

CITY OF AVOCA

TITLE IV: COMMUNITY SERVICES **CHAPTER 5: RIGHT-OF-WAY REGULATIONS**

5.01 PURPOSE. The purpose of this ordinance is to ensure that all public grounds, utility easements, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, public ways, squares, and commons are open, in repair, and free from nuisance.

5.02 DEFINITIONS. Improvements are those that meet any of the following:

1. Safety Easement. That area of the public right-of-way between the lot line and the curb line or street edge, where curbs do not exist. This area may be used for, but is not limited for, sidewalks, driveway approaches, utility easements, and tree plantings.
2. Public Right-of-Way. The boundaries within which the public has a right to travel, even though the property in question may be privately owned. For example, ownership of a city lot may extend to the curb, but there may be public right-of-way along the sidewalk on private land.
3. Public Way. Street, alley or other place where the public has access and which is at least 10 feet in width.

5.03 BUILDING, PLANTING OR USING PROPERTY LOCATED IN A UTILITY EASEMENT. Any person, corporation or entity of any kind who builds any structure or plants any foliage of any kind in any utility easement does so at said person's own risk. Should the City or other utility find it necessary to disturb the ground or otherwise clear structures, bushes, trees or plants located in an existing utility easement or in any way use any utility easement to maintain, replace or relocate any utility structure or device, the City or utility shall not be responsible for replacing, repairing, replanting or restoring any structure or plant placed in the easement right-of-way by any property owner.

5.04 MAINTENANCE OF AREA BETWEEN LOT LINE AND CURB LINE. It shall be the responsibility of the abutting property owner to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the abutting property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way. Maintenance includes timely mowing, trimming trees and shrubs and picking up litter.

5.05 PERMIT REQUIRED. No person shall perform any of the following work in the public right-of-way, unless such person has obtained a permit from the City and has agreed in writing that said removal, reconstruction or installation will comply with all ordinances and requirements of the City for such work:

1. Connections to the public water system.
2. Installation or replacement of private water service pipes or water service shut-off valves.
3. Connections to the public sanitary sewer system.
4. Installation or replacement of private sanitary sewer service pipes.
5. Construction or reconstruction of driveways.
6. Construction or reconstruction of sidewalks.
7. Installation of stormwater control devices, including driveway culverts.

5.06 DUMPING OF SNOW. It is unlawful for any person to throw, push, or place or cause to be thrown, pushed or placed, any ice or snow from private property, sidewalks, or driveways onto the traveled way of a street or alley so as to obstruct gutters, or impede the passage of vehicles upon the street or alley or to create a hazardous condition therein; however, it is lawful for a person to redeposit into the street any snow accumulation that snow plows have pushed onto private driveways or sidewalks.

(Code of Iowa, Chapter 364.12 (2))

5.07 DRIVEWAY CULVERTS. The property owner shall, at the owner's expense, install any culvert deemed necessary under any driveway or any other access to the owner's property and before installing a culvert, permission must first be obtained from the City. In the event repairs are needed at any time with respect to culverts, it shall be the responsibility of the property owner to make such repairs.

5.08 BARRICADES AND WARNING LIGHTS. Excavations to do work under this chapter shall be dug so as to occasion the least possible inconvenience to the public and to provide for the passage of water along the gutter. All such excavations shall have proper barricades at all times and warning lights in place from one-half hour before sunset to one-half hour after sunrise.

5.09 RESTORATION OF PUBLIC PROPERTY. Any street, sidewalk, or other public property that is affected by the work shall be restored to as good a condition as it was previous to the excavation. After refilling, the affected area shall be maintained in good repair.

5.10 GROUND COVER. Living ground cover, such as grass, shall be provided within the area between the lot line and curb line of properties, exclusive of sidewalks and other improvements. Non-living materials (such as walk on bark, mulch, and ornamental rock) may be used for up to twenty-five percent (25%) of the right-of-way exclusive of access.

5.11 RESPONSIBILITY FOR MAINTENANCE OF DRIVEWAYS AND SIDEWALKS IN THE RIGHT-OF-WAY. It is the responsibility of the abutting property owners to repair, replace or reconstruct, or cause to be repaired, replaced or reconstructed, all broken or defective driveways and sidewalks and to maintain it in a safe and hazard-free condition.

5.12 BUILDING, PLANTING OR USING PROPERTY LOCATED IN A STREET, ROAD, OR ALLEY RIGHT-OF-WAY. Any person, corporation, or entity of any kind who builds a structure, plants a tree, bush, shrub, foliage of any kind, or does any landscaping to any extent within the confines of any City street, road or alley does so at his, her or its own risk. Should the City or utility with infrastructure located within the confines of said street, road, or alley right-of-way, disturb the ground, or otherwise clear structures, fixtures, landscape apparatus, bushes, trees or plants located in an existing street, road, or alley right-of-way or in any way use said right-of-way to maintain, replace or relocate a utility structure or device, or in any other way use any portion of said City right-of-way, the City or other utility shall not be responsible for replacing, repairing, replanting, or restoring any structure or plant placed within said right-of-way by the property owner. There shall be one exception to this general rule: Should the City or other utility, damage or destroy any mailbox erected by a property owner within the confines of the street, road, or alley right-of-way, through use of the right-of way including but not limited to snow removal or street cleaning, the City or other utility shall pay the actual costs of replacement or repair up to a maximum of \$50.00.

5.13 REMOVAL OF SNOW, ICE AND ACCUMULATIONS. It is the responsibility of the abutting property owners to remove snow, ice and accumulations promptly from sidewalks. If a property owner does not remove snow, ice or accumulations within twenty-four (24) hours after being deposited, the City may do so and assess the costs against the property owner for collection in the same manner as a property tax.

(Code of Iowa, Chapter 364.12 (2b & e))

5.14 RESPONSIBILITY FOR MAINTENANCE; LIABILITY FOR INJURIES. It is the responsibility of the abutting property owners to repair, replace or reconstruct, or cause to be repaired, replaced or reconstructed, all broken or defective sidewalks and to maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or traveled portion of the public street. An abutting property owner who fails to maintain or repair defective or broken sidewalks as set forth in this section shall be liable for damages caused by said failure to repair, replace or reconstruct broken or defective sidewalks. The City's general duty to maintain public places pursuant to Section 364.12 of the Code of Iowa does not include a duty to remove natural accumulations of snow or ice from sidewalks or to repair, replace or reconstruct all broken or defective sidewalks. However, when the City is the abutting property owner, it has the specific duty of the abutting property owner as set forth in this section.

(Code of Iowa, Chapters 364.12 (2b & 2c); 364.14)

5.15 CITY MAY ORDER SIDEWALK REPAIRS. If the abutting property owner does not maintain sidewalks as required, the City Manager may serve notice on such owner requiring the owner to repair, replace or reconstruct sidewalks within a reasonable time and if such action is not completed within the time stated in the notice, the City may require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Chapter 364.12(2d & e))

5.16 SIDEWALK CONSTRUCTION ORDERED. The City 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.

(Code of Iowa, Chapter 384.38)

5.18 VEHICULAR PARKING REGULATIONS. The following regulations apply to the parking of vehicles within the Safety Easement:

1. No vehicle shall be permitted to be parked or stored in a manner which limits or blocks pedestrian access to a sidewalk within the public right-of-way.
2. Parking or storage of vehicles or any portion thereof, shall not occur within the area ten and one half feet (10.5) from the curb face, or where there is no curb, from the edge of the street pavement. The following exceptions shall apply:
 - A. Parking areas located entirely within the Safety Easement and constructed of an improved surface such as concrete, asphalt, laid brick, or other impervious material, and in use at the effective date of this chapter shall be considered a nonconforming permitted use. These parking areas shall not be repaired, reconstructed, or replaced. Upon deterioration into a condition of disrepair or nuisance, the City will remove the parking area from the public right-of-way. These parking areas shall not constitute a traffic safety hazard.
 - B. Qualified exceptions may be made in residential districts, which allow personal vehicles to be parked in the area ten and one half feet (10.5) from the curb face, or where there is no curb, from the edge of the street pavement, under the following conditions:
 - i. Upon the approval of the City Manager, Utility Staff, and Police Chief, a residential right-of-way parking permit may be issued for a single personal vehicle, excluding recreational vehicles, to be parked within the 10.5 feet area measured from the curb face or edge of the street.

- ii. Prior to issuance of a residential right-of-way parking permit, the City Manager and Police Chief shall find that handicap accessibility is not adequately provided or other irremediable site characteristics exist which make other parking alternatives unsuitable.
- iii. All vehicles stored in the Safety Easement under a residential right-of-way parking permit must be located on an improved surface such as concrete, asphalt, laid brick, or other impervious material.
- iv. No vehicle authorized to park in the Safety Easement under a residential right-of-way parking permit shall be parked or stored in a manner which limits or blocks pedestrian access to a sidewalk within the public right-of-way.
- v. The residential right-of-way permit will be issued at no cost.

5.19 FAILURE TO PERFORM. If the abutting property owner does not perform an action required under the above section within a reasonable time, the City may perform the required action and assess the cost against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12(2e))