

ORDINANCE NO. 2010-05

**AN ORDINANCE AMENDING CITY CODE SECTION 1125
REGARDING PRIVATE USE OF UNDEVELOPED RIGHT OF WAY**

The City of Minnetonka Ordains:

Section 1. Section 1125 of the city code is amended as follows:

SECTION 1125. PRIVATE USE OF UNDEVELOPED RIGHT OF WAY.

1125.005. Purpose.

The purpose of this chapter is to establish a procedure for the city to use in considering requests for the private use of undeveloped public right-of-way.

1125.010. Applicability.

1. Except as noted below and except for uses that are regulated under city code section 1120, this chapter applies to all private uses of undeveloped public right-of-way regardless of whether the use is presently taking place or may be permitted in the future. The intent of this chapter is to primarily govern above-ground private improvements, such as private streets, that are only for the benefit of adjacent or nearby property.

2. A person may use undeveloped public right-of-way only by complying with this chapter's provisions. An adjacent property owner who owns the underlying fee is not required to comply with this chapter if the owner's use does not have the potential of interfering with the city's superior easement rights, but the city may at any time require the owner's use of the right-of-way to cease if such action would serve the public interest.

3. Undeveloped right-of-way includes boulevards, slopes adjacent to city streets, unpaved shoulders, and dedicated streets not yet developed.

4. Private use of undeveloped public right-of-way will be by permit only.

1125.015. Procedure.

1. The engineering department will decide whether to issue a permit. The criteria for evaluating a permit request includes guidelines established by the city council, safety of the public, need to maintain access for emergency services, the use for which the permit is requested, compatibility with surrounding uses and neighborhood, and other factors reasonably related to health, safety and welfare of the community.

The ~~stricken~~ language is deleted; the underlined language is inserted.

2. The engineering department may impose conditions on a permit.
3. A permit must contain notice to the permit holder that the permit may be revoked by the city manager at any time when continued private use of the undeveloped public right-of-way is contrary to the public interest. When revoking a permit for a private driveway that provides the only access to a property, the city must still allow some reasonable access to the property. After a permit revocation, the property owner may petition the council for construction of a public street. The council may not deny the property owner access to his/her property if no other access is available, but may choose the manner in which it is given.
4. An aggrieved party may appeal any decision regarding a permit or application to the city council by submitting a written request to the city manager.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on April 5, 2010.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

The ~~stricken~~ language is deleted; the underlined language is inserted.

Date of introduction: March 8, 2010
Date of adoption: April 5, 2010
Motion for adoption: Allendorf
Seconded by: Greves
Voted in favor of: Allendorf, Ellingson, Greves, Hiller, Schneider, Wagner, Wiersum
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on April 5, 2010.

David E. Maeda, City Clerk