AGENDA OF THE PLANNING COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
March 23rd, 2023
7:00 P.M.

CALL TO ORDER

APPROVE AGENDA

REGULAR AGENDA

A. Approve Jan26 PC Meeting Minutes* (pp. 2-5)
B. 419B Sewer and Water Discuss Options - Nadja Gale Presentation
C. Ordinance 2023-02-01: Removing Solar Panels from CUP
    1. Discuss MN Solar Ordinance* (pp. 6-22)
    2. Review and Discuss Ordinance 2023-02-01* (pp. 23-25)
    3. Make Recommendation to Approve, Amend, or Deny
D. New Variance Application Discussion* (pp. 26-28)
    1. Review and discuss new Variance Application Proposed
    2. Make Recommendation to Approve, Amend, or Deny
E. 208A: Right of Way Code Revision Discussion* (pp. 29-63)
    1. Discuss Proposed Ordinance regarding the fee schedule
        a. Review and Discuss Ordinance
        b. Make Recommendation to Approve, Amend, or Deny
    2. Discuss Proposed Ordinance RE City Code 615
        a. Review and Discuss Ordinance
        b. Make Recommendation to Approve, Amend, or Deny
    3. Discuss Proposed Ordinance RE Enacting City Code 208A
        a. Review and Discuss Ordinance
        b. Make Recommendation to Approve, Amend, or Deny
F. 302.045 Structural Height Restrictions* (pp. 64 - 68)
        a. Review and Discuss Ordinance
        b. Make Recommendation to Approve, Amend, or Deny
G. 304.035 Variances* (pp. 69 - 70)
        a. Review and Discuss Ordinance
        b. Make Recommendation to Approve, Amend, or Deny

ADJOURN

* Denotes items that have supporting documentation provided

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 1/26/2023

Submitted by Michelle Maiers-Atakpu – secretary (substitute)

COMMISSIONERS PRESENT: —- Andy Sorenson - Chairman, Joe Evans, Michael McKenzie, Michelle Maiers-Atakpu

COMMISSIONERS ABSENT: Michael Kraemer

OTHERS PRESENT: Steve Thatcher - City Engineer, Christopher Sullivan – Birchwood Resident, Dan Schmidt – Civil Engineer, Kyle Hunt – General Contractor, Mike Sharratt – Architect, Eric Stabnon – General Contractor, Justis McCarthy, Kevin Heisdorffer – 423 Wildwood, Debbie Herrod – 483 Lake Ave, Ryan Hankins – 183 Wildwood, Kathy Madore – 413 Lake Ave. Present via Zoom: Rachel Vassar, Laurie Hunt, Dr. Jim Barthel – 469 Lake Ave (Applicant).

CALL TO ORDER Meeting called to order by Chairman Andy Sorenson at 7:00 PM.

1. PUBLIC FORUM – none
2. APPROVE AGENDA
    a. Evans moved to add proceed with Item D before Item C, as listed in the Regular Agenda. 2nd by Maiers-Atakpu. Vote: Yes – 4, No – 0. Motion to approve amended agenda passed.

3. REGULAR AGENDA
    a. Item A – Appoint Secretary to take Minutes for this 1/26/2023 Meeting
        i. Michelle Maiers-Atakpu was previously asked to act as secretary for this meeting.

    b. Item B – Review/Approve December 1, 2022 Meeting Minutes
        i. Motion by Maiers-Atakpu, 2nd by Sorenson. Evans suggested we amend item 3.b.iv with the following: "CUP for rooftop solar arrays are uncommon in other cities. They instead just utilize the building permit process." Evans made motion, Sorenson 2nd, Vote: Yes - 4, No – 0, Motion to approve the corrected minutes passed.

    c. Item C – Review Current Commissioner Terms
        i. The list of Commissioners and their terms was reviewed by the Planning Commissioners present. Motion by Sorenson, 2nd by Evans to approve the list as correct, except with the following changes: For Michael McKenzie, remove "Secretary" from "Role" and change Ryan Hanson to Ryan Hankins under "Notes". Vote: Yes - 4, No – 0, Motion to approve the List of Commissioner Terms, as amended, passed.

    d. Item D – Review Variance Application23-01-VB (469 Lake Ave)
        i. Variance Application
            1. Overview
                a. Variance Request #1 (Impervious Surfaces)
                    i. Commission Chairman summarized the Variance application for all present.

ii. It was noted that on the Petition for Variance Application, item 6 (page 007 of the Planning Commission Meeting packet) which states that "the existing attached garage to remain" is not correct. It should read "the existing unattached garage to remain".

ii. Resident Feedback – open forum and letters

1. Debbie Herrod, 483 Lake Avenue spoke stating that she and her husband support Dr. Barthel's variance application. She noted that the house he plans to build is more in compliance with City and Building Codes than the current home. Additionally, she stated that it will add value to the neighborhood. She also noted that the lots plotted in 1853 are undersized by today's standards, so variances should be granted to construct a home meeting today's standards. Ms. Herrod and her husband are 100% in favor of the project.
2. Kathy Madore, 413 Lake Avenue spoke stating that she concurs with Ms. Herrod's comments and supports the variance application.
3. Sorenson read the letter from Michael and Candace Kramer, included in the Planning Commission package. The Kramer's are in support of the variance request.
4. Sorenson read the letter from Susan and Larry Mahoney, attached to the Planning Commission package. The Mahoney's are opposed to the variance request.
5. Sorenson closed the Public Forum

iii. City Engineer, Steve Thatcher's Review and Supporting Documentation

1. Thatcher noted that his review included assurance that the Applicant has satisfied the conditions of Zoning Code section 302.050 items A thru K. He also noted that the proposed mitigated rate and volume of stormwater run-off will be less than the current conditions, if the variance is approved.
2. Kyle Hunt discussed the submitted mitigation calculations and noted that they are complicated and take time to review and understand.
3. Maiers-Atakpu commented that the mitigation proposed may not matter if the Planning Commission does not agree that there is a "practical difficulty" in keeping to the 25% maximum impervious surface as required by the zoning code. It is her opinion that the amount of lot square footage devoted to garage is excessive for the lot size and is causing the need for the Impervious Surface variance.
4. Sorenson asked for an explanation of why the Applicant has added row 9 to the City's Standard Application table (page 008 of the Planning Commission Packet). Hunt noted that the standard table does not allow for mitigation calculations.
5. Sorenson questioned whether item 11 of the application should be check as "No", rather than "Yes" as selected by the Applicant. Sorenson does not believe that Fire Trucks or Ambulances will be able to navigate the narrow driveway, between the existing garage and the neighbor's garage. Hunt noted that Emergency vehicles are not required by code to drive onto the property to provide emergency services – the existing site construction does not currently

have room for access. Sorenson believes that improvements to the property should improve the situation and allow for emergency vehicle access onto the property.

6. Maiers-Atakpu read the meeting minutes from the 3/8/22 City Council meeting, where the Council "voted to deny the Applicants previous variance request for impervious surface on the basis that it does not meet practical difficulty and exceeds 25% impervious surface as per city code." She further noted that the Application at that time proposed an "impervious surface of 29.56% and 42.7% including the pervious pavers." And that "Mayor Wingfield reminded the Council that an impervious surface of over 35% has not been historically permitted by the Council. The application is incompatible with the city's open space, values, and the Council's decisions in the past. Mayor Wingfield expressed concern regarding setting a precedent and reiterated that the Council imposed a standard to deny any variance request over 25% impervious surface." Hunt noted that the current application has been updated so that the impervious surface (without mitigation) is actually 28.2%. McKenzie noted disagreement with Mayor Wingfield's concern about setting a precedent.
7. Sharrett reiterated all the practical difficulties of the site. Maiers-Atakpu noted that 3 variances have already been approved by the City Council to accommodate the fact that the property is a "non-conforming site". However, the property is large enough to construct a residence keeping to the 25% impervious surface limitation. Excessive garage square footage is causing the impervious surface to exceed 25%. Evans commented that even if one can physically mitigate all the runoff, should that be the case? Thatcher noted that the existing impervious driveway – between the road and the existing garage – is perhaps the problem in that it takes the impervious surface calculation over 25% by 421 sq. ft. Schmidt noted that there is not 3 feet of separation between this area of the property and the ordinary high water mark, so pervious pavers cannot be used. Evans wondered if that situation actually poses a practical difficulty.
8. Sorenson asked Hunt to reiterate the practical difficulties that the property poses to the Applicant. Hunt noted that that question should be addressed to the Applicant, Dr. Barthel. Sorenson addressed Dr. Barthel asking the same question. Barthel noted that as he ages, having an attached garage is necessary. He further commented on the question of emergency vehicle access, noting that shrubs on the property line, along the driveway will be removed, improving the space between his existing garage and the neighbor's garage. He further noted that he will be vastly improving the structures on the property – the current residence had problems with mold and rodents. It has outlived its useful life and needs to be replaced. Aesthetic improvement of the property will be significant. He noted that he has engaged a wonderful building team to construct a quality home. Further, the proposed mitigation will improve the impervious/pervious ratio of the property. That said, since 1998 when Barthel purchased the property, he has not experienced stormwater run-off problems. He noted that

there are many homes along Lake Avenue that are not in compliance with City Zoning – due to the narrowness of the lots in that area of Birchwood.

iv. Original Documentation Received.
    1. Initial documentation that was received but was resubmitted at a later date and replaced by documents in the agenda packet page 21-107.

v. Complete Variance Findings Form
    1. The Commissioners reviewed the Variance Findings form with the following results:
        a. #1 – Sorenson, Evans and Maiers-Atakpu "Is Not". McKenzie "Is"
        b. #2 – Sorenson - "Is Not" impervious surface over 25%; Evans – "Is" because the granting of a variance would meet the City's comprehensive code because it betters the property; McKenzie – "Is Not" because 25% impervious surface is a hard and fast rule; Maiers-Atakpu - "Is Not", impervious surface over 25%.
        c. #3 – Sorenson and Maiers-Atakpu "Are Not". Evans and McKenzie "Are"
        d. #4 – Sorenson, Evans, McKenzie and Maiers-Atakpu "Were".
        e. #5 – Sorenson, Evans, McKenzie and Maiers-Atakpu "Will not".
        f. #6 – Sorenson, Evans, McKenzie and Maiers-Atakpu "Will not".
        g. #7 – Sorenson, Evans, McKenzie and Maiers-Atakpu "No".
        h. #8 - Sorenson and Maiers-Atakpu "Does". Evans and McKenzie "Does not"
        i. What is your decision: Sorenson and Maiers-Atakpu "Deny". Evans and McKenzie "Approve"
        j. If approved, what conditions would you impose? Evans – maintenance agreement (it was noted that a maintenance agreement would already be part of a variance); McKenzie – none.

vi. ***Commission Action:***
    1. The advisory motion is split – 2 to deny, 2 to approve.

4. ADJOURN 9:10 PM

a. Motion by Sorenson, 2nd by McKenzie to adjourn meeting. Vote: Yes – 4, No – 0. Motion passed.

Minnesota Solar Model Ordinance

Photo by Katharine Chute

Prepared by Great Plains Institute with support from Sunshot and the Energy Foundation

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Model Solar Ordinance – Minnesota

Introduction

Minnesota's solar energy resources are high quality and cost effective—as good as many states to our south and consistently available across the entire state. As solar energy system components have become more efficient and less costly, an increasing number of solar energy systems have been installed in Minnesota. Market opportunities for solar development have dramatically increased in Minnesota over the last five years, such that communities must now address solar installations as land use and development issues. Solar energy components continue to improve in efficiency and decline in price; large-scale solar energy is expected to become the least expensive form of electric energy generation within a few years, surpassing wind energy and natural gas in levelized cost of energy.

Model Solar Energy Standards

This ordinance is based on the model solar energy ordinance originally created for Solar Minnesota, under a Million Solar Roofs grant from the U.S. Department of Energy. It has been substantially updated several times to reflect address additional issues and opportunities for Minnesota communities and the evolving solar industry, last updated May 2020

But solar energy is much more than just low-cost energy generation. Households and businesses seeking to reduce their carbon footprint see solar energy as a strong complement to energy efficiency. Agricultural producers see their solar energy as an economic hedge against price volatility in commodity crops. Utilities see solar's declining cost, high reliability, and free fuel as a means to put downward pressure on electric rates. Corporate, institutional, and municipal buyers are actively acquiring carbon-free solar generation to meet climate and clean energy goals. And innovative solar site designs are capturing habitat and water quality co-benefits by using solar with habitat-friendly ground cover to restore eco-system functions.

Solar Energy Issues

Local governments in Minnesota are seeing increasing interest by property owners in solar energy installations and are having to address a variety of solar land uses in their development regulation. Given the continuing cost reductions and growing value of clean energy, solar development will increasingly be a local development opportunity, from the rooftop to the large-scale solar farm. Three primary issues tie solar energy to development regulations:

1. *Land use conflicts and synergies.* Solar energy systems have few nuisances. But solar development can compete for land with other development options, and visual impacts and perceived safety concerns sometimes create opposition to solar installations. Good design and attention to aesthetics can address most concerns for rooftop or accessory use systems. Good siting and site design standards for large- and community-scale solar can similarly resolve conflicts and create co-benefits from solar development, such as restoring habitat, diversifying agricultural businesses, and improving surface and ground waters.

2. *Protecting access to solar resources.* Solar resources are a valuable component of property ownership. Development regulations can inadvertently limit a property owner's ability to access their solar resource. Communities should consider how to protect and develop solar resources in zoning, subdivision, and other development regulations or standards.

3. *Encouraging appropriate solar development.* Local government can go beyond simply removing regulatory barriers and encourage solar development that provides economic development, climate protection, and natural resources co-benefits. Local governments have a variety of tools to encourage appropriately sited and designed solar development to meet local goals.

Components of a Solar Standards Ordinance

Solar energy standards should:

1. *Create an as-of-right solar installation path for property-owners.* Create a clear regulatory path (an as-of-right installation) to solar development for accessory uses and - if appropriate - for principal uses such as large-scale solar and ground-mount community shared solar installations.

2. *Enable principal solar uses.* Define where community- and large-solar energy land uses are appropriate as a principal or primary use, set development standards and procedures to guide development, and capture co-benefit opportunities for water quality, habitat, agriculture.

3. *Limit regulatory barriers to developing solar resources.* Ensure that access to solar resources is not unduly limited by height, setback, or coverage standards, recognizing the distinct design and function of solar technologies and land uses for both accessory and principal uses.

4. *Define appropriate aesthetic standards.* Retain an as-of-right installation pathway for accessory uses while balancing design concerns in urban neighborhoods and historic districts. Set reasonable aesthetic standards for solar principal uses that are consistent with other principal uses that have visual impacts.

5. *Address cross-property solar access issues.* Consider options for protecting access across property lines in the subdivision process and in zoning districts that allow taller buildings on smaller (urban density) lots.

6. *Promote "solar-ready" design.* Every building that has a solar resource should be built to seamlessly use it. Encourage builders to use solar-ready subdivision and building design.

7. *Include solar in regulatory incentives.* Encourage desired solar development by including it in regulatory incentives: density bonuses, parking standards, flexible zoning standards, financing/grant programs, promotional efforts.

Different Community Types and Settings

The model ordinance language addresses land use concerns for both urban and rural areas, and thus not all the provisions may be appropriate for every community. Issues of solar access and nuisances associated with small or accessory use solar energy systems are of less consequence in rural areas, where lot sizes are almost always greater than one acre. Large-scale and community- scale solar (principal solar land uses) are much more likely to be proposed in rural areas rather than developed cities. However, urban areas should consider where community- or large-scale solar can add value to the community and enable economic development of a valuable local resource. Rural communities should address rooftop and accessory ground-mount development, although the standards used in this model are designed more for the urban circumstances.

Solar development is not one thing

Communities would not apply the same development and land use standards to an industrial facility and a single family home, merely because both are buildings. Community and large-scale solar development is a completely different land use than rooftop or backyard solar. Standards that are appropriate for large-scale solar may well be wholly inappropriate for rooftop solar and may unnecessarily restrict or stymie solar development opportunities of homes and business owners.

This ordinance includes language addressing solar energy as an accessory use to the primary residential or commercial use in an urban area and language for principal solar uses more typically seen in rural communities. Communities should address both types of solar development.

Model Ordinance

I. Scope - This article applies to all solar energy installations in Model Community.

II. Purpose - Model Community has adopted this regulation for the following purposes:

A. Comprehensive Plan Goals - To meet the goals of the Comprehensive Plan and preserve the health, safety and welfare of the community by promoting the safe, effective and efficient use of solar energy systems. The solar energy standards specifically implement the following goals from the Comprehensive Plan:

1. **Goal** – Encourage the use of local renewable energy resources, including appropriate applications for wind, solar, and biomass energy.

2. **Goal** – Promote sustainable building design and management practices to serve current and future generations.

3. **Goal** – Assist local businesses to lower financial and regulatory risks and improve their economic, community, and environmental sustainability.

4. **Goal** – Implement the solar resource protection element required under the Metropolitan Land Planning Act.

Comprehensive Plan Goals

Tying the solar energy ordinance to Comprehensive Plan goals is particularly important for helping users (both Planning Commission and community members) understand why the community is developing and administering regulation.

The language here provides examples of different types of Comprehensive Plan goals, and other policy goals that the community may have that are served by enabling and encouraging solar development. The community should substitute its policy goals for these examples.

If the Comprehensive Plan does not include goals supporting local solar development), the community should consider creating a local energy plan or similar policy document to provide a policy foundation for solar development regulation (as noted in II.B) .

B. Climate Change Goals - Model Community has committed to reducing carbon and other greenhouse gas emissions. Solar energy is an abundant, renewable, and nonpolluting energy resource and its conversion to electricity or heat reduces dependence on nonrenewable energy resources and decreases the air and water pollution that results from the use of conventional energy sources.

C. Infrastructure - Distributed solar photovoltaic systems will enhance the reliability and power quality of the power grid and make more efficient use of Model Community's electric distribution infrastructure.

D. Local Resource - Solar energy is an underused local energy resource and encouraging the use of solar energy will diversify the community's energy supply portfolio and reduce exposure to fiscal risks associated with fossil fuels.

Metropolitan Land Planning Act

Minnesota local governments subject to the Metropolitan Land Planning Act are required in their comprehensive plans to plan for the protection and development of solar resources. Communities must then incorporate Plan goals in their local controls. This ordinance implements that required Comprehensive Plan element.

E. Improve Competitive Markets - Solar energy systems offer additional energy choice to consumers and will improve competition in the electricity and natural gas supply market.

III. Definitions

Agrivoltaics – A solar energy system co-located on the same parcel of land as agricultural production, including crop production, grazing, apiaries, or other agricultural products or services.

Building-integrated Solar Energy Systems – A solar energy system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include, but are not limited to, photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.

Solar Definitions

Not all these terms are used in this model ordinance, nor is this a complete list of solar definitions. As a community develops its own development standards for solar technology, many of the concepts defined here may be helpful in meeting local goals. For instance, solar daylighting devices may change the exterior appearance of the building, and the community may choose to distinguish between these devices and other architectural changes.

Community-Scale Solar Energy System – A commercial solar energy system that converts sunlight into electricity for the primary purpose of serving electric demands off-site from the facility, either retail or wholesale. Community-scale systems are principal uses and projects typically cover less than 20 acres.

Community Solar Garden – A solar energy system that provides retail electric power (or a financial proxy for retail power) to multiple community members or businesses residing or located off-site from the location of the solar energy system, consistent with Minn. Statutes 216B.1641 or successor statute. A community solar garden may be either an accessory or a principal use.

Differentiating Solar Uses by Size

Community-scale and Large-scale systems are defined here as occupying less than 20 acres and greater than 20 acres respectively. Some communities will use a lower number (ten acres) and some a higher number (up to 50 acres). An ex-urban city would use a lower number and a rural county could use a higher number. Community-scale is generally a size that can fit into the land use fabric of the community without assembly of separate parcels. Some communities have chosen not to distinguish between community- and large-scale, but use a single large-scale designation.

Grid-intertie Solar Energy System – A photovoltaic solar energy system that is connected to an electric circuit served by an electric utility company.

Ground-mount – A solar energy system mounted on a rack or pole that rests or is attached to the ground. Ground-mount systems can be either accessory or principal uses.

Large-Scale Solar Energy System – A commercial solar energy system that converts sunlight into electricity for the primary purpose of wholesale sales of generated electricity. A large-scale solar energy system will have a project size greater than 20 acres and is the principal land use for the parcel(s) on which it is located.

Off-grid Solar Energy System – A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility company.

Passive Solar Energy System – A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

Photovoltaic System – A solar energy system that converts solar energy directly into electricity.

Renewable Energy Easement, Solar Energy Easement – An easement that limits the height or location, or both, of permissible development on the burdened land in terms of a structure or vegetation, or both, for the purpose of providing access for the benefited land to wind or sunlight passing over the burdened land, as defined in Minn. Stat. 500.30 Subd. 3 or successor statute.

Roof-mount – A solar energy system mounted on a rack that is fastened to or ballasted on a structure roof. Roof-mount systems are accessory to the principal use.

Roof Pitch – The final exterior slope of a roof calculated by the rise over the run, typically but not exclusively expressed in twelfths such as 3/12, 9/12, 12/12.

Solar Access – Unobstructed access to direct sunlight on a lot or building through the entire year, including access across adjacent parcel air rights, for the purpose of capturing direct sunlight to operate a solar energy system.

Solar Carport – A solar energy system of any size that is installed on a carport structure that is accessory to a parking area, and which may include electric vehicle supply equipment or energy storage facilities.

Solar Collector – The panel or device in a solar energy system that collects solar radiant energy and transforms it into thermal, mechanical, chemical, or electrical energy. The collector does not include frames, supports, or mounting hardware.

Solar Daylighting – Capturing and directing the visible light spectrum for use in illuminating interior building spaces in lieu of artificial lighting, usually by adding a device or design element to the building envelope.

Solar Energy – Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System – A device, array of devices, or structural design feature, the purpose of which is to provide for generation or storage of electricity from sunlight, or the collection, storage and distribution of solar energy for space heating or cooling, daylight for interior lighting, or water heating.

Solar Hot Air System (also referred to as Solar Air Heat or Solar Furnace) – A solar energy system that includes a solar collector to provide direct supplemental space heating by heating and re-circulating conditioned building air. The most efficient performance includes a solar collector to preheat air or supplement building space heating, typically using a vertically-mounted collector on a south-facing wall.

Solar Hot Water System – A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs, including residential domestic hot water and hot water for commercial processes.

Solar Mounting Devices – Racking, frames, or other devices that allow the mounting of a solar collector onto a roof surface or the ground.

Solar Resource – A view of the sun from a specific point on a lot or building that is not obscured by any vegetation, building, or object for a minimum of four hours between the hours of 9:00 AM and 3:00 PM Standard time on all days of the year, and can be measured in annual watts per square meter.

Solar Resource

Understanding what defines a "solar resource" is foundational to how land use regulation affects solar development. Solar energy resources are not simply where sunlight falls. A solar resource has minimum spatial and temporal characteristics, and needs to be considered not only today but also into the future. Solar energy systems are economic only if the annual solar resource (measured in annual watts per square meter) are sufficiently high to justify the cost of installation. The resource is affected by the amount of annual shading, orientation of the panel, and typical atmospheric conditions. Solar resources on a particular site can be mapped and quantified, similar to quantifying other site resources that enhance property value; mineral resources, prime soils for agriculture, water, timber, habitat.

IV. Permitted Accessory Use - Solar energy systems are a permitted accessory use in all zoning districts where structures of any sort are allowed, subject to certain requirements as set forth below. Solar carports and associated electric vehicle charging equipment are a permitted accessory use on surface parking lots in all districts regardless of the existence of another building. Solar energy systems that do not meet the following design standards will require a conditional use permit.

A. Height - Solar energy systems must meet the following height requirements:

1. Building- or roof- mounted solar energy systems shall not exceed the maximum allowed height in any zoning district. For purposes for height measurement, solar energy systems other than building-integrated systems shall be given an equivalent exception to height standards as building-mounted mechanical devices or equipment.

2. Ground- or pole-mounted solar energy systems shall not exceed 15 feet in height when oriented at maximum tilt.

3. Solar carports in non-residential districts shall not exceed 20 feet in height.

Height - Rooftop System

This ordinance notes exceptions to the height standard when other exceptions for rooftop equipment are granted in the ordinance. Communities should directly reference the exception language rather than use the placeholder language here.

Height - Ground or Pole Mounted System

This ordinance sets a 15-foot height limit, which is typical for residential accessory uses. Some communities allow solar to be higher than other accessory uses in order to enable capture of the lot's solar resource when lots and buildings are closer together. An alternative is to balance height with setback, allowing taller systems if set back farther– for instance, an extra foot of height for every extra two feet of setback. In rural (or large lot) areas, solar resources are unlikely to be constrained by trees or buildings on adjacent lots and the lot is likely to have adequate solar resource for a lower (10-15 foot) ground-mount application.

B. Set-back - Solar energy systems must meet the accessory structure setback for the zoning district and primary land use associated with the lot on which the system is located, except as allowed below.

1. **Roof- or Building-mounted Solar Energy Systems** – The collector surface and mounting devices for roof-mounted solar energy systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built, unless the collector and mounting system has been explicitly engineered to safely extend beyond the edge, and setback standards are not violated. Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side-yard exposure. Solar collectors mounted on the sides of buildings and serving as awnings are considered to be building-integrated systems and are regulated as awnings.

2. **Ground-mounted Solar Energy Systems** - Ground-mounted solar energy systems may not extend into the side-yard or rear setback when oriented at minimum design tilt, except as otherwise allowed for building mechanical systems.

C. Visibility - Solar energy systems in residential districts shall be designed to minimize visual impacts from the public right-of-way, as described in C.1-3, to the extent that doing so does not affect the cost or efficacy of the system. Visibility standards do not apply to systems in non-residential districts, except for historic building or district review as described in E. below.

Visibility and Aesthetics

Aesthetic regulation should be tied to design principles rather than targeted at a specific land use. If the community already regulates aesthetics in residential districts, this model language provides guidance for balancing between interests of property owners who want to use their on-site solar resources and neighbors concerned with neighborhood character. Substantial evidence demonstrates that solar installations have no effect on property values of adjacent properties. But where aesthetic regulation is used to protect community character, these standards provide balance between competing goals.

1. **Building Integrated Photovoltaic Systems** - Building integrated photovoltaic solar energy systems shall be allowed regardless of whether the system is visible from the public right-of-way, provided the building component in which the system is integrated meets all required setback, land use, or performance standards for the district in which the building is located.

2. **Aesthetic restrictions** – Roof-mount or ground-mount solar energy systems shall not be restricted for aesthetic reasons if the system is not visible from the closest edge of any public right-of-way other than an alley, or if the system meets the following standards.

   a. Roof-mounted systems on pitched roofs that are visible from the nearest edge of the front right-of-way shall have the same finished pitch as the roof and be no more than ten inches above the roof.

   b. Roof-mount systems on flat roofs that are visible from the nearest edge of the front right-of-way shall not be more than five feet above the finished roof and are exempt from any rooftop equipment or mechanical system screening.

3. **Reflectors** - All solar energy systems using a reflector to enhance solar production shall minimize glare from the reflector affecting adjacent or nearby properties.

D. **Lot Coverage -** Ground-mount systems total collector area shall not exceed half the building footprint of the principal structure.

1. Ground-mount systems shall be exempt from lot coverage or impervious surface standards if the soil under the collector is maintained in vegetation and not compacted.

2. Ground-mounted systems shall not count toward accessory structure limitations.

3. Solar carports in non-residential districts ar exempt from lot coverage limitations.

E. **Historic Buildings** - Solar energy systems on buildings within designated historic districts or on locally designated historic buildings (exclusive of State or Federal historic designation) must receive approval of the community Heritage Preservation Commission, consistent with the standards for solar energy systems on historically designated buildings published by the U.S. Department of Interior.

F. **Plan Approval Required** - All solar energy systems requiring a building permit or other permit from Model Community shall provide a site plan for review.

Building Integrated PV

Building integrated solar energy systems can include solar energy systems built into roofing (existing technology includes both solar shingles and solar roofing tiles), into awnings, skylights, and walls.

Roof-Mounted Solar Energy Systems

This ordinance sets a threshold for pitched roof installations that they not be steeper than the finished roof pitch. Mounted systems steeper than the finished roof pitch change the appearance of the roof, and create additional considerations in regard to the wind and drift load on structural roof components. If the aesthetic impacts are not a concern to the community, the structural issues can be addressed in the building permit, as described in this Toolkit.

Reflectors

Unlike a solar collector, reflector systems do create a potential glare nuisance. While reflector systems are unusual, communities may want to include this reference as a precaution.

Impervious Surface Coverage

Rather than consider the solar panel for a ground-mount system as a roof, this provision recognizes that the ground under the panel can mitigate stormwater risks if it is kept in vegetation so that rain water can infiltrate. Any effects are deminimus for a small array if the lot is otherwise within coverage ratios.

Roof Coverage

National Fire Code standards recommend keeping solar arrays well away from roof edges and peak in order to enable some fire fighting access. Different fire departments have addressed this in different ways. Recommendations for solar friendly permitting that accommodate Fire Code recommendations can be found in the Solar America Board of Codes and Standards.

Plan Approval

This process is generally part of the process for obtaining a building permit. If the community does not issue building permits, it can be tied to a land use permit instead. For rural areas or cities without standards for rooftop systems, the plan approval section may be eliminated.

1. **Plan Applications** - Plan applications for solar energy systems shall be accompanied by to-scale horizontal and vertical (elevation) drawings. The drawings must show the location of the system on the building or on the property for a ground-mount system, including the property lines.

2. **Plan Approvals** - Applications that meet the design requirements of this ordinance shall be granted administrative approval by the zoning official and shall not require Planning Commission review. Plan approval does not indicate compliance with Building Code or Electric Code.

G. Approved Solar Components - Electric solar energy system components must have a UL or equivalent listing and solar hot water systems must have an SRCC rating.

H. Compliance with Building Code - All solar energy systems shall meet approval of local building code officials, consistent with the State of Minnesota Building Code, and solar thermal systems shall comply with HVAC-related requirements of the Energy Code.

I. Compliance with State Electric Code - All photovoltaic systems shall comply with the Minnesota State Electric Code.

J. Compliance with State Plumbing Code - Solar thermal systems shall comply with applicable Minnesota State Plumbing Code requirements.

K. Utility Notification - All grid-intertie solar energy systems shall comply with the interconnection requirements of the electric utility. Off-grid systems are exempt from this requirement.

V. Principal Uses – Model Community encourages the development of commercial or utility scale solar energy systems where such systems present few land use conflicts with current and future development patterns. Ground-mounted solar energy systems that are the principal use on the development lot or lots are conditional uses in selected districts.

A. Principal Use General Standards

1. Site Design

a. **Set-backs** – Community- and large-scale solar arrays must meet the following setbacks:

1. Property line setback for buildings or structures in the district in which the system is located, except as other determined in 1.a.5 below.

2. Roadway setback of 150 feet from the ROW centerline of State highways and CSAHs, 100 feet for other roads, except as other determined in 1.a.5 below.

3. Housing unit setback of 150 feet from any existing dwelling unit, except as other determined in 1.a.5 below.

4. Setback distance should be measured from the edge of the solar energy system array, excluding security fencing, screening, or berm.

5. All setbacks can be reduced by 50% if the array is fully screened from the setback point of measurement.

b. **Screening** – Community- and large-scale solar shall be screened from existing residential dwellings.

1. A screening plan shall be submitted that identifies the type and extent of screening.

2. Screening shall be consistent with Model Community's screening ordinance or standards typically applied for other land uses requiring screening.

3. Screening shall not be required along property lines within the same zoning district, except where the adjoining lot has an existing residential use.

4. Model Community may require screening where it determines there is a clear community interest in maintaining a viewshed.

Community-Scale Solar or Solar Gardens

Community solar systems differ from rooftop or solar farm installations primarily in regards to system ownership and disposition of the electricity generated, rather than land use considerations. There is, however, a somewhat greater community interest in community solar, and thus communities should consider creating a separate land use category.

This language limits the size of the garden to ten acres, which is an installation of no more than one MW of solar capacity. Communities should tailor this size limit to community standards, which may be smaller or larger.

Appropriate Setbacks

The community should consider balancing set-back requirements and screening requirements for principal use solar. Since the primary impact to neighbors of large-scale solar is visual, screening becomes less useful, as the setbacks get larger (and vice versa).

The setback distances provided here are general examples that should be modified to be consistent with other setbacks already in the ordinance. Excessive setbacks that are unique to solar land uses, or that are similar to high nuisance land uses such as industrial uses or animal agriculture, are unjustified given the low level of risk or nuisance posed by the system.

Screening

The community should consider limiting screening of community- or large-scale solar to where there is a visual impact from an existing use, such as adjacent residential districts or uses. Solar energy systems may not need to be screened from adjacent lots if those lots are in agricultural use, are non-residential, or have low-intensity commercial use.

c. **Ground cover and buffer areas** - The following provisions shall be met related to the clearing of existing vegetation and establishment of vegetated ground cover. Additional requirements may apply as required by Model Community.

1. Large-scale removal of mature trees on the site is discouraged. Model Community may set additional restrictions on tree clearing or require mitigation for cleared trees.

2. The project site design shall include the installation and establishment of ground cover meeting the beneficial habitat standard consistent with Minnesota Statutes, section 216B.1642, or successor statutes and guidance as set by the Minnesota Board of Water and Soil Resources (BWSR).

3. The applicant shall submit a planting plan accompanied by a completed "Project Planning Assessment Form" provided by BWSR for review by BWSR or the County SWCD.

4. Beneficial habitat standards shall be maintained on the site for the duration of operation, until the site is decommissioned. The owner of the solar array shall complete BWSR's "Established Project Assessment Form" at year 4 and every 3 years after that, and allow the County SWCD to conduct a site visit to verify compliance.

5. Model Community may require submittal of inspection fee at the time of the initial permit application to support ongoing inspection of the beneficial habitat ground cover.

6. The applicant shall submit a financial guarantee in the form of a letter of credit, cash deposit or bond in favor of the Community equal to one hundred twenty-five (125) percent of the costs to meet the beneficial habitat standard. The financial guarantee shall remain in effect until vegetation is sufficiently established.

Ground Cover Standards

Minnesota has created a "beneficial habitat" certification, administered by the Board of Soil and Water Resources (BWSR) to enable local governments and solar developers to certify principal use solar as having achieved the co-benefits of using the site as pollinator habitat.

Establishing and maintaining native ground cover creates important co-benefits to the community or the property owner. Native grasses can be harvested for forage and wildflowers and blooming plants can create pollinator and bird habitat, and maintaining the site in native vegetation will build soils that can be turned back into agriculture at the end of the solar farm's life.

Site Design in Conditional Use Permit

Certain site design elements may be included in a community's conditional use permit for community- and large-scale solar. Best practices for habitat-friendly solar site design include, for instance, that:

• panels be at least 36 inches off the ground to allow mowing and other maintenance,

• panels be spaced to allow vegetation to be self-sustaining,

• maintenance standards limit or prevent pesticide use.

Financial Surety

Communities frequently require bonds or similar financial guarantees when infrastructure improvements are required for a development project. The beneficial habitat installation can be considered in a similar light. Establishing a self-sustaining pollinator or native habitat ground cover requires maintenance over the first 2-3 years, and some maintenance over the life of the project.

d. Foundations - A qualified engineer shall certify that the foundation and design of the solar panel racking and support is within accepted professional standards, given local soil and climate conditions.

e. Power and communication lines - Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by Model Community in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines, or distance makes undergrounding infeasible, at the discretion of the zoning administrator.

2. **Stormwater and NPDES** - Solar farms are subject to Model Community's stormwater management and erosion and sediment control provisions and NPDES permit requirements. Solar collectors shall not be considered impervious surfaces if the project is certified as beneficial habitat solar, as described in A.1.c.2. of this ordinance.

3. **Other standards and codes** - All solar farms shall be in compliance with all applicable local, state and federal regulatory codes, including the State of Minnesota Uniform Building Code, as amended; and the National Electric Code, as amended.

4. **Site Plan Required** - A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by Model Community. The site plan should show all zoning districts and overlay districts.

5. **Aviation Protection** - For solar farms located within 500 feet of an airport or within approach zones of an airport, the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.

6. **Agricultural Protection** - Solar farms must comply with site assessment or soil identification standards that are intended to identify agricultural soils. Model Community may require mitigation for use of prime soils for solar array placement, including the following:

   a. Demonstrating co-location of agricultural uses (agrivoltaics) on the project site.

   b. Using an interim use or time-limited CUP that allows the site to be returned to agriculture at the end of life of the solar installation.

   c. Placing agricultural conservation easements on an equivalent number of prime soil acres adjacent to or surrounding the project site.

   d. Locating the project in a Drinking Water Supply Management Area or wellhead protection area.

Stormwater and Water Quality Standards

Perennial grasses and wildflowers planted under the panels, between arrays, and in setback or buffer areas will substantially mitigate the stormwater risks associated with solar arrays, and result in less runoff than typically seen from many types of agriculture. The ground cover standards in Section A.3. will mitigate many stormwater risks, although soil type and slope can still affect the need for additional stormwater mitigation.

Solar with native perennial ground cover can provide multiple water quality benefits when converting from most agricultural crop uses. Both groundwater (limiting nitrate contamination) and surface waters (reducing phosphorus and sediment loading) can benefit if the system is appropriately designed.

Site Plan

Solar farm developers should provide a site plan similar to that required by the community for any other development. Refer to your existing ordinance to guide site plan submittal requirements.

Aviation Standards, Glare

This standard was developed for the FAA for solar installations on airport grounds. It can also be used for solar farm and garden development in areas adjacent to airports. This standard is not appropriate for areas where reflected light is not a safety concern.

Agricultural Protection

If the community has ordinances that protect agricultural soils, this provision applies those same standards to solar development. Communities should understand, however, that solar farms do not pose the same level or type of risk to agricultural practices as does housing or commercial development. Solar farms can be considered an interim use that can be easily turned back to agriculture at the end of the solar farm's life (usually 25 years.)

7. **Decommissioning** - A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life.

   a. Decommissioning of the system must occur in the event the project is not in use for 12 consecutive months.

   b. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and assurances that financial resources will be available to fully decommission the site.

   c. Disposal of structures and/or foundations shall meet the provisions of the Model Community Solid Waste Ordinance.

   d. Model Community may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

Prime Farmland and Agrivoltaics

Minnesota Admin. 7850.4400 Subd. 4 has provisions for the protection of prime farmland when large electric power generating plants are located on lands designated as prime farmland.

There are a number of mitigation opportunities for solar sited on prime farmland, such as co-locating agricultural uses within solar arrays (also called agrivoltaics). Groundcover that includes pollinator-friendly plantings may enhance surrounding agricultural opportunities, or in the case of protecting drinking water or wellhead protection areas as described below.

B. Community-Scale Solar – Model Community permits the development of community-scale solar, subject to the following standards and requirements:

1. **Rooftop gardens permitted** - Rooftop community systems are permitted in all districts where buildings are permitted.

2. **Community-scale uses -** Ground-mount community solar energy systems must cover no more than ten acres (project boundaries), and are a permitted use in industrial and agricultural districts, and permitted with standards or conditional in all other non-residential districts. Ground-mount solar developments covering more than ten acres shall be considered large-scale solar.

3. **Dimensional standards** - All structures must comply with setback, height, and coverage limitations for the district in which the system is located.

4. **Other standards** - Ground-mount systems must comply with all required standards for structures in the district in which the system is located.

Defining Community-Scale Solar

The acreage size for community-scale solar garden written here (10 acres) is the high end of project size for a one megawatt system, which is the maximum size of community solar gardens within Xcel Energy's program. But other utilities have other size limitations, and community-scale could be defined as high as 10 megawatts (100 acre project size). Community-scale solar is the size that can fit in to the landscape.

Drinking Water Protection

In identifying preferred sites for solar principal uses the community should consider co-benefits of solar energy development. One such potential co-benefit is protection of drinking water supplies. Solar energy development may be intentionally sited within vulnerable portions of Drinking Water Supply Management Areas (DWSMAs)as a best management practice to restore and protect native perennial groundcover that reduces nitrate contamination of ground water supplies.

C. **Large-Scale Solar** - Ground-mount solar energy arrays that are the primary use on the lot, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. **Conditional use permit** – Solar farms are conditional uses in agricultural districts, industrial districts, shoreland and floodplain overlay districts, airport safety zones subject to A.1.5. of this ordinance, and in the landfill/brownfield overlay district for sites that have completed remediation.

Large-Scale Solar Conditional Uses

Large -scale solar should require a conditional use or interim use permit in order for the community to consider the site-specific conditions. The districts listed here are examples. Each community needs to consider where large scale solar is suitable in the context of its zoning districts and priorities.

Example Use Table

Use Type	Residential	Mixed Use	Business	Industrial	Agricultural, Rural, Landfill	Shoreland	Floodplain	Special (Conservation, Historic Districts)
Large-scale solar				C	C	C	C	C
Community-scale solar	C	C	C	P	P	PS	PS	PS
Accessory use ground-mounted solar	P	P	P	P	P	P	C	C
Rooftop solar	P	P	P	P	P	P	P	PS

P = Permitted

PS = Permitted Special (additional separate permit or review)

C = Conditional

Blank Cell = Prohibited

Solar as a Land Use

The above use table shows four types of solar development that are distinct types of land uses (two kinds of accessory uses, two principal uses), and a group of districts or overlays that are commonly used in Minnesota.

• Rooftop system are permitted in all districts where buildings are permitted, with recognition that historic districts will have special standards or permits separate from the zoning permits.

• Accessory use ground-mount are conditional where potentially in conflict with the primary district or overlay goal.

• Community-scale solar principal uses are conditional where land use conflicts or opportunity conflicts are high, permitted where a 10 acre development can be integrated into the landscape, and requiring special consideration in shoreland and floodplain overlay districts.

• Large-scale is prohibited in higher density districts and conditional in all other districts.

Both community- and large-scale solar is allowed in shoreland and floodplain overlay districts, because the site design standards requiring beneficial habitat ground cover not only ensure a low-impact development but in most cases result in a restoration of ecosystem services from the previous (usually agricultural) use.

VI. Restrictions on Solar Energy Systems Limited – As of (adoption date for this ordinance) new homeowners' agreements, covenant, common interest community standards, or other contract between multiple property owners within a subdivision of Model Community shall not restrict or limit solar energy systems to a greater extent than Model Community' solar energy standards.

VII. Solar Access - Model Community encourages protection of solar access in all new subdivisions.

A. Solar Easements Allowed - Model Community allows solar easements to be filed, consistent with Minnesota State Code 500. Any property owner can purchase an easement across neighboring properties to protect access to sunlight. The easement can apply to buildings, trees, or other structures that would diminish solar access.

B. Easements within Subdivision Process - Model Community requires new subdivisions to identify and create solar easements when solar energy systems are implemented as a condition of a PUD, subdivision, conditional use, or other permit, as specified in Section 8 of this ordinance.

Solar Easements

Minnesota allows the purchase and holding of easements protecting access to solar and wind energy. The easement must specify the following information:

Required Contents - Any deed, will, or other instrument that creates a solar or wind easement shall include, but the contents are not limited to:

(a) A description of the real property subject to the easement and a description of the real property benefiting from the solar or wind easement; and

(b) For solar easements, a description of the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar easement extends over the real property subject to the easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to direct sunlight is prohibited or limited;

(more provisions, see Statute)

Source: Minnesota Stat. 500.30 Subd. 3.

VIII. Renewable Energy Condition for Certain Permits

A. **Condition for Planned Unit Development (PUD) Approval** - Model Community may require on-site renewable energy systems, zero-net-energy (ZNE) or zero-net-carbon (ZNC) building designs, solar-synchronized electric vehicle charging or other clean energy systems as a condition for approval of a PUD permit to mitigate for:

1. Impacts on the performance of the electric distribution system,

2. Increased local emissions of greenhouse gases associated with the proposal,

3. Need for electric vehicle charging infrastructure to offset transportation-related emissions for trips generated by the new development,

4. Other impacts of the proposed development that are inconsistent with the Model Community Comprehensive Plan.

B. **Condition for Conditional Use Permit** - Model Community may require on-site renewable energy systems or zero net energy construction as a condition for a rezoning or a conditional use permit.

Renewable Energy Conditions, Incentives

The community can use traditional development tools such as conditional use permits, PUDs, or other discretionary permits to encourage private investment in solar energy systems as part of new development or redevelopment. This model ordinance notes these opportunities for consideration by local governments. In most cases, additional ordinance language would need to be tailored to the community's ordinances.

For instance, a provision that PUDs (or other special district or flexible design standard) incorporate solar energy should be incorporated into the community's PUD ordinance rather than being a provision of the solar standards.

Conditional use permits generally include conditions, and those conditions can include renewable energy or zero net energy design, but only if the conditions are clearly given preference in adopted policy or plans. Explicit reference to climate or energy independence goals in the ordinance and explicit preference for such conditions will set a foundation for including such conditions in the permit.

IX. Solar Roof Incentives - Model Community encourages incorporating on-site renewable energy system or zero net energy construction for new construction and redevelopment. Model Community may require on-site renewable energy or zero-net-energy construction when issuing a conditional use permit where the project has access to local energy resources, in order to ensure consistency with Model Community's Climate Action Plan.

A. **Density Bonus** - Any application for subdivision of land in the ___ Districts that will allow the development of at least four new lots of record shall be allowed to increase the maximum number of lots by 10% or one lot, whichever is greater, provided all building and wastewater setbacks can be met with the increased density, if the applicant enters into a development agreement guaranteeing at least three (3) kilowatts of PV for each new residence that has a solar resource.

Solar Roof Incentives

This section of the model ordinance includes a series of incentives that can be incorporated into development regulation. Most cities and many counties use incentives to encourage public amenities or preferred design. These same tools and incentives can be used to encourage private investment in solar energy. Communities should use incentives that are already offered, and simply extend that incentive to appropriate solar development.

Some of the incentives noted here are not zoning incentives, but fit more readily into incentive programs offered by the community (such as financing or incentive-based design standards).

B. **Financial Assistance** – Model Community provides financial assistance to certain types of development and redevelopment. All projects that receive financial assistance of $_____ or greater, and that have a solar resource shall incorporate on-site renewable energy systems.

C. **Solar-Ready Buildings** – Model Community encourages builders to use solar-ready design in buildings. Buildings that submit a completed U.S. EPA Renewable Energy Ready Home Solar Photovoltaic Checklist (or other approved solar-ready standard) and associated documentation will be certified as a Model Community solar ready home, and are eligible for low-cost financing through Model Community's Economic Development Authority. A designation that will be included in the permit home's permit history.

D. **Solar Access Variance** – When a developer requests a variance from Model Community's subdivision solar access standards, the zoning administrator may grant an administrative exception from the solar access standards provided the applicant meets the conditions of 1. and 2. below:

1. **Solar Access Lots Identified** - At least __% of the lots, or a minimum of __ lots, are identified as solar development lots.

2. **Covenant Assigned** - Solar access lots are assigned a covenant that homes built upon these lots must include a solar energy system. Photovoltaic systems must be at least three (3) KW in capacity.

3. **Additional Fees Waived** - Model Community will waive any additional fees for filing of the covenant.

Solar Ready Buildings

New buildings can be built "solar-ready" at very low cost (in some cases the marginal cost is zero). Solar energy installation costs continue to decline in both real and absolute terms, and are already competitive with retail electric costs in many areas. If new buildings have a rooftop solar resource, it is likely that someone will want to put a solar energy system on the building in the future. A solar ready building greatly reduces the installation cost, both in terms of reducing labor costs of retrofits and by "pre-approving" most of the installation relative to building codes.

A community's housing and building stock is a form of infrastructure that, although built by the private sector, remains in the community when the homeowner or business leaves the community. Encouraging solar-ready construction ensures that current and future owners can take economic advantage of their solar resource when doing so makes the most sense for them.

Solar Access Subdivision Design

Some communities will require solar orientation in the subdivision ordinance, such as requiring an east-west street orientation within 20 degrees in order to maximize lot exposure to solar resources. However, many such requirements are difficult to meet due to site constraints or inconsistency with other requirements (such as connectivity with surrounding street networks). Rather than simply grant a variance, the community can add a condition that lots with good solar access actually be developed as solar homes.

Memo by Margaret Ford, 2/7/2023

Revision of 301.070

The ordinance 301.070 governing conditional uses applies to those uses that have greater than usual chances of creating safety hazards, impact on neighboring people and property, and nuisance situations.

Under 301.070

1.e. A conditional use permit is required for any solar energy systems for heating, cooling, electrical generation or other purposes. This ordinance was written when solar energy systems intruded on open spaces. Residential solar panels that attach and are within the bounds of the roof surface should not require a conditional use permit and should be exempt from this provision.

Therefore, I propose the following ordinance:

An ordinance amending section 301.070 Zoning code conditional uses.

The City Council of Birchwood village hereby ordains that section .070 1e of chapter 301 of the Municipal Code of the City of Birchwood village is hereby revised to read:

e. Solar energy systems for heating, cooling, electrical generation or other purposes. Residential solar panels that attach and are within the bounds of the roof surface do not require a conditional use permit and are exempt from this provision.

ORDINANCE 2023-02-01

CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE AMENDING SECTION 301.070 CONDITIONAL USES

The City Council of the City of Birchwood Village hereby ordains that Section 301.070 (Conidtional Uses) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

301.070. CONDITIONAL USES. Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. CONDITIONAL USE PERMITS.

1. A Conditional Use Permit shall be required for the following projects:

    a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070.

    b. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.

    c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 1/2) feet of water.

    d. Any tennis court.

    e. Solar energy systems for heating, cooling, electrical generation or other purposes. Residential solar panels that attach and are within the bounds of the roof surface do not require a conditional use permit and are exempt from this provision.

    ~~e. Any solar energy system for heating, cooling, electrical generation or other purposes.~~

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.

_____
Margaret Ford, Mayor

Attested:

_____
Rebecca Kellen, City Clerk-Administrator

CITY OF BIRCHWOOD VILLAGE
VARIANCE APPLICATION

207 Birchwood Ave, Birchwood, MN 55110
Phone: 651-426-3403 Fax: 651-426-7747
Email: info@cityofbirchwood.com

FOR OFFICIAL USE ONLY

Application Received Date	_____	Amount Paid	$_____
Payment Type	□ Cash □ Check □ Money Order □ Credit Card		
Check / Money Order #	_____		
Date Received:			
Application Complete?	□ Yes □ No		
Signature of City Planner	_____	Date of Determination	_____

Completed *requests for variances submitted on or before the* ***first of each month*** *will generally be considered by the Planning Commission at its next meeting on the fourth Thursday of that month. Requests submitted after the first of the month will generally be considered the following month. Upon recommendation of the Planning Commission, the City Council will consider and decide the variance application at the City Council's next meeting.*

A. Applicant's Name: Telephone
Home: _____
Work/Cell:

B. Address (Street, City, State, ZIP):

_____

C. Property Owner's Name (If different from above): Telephone
Home: _____
_____ Work/Cell: _____

D. Location of Project:

_____

E. Legal Description:

_____
_____

F. Description of Proposed Project:

_____
_____
_____

G. Specify each section of the City Code for which a variance is sought:

_____
_____
_____

H. Explain how you wish to vary from the applicable provisions of the ordinance:

_____
_____
_____

I. Please attach a site plan or accurate survey as may be required by ordinance, a Plot plan drawn to scale showing existing and proposed new and changed structures on the lot, and existing structures on adjacent lots.

J. Please answer the following questions as they relate to your specific variance request:

1. In your opinion, is the variance in harmony with the purposes and intent of the ordinance?
   Yes ( ) No ( ) Why or why not?
   _____
   _____
   _____

2. In your opinion, is the variance consistent with the comprehensive plan?
   Yes ( ) No ( ) Why or why not?
   _____
   _____
   _____

3. In your opinion, does the proposal put property to use in a reasonable manner?
   Yes ( ) No ( ) Why or why not?
   _____
   _____
   _____

4. In your opinion, are there circumstances unique to the property?
   Yes ( ) No ( ) Why or why not?
   _____
   _____

5. In your opinion, will the variance maintain the essential character of the locality?
   Yes ( ) No ( ) Why or why not?
   _____
   _____

K. Are there other governmental permits required for the project, including requirements of the Rice Creek Watershed District? Please attach copies of permits, or evidence they are unnecessary.

Yes ( ) No ( ) Which permits are required?

_____

_____

L. After the proposed project, will the impervious surface of the lot exceed 25 percent?

Yes ( ) No ( ) If so, include the information in the following table.

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot			
2. Maximum Impervious Surface (25% of item 1)			
3. Roof Surface			
4. Sidewalks			
5. Driveways			
6. Other Impervious Surface			
7. Total of Items 3-6			
8. Percent Impervious Surface			

The Planning Commission and City Council must make affirmative findings on each of the five criteria in question J in order to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria have been satisfied.

The City and its representatives accept no responsibility for errors and/or damages caused due to incomplete and/or inaccurate information herein. It is the responsibility of the applicant to ensure the accuracy and completeness of this information.

The applicant declares that they are familiar with application fees and other associated costs and with the procedural requirements of the City Code and other applicable ordinances, and that, with the exception of the City Code listed in question G, the proposed project conforms to the City Code, that the information provided in and enclosed herewith is complete and that all documents represented are true and correct representations of the actual project/building that will be built in conformance with such representation if approved.

Applicant's Signature: Date:

_____ _____

Fee Owner's Signature: Date

_____ _____

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

ORDINANCE ____

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 13th day of December 2022

_____

Margaret Ford, Mayor

Attest:

_____
Rebecca Kellen, City Administrator-Clerk

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	
	~~Right-of-Way (ROW) Permit Application Fee *~~		~~309.061~~	~~$300.00 + $100.00/hour for plan review after two hours~~	
		~~Refundable ROW Permit Escrow for permitting costs incurred by city~~	~~301.055(2)~~	~~$3,000.00~~	
	~~Right-of-Way Degradation Fee~~		~~309.080~~	~~Permit holder responsible for actual costs~~	
	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	

RIGHT OF WAY FEES	Refundable ROW Excavation Permit Deposit	301.055(2)	$3,000.00	
	Obstruction Permit	208 B.06 (2)	$200	
	Excavation permit	208 B.06 0(1)	$200	
	Small Wireless Facility Permit	208 B.06 0(3)	$500.00 up to 5 sites, $100.00 for each additional	
	Delay Penalty		$60 plus $20 / day each day late over 3 days	
	Refundable Street Excavation Damage Deposit		$3,000.00	

~~COMMUNICATIONS FEES~~	~~Permit to install, repair, remove or relocate communications facilities *, **~~	~~208.020~~	~~$50.00~~	~~12/2022~~

ORDINANCE NO. _____

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 February, 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 XXth day of February, 2023

_____
Margaret Ford, Mayor

Attest:

_____

Rebecca Kellen, City Administrator-Clerk

ORDINANCE NO. _____

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.

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. REVOCATION 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 Month, Year.

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 XXth day of February, 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.

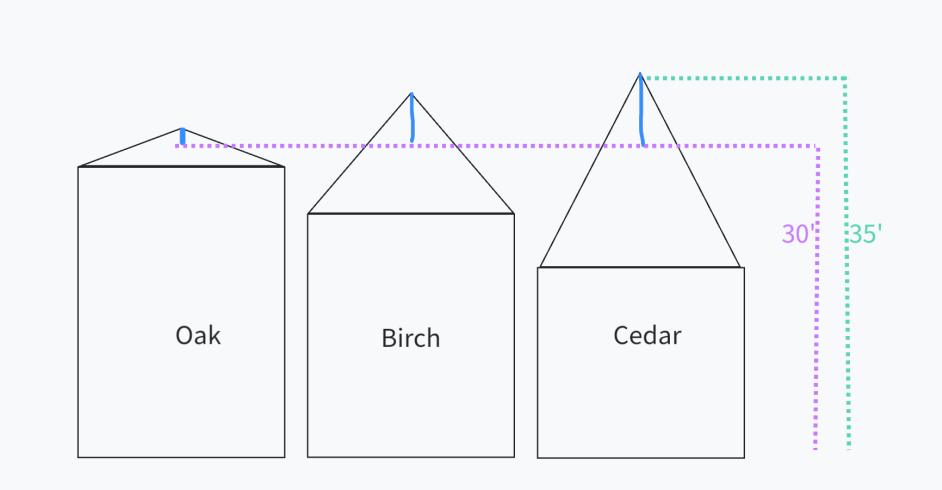
Sec. 208A.330. Severability.

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.

To: Birchwood City Council
From: Ryan Hankins

The planning commission has recommended some updates to our structural height restrictions; those updates; the following represents a generalization of those recommendations.

1. [ACTION] Refer ordinance to planning commission.



Ryan's marginally helpful diagram.

The height code proposal works like this for most single-family houses: the top 30% of the structure is excluded from calculation, so a house with a more sloped roof can poke up higher above 30 feet. The Oak house with a less sloped roof can must have a lower total height; the Cedar house with a very high pitch occupies less visible space. The purple line shows that the 30 foot maximum. All single-family dwelling remain limited to 35' at the tallest point.

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 302.045 OF ORDINANCE NO. 302 ADOPTED ON DECEMBER 13, 2016, AND TITLED "ZONING CODE REQUIREMENTS AND PERFORMANCE STANDARDS."

Findings and Purpose:

The Planning Commission considered this code and recommends more flexibility in principal structure height. New energy code requires 7-inch energy heel, 9-foot ceilings, and building methods that use 18- to 48-inch deep trusses to span open floor plans result in common two-story building heights that can easily exceed the existing code limitation of 30-foot average exposure height on a flat lot. Allowing higher structures when roofs have greater pitch balances goals of regulating structure size and meeting stricter energy codes.

This changes allows the upper 30% of a roof of a house or its attached garage, measured vertically, to protrude above the 30-foot maximum structure height. It limits the amount of the structure that may fill that area, preserving light and space outdoors, but reducing the advantage in expanded interior space that flatter roofs provide over pitched roofs.

Our current code for detached structures has more reasonable results; that is unchanged.

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

Section 1. Section 302.045 of Ordinance No. 302 adopted on December 13, 2016 and titled ZONING CODE REQUIREMENTS AND PERFORMANCE STANDARDS is amended to read:

302.045 STRUCTURAL HEIGHT RESTRICTIONS

1. The height of a structure shall not exceed the maximum structure height for its type in 302.045(2).

2. STRUCTURAL HEIGHT LIMITATION: The maximum height of a structure as calculated by Method A, B or C (see below) is as follows:

Structure type	**Maximum Structure Height**
Principal Structure/attached garage	30 feet
Detached garage	18 feet
Detached storage shed	12 feet

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METHOD A: (Applicable to principal structures and attached garages.) For flat and shed roofs, the height of a structure is the vertical distance measured between the average elevation of the grade plane and the highest point of the roof surface. For mansard roofs, the height of a structure is the vertical distance between the average elevation of the grade plane and the break line. For gable, gambrel and hip roofs, the height of a structure is the vertical distance between the eaves and the average elevation of the grade plane, plus 70% of the vertical distance between the eaves and the structure's highest roof ridge. For gable, gambrel and hip roofs with uneven eaves, the average of the heights of that roof's eaves is used to determine vertical distance. The grade plane shall be calculated based on the method shown in Exhibit A below. Elevation points at the ground level shall be evenly distributed along each façade.

METHOD B: (Applicable to detached 3-dimensional structures, e.g. detached garages and storage sheds): The height of a structure is the difference between the elevation of the highest point of the structure and the average elevation of the grade plane. The grade plane shall be calculated based on the method shown in Exhibit A below. Elevation points at the ground level shall be evenly distributed along each façade.

METHOD C: (Applicable to structures which are mainly 1- or 2-dimensional, e.g. towers and walls.) The height of a structure is the difference in elevation between any point on the structure and the ground directly below that point.

3. Grading/Fill Limitation

The grade of the property shall not be changed to comply with the height requirements of this code.

4. Tallest Point Limitation

Regardless of the structure height limitations for principal structures specified in section 302.045 subsection 2 above, the lowest point on the façade to the tallest point of a structure shall not exceed 35 feet. Also, the tallest point of an attached garage shall not exceed the height of the tallest point of the principal structure.

5. Exceptions.

The maximum structure height and tallest point limitations established herein shall not apply to chimneys and flues provided the footprint or horizontal area of the chimney or flue does not exceed 16 square feet and the top of the chimney or flue and does not extend more than three feet above the tallest point of the roof.

Exhibit A:

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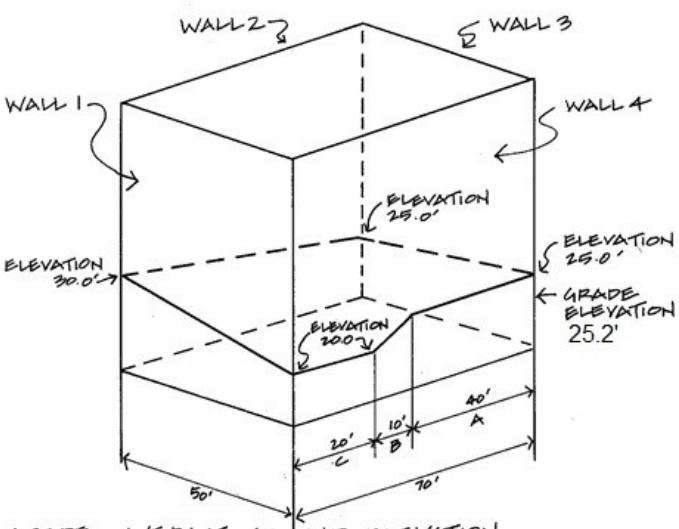
ILLUSTRATION 16: GRADE, GRADE ELEVATION



GRADE = AVERAGE GROUND ELEVATION

WALL 1 $\frac{20.0 + 30.0}{2} \times 50 = 1250$

WALL 2 $\frac{30.0 + 25.0}{2} \times 70 = 1925$

WALL 3 $\frac{25.0 + 25.0}{2} \times 50 = 1250$

WALL 4 A - $25.0 \times 40 = 1000$

B - $\frac{25.0 + 20.0}{2} \times 10 = 225$

C - $20.0 \times \frac{20}{240} = \frac{400}{6050}$

GRADE = $\frac{6050}{240} = 25.2$

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

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.

ORDINANCE NO. _____

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.

Deleted: A variance shall become null and void one year after it was granted, unless made use of within the year or such longer period as prescribed by the Council.

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

Passed by the City Council of Birchwood Village, Minnesota, Minnesota this _____ day of Month, Year.

_____
Mayor

Attested:

_____
City Clerk