently be adjusted as described below.
3. The attached Schedule of Fees (**Exhibit B**) shall apply for services provided through December 31, 2023. Hourly rates may be adjusted by CONSULTANT, on an annual basis thereafter to reflect reasonable changes in its operating costs, or as may be appropriate for a specific Task Order. Adjusted rates will become effective on January 1st of each subsequent year; or, upon mutual agreement of the parties and inclusion in a Task Order, upon execution of that Task Order.
4. Rates and charges do not include sales tax. If such taxes are imposed and become applicable after the date of this Agreement CLIENT agrees to pay any applicable sales taxes.
5. The rates in the Schedule of Fees include labor, general business and other normal and customary expenses associated with operating a professional business. Unless otherwise agreed in writing, the above fees include vehicle and personal expenses, mileage, telephone, survey stakes and routine expendable supplies; and no separate charges will be made for these activities and materials.
6. Reimbursable Direct Expenses: Except for those expenses identified in Paragraph 3.A.5, any expenses required to complete the agreed scope of services or identified in this paragraph will be listed separately on the invoice, and include but are not limited to large quantities of prints; extra report copies; out-sourced graphics and photographic reproductions; document recording fees; special field and traffic control equipment rental; outside professional and technical assistance; geotechnical services; and other items of this general nature required by the CONSULTANT to fulfill the terms of this Agreement. Unless otherwise explicitly described in a Task Order or Addendum for the specific assignment, CONSULTANT shall be reimbursed at cost plus an overhead fee (not-to-exceed 10%) for these Direct Expenses incurred in the performance of the work, subject to any limit set forth in Section 3 or any Task Order.

## B. PAYMENTS AND RECORDS

1. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly at the herein rates and terms.
2. If CLIENT fails to make any payment due CONSULTANT for undisputed services and expenses within 45 days after date of the CONSULTANT'S invoice, a service charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance.
3. In addition to the service charges described in preceding paragraph, if the CLIENT fails to make payment for undisputed services and expenses within 60 days after the date of the invoice, the CONSULTANT may, upon giving seven days' written notice to CLIENT, suspend services and withhold project deliverables due under this Agreement and/or any Task Order until CONSULTANT has been paid in full for all past due amounts for undisputed services, expenses and charges, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT.

4. Documents Retention. The CONSULTANT will maintain records that reflect all revenues, costs incurred, and services provided in the performance of the Agreement. The CONSULTANT will also agree that the CLIENT or its duly authorized representatives may, at any time during normal business hours and as often as reasonably necessary, have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices of the CONSULTANT which are relevant to the contract for a period of six years.

## **SECTION 4 - GENERAL**

### **A. STANDARD OF CARE**

Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S profession currently practicing under similar conditions. No warranty, express or implied, is made.

### **B. CHANGE IN PROJECT SCOPE**

In the event the CLIENT changes or is required to change the scope or duration of the project from that described in this Agreement, any Task Order or Addendum, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the applicable hourly rates. To the fullest extent practical, the CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such Additional Services. Except for Additional Services required to address emergencies or acts of God that impact the Project, the CONSULTANT shall furnish an estimate of additional cost, prior to authorization of the changed scope of work. Any change will be memorialized in writing and executed, either as an Addendum to this Agreement or the affected Task Order; or issuance of a new Task Order for the Additional Services.

### **C. LIMITATION OF LIABILITY**

1. General Liability of CONSULTANT. For liability other than professional acts, errors, or omissions, and to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CLIENT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from claims or actions relating to the project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts and omissions in the non-professional services of CONSULTANT or CONSULTANT'S employees, agents, or subconsultants.
2. Professional Liability of CONSULTANT. With respect to professional acts, errors and omissions and to the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from third-party claims or actions relating to the project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by a negligent act, error or omission of CONSULTANT or CONSULTANT'S employees, agents, or subconsultants. This indemnification shall include reimbursement of CLIENT's reasonable attorneys' fees and expenses of litigation in proportion to CONSULTANT's fault as determined by a final non-appealable judgment by a court of competent jurisdiction or as agreed by CONSULTANT in a binding settlement agreement.



3. General Liability of CLIENT. To the fullest extent permitted by law and subject to the maximum limits of liability set forth in Minnesota Statutes Section 466.04, CLIENT shall indemnify, defend and hold harmless CONSULTANT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from third-party claims or actions relating to the project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts or omission of CLIENT or CLIENT'S employees, agents, or other consultants.
4. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services provided hereunder.
5. To the fullest extent permitted by law, CLIENT and CONSULTANT waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, from any cause or causes.
6. CLIENT waives all claims against individuals involved in the services provided by CONSULTANT under this Agreement and agrees that any claim, demand, or suit shall be directed/asserted only against the CONSULTANT's corporate entity.
7. For those services provided by the CONSULTANT while serving in the role of designated City Engineer under Section 1.B of this Agreement, including professional and technical oversight or supervision of CLIENT staff, the CLIENT shall, to the fullest extent permitted by law and in addition to any other requirements of this Agreement, indemnify and hold harmless the CONSULTANT from and against any claims, costs, losses and damages to the same extent as CLIENT would indemnify and hold harmless a CLIENT employee providing similar City Engineer services.

#### D. INSURANCE

1. The CONSULTANT agrees to maintain, at CONSULTANT'S expense a commercial general liability (CGL) and excess or umbrella general liability insurance policy or policies insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities. The general liability coverage shall provide limits of not less than \$2,000,000 per occurrence and not less than \$2,000,000 general aggregate. Coverage shall include Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury; Blanket Contractual Liability; Products and Completed Operations Liability.
2. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, a single limit or combined limit automobile liability insurance and excess or umbrella liability policy or policies insuring owned, non-owned and hired vehicles used by CONSULTANT under this Agreement. The automobile liability coverages shall provide limits of not less than \$1,000,000 per accident for property damage, \$2,000,000 for bodily injuries, death, and damages to any one person and \$2,000,000 for total bodily injury, death and damage claims arising from one accident.
3. CLIENT shall be named Additional Insured for the CGL and Auto liability policies.

4. The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage together with Coverage B, Employer's Liability limits of not less than \$500,000 for Bodily Injury by Disease per employee, \$500,000.00 for Bodily Injury by Disease aggregate and \$500,000 for Bodily Injury by Accident.
5. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from a negligent act, error, or omission in the performance of professional services required by this Agreement during the period of CONSULTANT'S services and for three years following date of final completion of its services. The professional liability insurance coverage shall provide limits of not less than \$2,000,000 per claim and an annual aggregate of not less than \$2,000,000 on a claims-made basis.
6. CLIENT shall maintain statutory Workers Compensation insurance coverage on all of CLIENT'S employees and other liability insurance coverage for injury and property damage to third parties due to the CLIENT'S negligence.
7. Prior to commencement of this Agreement, CONSULTANT will provide the CLIENT with certificates of insurance, showing evidence of required coverages. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement for any reason except non-payment of premium, until at least 30 days prior written notice has been given to the Certificate Holder, and at least 10 days prior written notice in the case of non-payment of premium.

#### E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of General and Designated City Engineer Services or any Task Order or Addendum or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

#### F. CONSTRUCTION SERVICES

It is agreed that the CONSULTANT and its representatives shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall CONSULTANT have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at any Project site, nor for any failure of a contractor to comply with Laws and Regulations applicable to that contractor's furnishing and performing of its work. CONSULTANT shall not be responsible for the acts or omissions of any contractor. CLIENT acknowledges that on-site contractor(s) are solely responsible for construction site safety programs and their enforcement.

#### G. USE OF ELECTRONIC/DIGITAL DATA

1. Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for

electronic/digital data which is specifically identified as a project deliverable for this Agreement or except as otherwise explicitly provided in this Agreement, all electronic/digital data developed by the CONSULTANT as part of the project is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent verification by the CLIENT (or its designees).

2. Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this Agreement, unless such third-party use and adaptation or distribution is explicitly authorized by this Agreement.

#### H. REUSE OF DOCUMENTS

1. Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service in respect to the project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire a limited license in all identified deliverables (including Reports, Plans and Specifications) for any reasonable use relative to the project and the general operations of the CLIENT. Such limited license to Owner shall not create any rights in third parties.
2. CLIENT may make and disseminate copies for information and reference in connection with the use and maintenance of the project by the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the project associated with any Task Order or Addendum or on any other project. Any reuse by CLIENT or, any other entity acting under the request or direction of the CLIENT, without written verification or adaptation by CONSULTANT for such reuse will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT and CLIENT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from such reuse.
3. Not used This Agreement.

#### I. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action.

#### J. PERIOD OF AGREEMENT

This Agreement will remain in effect for the longer of a period of two (2) years after written authorization to proceed is issued by CLIENT; or until the specified completion date for any subsequently issued Task Order or Addendum that falls after the end of that period; or such other expressly identified completion date, after which time the Agreement may be extended upon mutual agreement of both parties.

#### K. HAZARDOUS MATERIALS

1. Except as expressly stated in a specific Task Order, the parties acknowledge that CONSULTANT'S Services do not include any services related to Constituents of Concern. If CONSULTANT or any other party encounters, uncovers, or reveals a Constituent of Concern at the Project site or should it become known in any way that such materials may be present at the site or any adjacent areas that may affect the performance of the CONSULTANT's services, then CONSULTANT may, at its option and without liability for consequential or any other damages: 1) suspend performance of Services on the portion of the Project affected thereby until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove such materials, and warrant that the site is in full compliance with applicable laws and regulations; or, 2) terminate the applicable specific Task Order for cause if it is not practical to continue providing Services.
  - a. Constituent of Concern is defined as asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

#### L. TERMINATION

1. For Cause: This Agreement or any Task Order may be terminated by either party upon 7 days written notice in the event of substantial failure by other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.
  - a. For termination by CONSULTANT, Cause includes, but is not limited to, failure by CLIENT to pay undisputed amounts owed to CONSULTANT within 120 days of invoice and delay or suspension of CONSULTANT's services for more than 120 days for reasons beyond CONSULTANT'S cause or control.
  - b. For termination by CLIENT, Cause includes, but is not limited to, failure by CONSULTANT to perform its services or provide deliverables per a proper Task Order in the required or established timelines when provided.
  - c. Notwithstanding the foregoing and with consent of terminating party, this Agreement will not terminate under paragraph 4.L.1 if the party receiving such notice immediately commences correction of any substantial failure and cures the same within 10 days of receipt of the notice.
2. For Convenience: This Agreement or any Task Order may be terminated for convenience by CLIENT upon 7 days written notice to CONSULTANT.

3. The notice of termination shall identify the individual Task Order being terminated, or if the terminating party intends to terminate the entire Agreement the notice shall so state. This Termination process shall apply only to those elements expressly identified in the notice.
4. In the event of termination by CLIENT for convenience or by CONSULTANT for cause, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section 3 of this Agreement. Upon receipt of payment, CONSULTANT shall deliver, and CLIENT shall have, at its sole risk, right of use of any completed or partially completed deliverables, subject to provisions of Paragraph 4. H.
5. In event of termination by CLIENT for cause, CLIENT shall compensate CONSULTANT for all undisputed amounts owed CONSULTANT as of date of termination and, upon receipt of payment, CONSULTANT shall deliver to CLIENT and CLIENT shall have at its sole risk, right of use of any completed or partially completed deliverables, subject to the provisions of Section 4.H. All other matters will be resolved in accordance with the Dispute Resolution clause of this Agreement.

#### M. INDEPENDENT CONTRACTOR

Nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the CONSULTANT or any of its employees as the agent, representative, or employee of the CLIENT for any purpose or in any manner whatsoever. The CONSULTANT is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

#### N. CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Agreement.

#### O. NON-DISCRIMINATION

The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein. **The CONSULTANT is an Equal Opportunity Employer**, and it is the policy of the CONSULTANT that all employees, persons seeking employment, subcontractors, subconsultants and vendors are treated without regard to their race, religion, sex, color, national origin, disability, age, sexual orientation, marital status, public assistance status or any other characteristic protected by federal, state or local law.

#### P. ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement without the prior written consent of the other party.

#### Q. SURVIVAL

All obligations, representations and provisions made in or given in Section 4 and Documents Retention clause of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

#### R. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### S. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Minnesota and venued in courts of Minnesota; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the project is located.

#### T. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall then be submitted to mediation using a neutral from the Minnesota District Court Rule 114 Roster, or if mutually agreed at time of dispute submittal, a neutral from the American Arbitration Association Construction Industry roster. If mediation is unsuccessful in resolving the dispute, then either party may seek to have the dispute resolved by bringing an action in a court of competent jurisdiction.

#### U. MINNESOTA GOVERNMENT DATA PRACTICES ACT

All data collected, created, received, maintained, or disseminated, or used for any purposes in the course of the CONSULTANT'S performance of the Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Section 13.01, et seq. or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy. The Consultant agrees to abide by these statutes, rules and regulations and as they may be amended. In the event the CONSULTANT receives a request to release data, it shall notify CLIENT as soon as practical. The CLIENT will give instructions to CONSULTANT concerning release of data to the requesting party and CONSULTANT will be reimbursed as Additional Services by CLIENT for its reasonable expenses in complying with the request **to the extent those costs are recoverable from the requesting party by law.**

#### V. LIMITATION OF LIABILITY

Except where due solely to CONSULTANT'S negligence, the CLIENT shall to the fullest extent permitted by law hold CONSULTANT harmless from any and all liability, loss, damage, or expense, including attorney's fees resulting from claims, demands, costs, or judgments arising out of CONSULTANT'S performance relating to this Agreement or the Project. In no event shall CONSULTANT'S liability exceed the amount which is paid to CONSULTANT for its services.

W. ETHICAL STANDARDS

No member, officer, employee, or agent of the CLIENT or of a local public body thereof during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the benefits therefrom.

SECTION 5 - SIGNATURES

THIS INSTRUMENT embodies the whole agreement of the parties, there being no promises, terms, conditions, or obligation referring to the subject matter other than contained herein. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: City of Birchwood Village

CONSULTANT: Bolton & Menk, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Rebecca Kellen, its Administrator  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Margaret Ford, its Mayor  
Printed Name

Address for giving notice:  
\_\_\_\_\_

Address for giving notice:  
207 Birchwood Ave, Birchwood, MN 55110

\_\_\_\_\_  
\_\_\_\_\_

CLIENT's Representative with authority for ordering engineering services and transmitting instructions:  
Rebecca Kellen or her designee

ATTACHMENTS:

- Sample Task Order Form (Include Scope directly in each Task Order or attach as Exhibit A)
- Exhibit B Schedule of Fees (hourly rates table)

**SAMPLE**  
**PUBLIC CLIENT AND BOLTON & MENK, INC.**  
**TASK ORDER TO AGREEMENT FOR PROFESSIONAL SERVICES**

**TASK ORDER NO:** **XXX**

**CLIENT:** Name of Client

**CONSULTANT:** Bolton & Menk, Inc.

**DATE OF THIS TASK ORDER:** Month xx, 20xx

**DATE OF MASTER AGREEMENT FOR PROFESSIONAL SERVICES:** Month xx, 20xx

Whereas, CLIENT and CONSULTANT entered into a Master Agreement for Professional Services (“Master Agreement”) as dated above; and CONSULTANT agrees to perform and complete the following Services for CLIENT in accordance with this Task Order and the terms and conditions of the Master Agreement. CLIENT and CONSULTANT agree as follows:

**1.0 Scope of Services:**

CONSULTANT shall perform the Services listed below or in the attached Scope (Exhibit A). All terms and conditions of the Master Agreement are incorporated by reference in this Task Order, except as explicitly modified in writing herein. [MODIFY AS NEEDED]

**2.0 Fees:**

CLIENT shall pay CONSULTANT in accordance with Section 3 of the Master Agreement and as follows or as described in the attached Scope. Total cost of services and reimbursable direct expenses provided by CONSULTANT for this Task Order shall not exceed \$XX,XXX.XX without prior approval of CLIENT. Total cost does not include authorized Additional Services as may subsequently be required and authorized. [MODIFY AS NEEDED FOR LUMP SUM, HOURLY, HOURLY NOT TO EXCEED, OR OTHER METHOD and coordinate with Section 3 of Master Agreement for treatment of Total Cost, Additional Services and reimbursable expenses.]

**3.0 Schedule:**

Schedule for performance of Services will be as follows or as set forth in attached Scope, such that all services will be completed by Month xx, 20xx. [MODIFY AS NEEDED]

**4.0 Deliverables**

Deliverables will be as follows or as set forth in the attached Scope. [MODIFY AS NEEDED TO LIST KEY DELIVERABLES]

**5.0 Term**

In the event that the Schedule for this Task Order extends beyond the term of the Master Agreement, either intentionally or unintentionally by Task Order Scope or by Task Order extension, then this Task Order shall operate to extend the Master Agreement through the completion of CONSULTANT’S obligations under this Task Order or until a new Master Agreement is executed incorporating this Task Order.

**6.0 Other Matters**

[LIST ANY OTHER CONDITIONS OR CHANGES IN MASTER AGREEMENT THAT APPLY TO



TASK ORDER, SUCH AS UPDATED FEE SCHEDULE, CHANGED INSURANCE REQUIREMENTS, ETC. IF NONE, STATE "NONE."]

**7.0 Project Managers**

Project managers and contact information for the CLIENT and CONSULTANT for this Task Order, if different than the Master Agreement, are as follows:

CLIENT:	BOLTON & MENK, INC.
Name	Name
Address	Office Address
City, State, Zip	City, State, Zip
Office Phone: xxx-xxx-xxxx	Office Phone: xxx-xxx-xxxx
Email: xxx@xxx	Email: xxx@xxx

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: \_\_\_\_\_

CONSULTANT: Bolton & Menk, Inc. \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTACHMENTS TO THIS TASK ORDER: List or, if none, state "NONE"

**INSTRUCTIONS AND KEY**

**GRAY HIGHLIGHTS REQUIRE CHANGES SPECIFIC TO SCOPE, FEE AND DELIVERABLES.**

**YELLOW HIGHLIGHTS ARE SPACE HOLDERS FOR PROJECT SPECIFIC CHANGES AND REQUIRE CUSTOMIZATION FOR EACH AGREEMENT AND TASK ORDER.**

**IT IS ANTICIPATED THAT A SEPARATE SCOPE WILL BE ATTACHED (AS EXHIBIT A) FOR MOST TASK ORDERS.**

**DELETE HIGHLIGHTS AND THESE INSTRUCTIONS BEFORE SUBMITTING.**

Exhibit B

Schedule of Fees

# FEE SCHEDULE

The following fee schedule is based upon competent, responsible professional services and is the minimum, below which adequate professional standards cannot be maintained. It is, therefore, to the advantage of both the professional and the client that fees be commensurate with the service rendered. Charges are based on hours spent at hourly rates in effect for the individuals performing the work. The hourly rates for principals and members of the staff vary according to skill and experience. The current specific billing rate for any individual can be provided upon request.

The fee schedule shall apply for the period through December 31, 2023. These rates may be adjusted annually thereafter to account for changed labor costs, inflation, or changed overhead conditions.

These rates include labor, general business, and other normal and customary expenses associated with operating a professional business. For projects with typical expenses and unless otherwise agreed, the above rates include vehicle and personal expenses, mileage, telephone, survey stakes, and routine expendable supplies; no separate charges will be made for these activities and materials. Expenses beyond typical project expenses, non-routine expenses, and expenses beyond the agreed scope of services, such as out of town travel expenses, long travel distances, large quantities of prints, extra report copies, outsourced graphics and photographic reproductions, document recording fees, outside professional and technical assistance, and other items of this general nature will be invoiced separately. Rates and charges do not include sales tax, if applicable.

Bolton & Menk proposes a **monthly fee for attendance at one regularly scheduled planning commission and city council meeting of \$300 each**. Marcus Johnson, acting as your city engineer, will attend as requested.

Employee Classification	Hourly Billing Rates
City Engineer—Marcus Johnson	\$149
Senior Advisor—Brian Bachmeier	\$208
Senior Project Manager	\$175-264
Project Manager	\$104-198
Senior Project Engineer	\$140-198
Project Engineer	\$130-188
Design Engineer	\$110-186
Graduate Engineer	\$110-145
Senior Planner	\$115-198
Planner	\$115-171
Senior Landscape Architect	\$150-204
Landscape Architect	\$120-160
Landscape Designer	\$100-169
Licensed Project Surveyor	\$160-240
Graduate Surveyor	\$130-181
Survey Technician	\$85-173
Senior Technician	\$110-195
Technician	\$79-168
Specialist*	\$95-205
Practice Expert**	\$205-308
Senior Principal	\$195-314
Principal	\$160-289
Administrative/Corporate Specialists	\$64-194
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE

<sup>1</sup> No separate charges will be made for GPS or robotic total stations on Bolton & Menk, Inc. survey assignments; the cost of this equipment is included in the rates for survey technicians.

\*Specialized role not classified above otherwise, incl. graphic design, project communication, funding support, etc.

\*\*Highly specialized and industry expertise unique to the market or area of discipline.

# CONSULTING SERVICES AGREEMENT

**I. The Parties.** This Consulting & Retainer Agreement ("Agreement") is made effective as of March 30, 2023, by and between an individual known as Ben Wikstrom with a mailing address of 112 Mill Avenue, WATERTOWN, Minnesota, 55388 ("Consultant") and a business entity known as City of Birchwood Village with a mailing address of 207 Birchwood Avenue, Birchwood, Minnesota, 55110 ("Client").

**II. Services.** Consultant agrees to provide the following services ("Services"):

Planning Consulting. Consultant shall abide by, administer, and enforce the Land Use Regulations (Sections 300-310) of the City Code, and other Code sections as applicable. Specific duties are listed in the attached Exhibit A.

**III. Term.** The Services shall commence on the date of May 1, 2023, and shall continue until either Consultant or Client gives Notice of terminating this Agreement and the associated Notice Period elapses (See Section IX).

**IV. Payment.** In consideration for the Services provided, the Consultant is to be paid the following:

Monthly Fee ("Payment"): See Exhibit A for fee amount and duties covered by fee.

**V. Payment Interval.** Consultant shall be paid on a monthly basis after the Services have started. After the Services have been completed, if there is any remaining balance it shall be paid within thirty (30) days by the Client.

**VII. Retainer.** The Client is not required to pay a retainer as part of this Agreement.

**VIII. Expenses.** The Consultant shall be responsible for all expenses related to providing the Services under this Agreement EXCEPT any "out-of-pocket" expenses. Out-of-pocket expenses are considered to be an expense that requires the Consultant to pay a third (3rd) party as a direct or indirect result of providing the Services. However, the Consultant will be required to pay for their internal expenses which includes, but is not limited to, supplies, equipment, operating costs, business costs, employment costs, taxes, Social Security contributions and/or payments, disability insurance, unemployment taxes, and any other cost that may or may not be in connection with the Services provided by the Consultant. Client agrees to pay the Consultant within thirty (30) days of receiving notice of any expense directly

associated with the Services. Upon request by the Client, the Consultant may have to show receipt(s) or proof(s) of purchase for said expense.

**IX. Termination Clause.** The Consultant and Client may terminate this Agreement at any time with 60 Day(s) Notice of Termination.

**X. Government Data.** Consultant acknowledges that by providing services to a governmental entity in Minnesota his records and communications may constitute Government Data as that term is defined in Chapter 13 of Minnesota State Statute. Consultant shall produce, and may be asked to deliver, some or all records, notes, and data of any nature that are in the Consultant's possession or under the Consultant's control and that are of the Client's property or relate to Client's business pursuant to a valid data request. Consultant will not charge Client for fulfilling such requests beyond what the Client is able to bill the requestor pursuant to State Law.

**XI. Return of Records.** Upon termination of this Agreement, the Consultant shall deliver all records, notes, and data of any nature that are in the Consultant's possession or under the Consultant's control and that are of the Client's property or relate to Client's business.

**XII. Disputes.** If any dispute arises under this Agreement, the Consultant and the Client shall negotiate in good faith to settle such dispute. If the parties cannot resolve such dispute themselves, then either party may submit the dispute to mediation by a mediator approved by both parties. If the parties cannot agree with any mediator or if either party does not wish to abide by any decision of the mediator, they shall submit the dispute to arbitration by any mutually acceptable arbitrator, or the American Arbitration Association (AAA). The costs of the arbitration proceeding shall be borne according to the decision of the arbitrator, who may apportion costs equally or in accordance with any finding of fault or lack of good faith of either party. If either party does not wish to abide by any decision of the arbitrator, they shall submit the dispute to litigation. The jurisdiction for any dispute shall be administered and decided upon the Client.

**XIII. Liability Insurance.** The Consultant agrees to bear all responsibility for the actions related to themselves and their employees or personnel under this Agreement. In addition, the Consultant agrees to obtain comprehensive liability insurance coverage in case of bodily injury, personal injury, property damage, contractual liability, and cross-liability. In addition, the Consultant shall be required to have general liability insurance equal to a single-limit of \$1,000,000.00.

**XIV. Legal Notice.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in-person or deposited in the United States Postal Service via Certified Mail with return receipt.

**XV. Waiver of Contractual Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**XVI. Independent Contractor Status.** The Consultant, under the code of the Internal Revenue (IRS), is an independent contractor and neither the Consultant's employees or contract personnel are, or shall be deemed, the Client's employees. In its capacity as an independent contractor, the Consultant agrees and represents:

- a.) Consultant has the right to perform Services for others during the term of this Agreement;
- b.) Consultant has the sole right to control and direct the means, manner, and method by which the Services required under this Agreement will be performed; Consultant shall select the routes taken, starting and ending times, days of work, and order the work that performed;
- c.) Consultant shall not be required to wear any uniforms provided by the Client;
- e.) The Services required by this Agreement shall be performed by the Consultant, and the Client will not hire, supervise, or pay assistants to help the Consultant;
- f.) Consultant shall not receive any training from the Client for the professional skills necessary to perform the Services required by this Agreement; and
- g.) Consultant shall not be required by the Client to devote full-time to the performance of the Services required by this Agreement.

**XVII. State and Federal Licenses.** The Consultant represents and warrants that all employees and personnel associated shall comply with federal, state, and local laws requiring any required licenses, permits, and certificates necessary to perform the Services under this Agreement.

**XVIII. Payment of Taxes.** Under this Agreement, the Client shall not be responsible for:

- a.) Withholding FICA, Medicare, Social Security, or any other Federal or State withholding taxes from the Consultant's payments to employees or personnel or make payments on behalf of the Consultant;
- b.) Making Federal and/or State unemployment compensation contributions on the Consultant's behalf; and
- c.) Making payments of taxes incurred while performing the Services under this Agreement, including all applicable income taxes and, if the Consultant is not a business entity, all applicable self-employment taxes. Upon demand, the Consultant shall provide the Client with proof that such payments have been made.

**XIX. Employees' Compensation.** The Consultant shall be solely responsible for the following:

- a.) Employee Benefits. The Consultant understands and agrees that they are solely responsible and shall be liable to all benefits that are provided to their employees including, but not limited to, retirement plans, health insurance, vacation time-off, sick pay, personal leave, or any other benefit provided.
- b.) Unemployment Compensation. The Consultant shall be solely responsible for the unemployment compensation payments on behalf of their employees and personnel. The Consultant themselves shall not be entitled to unemployment compensation with the Services performed under this Agreement.
- c.) Workers' Compensation. The Consultant shall be responsible for providing all workers' compensation insurance on behalf of their employees. If the Consultant hires employees to perform any work under this Agreement, the Consultant agrees to grant workers' compensation coverage to the extent required by law. Upon request by the Client, the Consultant must provide certificates proving workers' compensation insurance at any time during the performance of the Services.

**XX. Indemnity.** Consultant shall release, defend, indemnify, and hold harmless the Client and its officers, agents, and employees from all suits, actions, or claims of any character, name, or description including reasonable attorney fees, brought on account of any injuries or damage, or loss (real or alleged) received or sustained by any person, persons, or property, arising out of services provided under this Agreement or Consultant's failure to perform or comply with any requirements of this Agreement including, but not limited to any claims for personal injury, property damage, or infringement of copyright, patent, or other proprietary rights. Client reserves the right to retain whatever funds which would be due to the Consultant under this Agreement until such suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and satisfactory evidence to that effect furnished.

**XXI. Confidentiality & Proprietary Information.** The Consultant acknowledges that it will be necessary for the Client to disclose certain confidential and proprietary information to the Consultant in order for the Consultant to perform their duties under this Agreement. The Consultant acknowledges that disclosure to a third (3rd) party or misuse of this proprietary or confidential information would irreparably harm the Client. Accordingly, the Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of the Client without the Client's prior written permission except to the extent necessary to perform the Services on the Client's behalf.

Proprietary or confidential information includes, but is not limited to:

- a.) The written, printed, graphic, or electronically recorded materials furnished by Client for Consultant to use;

Upon termination of the Consultant's Services to the Client, or at the Client's request, the Consultant shall deliver all materials to the Client in the Consultant's possession relating to the Client's business.

The Consultant acknowledges any breach or threatened breach of confidentiality under this Agreement will result in irreparable harm to the Client for which damages would be an inadequate remedy. Therefore, the Client shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of confidentiality. Such equitable relief shall be in addition to Client's rights and remedies otherwise available at law.

Furthermore, proprietary information, under this Agreement, shall include:

- a.) The product of all work performed under this Agreement ("Work Product"), including without limitation all notes, reports, documentation, drawings, will be the sole property of the Client, and Consultant hereby assigns to the Client all right, title, and interest therein, including, but not limited to, all audiovisual, literary, moral rights and other copyrights, patent rights, trade secret rights, and other proprietary rights therein. Consultant retains no right to use the Work Product and agrees not to challenge the validity of the Client's ownership in the Work Product;
- c.) The Client will be entitled to use the Consultant's name and/or likeness in written material and other media.

**XXII. Governing Law.** This Agreement shall be governed under the laws in the State of Minnesota and any legal actions filed shall be venued inn Washington County.

**XIII. Severability.** This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

**XIV. Entire Agreement.** This Agreement, along with any attachments or addendums, represents the entire agreement between the parties. Therefore, this Agreement supersedes any prior agreements, promises, conditions, or understandings between the Client and Consultant. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

**Consultant's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name \_\_\_\_\_

**Client's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name \_\_\_\_\_



## EXHIBIT A

### **Included Services**

- Review of land use applications and preparation of staff reports
- Ordinance amendments
- Enforcement letters and site visits
- Phone and email correspondence with City staff, Council and Commission members, residents, applicants, etc.
- Review of permit applications as necessary
- Meeting attendance at City Council, Planning Commission, and other meetings and with residents
- Other duties as typical as referenced in Chapter 300 of the City Code

### **Additional Services (not included)**

- Comprehensive Plan review and update
- Zoning Ordinance/City Code review and update (full sections; typical amendments are included services)
- Special projects as approved by the City Council
- Large-scale development project review as approved by the City Council

### **Fee**

**\$1,600 per month**

**(No Meeting Fees or Mileage to be paid by Client)**