

## CHAPTER 135

# EXCAVATIONS OF PUBLIC PROPERTY

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**135.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “Applicant” means any person making written application to the Clerk for an excavation permit under this chapter.
2. “City” means the City of Windsor Heights, Iowa, and where appropriate, shall include its officers, employees and agents.
3. “Excavation work” means the excavation and other work permitted under an excavation permit and required to be performed under this chapter.
4. “Permittee” means any person who has been granted and has in full force and effect an excavation permit issued under this chapter.
5. “Public Improvements” means any improvements on public property, including, but not limited to, paving, sidewalks, grass, vegetation, trees, street lights, traffic signals, water mains, sewers, electric transmission lines and equipment related thereto.
6. “Public Property” means City owned property or City controlled easements.
7. “Public Rights-of-Way” means the area on, below or above a public roadway, highway, street, bridge, cart-way, bicycle lane or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and public easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcasts service.
8. “Street” means any street, highway, sidewalk, alley, avenue or other public right-of -way or public grounds in the City.
9. “Licensee” means a company providing utility services by wire, or through conduit, pipe or similar structure, device or apparatus, and all equipment owned, operated, leased or subleased in connection with the operation of the utility business, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables and other structures or appurtenances.

**135.02 RESERVATIONS.** A licensee or permittee shall construct, maintain, inspect, protect, repair, replace, retain a system in, under, upon, along and across the public rights-of-way or public property, subject to the federal, state and city regulatory powers, and subject to the conditions hereinafter set forth.

**135.03 PERMITS, FEE, INSPECTIONS AND REQUIREMENTS.**

1. No person shall make any excavation or fill any excavation in any city street, avenue, alley, sidewalk, public right-of-way and other similar property dedicated to public use without first obtaining a permit from the City. The application for a permit shall be in writing and completed by the applicant or their agent. A permit shall not be required for a single commercial or residential service connection within a public right-of-way for a franchise licensee. However, a permit shall be required if such connection requires a street cut, curb or sidewalk. A permit shall not be required for a single pole or single transformer change out, or a single street light change out.
2. After the City reviews, approves and issues a permit, the permittee shall provide the City with forty-eight (48) hour's notice, excluding Saturdays, Sundays and legal holidays, prior to the actual commencement of the work; shall not unnecessarily obstruct the use of streets, avenues, alleys or public places; shall not endanger the safety of workers or passerby; shall prevent traffic backup during construction; and shall comply with all provisions, requirements and regulations in performing such work. An applicant's installation shall not interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property.
3. The licensee or applicant shall submit its permit application and, maps, plans and/or specifications for a proposed utility plan, and other notices as may be appropriate, to the following city office for the initial permit review, permit findings (approval, denial, resubmission), fee assessment and other activities as may be appropriate:

Director of Public Services  
City of Windsor Heights  
6800 School Street  
Windsor Heights, IA 50324  
Phone: (515) 279-3662
4. The licensee or applicant shall pay the City the following rates:
  - A. A per permit fee, as set by resolution as approved by the City Council, for the review of the applications and proposed plans and specifications, is due at the time the permit application is submitted. Franchise licensees will only be required to pay if a hard surface is being cut such as a curb, street or sidewalk.
  - B. An hourly rate for any inspection services will be required in connection with the applicants work, including, but not limited to, the personnel cost of an inspector's salary and benefits, vehicle and mileage, administrative overhead, with payment due within 30 days of the City's submittal of an invoice to the applicant.
5. The applicants permit will show the exact location of the work including street or house number and the direction and length the trench will run.
6. If the applicant plans to do extensive digging, a blanket permit may be issued, however, the party performing the work must notify all other utilities concerned as to the location and time that work will take place so that the others may locate their property.

7. The applicant shall post with the City a surety bond in the amount of ten thousand dollars (\$10,000.00) or one and a half times the estimated cost of the excavation and restoration, whichever is greater, issued by a surety company authorized to issue such bonds in the State before excavating or opening any public street, sidewalk, ditch, alley or public right-of-way. The bond shall guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this section. In lieu of a surety bond, a cash deposit of \$10,000.00, or one and a half times the estimated cost of the excavation and restoration, whichever is greater, may be deposited with the City. Duration of the bond or cash deposit shall be for a period of one (1) year commencing with the completion of the excavation and restoration. Upon approved completions of the excavation the cash deposit may be substituted for a one-year maintenance bond and upon satisfactory completion of a one (1) year period, the City shall release any and all bonds and deposit requirements.

8. The applicant shall file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:

- A. Bodily Injury - \$1,000,000.00 per person; \$1,000,000.00 per accident.
- B. Property Damage - \$2,000,000.00 per accident.

9. All work shall be subject to inspection by the City. Backfill of openings shall not be deemed completed, and no resurfacing of any improved street or alley surface shall begin, until such backfill is inspected and approved by the City. The permit holder/property owner shall provide the City with notice at least twenty-four (24) hours prior to the time when inspection of backfill is desired.

10. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of twenty-four (24) hours or in the event the work is improperly done, the City has the right to finish or correct the excavation work, keep an account of the expense thereof, and charge such expenses to the permit holder/property owner. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

11. All work by permittee shall be performed in accordance with the current standard specifications adopted by the City at the time. Any damaged curb, gutter, sidewalk or grass covered area shall be restored to the same or better condition prior to damage.

12. All costs and expenses incident to the excavation shall be borne by the permit holder and/or property owner. The permittee and owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation. The applicant will fill up and place in good and safe condition all excavations and openings made in the street, and will replace and restore the pavement over any opening they may make to the same or better condition than it was prior to excavation to the satisfaction of the Director of Public Services for a period of one (1) year.

13. The applicant will pay all fines or forfeitures imposed upon them for any violation of any rule, regulation or ordinance governing street openings or drain laying adopted by the Council and will repair any damage done to existing improvements during progress of the excavation in accordance with the ordinances, rules and regulations of the City. Such bond shall also guarantee that, if the City shall elect to

make the street repair, the applicant opening the street will pay all costs of making such repair and of maintaining the same for one (1) year, recovery on such bond for any accident, injury, violation of law, ordinance, rule or regulation shall not exhaust the bond but it shall cover any and all accidents, injuries or violation of law during the period of excavation for which it is given.

14. Faulty work or materials shall be immediately replaced by the permittee upon notice by the City. Failure to correct deficiencies in a timely manner shall result in a minimum one (1) year revocation of the right to obtain a street opening permit. The Director of Public Services shall repair the deficiencies and bill the permittee for all labor, materials and equipment used plus administration costs.

15. The permittee who does such restoration shall be responsible therefor for one (1) year from the date of the completion of the work and shall file a written guarantee from a banking institution or surety bond to that effect with the City.

16. If the Council shall find that any such work has become defective within one (1) year of the date of completion of the said project, it shall give written notice thereof to the applicant or to their surety stating the defect, the work to be done, the cost thereof and the period of time deemed by the Council to be reasonably necessary to complete said work. After receipt of such notice, the applicant or the surety must, within the time specified, repair the defect or indemnify the City for the cost of doing the work as set forth in the notice.

17. All excavation and restoration shall be completed in a prompt manner as determined by the Director of Public Services.

#### **135.04 UTILITY MAP, PLAN AND SPECIFICATION.**

1. Before commencing any extension or expansion of its Utility system, or any major repair work, or the installation of any new system in the City's public rights-of-way or public property, the applicant shall file with the City a written statement verifying the public rights-of-way or public property under which or upon which it proposes to extend, expand, install or repair its system. The City shall require that the statement be accompanied by a map, plan or specifications showing the proposed location of the system components with reference to streets and alleys, the size and dimensions of all public utilities, and the distance beneath the surface of the ground.

2. All existing public utilities must be shown on the map, plan or specifications. If the proposed locations of any facilities shall interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property, the City shall within a reasonable time after the filing of such plan, map or specifications, note the changes necessary, eliminate all interference with a public improvement or existing City owned public utility system facility and refer the same back to the utility business for amendment.

3. Maps, plans or specifications, when properly changed and corrected, shall be filed with the City and, after the approval of the same by the City, a permit shall be issued authorizing utility business to proceed in accordance with the approved maps, plans or specifications.

4. No such excavation, construction or erection shall be commenced before the issuance of the permit herein provided for, unless it is an emergency as described in

section 135.07, and all work shall be in accordance with the approved maps, plans or specifications, or work being performed by a licensed franchise not requiring a permit.

**135.05 CONDITIONS, CONSTRUCTION AND REPAIR.**

1. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15th and April 15th except where it is determined by the Director of Public Services or their designee to be an emergency excavation.
2. In the process of location, construction, reconstruction, replacement or repair of any system component, the excavation or obstruction made or placed in public property at any time or for any purpose by the utility business or permittee shall, protect the public and to assure the safe and efficient movement of traffic, be properly barricaded to comply, at a minimum, with requirements set forth in the *Uniform Manual for Traffic Control*. Sufficient warning lights shall be kept on from sunrise to sunset. No open flame warning devices shall be used. Except by special permission for the Director of Public Services, no trench shall be excavated more than two hundred fifty (250) feet in advance of pipe or conduit laying nor left unfilled more than five hundred (500) feet from where pipe or conduit has been laid. All pavement removed or damaged shall be properly and speedily replaced in accordance with the City's specifications, which may be obtained at the Public Works Department.
3. Upon request, a licensee agrees to assist in locating underground facilities which are part of its system prior to excavation. As a condition of this chapter, a licensee shall enroll as a member of the "Iowa One-Call System" and shall respond to all requests and notifications placed to the toll free "One-Call" number.
4. All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of work. Each permittee making such openings shall be held liable for all damages, including costs incurred by the City in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or their employees of any necessary precaution against injury or damage to persons, vehicles or property of any kind.
5. Unless otherwise approved, a minimum of one (1) lane of traffic in each direction shall be provided. Every effort shall be made on the part of the permittee to provide reasonable access to all properties adjacent to their project. In the event traffic is limited to less than one (1) lane in each direction, a flagman or temporary traffic control signal shall be provided so as to safely cycle traffic in each direction past the work area and the City must be notified regarding the dates/times applicable.
6. Removal of existing pavement shall be to neat, straight lines. The permittee shall make a final saw cut in the existing pavement after backfilling. Excavations shall be kept to the minimum possible and acceptable for the convenience and safe performance of the permittee's work and in accordance with all applicable codes and regulations.
7. If the pavement is damaged during excavation beyond the original saw cut lines, it shall be saw cut again along neat, straight lines. The finished saw cut shall leave a regular rectangular section for pavement replacement. Should the street opening occur within adjacent or close to an existing patch or require more than one (1) opening within a short distance, the permittee shall identify and locate the existing patches or additional openings on the permit application form. The Director of Public

Services or their designee shall, on the basis of an on-site inspection, approximate the boundaries of the pavement replacement area.

8. Pavement replacement areas with the long dimension in the direction of travel shall have the long dimension parallel with the curb line or the direction of travel. Pavement replacement areas in concrete pavements shall be parallel with or at right angles to the direction of travel.

9. The Director of Public Services or their designee may order the permittee to remove and replace up to one (1) full lane width of pavement along the patched or excavated area. Special care shall be taken with concrete pavement to produce a vertical face on the existing concrete at the point of the saw cut to insure a full depth of concrete at the joint.

10. All excavated material shall be piled in a manner such that pedestrian and motor traffic is not unnecessarily disrupted. Gutters shall be kept clear or other satisfactory provisions made for street drainage, and natural watercourses shall not be obstructed. As little as possible of the trench must be dug until the slant of junction-piece of the sewer, water, gas main, electric cables, telephone lines or fuel line is found. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the City shall have the authority to require the permittee to haul the excavated material to a storage site and then re-haul it to the trench site at the time of backfilling.

11. All conduits, sewers, pipes, wires or other means of transmission of utility services within the City, if to be placed underground, shall, in addition to all of the requirements of this Section, be dug at least thirty (30) inches below the normal ground level whenever said utility service will cross under a highway, City street, sidewalk, alley or other public right-of-way within the City of Windsor Heights.

12. Excavated material to be used for backfilling of the trench must be so handled and placed as to be of as little inconvenience as practical to public travel and adjoining tenants.

13. All backfill material shall be free from cinders, hot mix fragments, ashes, refuse, vegetable or organic matter, boulders, rocks or stones greater than eight (8) inches in their greatest dimension, frozen lumps or other material which in, in the opinion of the Director of Public Services or their designee, is unsuitable. All non-compactable material will be placed, upon excavation, in an area where removal from site will be made readily possible.

14. In refilling the excavation, if there is not sufficient material excavated suitable for refilling, the deficiency shall be made up with material, approved prior to use by the Director of Public Services or their designee, hauled in, or refilled by the City.

15. Wherever an excavation crosses an existing utility, pipe or other structure, backfill shall be carefully compacted in stages from the bottom of the excavation. Any sanitary sewer, storm sewer, water, telephone, natural gas or other service shall not be interrupted by the permittee. It shall be the permittee's responsibility to have the various utilities locate and mark their facilities prior to excavation.

16. Mechanical compaction or puddling shall be used on all materials used for trench backfill. Each layer (12-inch maximum) shall be uniformly compacted. Compaction or consolidation by flooding shall not be permitted. Earth must be puddled or laid in layers not more than twelve (12) inches in depth and each layer

rammed and tamped to prevent settling. The Public Works Department will test the fill to meet the City's specifications. Contractors will be instructed by the City's inspector, if they meet the specifications, to proceed to fill the opening.

17. All excavations shall be subject to testing by the City. Backfilled material not achieving the above compaction requirements shall be removed and re-compacted by the permittee. The cost of any retesting shall be paid by the permittee.

18. When the sides of the trench will not stand perpendicular, sheathing and braces shall be used to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. At no time shall any street pavements, be permitted to overhang the excavation. When caving occurs, all the street support thus disturbed must be restored to the same or better condition prior as though it was an excavation or a trench.

19. Concrete pavement shall be placed to the full depth of the existing pavement or seven (7) inches, whichever is greater. Concrete used shall not contain calcium chloride. The surface shall be given a light broom finish. The edges shall be tooled to prevent spalling at the saw cut edge. The surface shall be evenly and completely sealed with a white pigmented curing compound. The surface shall be protected from traffic for a minimum of three (3) days. Tie bars shall be installed as directed by the Director of Public Services or their designee.

20. All permanent restoration of street, curb and gutter shall be of the same type and thickness as the curb and gutter which abuts. The grade of the restored curb and gutter shall conform with the grade of the existing adjacent curb and gutter.

21. All permanent restoration of driveways and sidewalks shall conform to the manner of construction as originally placed and to the lines and grades as given by the City Engineer. No patching of concrete driveway areas will be allowed between joints or dummy joints.

#### **135.06 RESTORATION.**

1. As a condition of the permit, the permittee shall at its own expense, repair or cause repair to any private property, public utility system component, public improvement, vegetation, public rights-of-way or public property damaged by such location, construction, reconstruction, replacement or repair work, to the same or better condition than it was prior to the excavation.

2. The permittee shall restore with sod (unless seed is approved by the City) all such property to its previous condition at its expense. If multiple utilities are involved in the restoration, the City Engineer or Director of Public Services shall assess the restoration cost equally or proportionately to the parties involved.

3. If the permittee fails to repair or arrange with the City for the proper repair of any public property after excavations or damage to the surface has been made, and after 30 days' notice in writing to do so given to its designated representative, then the City may make such repairs at the expense of the permittee. The City shall keep an account of all such expenses and invoice the permittee for the same. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

**135.07 EMERGENCIES.**

1. In the event of any emergency, the permittee shall remove or relocate its installations within forty-eight (48) hours of notification from the City.
2. In emergencies which require immediate excavation to remedy dangerous conditions for the protection of property, life, health or safety, a licensee may proceed with the work without first applying for or obtaining the permit, provided, however, that the utility business shall apply for and obtain the permit within forty-eight (48) hours after commencing such emergency work.

**135.08 WORK BY OTHERS.**

1. The City reserves the right to lay, and permit to be laid, wires, pipes, cables, conduits, ducts, manholes and other appurtenances, and to do, or permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over or under any public property occupied by utility business, and to change any curb or sidewalk or the grade of any street.
2. In permitting others to do such work, the City shall not be liable to utility business for any damages arising out of the performance of such work by other parties, except those arising out of or resulting from negligence of the City.
3. Nothing in this chapter shall be construed as to relieve any other person or corporation from liability for damage to utility business' facilities.

**135.09 UTILITY BUSINESS CONTRACTORS.** The requirements of this chapter shall apply to all persons, firms or corporations performing work for a utility business under a contract, subcontract or other type of work order.

**135.10 POWERS OF THE CITY.** Nothing in this chapter shall be construed to abridge the right or power of the City to make further regulations relative to the use of the streets, alley and public grounds by anyone using the same for the erection and maintenance of utility systems.

**135.11 VIOLATIONS.**

1. Upon evidence being received or observed by the City that a violation or breach of this chapter or codes lawfully regulating utility business in the operation of its facilities, or in the use of public property therefore, is occurring, or has occurred, the City shall cause an investigation to be made.
2. If the City finds that a violation exists or has occurred, the City may take appropriate steps to secure compliance with the terms of this chapter.
3. The City shall notify the utility business or permittee of the violation and the utility business or permittee shall cure such violation within 30 days after receipt of such notice.
4. If a permittee fails to cure a violation within the time allowed, the City shall have the right to:
  - A. Revoke the permit;
  - B. Seek specific performance;

- C. Seek damages for such default; and/or
- D. Any combination of division (4)(A) and (4)(C) above.

**135.12 LIABILITY, INDEMNIFICATION AND INSURANCE.** The permittee covenants to indemnify, defend and save the City and its officers, agents and employees, harmless from any and all damages arising directly from the exercise of the rights granted herein, except those arising out of or resulting from negligence of the City. The permittee agrees to require contractors and subcontractors engaged in work for the permittee with the public rights-of-way or on public property to maintain in effect during the term of work liability insurance in comprehensive form and in the amounts to be set by the City.

*(Ch. 135 – Ord. 15-05 – Oct. 15 Supp.)*

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## CHAPTER 136

# SIDEWALK REGULATIONS

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**136.01 PURPOSE.** The purpose of this ordinance is to promote the health, safety and general welfare of the City of Windsor Heights, and to ensure compliance with the following goals in accordance with the City of Windsor Heights Complete Street Policy passed on July 6, 2015:

1. Promoting the safety of pedestrian access, movement, and protection for the physically able, physically challenged, children or seniors (or variously-abled) within the community;
2. Ensuring that the ADA guidelines are met for all sidewalk or pathway installations, existing and proposed;
3. Promoting attractive and well-constructed sidewalks or pathways that correspond to the character, aesthetic qualities, natural, environmental, and historical features of developing or existing neighborhoods;
4. Connecting to existing and projected sidewalks or pathways whenever the opportunity arises to insure an interconnected pedestrian system;
5. Ensuring that all development actively implements the building of sidewalks or pathways for new construction, reconstruction, or rehabilitation.

**136.02 DEFINITIONS.** For use in this chapter the following terms are defined:

1. "Pedestrian Friendly" or "walkability" means the presence of facilities and design features that make an environment safe and attractive to pedestrians. These include: walkable distances between uses, (i.e. under ¼ mile); sidewalks, paths and walkways; continuous visual interest (i.e. uninterrupted line of buildings, attractive barrier in front of parking lots, murals on blank walls, infill development, pocket parks, etc.); consumer uses (i.e. restaurants, shops, cinemas, housing); trees for shade; awnings for shelter; buildings and landscaping elements sited to avoid wind tunnel effect, and to provide sheltered areas; visual texture in the streetscape (i.e. interesting storefronts, public art, plantings, pavement patterns, etc.); people presence (i.e. sidewalk cafes, street vendors, late business hours, residents using front porches and yards); good maintenance and inclusion of site amenities; buffers between cars and pedestrians (i.e. planted medians, on-street parking, grade separation); paths connecting adjacent uses; crosswalks and ramps; traffic calming devices; traffic lights.

2. “Crosswalk” means any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing. If there is no marking, a sidewalk crossing is implied at each leg of every intersection by the extension of the lateral lines of the sidewalk on each side, or where the sidewalk would be if there is none.
3. “Broom finish” means a sidewalk finish that is made by sweeping the sidewalk when it is hardening.
4. “Wood float finish” means a sidewalk finish that is made by smoothing the surface of the sidewalk with a wooden trowel.
5. “Defective sidewalk” means any public sidewalk exhibiting one or more of the following characteristics (Appendix “B”):
  - A. Sidewalk faulted at joint or crack with 1 inch or more deflection;
  - B. Sidewalk raised more than 2 inches in 8 feet from normal profile line of sidewalk;
  - C. Sidewalk sunken more than 2 inches in 8 feet from normal profile line of sidewalk;
  - D. Sidewalk cracked into 3 or more pieces per panel, or any single crack with ½ inch or greater openings;
  - E. Sidewalk cracked and/or spalled (small crater line holes deeper than 3/8 inch with part of sidewalk missing, forming holes deeper than 3/8 inch;
  - F. Sidewalk cross slope is incorrect, greater than 1 inch in 1 foot; and,
  - G. Sidewalk is missing panels.
6. “Established grade” means that grade established by the City for the particular area in which a sidewalk is to be constructed.
7. “One-course construction” means that the full thickness of the concrete is placed at one time, using the same mixture throughout.
8. “Owner” means the person owning the fee title to property abutting any sidewalk and includes any contract purchaser for purposes of notification required herein. For all other purposes, “owner” includes the lessee, if any
9. “Portland cement” means any type of cement except bituminous cement.
10. “Sidewalk” means all permanent public walks in business, residential or suburban areas. Sidewalks should be a minimum of 4 feet (5 feet recommended) in residential areas and a minimum of 8 feet in commercial areas.
11. “Sidewalk improvements” means the construction, reconstruction, repair, replacement, or removal, of a public sidewalk and/or the excavating, filling or depositing of material in the public right-of-way in connection therewith.
12. “Shared use path” means a paved pathway, typically from eight (8) to twelve (12) feet in width, physically separated from motorized vehicular traffic within the roadway right-of-way or within an easement adjacent to the roadway right of way. Primarily used by pedestrians and bicyclists, shared use paths are also used by joggers, skaters, wheelchair users (both nonmotorized and motorized). A shared use path's primary purpose is to provide pedestrians with connections to trails, other neighborhoods, shopping centers, businesses and other venues of interest. In addition, the shared use path may be used for recreational purposes.

13. “Bicycle/recreational trail” means a PCC, blacktop or gravel bicycle/recreational route developed primarily for outdoor recreational purposes. Trails are largely designed for pedestrians and other users to "experience" the outdoors and may be used by a variety of users, but they are not primarily designed for transportation purposes. Bicycle trails within the city of Windsor Heights should be constructed at a minimum of ten (10) feet in width with a preferred width of twelve (12) feet whenever possible.

14. “Trailhead” means an outdoor system developed to serve as an access point to a bicycle/recreational trail which generally includes an area to park vehicles and typically is a beginning or ending point of a bicycle/recreational trail. The junction of two or more trails, where no other access point is provided to the trails, is not a trailhead.

15. “Mature tree” means any tree with a diameter at breast height of 10 inches or greater.

**136.03 REMOVAL OF SNOW, ICE, AND ACCUMULATIONS.** The abutting property owner shall remove snow, ice, and accumulations promptly from sidewalks. If a property owner does not remove snow, ice, or accumulations within 48-hours following the conclusion of the weather event, the Public Works Director will provide a 24-hour notice in the door. Following the 24-hour notice the Public Works Director may have the natural accumulations of snow or ice removed and shall give the Council an itemized and verified statement of the costs and a legal description of the property. The costs shall be assessed against the property as taxes. The abutting property owner may be liable for damages caused by failure to remove snow, ice, and accumulations promptly from the sidewalk. Under extreme weather conditions, the Public Works Director may provide additional time for abutting property owners to remove snow, ice, and accumulations from the sidewalk.

*(Code of Iowa, Sec. 364.12[2b & e])*

**136.04 PROPERTY OWNER’S RESPONSIBILITY FOR MAINTENANCE.** The abutting property owner shall repair, replace, or reconstruct, or cause to be repaired, replaced, or reconstructed, all broken or defective sidewalks and maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or, in the absence of a curb, any sidewalk between the property line and that portion of the public street used or improved for vehicular purposes (Appendix “C”); provided, however, that this section shall not be construed to require a property owner to take any action with respect to a public sidewalk or shared use path when said action is made necessary by the excavation or other activity of the city or a public utility. The abutting property owner may be liable for damages caused by failure to maintain the sidewalk.

The abutting property owner will not be responsible for the cost of installing ADA ramps. In situations where ADA ramps are required the portion of the cost associated with the ramp is the economic responsibility of the City.

**136.05 ANNUAL INSPECTION ZONES.** The City will be responsible for inspecting the public sidewalks on a five (5) year cycle within the city. These inspections shall be made to determine if any of the public sidewalks within a particular zone of the city are defective as defined. The City will be divided into five zones as designated in (Appendix “A”). When a sidewalk defect is found to exist outside of the annual inspection zone, the City will initiate appropriate action as directed by this policy to have the sidewalk reconstructed. The annual inspections will occur on the following timeline:

1. August – designated zone sidewalk inspections completed
2. August 31 - Notifications mailed to property owners
3. October – April – property owner requests bids for repairs and selects contractor
4. May 1 – seventy-five day initiated from May 1.
5. July 15 – deadline for property owners to complete sidewalk repair.
6. July - October – three months for city to coordinate and schedule uncompleted repairs

*(Code of Iowa, Sec. 364.12[2c])*

**136.06 CITY SHALL ORDER REPAIRS.** If the abutting property owner does not maintain sidewalks as required, the Public Works Director shall serve notice on such owner, by certified mail, requiring the owner to repair, replace or reconstruct sidewalks within seventy-five (75) days from the date the notice is mailed. If, upon expiration of the 75 days as provided in said notice, the required work has not been done or is not in the process of completion, the Public Works Director Shall require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax. No such assessment shall be made for the repair, reconstruction or replacement of a public sidewalk unless the city has served upon the person shown by the records of the Polk County recorder to be the owner of the abutting property, by certified mail, a notice requiring said person to repair, reconstruct or replace the public sidewalk within seventy five (75) days from the date said notice is mailed. All sidewalk improvements shall be performed under the supervision and inspection of the Public Works Director.

If work has not commenced following the 75 day notice, the sidewalk will be placed on a list for repair and the City’s contractor notified to proceed with the repairs. Upon completion of the repair the property owner will be sent by regular mail an invoice of the actual cost of the repair with no administration fee. The property owner will have 30 days to pay the invoice. If the invoice is not paid within 30 days, the amount will be certified to the County Auditor to be added to the owner’s property taxes.

Any unpaid costs for said repairs over \$500 will be assessed and collected in the same manner as property taxes. There shall be returned to the City Council an itemized assessment schedule, verifying expenditures used in doing such work, and the legal description of the lots, or tract of ground abutting the sidewalk on which such work has been performed. Assessments may be spread over a ten-year period at an interest rate of 2% over current bank rates. Any costs less than \$500 will be assessed in one installment. There will also be a \$50 administrative fee if costs are assessed against the property.

The Public Works Director does not have the authority to assess property owners in cases where there is not an existing sidewalk. New sidewalk installation is the sole discretion of the Council. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15th and April 15th except where it is determined by the Director of Public Services or their designee to be an emergency excavation.

*(Code of Iowa, Sec. 364.12[2d & e])*

**136.07 NOTICE OF INABILITY TO REPAIR OR BARRICADE.** It is the duty of the owner of the property abutting the sidewalk (or of the contractor or agent of the owner) to notify the City immediately in the event the owner is unable to make necessary sidewalk improvements or to install or erect warnings and barricades as required by this chapter.

**136.08 ECONOMIC HARDSHIP PROCESS.** To be eligible for an economic hardship waiver, the applicant must have a recorded legal or equitable title to the parcel and have an adjusted annual income that is at or below 80 percent of the median income guidelines for the Des Moines Metropolitan Statistical Area as established by the U.S. Department of Housing and Urban Development Block Grant (CDBG) programs (called median income guidelines) for the year in which the resolution of necessity for construction, reconstruction, or repair of the public improvement is approved by the city council. Any residential property owner seeking to qualify for economic hardship of sidewalk repair must meet the defined criteria as illustrated in (Appendix “E”).

**136.09 SIDEWALK CONSTRUCTION ORDERED.** Based on Iowa Law, the Council may order the construction of permanent sidewalks upon any street or court in the City and may specially assess the cost of such improvement to abutting property owners in accordance with the provisions of Chapter 384 of the Code of Iowa. The abutting property owner will not be responsible for the cost of installing ADA ramps. In situations where ADA ramps are required the portion of the cost associated with the ramp is the economic responsibility of the City.

*(Code of Iowa, Sec. 384.38)*

**136.10 STANDARD SIDEWALK SPECIFICATIONS.** The City Engineer shall prepare complete plans and specifications for the construction, reconstruction, and repair of sidewalks and driveway crossings in sidewalks, which, upon approval of the Council, shall be kept on file in the office of the Clerk. The specifications shall include descriptions and location of barricades and warning lights. All sidewalk improvements on public property, whether performed by the owner of the abutting property or by the City, shall be performed under the supervision of and subject to inspection by the Public Works Director, and in accordance with the plans and specifications adopted in accordance with this chapter (Appendix “D”).

**136.11 PERMITS FOR CONSTRUCTION OR REPAIR.** No person shall make any sidewalk improvements unless such person shall obtain a permit from the Public Works Director. The permit shall state that the person will comply with the ordinances of the City and with the specification for sidewalks adopted by the City. The permit also shall state that the work will be done under the direction and approval of the Public Works Director. All such permits shall be issued upon payment of sidewalk construction or repair fee. A copy of such permit shall be filed and preserved in the office of the Public Works Director. The permit shall state when the work is to be commenced and when the work is to be completed. The time of completion for the sidewalk improvements may be extended by the City Engineer. All permits for sidewalk improvements not ordered by resolution of the City Council shall be issued in compliance with this chapter. The Public Works Director may withhold the issuance of any permit for any sidewalk improvements for a sufficient period to determine the necessity for the proposed improvements or when weather conditions will adversely affect the sidewalk improvements. The person who makes a sidewalk construction or repair permit application shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

**136.12 FAILURE TO OBTAIN PERMIT; REMEDIES.** Whenever any sidewalk improvements are made that do not conform to the provisions of this chapter and with the

specifications, or when any sidewalk improvements are made without a permit, the Public Works Director shall serve notice to obtain a permit upon the property owner and upon the contractor doing the work. If the sidewalk is in the course of construction, the notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the sidewalk work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five days from receipt of the permit. If the owner fails to comply with this notice, the Public Works Director shall have the work completed and the costs assessed to the property owner.

**136.13 INSPECTION AND APPROVAL.** Upon final completion, the Public Works Director shall inspect the work. The Public Works Director may order corrections if the work does not meet specifications. When the work does meet all requirements of this chapter, the specifications, and the permit, the Public Works Director shall indicate this on both copies of the permit.

**136.14 BARRICADES AND WARNING LIGHTS.** Whenever any material of any kind is deposited on any street, avenue, highway, passageway or alley when sidewalk improvements are being made or when any sidewalk is in a dangerous condition, it shall be the duty of all persons having an interest therein, either as the contractor or the owner, agent, or lessee of the property in front of or along which such material may be deposited, or such dangerous condition exists, to put in conspicuous places at each end of such sidewalk and at each end of any pile of material deposited in the street, a sufficient number of approved warning lights or flares, and to keep them lighted during the entire night and to erect sufficient barricades both at night and in the daytime to secure the same. The party or parties using the street for any of the purposes specified in this chapter shall be liable for all injuries or damage to persons or property arising from any wrongful act or negligence of the party or parties, or their agents or employees or for any misuse of the privileges conferred by this chapter or of any failure to comply with provisions hereof.

**136.15 INTERFERENCE WITH SIDEWALK IMPROVEMENTS.** No person shall knowingly or willfully drive any vehicle upon any portion of any sidewalk or approach thereto while in the process of being improved or upon any portion of any completed sidewalk or approach thereto, or shall remove or destroy any part or all of any sidewalk or approach thereto, or shall remove, destroy, mar or deface any sidewalk at any time or destroy, mar, remove or deface any notice provided by this chapter.

**136.16 DETERMINING LOCATION OF NEW SIDEWALKS.** The decision as to where to place new sidewalks, including the side of the street and placement in relation to the curb, should be made at the recommendation of the city engineer and should be based on a number of factors including environmental constraints and costs considerations. The design of sidewalks, necessary retaining walls, and materials will be subject to discussion at a public meeting prior to council providing final approval.

When constructing new sidewalks every effort should be made to limit the number of mature trees removed during the construction process. If a property owner wishes to save a mature tree that otherwise would need to be removed to allow for the sidewalk, that property owner may choose to have the tree saved by providing an easement for the sidewalk to go around the tree. This easement would be provided at no cost to the city. The city is not responsible for replacing or compensating property owners for any landscaping located within the public right-of-way that is removed to allow for the installation of sidewalks.

**136.17 ENCROACHING STEPS.** It is unlawful for a person to erect or maintain any stairs or steps to any building upon any part of any sidewalk without permission by resolution of the Council.

**136.18 OPENINGS AND ENCLOSURES.** It is unlawful for a person to:

1. Stairs and Railings. Construct or build a stairway or passageway to any cellar or basement by occupying any part of the sidewalk, or to enclose any portion of a sidewalk with a railing without permission by resolution of the Council.
2. Openings. Keep open any cellar door, grating, or cover to any vault on any sidewalk except while in actual use with adequate guards to protect the public.
3. Protect Openings. Neglect to properly protect or barricade all openings on or within six (6) feet of any sidewalk.

**136.19 FIRES OR FUEL ON SIDEWALKS.** It is unlawful for a person to make a fire of any kind on any sidewalk or to place or allow any fuel to remain upon any sidewalk.

**136.20 DEFACING.** It is unlawful for a person to scatter or place any paste, paint, or writing on any sidewalk.

*(Code of Iowa, Sec. 716.1)*

**136.21 DEBRIS ON SIDEWALKS.** It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any substance likely to injure any person, animal, or vehicle.

*(Code of Iowa, Sec. 364.12[2])*

**136.22 VEGETATION OVERGROWTH ON SIDEWALK.** It is the responsibility of the abutting property owner to make sure that there is no vegetative overgrowth encroaching on the sidewalk. This includes grass encroaching onto the sidewalk thereby reducing the walkway width as well as keeping bushes and shrubs trimmed so that no part of the plant is encroaching on the sidewalk space. Tree branches should be a minimum of eight (8) feet above the level of the sidewalk.

**136.23 MERCHANDISE DISPLAY.** It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three (3) feet of the sidewalk next to the building be occupied for such purposes.

**136.24 SALES STANDS.** It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council.

*(Ch. 136 – Ord. 16-07 – Oct. 16 Supp.)*

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## CHAPTER 137

# VACATION AND DISPOSAL OF STREETS

137.01 Power to Vacate  
137.02 Planning and Zoning Commission  
137.03 Notice of Vacation Hearing

137.04 Findings Required  
137.05 Disposal of Vacated Streets or Alleys  
137.06 Disposal by Gift Limited

**137.01 POWER TO VACATE.** When, in the judgment of the Council, it would be in the best interest of the City to vacate a street, alley, portion thereof, or any public grounds, the Council may do so by ordinance in accordance with the provisions of this chapter.  
*(Code of Iowa, Sec. 364.12[2a])*

**137.02 PLANNING AND ZONING COMMISSION.** Any proposal to vacate a street, alley, portion thereof, or any public grounds shall be referred by the Council to the Planning and Zoning Commission for its study and recommendation prior to further consideration by the Council. The Commission shall submit a written report including recommendations to the Council within thirty (30) days after the date the proposed vacation is referred to the Commission.  
*(Code of Iowa, Sec. 392.1)*

**137.03 NOTICE OF VACATION HEARING.** The Council shall cause to be published a notice of public hearing of the time at which the proposal to vacate shall be considered.

**137.04 FINDINGS REQUIRED.** No street, alley, portion thereof, or any public grounds shall be vacated unless the Council finds that:

1. Public Use. The street, alley, portion thereof, or any public ground proposed to be vacated is not needed for the use of the public, and therefore, its maintenance at public expense is no longer justified.
2. Abutting Property. The proposed vacation will not deny owners of property abutting on the street or alley reasonable access to their property.

**137.05 DISPOSAL OF VACATED STREETS OR ALLEYS.** When in the judgment of the Council it would be in the best interest of the City to dispose of a vacated street or alley, portion thereof or public ground, the Council may do so in accordance with the provisions of Section 364.7, *Code of Iowa*.

*(Code of Iowa, Sec. 364.7)*

**137.06 DISPOSAL BY GIFT LIMITED.** The City may not dispose of real property by gift except to a governmental body for a public purpose or to a fair.

*(Code of Iowa, Sec. 174.15[2] & 364.7[3])*





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## CHAPTER 139

# NAMING OF STREETS

139.01 Naming New Streets  
139.02 Changing Name of Street  
139.03 Recording Street Names

139.04 Official Street Name Map  
139.05 Revision of Street Name Map

**139.01 NAMING NEW STREETS.** New streets shall be assigned names in accordance with the following:

1. Extension of Existing Street. Streets added to the City that are natural extensions of existing streets shall be assigned the name of the existing street.
2. Resolution. All street names, except streets named as a part of a subdivision or platting procedure, shall be named by resolution.
3. Planning and Zoning Commission. Proposed street names shall be referred to the Planning and Zoning Commission for review and recommendation.

**139.02 CHANGING NAME OF STREET.** The Council may, by resolution, change the name of a street.

**139.03 RECORDING STREET NAMES.** Following official action naming or changing the name of a street, the Clerk shall file a copy thereof with the County Recorder, County Auditor and County Assessor.

*(Code of Iowa, Sec. 354.26)*

**139.04 OFFICIAL STREET NAME MAP.** Streets within the City are named as shown on the Official Street Name Map which is hereby adopted by reference and declared to be a part of this chapter. The Official Street Name Map shall be identified by the signature of the Mayor, and bearing the seal of the City under the following words: "This is to certify that this is the Official Street Name Map referred to in Section 139.04 of the Code of Ordinances of Windsor Heights, Iowa."

**139.05 REVISION OF STREET NAME MAP.** If in accordance with the provisions of this chapter, changes are made in street names, such changes shall be entered on the Official Street Name Map promptly after the change has been approved by the Council with an entry on the Official Street Name Map as follows: "On (date), by official action of the City Council, the following changes were made in the Official Street Name Map: (brief description)," which entry shall be signed by the Mayor and attested by the Clerk.

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## CHAPTER 140

# DRIVEWAY REGULATIONS

140.01 Definitions

140.02 Permit

140.03 Permit Fee

140.04 Standard Driveway Specifications

140.05 Driveway Requirements

140.06 Grade Variances

140.07 Failure to Obtain Permit; Remedies

140.08 Inspection and Approval

140.09 Repairing Defective Driveways

**140.01 DEFINITIONS.** As used in this chapter, the following terms have these meanings:

1. “Driveway” means that part of any approach for motor vehicles to private property that provides access to a public street, highway, or alley.
2. “Owner” means the person owning the fee title or the contract purchaser.
3. “Portland cement” means any type of cement except bituminous cement.

**140.02 PERMIT.** Before any person shall construct, repair, reconstruct, or replace a driveway, said person shall obtain a written permit from the City Administrator. A written application for the permit shall be filed with the City Administrator. The application shall include the street address or legal description of the property, the name of the owner, the name and address of the person performing the work, and the proposed plan of construction or repair. The plan of construction or repair must include the depth, width, and type of surface used. The City Administrator shall issue the permit if the proposed plan meets all the requirements of this chapter, including any specifications contained herein, if the fee is paid, and if the construction or repair as planned will not create any substantial hazard in the use of the street for public travel or drainage. A permit shall expire six (6) months after the date of issuance, if not constructed at that time.

**140.03 PERMIT FEE.** The applicant for a driveway construction or repair permit shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator and shall be open to inspection during regular business hours.

**140.04 STANDARD DRIVEWAY SPECIFICATIONS.** The Public Works Director shall prepare complete plans and specifications for the construction, reconstruction, and repair of driveways, which, upon approval of the Council, shall be kept on file in the office of the City Administrator. The specifications shall include descriptions in the use and placement of barricades and warning lights. All driveway repairs or construction on public property, whether performed by the owner of the abutting property or by the City, shall be performed under the supervision of and subject to inspection by the Public Works Director. All such work must be performed in accordance with the plans and specifications adopted by the City.

**140.05 DRIVEWAY REQUIREMENTS.** All driveways constructed at any place where no sidewalk exists shall conform to the appropriate standards or specifications adopted by the Public Works Director and approved by resolution of the City Council. All driveways shall be

constructed of Portland cement from the street to the property line. All driveways shall be constructed of Portland cement or asphalt at any location beyond the property line. All driveways shall be constructed so that the normal flow of drainage in the adjoining street will not be diverted or obstructed. In the event any person is unable to construct a driveway to grade, the owner must sign a waiver agreeing to indemnify the City from all liability arising from the maintenance and construction of the driveway.

**140.06 GRADE VARIANCES.** In any case where it appears that a steeper driveway grade than that specified in this section is necessary or desirable because of existing terrain conditions, a driveway may be constructed (in any place where no sidewalk exists) at such steeper grade. It shall be a condition to the granting of any permit to construct a driveway at a grade other than that specified that all rights acquired by virtue of such permit shall be subject to the right of the City to construct sidewalks at the established grade. In any place where sidewalks have, prior to July 28, 1958, been constructed at a different grade than that specified in this section, driveways may conform to the grade of the existing sidewalks. Nothing herein shall permit the construction of any driveway so as to divert or obstruct the normal flow of drainage in the adjoining street.

**140.07 FAILURE TO OBTAIN PERMIT; REMEDIES.** Whenever any driveway construction or repair is made that does not conform to the provisions of this chapter and with the specifications, or when any driveway construction, or repair is made without a permit, the City Administrator shall serve notice to the property owner and the contractor doing the work that a permit must be obtained. If the driveway is in the course of construction or repair, the notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the driveway work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five (5) days after receipt of the permit. If the owner fails to comply with this notice, the City Administrator shall have the work completed by an outside contractor and assess the costs to the property owner as provided in Section 140.09 of this chapter.

**140.08 INSPECTION AND APPROVAL.** Upon final completion, the Public Works Director shall inspect the work. The Public Works Director may order corrections in the work if it does not meet specifications.

**140.09 REPAIRING DEFECTIVE DRIVEWAYS.** It shall be the duty of the abutting property owner at any time, or upon receipt of thirty (30) days' notice from the City, to repair, replace, or reconstruct all broken or defective driveways in the City right-of-way abutting said property owner's property. If, after the expiration of the thirty (30) days as provided in the notice, the required work has not been done or is not in the process of completion, the Public Works Director shall proceed to repair, replace, or reconstruct the driveway. Upon completion of work, the Public Works Director shall submit to the Council an itemized and verified statement of expenditures for material, labor, and the legal description of the property abutting the driveway on which work has been performed. These costs shall be assessed to the property as taxes.

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## CHAPTER 141

# FIBER OPTIC CABLE LICENSE

141.01 Definitions	141.07 Conditions of Public Property Occupancy
141.02 Basic Grant	141.08 Powers of City
141.03 Construction and Repair of Network	141.09 Plans and Coordination
141.04 Excavations	141.10 Removal of Licensee Facilities
141.05 Work by Others; Alteration to Conform with Public Improvements	141.11 Liability and Indemnification
141.06 Licensee Contractors	141.12 Notices to Licensee
	141.13 Assignment

**141.01 DEFINITIONS.** The following words and phrases, when used in this chapter, have the meanings ascribed to them in this section:

1. “Public improvements” means any improvements on public property, including (but not limited to) paving, sidewalks, grass, vegetation, trees; street lights, traffic signals, water mains, sewers, electric transmission lines, and equipment related thereto.
2. “Public property” means City-owned or controlled public rights-of-way, easements, bridges, squares, and commons.
3. “Licensee” means the applicant named in the application for fiber optic cable license and includes all equipment owned, operated, leased, or subleased in connection with the operation of the network, and includes (but is not limited to) poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, and other structures or appurtenances.

**141.02 BASIC GRANT.** Upon approval of an application hereunder by the City, and for a period of two years unless otherwise terminated, subject to the terms and conditions of this chapter, the licensee is hereby granted a license to construct, maintain, inspect, protect, repair, replace, retain a communications system in, under, upon, along and across the public property shown and identified in the plans and specifications submitted to the City with the licensee’s application, subject to the regulatory powers of the City and subject to the conditions hereinafter set forth, as may be amended from time to time by the City Council in its sole and absolute discretion. The licensee will be required to pay a license application submittal and annual license fee. Fees shall be established by the City Council by resolution, which is on file with the City Clerk.

**141.03 CONSTRUCTION AND REPAIR OF NETWORK.** In the process of location, construction, reconstruction, replacement, or repair of any system component, the excavation or obstruction made or placed in public property at any time or for any purpose by the licensee shall protect the public and, to assure the safe and efficient movement of traffic, be properly barricaded to comply, at a minimum, with requirements set forth in the *Manual on Uniform Traffic Control Devices*. All pavement taken up or damaged shall be properly and speedily replaced in accordance with the City’s regulations. As a condition to use of public property, the licensee shall at its own expense, repair any private property, public utility system component, public improvement, or public property damaged by such location, construction, reconstruction, replacement, or repair work in a manner reasonably acceptable to City. If the licensee fails to repair or arrange with the City for the proper repair of any public property

after excavations have been made, and after ten days' notice in writing to do so is given to its designated representative, then the City may make such repairs at the expense of the licensee.

**141.04 EXCAVATIONS.** The licensee is authorized to make excavations in City streets, avenues, alleys, and public places for purposes of routine repair, replacement, and maintenance of poles, wire, or other system components associated with the licensee. In making such excavations, the licensee shall obtain a permit pursuant to City ordinances and regulations, shall not unnecessarily obstruct the use of streets, avenues, alleys, or public places, shall provide the Public Works Director with 24 hours' notice prior to the actual commencement of the work, and shall comply with all provisions, requirements, and regulations in performing such work. In emergencies that require immediate excavation, the licensee may proceed with the work without first applying for or obtaining the permit; provided, however, the licensee shall apply for and obtain the permit as soon as possible after commencing such emergency work. If the licensee fails to comply with the provisions of this section, the City may repair or restore the public property to a condition at least as good as the condition of the property prior to the disturbance by the licensee. The licensee shall pay the costs of such repair or restoration. The licensee shall pay to the City its costs and charges for such work within 30 days after receipt of the City's billing.

**141.05 WORK BY OTHERS; ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS.** The City reserves the right to lay—and permit to be laid—wires, pipes, cables, conduits, ducts, manholes and other appurtenances, and to do—or permit to be done—any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over, or under any public property occupied by the licensee and to change any curb or sidewalk or the grade of any street. In permitting others to do such work the City shall not be liable to the licensee for any damages arising out of the performance of such work by other parties. Nothing in this chapter shall be construed as to relieve any other person or corporation from liability for damage to the licensee's facilities.

**141.06 LICENSEE CONTRACTORS.** The requirements of the licensee shall apply to all persons, firms, or corporations performing work for the licensee under a contract, subcontract, or other type of work order.

**141.07 CONDITIONS OF PUBLIC PROPERTY OCCUPANCY.** The fiber optic cable systems and other components of the facilities erected by the licensee within the City shall conform to established grades of streets, alleys, and sidewalks, and be so located as to cause minimum interference with other public utilities located in or upon public property, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin public property. The licensee shall conduct its work hereunder in such manner as to cause as little interference as possible with pedestrian and vehicular traffic, and shall abide by scheduling directions, if any, given by the Public Works Director. Prior to undertaking any work in the area licensed hereunder, in addition to consulting records maintained by the City, if any, the licensee shall be responsible for locating any and all existing facilities located at or near the site that may, in any way, be impacted by the licensee's work hereunder. The licensee shall indemnify and hold harmless the City for any and all damages in any way related to activities undertaken by the licensee hereunder, regardless of any alleged negligence by the City. The licensee shall, upon 60 days' notice and at its sole cost and expense, remove, locate, and relocate its facilities in, on, over or under public property in such manner as the City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair or change in grade of any public improvement on, in, or about any such public property, for the purpose of promoting the efficient operation of any such improvement,

or for the purposes of facilitating the vacation and/or redevelopment of public right-of-way by the City, as it deems appropriate in its sole discretion. In the event the licensee fails to act as directed hereunder within the time prescribed in the notice, the license issued to licensee shall be deemed terminated immediately, without further action of the City. The City may proceed as it so desires, including (but not limited to) removing, destroying, or burying the facilities, as the City deems appropriate. The licensee releases, indemnifies, and holds the City harmless for any and all actions undertaken by the City hereunder. The licensee shall not place its facilities in the public property where the same will interfere with the normal use or maintenance of any public improvement, including (but not limited to) streets, alleys, sidewalks, traffic control devices, sanitary sewers, storm sewers, storm drains, or water mains, or electrical transmission lines, or any public utility facility. Upon request, the licensee agrees to assist in locating underground facilities which are part of its system. Such assistance will be provided in a timely manner, but not more than 48 hours after the time of request. As a condition of the agreement, the licensee shall enroll as a member of the One-Call System and shall respond to all requests and notifications placed to the toll free One-Call number. Installation, repair, or replacement work completed by the licensee on any facilities requiring excavation of public property or public right-of-way shall require restoration and replacement of surface vegetation with sod in conformance with City ordinances and in accordance with standard local practices for placing sod.

**141.08 POWERS OF CITY.** Nothing in this chapter shall be construed to abridge the right or power of the City to make further regulations relative to the use of the streets, alleys, and public grounds by anyone using the same for the erection and maintenance of utility systems.

**141.09 PLANS AND COORDINATION.** The licensee shall keep complete and accurate maps and records on the locations and operations of its facilities in connection with license and provide a full, completed construction copy to the City.

**141.10 REMOVAL OF LICENSEE FACILITIES.** The license granted pursuant to this chapter shall expire upon the conclusion of the term specified in this chapter, unless previously terminated. At least seven days prior to the expiration or termination of the license granted hereunder, the licensee shall be responsible for removing its facilities and equipment from public property and restoration of public property affected as part of the removal in the manner set forth in this chapter, at its sole cost and expense. In the event licensee fails to remove its facilities and equipment prior to the expiration or termination date of the license, any facilities or equipment shall be deemed abandoned. Any facilities, equipment, or other property remaining anywhere on public property after the expiration or termination of the license may be destroyed, removed, or otherwise disposed of by the City in any manner whatsoever and the licensee shall hold harmless the City from any and all liability in any way occasioned by the actions of the City hereunder.

**141.11 LIABILITY AND INDEMNIFICATION.** The licensee covenants to indemnify, defend, and save the City and its officers, agents, and employees harmless from any and all damages arising directly from the exercise of the rights granted herein, including (but not limited to) attorney's fees. The licensee agrees to require contractors and subcontractors engaged in work for the licensee within the public rights-of-way or on public property to maintain in effect during the term of work liability insurance in comprehensive form and in the amounts to be set by the City. Licensee agrees to accept the risk of having its communications systems and equipment upon the public right-of-way, including the possible risk of damage or injury to its system or equipment, and agrees to release and discharge the

City of any liability for damage or injury to the licensee's equipment. In no event shall the City be liable for any consequential damages arising out of any damage or injury to the licensee's equipment placed in the right-of-way.

**141.12 NOTICES TO LICENSEE.** Licensee shall be responsible for keeping the City apprised of the address to which notices should be sent throughout effective term of the license. Notices sent by the City pursuant to this chapter shall be sent to the address of licensee identified on the application, or any address identified in writing addressed to the City Clerk's Office by the licensee thereafter. Notice shall be deemed given by the City by mailing notice to the address provided by licensee hereunder by ordinary mail.

**141.13 ASSIGNMENT.** Neither party shall assign or otherwise transfer the agreement or any of its rights and interest to any firm, corporation, or individual, without the prior written consent of the other party, except either party shall have the right to assign, convey, or otherwise transfer its rights, title, interest, and obligations under the agreement, in whole or in part, to any entity controlled by, controlling or under common control with a party thereto, or any entity into which a party may be merged or consolidated or which purchases all or substantially all of the assets of such party.

## CHAPTER 142

### PARKLETS

142.01 Intent and Purpose

142.02 Permit Required

142.03 Definitions

142.04 Permit Requirements and Associated Fees

142.05 Permit Application and Site Plan Approval

142.06 Construction of Parklet Improvements

142.07 Parklet Operation and Conditions

142.08 Dates and Hours Of Operation

142.09 Taxes, Assessments; Operating Costs and Utility Charges

142.10 Indemnity and Insurance Requirements

142.11 Denial; Revocation or Suspension of Permit

142.12 Appeals

142.13 City-Owned Parklets

**142.01 INTENT AND PURPOSE.** The establishment of a program for the siting, installation, construction, operation, use, maintenance and repair of parklets is designed and intended to facilitate the conversion of inactive and often underutilized on-street parking spaces into publicly-accessible open space available for the general public to enjoy within a system of conditions. Parklets are located within a public right-of-way, and may include tables, seating, umbrellas, landscaping, food and beverage service and sun shade, all of which are intended to enhance the quality of the pedestrian experience. The program for parklets is designed to provide a path for merchants to take individual action in the development and beautification of the city's public realm and are further intended as an aesthetic enhancement to the streetscape, providing an economical solution to the need for increased public open space and encouraging of walking by providing amenities like seating, planting, bike parking, and art. Parklets may also be used as an extension of services for restaurants to offer seasonal outdoor patio services for patrons.

**142.02 PERMIT REQUIRED.** Operating a parklet within the public rights-of-way of the city without a permit and a parklet revocable license executed by the permittee and city, and paying the appropriate fees, costs and charges relating thereto in accordance with the provisions of this chapter is prohibited. A parklet, permitted and operated in accordance with this chapter shall not be considered an obstruction of a public right-of-way.

**142.03 DEFINITIONS.** As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meanings indicated:

1. "Applicant" means a person or entity that has applied for approval of a parklet site plan. The applicant shall include, jointly and severally, both (i) the owner or operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is situated. After approval of the permit for the parklet and the parklet site plan by the City and execution of a parklet revocable license authorizing the design, construction, installation, use, maintenance and removal of the parklet, the applicant shall be known as the "permittee".

2. "Leasing Applicant" means any person or entity that has applied to lease a City-owned parklet as set forth in Windsor Heights Code Section 142.13. The applicant shall include, jointly and severally, both (i) the owner or operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is situated. After approval of the parklet lease by the City and execution of a Parklet Use Agreement, the applicant shall be known as the "lessee".

3. “Lessee” means, jointly and severally, (i) the owner or operator of the qualifying business, and (ii) the fee simple owner of the real property upon which the qualifying business is situated, whom the City has approved to lease a City-owned parklet and have executed a Parklet Use Agreement.

4. “Parklet” means the platform installed by a permittee over parking spaces adjacent to a sidewalk area upon which tables, chairs, umbrellas, landscaping, benches and other accessory components may be placed to create an enhanced pedestrian experience for the general public and patrons of the permittee's adjacent business, providing an area within which the pedestrian experience along the public right-of-way may be amplified and enhanced by offering an area with which one might site, rest, recreate or indulge in open air dining and beverage experience. The term parklet, when permitted, also includes the ongoing obligation of maintenance, repair, operation and removal of the parklet improvements in accordance with the terms and conditions of this chapter. Parklets and the parklet revocable license must be undertaken at the sole cost and expense of the permittee. The parklet shall be located no farther than one hundred fifty (150) feet from any portion of the qualifying business.

5. “Parklet improvements” means the improvements identified on the approved parklet site plan, which such improvements may, but shall not necessarily include parklet platform, tables, chairs, umbrellas, and other accessory equipment to the project, railings, seating, landscape or streetscape elements, soft-hit poles, wheel stops, etc.

6. “Parklet license area” means the area described in the approved parklet site plan, such license area being within a public right-of-way, including the air space with which the parklet improvements identified in the parklet revocable license shall be constructed, and within which the parklet will be operated and maintained for the purpose of accommodating the general public and the patrons of permittee's adjacent business.

7. “Parklet revocable license” means the instrument that the permittee and City must execute after approval of the parklet location and parklet site plan. The parklet revocable license shall outline the terms and conditions required for the implementation of the construction, installation, use, operation, maintenance and removal of the parklet after approval by the department.

8. “Parklet site plan or site plan” means the site plan prepared by the applicant and approved by the City and incorporated into the parklet revocable license that authorizes the design, construction, installation, operation and maintenance of the parklet. Approval of the site plan does not relieve permittee of proceeding with all other governmental approvals otherwise applicable to the construction, installation, use, operation and maintenance of the parklet, including building permits under the City's Building Code and engineering permits under the City's regulations. A copy of the approved parklet site plan shall be attached to the parklet revocable license authorizing the parklet and shall be filed with the City.

9. “Permittee” means, jointly and severally, (i) the owner or operator of the qualifying business, and (ii) the fee simple owner of the real property upon which the qualifying business is situated, whom have been approved for a parklet permit and parklet site plan, and have received a parklet revocable license authorizing the design, construction, installation, use, maintenance and removal of a parklet.

10. "Qualifying business" means the business located no farther than one hundred fifty (150) feet from the parklet where the owner or operator of the qualifying business is one of the two applicants for the permit to construct, install, operate, use, maintain, repair and remove the parklet.

**142.04 PERMIT REQUIREMENTS AND ASSOCIATED FEES.** The following are permit requirements and associated fees needed to obtain a parklet permit:

1. A permit for a parklet shall be issued only to the permittee who shall include, jointly and severally, (i) operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is located.
2. The application fee and annual permit fee for establishing, operating and maintaining a parklet shall be determined by the City Council and set forth in a resolution.

**142.05 PERMIT APPLICATION AND SITE PLAN APPROVAL.** The following are permit requirements and associated fees needed to obtain a parklet permit:

1. The application for a permit to construct, operate, use, maintain and repair a parklet shall be submitted to the City's planning and zoning department on a form provided by the department. The application shall include, but not be limited to the following information:

A. Name, postal address, e-mail address and phone number(s) of the applicant;

B. The application shall be executed by (i) the owner or operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is situated;

C. A copy of the valid certificate of occupancy for the qualifying business;

D. A copy of the current liability insurance for the applicant and fee simple owner of property underlying the qualifying business;

E. A drawing (minimum scale of one (1) inch equals twenty (20) feet) showing the layout and dimensions of the proposed parklet license area and parklet and adjacent property, including the structures and improvements to be located on the parklet, proposed location, size and number of tables, seating, umbrellas, location of entries, location of trees, parking meters, parking spaces utilized, vehicular travel lanes, bus shelters, sidewalk benches, trash receptacles, landscaping, utility boxes, pole, guidelines and other sidewalk obstruction either existing or proposed within seventy-five (75) feet of the license area for the parklet;

F. Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects relating to the parklet improvements;

G. A plan for the maintenance and cleaning of the parklet license area; the tables and chairs located within the parklet area; any trash or food on or about the tables and chairs or sidewalk adjacent to the parklet improvements; and the disposal of any trash or debris generated from the operation and use of the parklet by the general public and patrons of the permittee;

H. Any permits or approvals required from any other governmental agency necessary to operate the parklet;

I. Applications shall be accompanied by a non-refundable application fee which shall be credited to the first year permit fee, should the application be approved.

J. Eligible locations for parklets shall be limited to the following unless otherwise approved by the City's Planning and Zoning Department:

(1) Parklets shall be sited along the curb line on streets where on-street parking spaces exist. The parklet can be considered on any location where there are, or would be, space(s) for on-street parallel, angled, or perpendicular parking, including spaces with metered or unmetered parking;

(2) Parklets are generally permitted on streets with a running slope (grade) of five (5) percent or less.

(3) Parklets shall be located on streets with traffic speeds of 25 mph or less;

(4) Parklets shall not block access to public utilities, hydrants, sidewalks, alleys or driveways.

2. The planning and zoning department shall review the materials in subparagraph (1) above and grant approval, approval with conditions or denial of the application for a parklet. Approval of the parklet site plan under this section shall not relieve the permittee of the obligation of securing all required governmental permits necessary for construction of the parklet improvements, to the extent required, which such permits may include, but are not necessarily limited to a building permit and engineering permits under the City's regulation. A copy of the approved parklet site plan shall be placed and remain on file with the City.

3. At all times the permit for the approved parklet, parklet site plan and parklet revocable license shall be subordinate and inferior to the City's superior interest in maintaining the public right-of-way underlying the parklet. In the event that any conflicts should ever arise between the City's superior interest as aforesaid and the operation, use, maintenance and repair of the parklet, then, in that event, the rights of the City's use and obligation of maintaining the public right-of-way for its superior intended purpose shall prevail over that of the permittee and the permittee shall not be entitled to any compensation for interference with the operation and use of the parklet. The permitted shall gain no property right or contract right to the continued operation and use of the parklet.

4. In the event the permittee desires to make modifications to the parklet site plan or parklet improvements after initial approval is granted under subsection (2) above, such proposed modifications shall be submitted to the planning and zoning department for review and approval following the processes set forth above. Approval of such modification shall be granted, granted with conditions or denied by the department.

#### **142.06 CONSTRUCTION OF PARKLET IMPROVEMENTS.**

1. The parklet license area shall be used as the site for the construction, maintenance and repair of the parklet improvements and the use and operation of the

parklet and shall be used for no other purpose whatsoever, unless otherwise approved by the City. The permittee shall construct the parklet in accordance with the following terms and conditions:

A. The permittee shall prepare construction plans and specifications based on the parklet site plan approved by the planning and zoning department in accordance with the provisions set forth in section 142.05 above. The construction plans and specifications shall be in accordance with the City's engineering standards and shall be submitted to the planning and zoning department for approval prior to submission of same to the appropriate government officials for issuance of applicable permits in accordance with applicable governmental regulations, including, but not limited to the Iowa Building Code, applicable unified land development regulations, applicable City Codes, and city engineering regulations.

B. After approval by the planning and zoning department, the construction plans and specifications shall be submitted by the permittee to the appropriate governmental officials for review and issuance of all applicable building and engineering permits in accordance with the laws, regulations and rules of all governmental entities with jurisdiction over the construction of the project improvements. A copy of the approved plans and specifications shall be placed and remain on file with the City.

C. The permittee shall be responsible for all costs and fees associated with the planning, permitting and construction of the project. The permittee agrees that the location and finish grades of the improvements shown on the parklet site plan will be indicated on the site and approved by the planning and zoning department prior to commencement of construction.

D. Parklet construction and installation must be overseen by an insured, certified contractor.

E. The permittee is obligated to replace any and all landscaping and public improvements that are damaged as a result of the construction and installation of the parklet improvements utilizing the same quality of materials and workmanship as approved by the City.

#### **142.07 PARKLET OPERATION AND CONDITIONS.**

1. Depending on the nature of the permit requested and authorized, The parklet may be operated for the purpose of accommodating the public in general without charge or the patrons of the permittee, and may include providing open air dining and beverage service opportunities, provided, however, that nothing herein shall be construed as prohibiting the permittee from charging for the sale or service of food or beverage within the parklet license area for sales from the qualifying business.

2. Permittee shall preserve and protect all existing trees and plantings in the public right-of-way within the immediate vicinity of the parklet. Permittee shall be required to replace or mitigate entirely at permittee's expense, any damage to the public right-of-way or private property as a result of the parklet construction, installation, placement, operation, maintenance or removal.

3. General landscape maintenance attendant to the parklet should be performed on a regular basis at the permittee's sole cost and expense.

4. Awnings, umbrellas and other decorative material accessory to the parklet shall be fire retardant, pressure treated or manufactured of fire resistive material. Patio heaters or heat lamps shall be allowed on the parklet if pre-approved by the City's Fire Chief, or their designee.
5. Tables, chairs, umbrellas and any objects accessory to the parklet shall be maintained in a clean and attractive appearance, shall be in good state of repair at all times and shall be maintained in accordance with the approved maintenance plan and shall keep the landscaping and plants in a good, healthy and vibrant condition.
6. The parklet shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day in compliance with the approved maintenance plan.
7. No tables or chairs will be permitted within ten (10) feet of a pedestrian crosswalk. There must be a distance separation of no less than 2 feet separating the structure of the parklet and the adjacent travel lane.
8. The City may require the permittee to provide additional services beneath the parklet platform, including but not limited to pest abatement service and clearing of catch basin grates to allow proper storm drainage.
9. No portion of any object placed within the parklet boundary shall extend into an adjacent pedestrian sidewalk.
10. If the parklet includes planters, the planters must be placed within the parklet boundaries but must be secured to ensure that they do not move onto the adjacent un-level sidewalk. No planters with wheels are to be permitted.
11. Tables, seating, umbrellas and any other items accessory to the parklet shall be of a quality, design and lasting materials, and workmanship both to ensure the safety and convenience of the users and to be compatible with the uses in the immediate vicinity of the parklet.
12. A permittee may sell and serve alcohol beverages in a parklet only if the permittee complies with all the requirements for obtaining an alcohol beverage license, and the parklet is listed on the alcohol beverage license application as being a part of the licensed premises. In such cases, alcohol may be served at the parklet under the following conditions:
  - A. The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
  - B. The retail alcohol beverage license premises description includes the parklet in the description of the licensed premises as an extended area.
  - C. The retail alcohol beverage license permits the sale of the type of alcohol beverages to be served in the parklet.
  - D. Alcohol beverages are sold and served by the licensee or licensee's employees and sold or served only to patrons seated at tables in the parklet.
  - E. Alcohol beverages are served by the licensee or the licensee's employees in compliance with alcohol beverage laws, ordinances and regulations.
  - F. Alcohol beverages may only be served at the parklet when food service is available through the licensed establishment.

- G. The permittee shall be responsible for policing the parklet area to prevent underage persons from entering or remaining in the parklet, except when underage persons are allowed to be present on the licensed premises under applicable laws.
- H. The area of the restaurant from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the parklet area, unless pre-approved by Police Chief, City Administration and City Council.
- I. At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the parklet area all containers used for or containing alcohol beverages. No container of alcohol beverages shall be present in the parklet between 12:00 a.m. and 8:00 a.m.
13. No smoking and/or use of tobacco of any kind shall be permitted within the parklet license area. The permittee shall purchase a minimum of two (2) "No Tobacco" signs for each entrance of the parklet.
14. No advertising signs or business identification signs shall be permitted within the parklet license area.
15. No food preparation, food or beverage station, refrigeration apparatus or equipment shall be allowed on the parklet unless authorized by the planning and zoning department as part of a special event.
16. No table or chair nor any other part of the parklet may be attached, chained, or in any manner affixed to any tree or city fixture, but may be affixed to the parklet structure.
17. If found necessary for the protection of health, safety and welfare of the public, the City Administrator or their designee may require the permittee to immediately remove or relocate all parts of the tables, chairs, umbrellas and equipment within the parklet license area. If the permittee fails to remove or relocate the tables, chairs and umbrellas as requested within a reasonable time as determined by the City Administrator, given the circumstances at hand, the city may remove or relocate same in emergency situations and the cost thereof shall be borne by the permittee.
18. Reflective elements are required at the outside corners of all parklets. Soft-hit posts are a standard solution deployed at the outside edges; however, the department will consider additional safety measures including bollards, reflective elements or other solutions incorporated into the parklet design if warranted.
19. For parklets in parallel parking spaces, a three-foot wheel stop or other appropriate "stops" such as planters must be installed one (1) foot from the curb at the edge of the front and back parking spaces. When parklets are installed adjacent to parallel parking spaces, wheel stops or other appropriate "stops" such as planters should be set back four (4) feet from the parklet improvements. For angled parking spaces adjacent to driveways, appropriate locations for wheel stops will be determined by the department. Wheel stops should be made of recycled rubber. Concrete wheel stops are discouraged.
20. Traffic safety devices, including but not limited to bollards may be required depending on existing conditions and site layout to properly protect the parklet and its patrons.

21. The permittee is responsible for the costs associated with removal of the parklet platform and accessories.
22. The city and its officers and employees shall not be responsible for parklet or parklet components relocated during emergencies.
23. Amplified or non-amplified music may be permitted within the parklet area, upon recommendation of the planning and zoning department and subject to the approval of the City Administrator, or their designee, as to the hours at which the music may be played, the volume settings, placement of speakers and any other facet of the projection of the music.
24. The permittee shall, at its sole cost and expense, remove the tables, chairs and umbrellas from the parklet area at the close of permittee's qualifying business each day, provided the tables, chairs and umbrellas are set back in the parklet license area by the opening of business (no later than 11:00 a.m.) the following day, except for inclement weather.
25. Parklets shall not be permitted in front of a fire hydrant, over a manhole, public utility valve or cover. A clearance of fifteen (15) feet shall separate parklets from fire hydrants.
26. Parklets shall be required to have soft-hit posts, wheel stops and barriers on all edges of the parklet platform.
27. The parklet shall be constructed and installed to conform to all applicable federal, state or county laws or regulations.
28. There shall be a minimum of two (2) feet wide clear path between the tables and/or seating within the parklet and any abutting sidewalks for pedestrians at all times.
29. The permittee shall keep on record with the department at all times, information on a contact person to be contacting during emergencies, such information on the contact person to include (i) name, (ii) mailing, (iii) e-mail address, (iv) telephone number both at work and residential.
30. The permittee shall have the continuing obligation of compliance with the Americans with Disabilities Act, as same may be amended from time to time.
31. The permittee shall, at its sole cost and expense, construct, operate, maintain and repair the parklet and parklet improvements and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the parklet, parklet improvements and parklet license area will be installed, constructed, operated, used, maintained and repaired in order to comply with health and sanitary requirements, fire hazard requirements, zoning requirements, building code requirements, city engineering standards, environmental requirements and other similar regulatory requirements.

#### **142.08 DATES AND HOURS OF OPERATION.**

1. Parklets shall be permitted from April 1<sup>st</sup> through October 31<sup>st</sup>, unless otherwise approved by the planning and zoning department. Parklets that have not been removed after October 31<sup>st</sup> may be removed by the City at the permittee's expenses.

2. The parklet shall only be open and available for serving permittee's patrons between the hours of 8:00 a.m. and 12:00 a.m.

**142.09 TAXES, ASSESSMENTS; OPERATING COSTS AND UTILITY CHARGES.**

1. The permittee shall pay or cause to be paid all applicable real estate taxes, assessments and other similar payments, usual or unusual, extraordinary as well as ordinary, which shall during the term be imposed upon, become due and payable, or become a lien upon the parklet or parklet license area or any part thereof, but specifically limited to such taxes or assessments which accrue after the effective date of the parklet revocable license. Permittee shall, upon request, exhibit a receipt for such payments to the City. Further, permittee shall pay or cause to be paid all operating expenses, such as those for light, electricity, charges for water, and all costs attributable to the maintenance and operation of all parklet improvements to be erected within the license area for the parklet or landscaping related thereto.

2. The permittee shall be responsible for securing separate meters or billing for all utilities consumed within the parklet license area. Permittee shall promptly pay when due all operating, construction, maintenance and servicing charges, expenses and costs, including telephone, gas, electricity, cable, telecommunications, water, and all other expenses incurred in the use and operation of the parklet. The accrual of utilities and operating costs under this subparagraph prior to termination of the parklet revocable license shall survive the termination of the parklet revocable license and remain the obligation of the permittee.

**142.10 INDEMNITY AND INSURANCE REQUIREMENTS.**

1. By execution of the parklet revocable license as a condition precedent to the installation, construction, use, operation, maintenance and repair of a parklet, the permittee shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of permittee under the parklet revocable license, conditions contained therein, the location, construction, repair, maintenance, use or occupancy by permittee of the parklet license area, or the breach or default by permittee of any condition proscribed by this chapter or covenants or provisions of the parklet revocable license, except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the City, its officers, agents and employees.

2. At all times while the parklet revocable license is in effect, the permittee, at its expense, shall keep or cause to be kept in effect the following:

A. Commercial general liability.

- (1) Limits of liability:  
 Bodily injury and property damage liability:  
 Each occurrence-One million dollars (\$1,000,000.00)

B. Business automobile liability.

- (1) Limits of liability:  
 Bodily injury and property damage:  
 One million dollars (\$1,000,000.00) combined single limit,

per occurrence;  
Including hired, borrowed or non-owned autos.

- C. Employer's liability.
- (1) Limits of liability:  
One hundred thousand dollars (\$100,000.00) for bodily injury caused by an accident, each accident;  
One hundred thousand dollars (\$100,000.00) for bodily injury caused by disease, each employee;  
Five hundred thousand dollars (\$500,000.00) for bodily injury caused by disease, policy limit.

The permittee shall deliver to the City copies of all insurance policies required hereunder and proof of full payment thereof on or before the effective date of the parklet revocable license. From time to time, the permittee shall procure and pay for renewals of insurance required herein before it expires. The permittee shall deliver to the planning and zoning department the renewal policy at least twenty (20) days before the existing policy expires.

3. If the permittee fails to obtain and maintain insurance as required herein and such failure shall continue for a period of fifteen (15) days after notice by the department, the City may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor, with the ultimate cost and expense thereof to be the responsibility of permittee.

#### **142.11 DENIAL; REVOCATION OR SUSPENSION OF PERMIT.**

1. The planning and zoning department may deny, revoke or suspend a permit for a parklet if it is found by the department that:
  - A. Any required business or health permit has been suspended, revoked or cancelled.
  - B. The permittee does not have the insurance that is correct and effective in the minimum amounts described in section 142.10.
  - C. Violation of any of the conditions set forth in section 142.07, Parklet Operation and Conditions, or any other provision of the Windsor Heights Code of Ordinances.
  - D. The permittee has failed to correct violations of this chapter or conditions of the permit within three (3) days of receipt of the planning and zoning department's notice of same delivered in writing to the permittee by registered mail, return receipt requested to the last address provided by the permittee to the City.
2. The permit for a parklet may be suspended under the following conditions:
  - A. In the event that the parklet revocable license granted herein shall (a) ever conflict with a superior municipal interest of the City or public, or (b) at any time the City requires the use of the parklet license area for a superior conflicting municipal purpose or (c) determines that continuation of the parklet revocable license granted herein is no longer in the best public interest, all as determined by the City Planning and Zoning Commission after at least fifteen (15) days advance notice to permittee that the matter will be considered by the City's Planning and Zoning Commission, then, in that

event, the permit and parklet revocable license granted herein for the respective parklet license area shall be terminable, in whole or in part, at the will of the Planning and Zoning Commission.

B. In the event permittee is in violation of any material term or condition of this parklet revocable license, as reasonably determined by the City Administrator, or the permit granted herein or the actions of permittee or any of its agents, servants, employees, guests or invitees or the agents, servants, employees, or any of permittee's contractors, subcontractors or independent contractors conflict with a superior municipal interest of the City or the public, then, upon advance written notice to permittee of not less than seventy-two (72) hours where permitted is given an opportunity to be heard on the matters by the City Administrator, the authority granted by the parklet revocable license or permit may be temporarily suspended by the City Administrator for a period not exceeding fourteen (14) days.

C. In the event that emergent conditions arise within the parklet license area that present an imminent threat to the health, safety or welfare of persons or property, the City Administrator may temporarily suspend this parklet revocable license, in whole or in part, for a period not to exceed fourteen (14) days. In such a circumstance, twenty-four (24) hour advanced written notice shall be provided to permittee by registered mail, return receipt requested to the last address provided by the permittee to the City. In the event the condition persists for a period of seven (7) days, then this revocable license may be temporarily suspended for a period in excess of fourteen (14) days by action of the City's Planning and Zoning Commission.

3. Upon denial or revocation, the director shall give notice of such action to the permittee in writing stating the action which has been taken and the reasons therefor.

#### **142.12 APPEALS.**

1. Appeal shall be initiated within ten (10) days of the effective date of the denial or revocation of the parklet permit by filing a written notice of appeal with the City Administrator.

2. The City Administrator shall place the appeal on the next available regularly scheduled City Planning and Zoning Commission agenda. At the hearing upon appeal, the City Planning and Zoning Commission shall hear and determine the appeal, and the decision of the City Planning and Zoning Commission shall be final and binding and effective immediately.

3. The filing of a notice of appeal by a permittee shall not stay an order by the planning and zoning director, or their designee, to remove a parklet or parts thereof. Vestiges of the parklet, such as tables, chairs, umbrellas and things of a like nature shall be removed immediately as set out in this article pending disposition of the appeal and final decision of the City Planning and Zoning Commission.

**142.13 CITY-OWNED PARKLETS.** In the event the City chooses to purchase parklets to be owned by the City, the City may choose to lease such parklets to eligible persons, under the following conditions:

1. The leasing applicant shall submit an application and proposed site plan for approval in accordance with the terms set forth in Section 142.05.

2. Upon approval of the permit and site plan by the planning and zoning department, the proposed permit shall be presented to the City Council for final approval by resolution.
3. The application fee and scheduled rental fee for leasing a City-owned parklet shall be determined by the City Council and established by resolution.
4. The leasing applicant shall be required to enter into a formal Parklet Use Agreement, in a form and pursuant to the terms as determined by the City Council and City's legal counsel.
5. The planning and zoning department, with final approval of the City Council and City's legal counsel, shall have full discretion to determine the parklet rental terms, including, *inter alia*, length of lease term, location of parklet placement, and terms of use.
6. The lessee must comply with all other obligations set forth in this Code Chapter, including parklet operation and conditions; dates and hours of operation; taxes, assessments, operating costs and utility charges; and indemnity and insurance requirements.
7. The City and/or an agent thereof shall be responsible for transporting the leased parklet to the approved location and providing for installation. The City and/or its agent shall invoice the lessee for the actual costs associated with transporting and installing the parklet, and the lessee shall be obligated to reimburse the City for such costs within thirty (30) days of receipt of the invoice.
8. The lessee shall be responsible for any damage to the parklet during the term of the lease.
9. The planning and zoning department may deny or revoke a parklet lease if it is found that:
  - A. Any required business or health permit has been suspended, revoked or cancelled.
  - B. The lessee does not have the insurance that is correct and effective in the minimum amounts described in section 142.10.
  - C. Violation of any of the conditions set forth in section 142.07, Parklet operation and conditions, or any other provision of the Windsor Heights Code of Ordinances.
  - D. The lessee has failed to correct violations of this chapter or conditions of the lease within three (3) days of receipt of the planning and zoning department's notice of same delivered in writing to the lessee by registered mail, return receipt requested to the last address provided by the lessee to the City.
  - E. In the event that the parklet lease granted herein shall (a) ever conflict with a superior municipal interest of the City or public, or (b) at any time the City requires the use of the parklet area for a superior conflicting municipal purpose or (c) determines that continuation of the parklet lease granted herein is no longer in the best public interest, all as determined by the City Council after at least fifteen (15) days advance notice to lessee that the matter will be considered by the City's Planning and Zoning Commission, then, in that

event, the parklet lease granted herein shall be terminable, in whole or in part, at the will of the Planning and Zoning Commission.

F. In the event that emergent conditions arise within the parklet area that present an imminent threat to the health, safety or welfare of persons or property.

10. Upon denial or revocation, the planning and zoning director shall give notice of such action to the lessee in writing stating the action which has been taken and the reasons therefor. The lessee shall have appeal rights as set forth in Section 142.12.

*(Ch. 142 – Ord. 16-08 – Oct. 16 Supp.)*

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