

City of Franklin

CODE OF ORDINANCES



Franklin, Minnesota 55333

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FRANKLIN CITY CODES

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10.01 TITLE OF CODE

- A. All ordinances of a permanent and general nature of the city, as revised, codified, rearranged, renumbered, and consolidated into component codes, titles, chapters, and sections, shall be known and designated as the “city code,” for which designation “code of ordinances,” “codified ordinances” or “code” may be substituted. Code title, chapter, and section headings do not constitute any part of the law as contained in the code.
- B. All references to codes, titles, chapters, and sections are to the components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the “Traffic Code.” Sections may be referred to and cited by the designation “§” followed by the number, such as “§10.01.” Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

10.02 RULES OF INTERPRETATION

- A. *Generally.* Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.
- B. *Specific rules of interpretation.* The construction of all ordinances of this city shall be by the following rules, unless that construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:
 - 1. **AND or OR.** Either conjunction shall include the other as if written “and/or,” whenever the context requires.
 - 2. *Acts by assistants.* When a statute, code provisions or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.
 - 3. *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

4. *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

10.03 APPLICATION TO FUTURE ORDINANCES

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted which amend or supplement this code unless otherwise specifically provided.

10.04 CAPTIONS

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

10.05 DEFINITIONS

- A. *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.
- B. *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance, annexation or other legal actions at a future time. The term **CITY** when used in this code may also be used to refer to the City Council and its authorized representatives.

CODE, THIS CODE or **THIS CODE OF ORDINANCES.** This city code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNTY. The county or counties in which the city is located.

MAY. The act referred to is permissive.

MONTH. A calendar month.

OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**. All terms shall mean a pledge taken by the person and administered by an individual authorized by state law.

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT. An officer, office, employee, commission, or department of this city unless the context clearly requires otherwise.

PERSON. Extends to and includes an individual, person, persons, firm, corporation, co-partnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

PRECEDING or FOLLOWING. Next before or next after, respectively.

SHALL. The act referred to is mandatory.

SIGNATURE or SUBSCRIPTION. Includes a mark when the person cannot write.

STATE. The State of Minnesota.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

YEAR. A calendar year, unless otherwise expressed.

10.06 SEVERABILITY

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

10.07 REFERENCE TO OTHER SECTIONS

Whenever in one section reference is made to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.08 REFERENCE TO OFFICES

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this city exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

10.09 ERRORS AND OMISSIONS

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

10.10 OFFICIAL TIME

The official time, as established by applicable state and federal laws, shall be the official time within this city for the transaction of all city business.

10.11 REASONABLE TIME

A. In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

- B. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day is a legal holiday or a Sunday, it shall be excluded.

10.12 ORDINANCES REPEALED

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

10.13 ORDINANCES UNAFFECTED

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

10.14 EFFECTIVE DATE OF ORDINANCES

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided.

10.15 REPEAL OR MODIFICATION OF ORDINANCE

- A. Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it when publication is required to give effect to it, unless otherwise expressly provided.
- B. No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

- C. When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

10.16 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE

- A. If the City Council shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.
- B. Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section. In addition to this indication as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

10.17 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this code. The liabilities, proceedings and rights are continued; punishments, penalties, or forfeitures shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway right-of-ways, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

10.18 COPIES OF CODE

The official copy of this code shall be kept in the office of the City Clerk for public inspection. The Clerk shall provide a copy for sale for a reasonable charge.

10.19 ADOPTION OF STATUTES AND RULES BY REFERENCE

It is the intention of the City Council that, when adopting this Minnesota Basic Code, all future amendments to any state or federal rules and statutes adopted by reference in this Code or

referenced in this Code are hereby adopted by reference or referenced as if they had been in existence at the time this Code was adopted, unless there is clear intention expressed in the Code to the contrary.

10.20 ENFORCEMENT

- A. Any licensed Peace Officer shall have the authority to enforce any provision of this Code.
- B. As permitted by M.S. '626.862, as it may be amended from time to time, the City Clerk/Administrator shall have the authority to administer and enforce this Code. In addition, under that statutory authority, certain individuals designated within the Code or by the City Council shall have the authority to administer and enforce the provisions specified. All and any person or persons designated may issue a citation in lieu of arrest or continued detention to enforce any provision of the Code.
- C. The City Clerk/Administrator and any City Official or employee designated by this Code who has the responsibility to perform a duty under this Code may with the permission of a licensee of a business or owner of any property or resident of a dwelling, or other person in control of any premises, inspect or otherwise enter any property to enforce compliance with this Code.
- D. If the licensee, owner, resident, or other person in control of a premises objects to the inspection of or entrance to the property, the City Clerk/Administrator, Peace Officer, or any employee or official charged with the duty of enforcing the provisions of this Code may, upon a showing that probable cause exists for the issuance of a valid search warrant from a court of competent jurisdiction, petition and obtain a search warrant before conducting the inspection or otherwise entering the property. This warrant shall be only to determine whether the provisions of this Code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions only, and no criminal charges shall be made as a result of the warrant. No warrant shall be issued unless there be probable cause to issue the warrant. Probable cause occurs if the search is reasonable. Probable cause does not depend on specific knowledge of the condition of a particular property.
- E. Every licensee, owner, resident or other person in control of property within the City shall permit at reasonable times inspections of or entrance to the property by the City Clerk/Administrator or any other authorized City Officer or employee only to determine whether the provisions of this Code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions. Unreasonable refusal to permit the inspection of or entrance to the property shall be grounds for termination of any and all

permits, licenses or City service to the property. Mailed notice shall be given to the licensee, owner, resident or other person in control of the property, stating the grounds for the termination, and the licensee, owner, resident or other person in control of the property shall be given an opportunity to appear before the City Clerk/Administrator to object to the termination before it occurs, subject to appeal of the Clerk's decision to the City Council at a regularly scheduled or special meeting.

- F. Nothing in this section shall be construed to limit the authority of the City to enter private property in urgent emergency situations where there is an imminent danger in order to protect the public health, safety and welfare. Potentially dangerous and/or life threatening situations constitute implied consent.
- G. Notice of Code Violation. A Notice of Code Violation shall be delivered to the offending party(ies). The following is an example of the City's Notice of Code Violation, which can be further customized based upon individual circumstances:

NOTICE OF CODE VIOLATION

To: (name and address of person who is alleged to have violated the Code)

From: (Name and title of City Official giving the notice)

Re: Alleged violation of Section of the City Code, relating to (give title of section)

Date: (date of notice)

I hereby allege that on (date of violation) you violated (section #) of Franklin's City Codes relating to (brief summary of the violation).

The City Council has by resolution established a fine in the amount of \$(dollar amount) for this violation.

Payment is due within 14 days of the date of this notice. Before or on the due date, you may request in writing an additional 14-day extension of the time to pay the fines which shall automatically be granted upon acceptance.

Optional Sentence: As an alternative to the payment of this fine, if the situation that gave rise to this alleged violation is corrected by (establish date), then the payment of the fine will be waived.

Even if the fine is paid, the City reserves the right to institute appropriate proceedings at to restrain, correct or abate the violation depending upon the unique circumstances of the violation.

Before or on the due date, you may request to appear before the City Council to contest the violation and/or fine. After a hearing before the Council, the Council may determine to withdraw or adjust fine.

Payment of the fine may be made by check, cash or money order to the City of Franklin.

Signed:

(Name and Title of Person Giving Notice)

10.99 GENERAL PENALTIES

- A. ***Misdemeanor.*** Any person, firm or corporation who violates any provision of this code for which another penalty is not specifically provided, shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than \$1,000 or both.
- B. ***Petty Misdemeanor.*** Any person, firm or corporation who violates any provision of this code, including Minnesota Statutes specifically adopted by reference, which is designated to be a petty misdemeanor shall, upon conviction be guilty of a petty misdemeanor. The penalty which may be imposed for any petty offense which is a petty misdemeanor shall be a sentence of a fine of not more than \$300.
- C. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.
- D. ***Prosecution Costs.*** In either the case of a misdemeanor or a petty misdemeanor, the costs of prosecution may be added. In addition to any penalties provided for in this Code, if any person, firm or corporation fails to comply with any provision of this Code, the Council or any designated City Official may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.
- ~~In either the case of a misdemeanor or a petty misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.~~
- E. The failure of any officer or employee of the city to perform any official duty imposed by this code shall not subject the officer or employee to the penalty imposed for the violation. In addition, law enforcement and/or city employees may be exempt from the provisions of this code if performed as part of official responsibilities and/or during emergency situations (i.e., parking in a no parking zone, use of emergency management equipment, etc.).
- F. ***Schedule of Fees.*** The City of Franklin will adopt a *Schedule of Fees* that may compliment, clarify, and/or supersede the penalties identified throughout the Code.

TITLE III:
ADMINISTRATION

CHAPTERS

Underlined text (<u>example</u>) represents new language Strikethrough text (example) represents deleted language

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30.01 CITY COUNCIL MEETINGS

- A. *Regular meetings.* Regular meetings of the City Council shall be held at least once each month, at a date, time and place as established by the City Council. Any regular meeting falling upon a holiday shall be held on the next following business day at the same time and place. All meetings, including special and adjourned meetings, shall be held in the city hall unless the City Council decides otherwise at a prior meeting, or meeting in the city hall is impossible.
- B. *Special meetings.* The Mayor or any two members of the City Council may call a special meeting of the City Council upon at least 24 hours written notice to each member of the City Council. This notice shall be delivered personally to each member or shall be left at the member's usual place of residence with some responsible person. Pursuant to M.S. '471.705, as it may be amended from time to time, written notice of any special meeting shall be posted giving the date, time, place and purpose of the meeting at least three days before the meeting. Written notice shall be mailed at least three days before the meeting to anyone who has filed a written request for notice of special meetings. In calculating the three days, if the last day falls on a Saturday, Sunday or legal holiday, the next regular business day shall be counted as the third day.

- C. *Emergency meetings.* Notice of emergency meetings shall be given as required by Minnesota Statutes, as amended from time to time. An emergency meeting is a meeting defined by M.S. 471, as amended from time to time.
- D. *Initial meeting.* At the first regular City Council meeting in January of each year, the City Council shall:
1. Designate the depositories of city funds;
 2. Designate the official newspaper;
 3. Choose one of the Council Members as Acting Mayor, who shall perform the duties of the Mayor during the disability or absence of the Mayor from the city or, in case of a vacancy in the office of Mayor, until a successor has been appointed and qualifies;
 4. Appoint officers and employees and members of departments, boards, commissions and committees as may be necessary;
 5. Establish and appoint Council Members to those City Council committees as are deemed appropriate for the efficient and orderly management of the city.
- E. *Public meetings.* All City Council meetings, including special, emergency and adjourned meetings and meetings of City Council committees, shall be conducted in accordance with the Minnesota Open Meeting Law, as amended from time to time, except during closed meetings as prescribed by Subsection F.
- F. *Closed Meetings.* A closed meeting is a meeting of a public body that the public is not allowed to attend. A public meeting can only be closed if it meets the requirements of one of the specific exceptions listed in the open meeting law (listed below). The same notice requirements that apply to open meetings also apply to closed meetings. For example, if a closed meeting takes place at a regular meeting, the notice requirements for a regular meeting apply. Likewise, if a closed meeting takes place at a special meeting or an emergency meeting, the notice requirements for a special meeting or emergency meeting apply.

Minnesota Statutes § 13D lists the following five types of meetings that *may be closed* by a public body:

1. ***Labor negotiation strategies.*** A meeting to consider strategies for labor negotiations (note: the actual labor negotiations must be held at an open meeting);

2. **Performance evaluations.** A public body may close a meeting to evaluate the performance of an individual who is subject to its authority;
3. **Attorney-client privilege.** Meetings between the governing body and its attorney to discuss active, threatened, or pending litigation.
4. **Purchase or sale of property.** This includes determining the asking price for real or personal property to be sold by the public body; the review of confidential or nonpublic appraisal data; and to develop or consider offers or counteroffers for the purchase or sale of real or personal property.
5. **Security reports.** A meeting may be closed to receive briefing and reports related to all law enforcement and/or security issues (note: all financial issues relating to security matters must be made at an open meeting).

Minnesota Statutes § 13D lists the following five types of meetings that ***must be closed*** by a public body:

1. **Misconduct allegations.** A public body must close a meeting for preliminary consideration of allegations or charges against an individual subject to the public body's authority.
2. **Certain not-public data.** A public body must close a meeting whenever confidential reports and/or data is presented, including but not limited to:
 - a. Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;
 - b. Internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data;
 - c. Educational, health, medical, welfare, mental health, or similar data that is not public data; and
 - d. Certain medical records.

30.02 PRESIDING OFFICER

- A. *Who presides?* The Mayor shall preside at all meetings of the City Council. In the absence of the Mayor, the Acting Mayor shall preside. In the absence of both, the City Clerk shall call the meeting to order and shall preside until the Council Members present at the meeting choose one of their number to act temporarily as presiding officer.
- B. *Procedure.* The presiding officer shall preserve order, enforce any rules of procedure adopted by the City Council, and determine without debate, subject to the final decision of the City Council on appeal, all questions of procedure and order.
- C. *Appeal procedure.* Any member may appeal to the City Council a ruling of the presiding officer. If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain the ruling, but no other Council Member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present, including the presiding officer.

30.03 MINUTES

- A. *Generally.* Minutes of each City Council meeting shall be kept by the City Clerk. In the absence of the City Clerk, the presiding officer shall appoint a secretary pro tem. Ordinances, resolutions and claims need not be recorded in full in the minutes if they appear in other permanent records of the City Clerk and can be accurately identified from the description given in the minutes.
- B. *Approval.* The minutes of each meeting shall be reduced to typewritten form, shall be signed by the City Clerk, and copies thereof shall be delivered to each Council Member as soon as practicable after the meeting. At the next regular City Council meeting following the delivery, approval of the minutes shall be considered by the City Council. The minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no objection to a proposed addition or correction, it may be made without a vote of the City Council. If there is an objection, the City Council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

30.04 ORDER OF BUSINESS

A. *Order established.* Each meeting of the City Council shall convene at the time and place appointed therefore. City Council business shall be conducted in the following order unless varied by the presiding officer:

1. Call to order.
2. Roll call.
3. Pledge of Allegiance
4. Approval of minutes.
5. Consent agenda.
6. Public hearings.
7. Petitions, requests, and communications.
8. Ordinances and resolutions.
9. Reports of officers, boards, and committees.
10. Unfinished business.
11. New business.
12. Miscellaneous.
13. Adjournment.

B. *Petitions and agenda.* Petitions and other papers addressed to the City Council shall be read by the City Clerk upon presentation of the same to the City Council. All persons desiring to present new business before the City Council shall inform the City Clerk thereof at least 72 hours before new business is to be heard. The City Clerk may prepare an agenda of the new business for submission to the City Council on or before the time of the next regular meeting.

30.05 VOTING

The votes of the Council Members on any question may be taken in any manner which signifies the intention of the individual members, and the votes of the Council Members on any action taken shall be recorded in the minutes. The vote of each Council Member shall be recorded on each appropriation of money, except for payments of judgments, claims and amounts fixed by statute. If any Council Member is present but does not vote, the minutes, as to his or her name, shall be marked "Abstained."

30.06 ORDINANCE, RESOLUTIONS, MOTIONS, PETITIONS AND COMMUNICATIONS

- A. *Signing and publication proof.* Every ordinance and resolution passed by the City Council shall be signed by the Mayor, attested by the City Clerk, and filed by the City Clerk in the ordinance or resolution book. Proof of publication of every ordinance shall be attached and filed with the ordinance.
- B. *Repeals and amendments.* Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision thereof shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution amending an existing ordinance or resolution or part thereof shall set forth in full each amended section or subdivision as it will read with the amendment.

30.07 SUSPENSION OR AMENDMENT OF RULES

These rules may be suspended only by a two-thirds vote of the members present and voting.

30.08 COMPENSATION OF MAYOR AND COUNCIL MEMBERS

The compensation of the Mayor and the compensation of each Council Member shall be established from time to time by City Council ordinance pursuant to Minnesota Statutes, as amended from time to time.

30.09 COMPENSATION OF OFFICERS AND EMPLOYEES

Officers and employees of the city shall be compensated at a rate determined by the City Council.

30.10 QUORUM FOR CONDUCTING BUSINESS

- A. A quorum shall consist of a majority of the entire City Council, including the Mayor. A quorum shall be necessary to transact the business of the City Council.
- B. If no quorum is present, the City Council shall not thereby stand adjourned, but the members present shall adjourn or recess the City Council by a majority vote.

30.11 FEES AND CHARGES

The City Council may enact an ordinance establishing those fees and charges that are authorized by this code. Until that ordinance becomes effective, all fees and charges established by ordinance or resolution prior to the adoption of this code shall remain in effect. All fees and charges established by the ordinance establishing fees and charges may be amended from time to time by amendment of that ordinance.

30.12 ANNUAL AUDIT

Beginning with the year in which this ordinance becomes effective and the years thereafter, there shall be an audit of the City's financial affairs by the State Auditor or a public accountant in accordance with minimum auditing procedures prescribed by the State Auditor.

**CHAPTER 31:
DEPARTMENTS, BOARDS AND COMMISSIONS**

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POLICE DEPARTMENT

31.01 POLICE DEPARTMENT CONTINUED

- A. The Police Department of the city is hereby continued. The head of the Police Department shall be known as the Chief of Police and the number of additional members of the Police Department, together with their ranks and titles, shall be determined by the City Council by resolution. The compensation to be paid to members of the Police Department shall be fixed by the City Council. Members of the Police Department shall be appointed by the City Council.

- B. All police officers shall meet the minimum standards for licensing as a peace officer as established by the Minnesota Peace Officers Standards and Training Board and have a current and valid peace officer license at the time of appointment. All police officers shall retain this license during their employment as a police officer with the city and will be subject to discharge if the license is suspended, revoked or becomes invalid for any reason. In addition, all police officers must have a valid Minnesota vehicle operator's license and must be insurable as a vehicle driver by the city's automobile insurance carrier.

31.02 CHIEF OF POLICE

The Chief of Police shall have supervision and control of the Police Department and its members. The Chief of Police shall be responsible for the proper training and discipline of the members of the Police Department. The Chief of Police shall be responsible for the keeping of adequate records and shall report to the City Council on the needs of the Police department and its work. Every member of the Police department is subordinate to the Chief of Police and shall obey the instructions of the Chief of Police and any superior officer. The City Council may designate one of the police officers as Acting Chief, who shall have all the powers and duties of the Chief of Police during the absence or disability of the Chief of Police.

31.03 DUTIES OF POLICE

Members of the Police Department shall enforce the laws applicable to the city, bring violators before the court, and make complaints for offenses coming to their knowledge. Members of the Police Department shall serve processes on behalf of the city and shall serve those notices as may be required by the City Council or other authority. When the city is not a party to the proceedings

involved in the process or notice, the officer shall collect the same fees as provided by law. All fees shall be paid into the city treasury.

31.04 UNIFORM AND BADGE

Each member of the Police Department shall, while on duty, wear a suitable badge and uniform furnished by the city, except that the Chief of Police may authorize the performance of specific duties while not in uniform. When a member terminates membership in the Police Department, the member shall immediately deliver to the city the badge, uniform and all other property of the city.

31.05 EXTRA POLICE

In case of riot or other law enforcement emergency, the Chief of Police may appoint for a specified time as many emergency assistants to the Chief of Police as may be necessary for the maintenance of law and order. During the term of appointment, the emergency assistants shall have only those powers and perform only those duties as shall be specifically assigned by the Chief of Police and which are permitted by law.

31.06 POLICE DEPARTMENT POLICIES MANUAL ADOPTED

The Police Department Manual, as amended, containing the general policies, procedures and rules for operation of the Police Department of the city is hereby adopted as the official departmental policy manual of the Police Department.

VOLUNTEER FIRE DEPARTMENT

31.20 VOLUNTEER FIRE DEPARTMENT CONTINUED; APPOINTMENT OF OFFICERS

A. There is continued in this city a Volunteer Fire Department, which department shall have the following officers: a Chief, and Assistant Chief, First Lieutenant, Second Lieutenant, and Secretary.

- B. The Chief of the Volunteer Fire Department shall be appointed by the City Council. The Chief shall appoint each year an Assistant Chief, First Lieutenant, Second Lieutenant, and Secretary, subject to confirmation by the City Council. The Chief shall hold office for three years and/or until the successor has been duly appointed. The remaining officers shall be appointed for one year term. Any officer may be removed by the City Council for just cause after a public hearing. If an officer resigns, is removed from office by the City Council, or is deceased, the successor shall be duly appointed by the City Council for the remainder of the vacated term.

- C. Firefighters and probationary firefighters shall be appointed by the Chief of the Volunteer Fire Department, subject to confirmation by the City Council. Firefighters shall continue as members of the Volunteer Fire Department during good behavior until retirement, but may be removed by the City Council for cause after a public hearing.

31.21 DUTIES OF CHIEF

The Chief shall have control of all firefighting apparatus and shall be responsible for its care and condition. The Chief shall make a report semi-annually to the City Council at its meeting in March and in September as to the condition of the equipment and needs of the Volunteer Fire Department. The Chief may submit additional reports and recommendations at any meeting of the City Council, and he or she shall report each suspension by him or her of a member of the Volunteer Fire Department at the *first* meeting of the City Council following the suspension. The Chief shall be responsible for the proper training and discipline of the members of the Volunteer Fire Department, and may suspend any member for refusal or neglect to obey orders pending final action by the City Council on his or her discharge or retention.

31.22 DUTIES OF FIRE MARSHAL

The office of Fire Marshal may be held by the Chief or Assistant Chief, if the City Council approves. The Fire Marshal shall be charged with the enforcement of all city ordinances and laws of the state for fire prevention including, if authorized by the City Council, the Uniform Fire Code, Minn. Rules Ch. 7510, as it may be amended from time to time. The Fire Marshal shall have full authority to inspect all premises and to cause the removal or abatement of all fire hazards.

31.23 RECORDS

The Chief shall keep in convenient form a record of all fires. The record shall include the time of the alarm, location of fire, cause of fire, if known, type of building, name of owner or tenant, purpose for which occupied, value of building and contents, members of the Volunteer Fire Department responding to the alarm and other information as he or she may deem advisable or as may be required from time to time by the City Council or state law or regulation.

31.24 PRACTICE DRILLS

It shall be the duty of the Chief, when the weather permits, to hold practice drills for the Volunteer Fire Department and to give the firefighters instruction in approved methods of firefighting and fire prevention.

31.25 ASSISTANT CHIEF

In the absence or disability of the Chief of the Volunteer Fire Department, the Assistant Chief shall perform all functions and exercise all of the authority of the Chief.

31.26 FIREFIGHTERS

Firefighters shall not be less than 18 years of age and able bodied. They shall become members of the Volunteer Fire Department only after a 12-month probationary period. The City Council may require that each candidate, before he or she may become a probationary firefighter, must possess certain minimum height, weight, education, mental and physical health requirements, and any other qualifications which may be specified by the City Council.

31.27 LOSS OF MEMBERSHIP

Firefighters shall forfeit membership in the Volunteer Fire Department for unreasonable inattention to duties or lack of attendance at meetings or calls or disobedience of orders or other due cause, and any firefighter may be suspended by the Chief pending hearing upon his or her removal. Firefighters absent from three consecutive drills or calls, unless excused by the Chief, shall forfeit membership in the Volunteer Fire Department.

31.28 COMPENSATION

The members and officers of the Volunteer Fire Department shall receive compensation as provided by the City Council.

31.29 INTERFERENCE WITH VOLUNTEER FIRE DEPARTMENT

It shall be unlawful for any person to give or make, or cause to be given or made, an alarm of fire without probable cause, or to neglect or refuse to obey any reasonable order of the Chief or other firefighter at a fire, or to interfere with the Volunteer Fire Department in the discharge of its duties.

31.30 BYLAWS

The Volunteer Fire Department may adopt bylaws for its government, which bylaws shall be effective upon approval by the City Council.

31.31. AN ORDINANCE ESTABLISHING FEES FOR EMERGENCY PROTECTION FIRE SERVICES

A. This ordinance is adopted for the purpose of authorizing the City of Franklin to charge for fire service as authorized by Minnesota Statutes.

B. Definitions:

1. “Fire service” means any deployment of firefighting personnel and/or equipment to extinguish a fire or perform any preventative measure in an effort to protect equipment, life, or property in an area threatened by fire. It also includes the deployment of firefighting personnel and/or equipment to provide fire suppression, rescue, extrication, and any other services related to fire and rescue as may occasionally occur.
2. “Fire service charge” means the charge imposed by the City for receiving fire service.
3. “Motor vehicle” means any self-propelled vehicle designed and originally manufactured to operate primarily upon public roads and highways, and not operated exclusively upon railroad tracks. It includes semi-trailers. It does not include snowmobiles, manufactured homes, all-terrain vehicles, or park trailers.

4. “Fire protection contract” means a contract between the City and a town or other city for the City to provide fire service.
5. “Mutual aid agreement” means an agreement between the City and a town or other city for the City’s fire department to provide assistance to the fire department of a town or other city.

C. Parties Affected:

1. Owners of property within the City who receive fire service.
2. Anyone who receives fire service as a result of a motor vehicle accident or fire within the City.
3. Owners of property in towns or cities to which the City provides fire service pursuant to a fire protection contract.

D. Rates. The fee established shall be set by the City’s Schedule of Fees.

E. Billing and Collection:

1. Parties requesting and receiving fire services may be billed directly by the City. Additionally, if the party receiving fire services did not request services but a fire or other situation exists which, at the discretion of the fire department personnel in charge requires fire service, the party will be charged and billed. All parties will be billed whether or not the fire service is covered by insurance. Any billable amount of the fire charge not covered by a party’s insurance remains a debt of the party receiving the fire service.
2. Parties billed for fire service will have 90 days to pay. If the fire service charge is not paid by that time, it will be considered delinquent and the City will send a notice of delinquency.
3. If the fire service charge remains unpaid for 30 days after the notice of delinquency is sent, the City will use all practical and reasonable legal means to collect the fire service charge. The party receiving fire service shall be liable for all collection costs incurred by the City including, but not limited to, reasonable attorney fees and court costs.
4. If the fire service charge remains unpaid for 30 days after the notice of delinquency is sent, the City shall on or before October 15 of each year, certify the unpaid fire service charge

to the county auditor in which the recipient of the services owns real property for collection with property taxes. The county auditor is responsible for remitting to the city all charges collected on behalf of the city. The City must give the property owner notice of its intent to certify the unpaid fire service charge by September 15.

5. False alarms will be billed per fiscal calendar year (December through November) and shall be set by the City's Schedule of Fees.
- G. Mutual Aid Agreement. When the City fire department provides fire service to another fire department pursuant to a Mutual Aid Agreement, the billing will be determined by the Mutual Aid Agreement.
- H. Application of Collections to Budget. All collected fire charges will be city funds and used to offset the expenses of the City fire department in providing fire services.

PLANNING COMMISSION

31.45 ESTABLISHMENT OF THE PLANNING COMMISSION

A Planning Commission for the city is hereby established. The Planning Commission shall be the city planning agency authorized by Minnesota Statutes, as amended.

31.46 COMPOSITION

- A. The Planning Commission shall consist of five members from the resident population of the city to be appointed by the Mayor with the approval of the City Council. The appointees shall be appointed to serve staggered terms of three years, except as noted below, commencing on the first day of January in the year of appointment. Upon expiration of a term, the appointee shall continue until reappointed or a successor is appointed. Absences from any three meetings in a year, unless excused in advance by the Chair, constitutes a vacancy. In the event of any vacancy, the Mayor, with the approval of the City Council, shall appoint a person to complete the unexpired term.
- B. One member may be a Council Member or the City Clerk, to be appointed by the Mayor with the approval of the City Council. This member shall serve for a one year term, to expire on December 31 of each year.

- C. Other persons may serve in an ex officio capacity as the City Council may, in its discretion, deem appropriate.
- D. Each of the five regular Planning Commission members shall have equal voting privileges. Any member may be removed for cause by majority vote of the City Council upon written charge and after a public hearing.

31.47 ORGANIZATION, MEETINGS, MINUTES AND EXPENDITURES

- A. At the first meeting in each calendar year, the Planning Commission shall elect a Chairperson, a Vice-Chairperson and a Secretary from among its appointed members, each for a term of one year. The Planning Commission may create and fill other offices as it may determine.
- B. Meetings may be called at any time by the Chairperson, or in the case of the Chairperson's absence, by the Vice-Chairperson. The meeting time and location shall be posted in the City Office no later than 24 hours prior to the meeting.
- C. Written minutes of meetings shall be kept and filed with the City Clerk prior to the next regularly scheduled City Council meeting, but shall be subject to the approval at the next Planning Commission meeting.
- D. No expenditures by the Planning Commission shall be made unless and until authorized for the purpose by the City Council.

31.48 POWERS AND DUTIES; COMPREHENSIVE PLAN

- A. *Generally.* The Planning Commission shall have the powers and duties given to city planning agencies generally by law. The Planning Commission shall also exercise the duties conferred upon it by this code. It shall be the purpose of the Planning Commission to prepare and adopt a comprehensive plan for the physical development of the city, including proposed public buildings, street arrangements and improvements, efficient design of major thoroughfares for moving of traffic, parking facilities, public utilities services, parks and playgrounds, a general land use plan and other matters relating to the physical development of the city. This plan may be prepared in sections, each of which shall relate to a comprehensive plan program. After the Planning Commission has prepared and adopted the comprehensive plan, it shall periodically, but at least every three years, review the comprehensive plan and any ordinances or programs implementing the plan.

- B. *Means of executing plan.* Upon the adoption of a comprehensive plan or any section thereof, it shall be the concern of the Planning Commission to recommend to the City Council reasonable and practical means for putting into effect the plan or section thereof in order that it will serve as a pattern and guide for the orderly physical development of the city and as a basis for judging the timely disbursements of funds to implement the objective. Means of effectuating the plan shall, among other things, consist of a zoning ordinance, subdivision regulations, capital improvement programming and technical review, and recommendations of matters referred to the Planning Commission by the City Council.

- C. *Zoning ordinance.* Pursuant to Minnesota Statutes, as amended from time to time, the Planning Commission shall review all proposed amendments to the zoning ordinance, take part in public hearings, and make recommendations to the City Council as may be prescribed by the zoning ordinance.

- D. *Special permits.* The Planning Commission may make recommendations on all requests for a conditional use permit under the terms of the zoning ordinance. The Planning Commission shall report its recommendations to the City Council for action.

- E. *Subdivision regulations.* The Planning Commission may make recommendations in relation to the subdividing of land as prescribed by the ordinance. The Planning Commission shall report its recommendations to the City Council for action.

- F. *Variances.* All applications for variances shall be referred to the Planning Commission which shall have the powers of a Board of Appeals and adjustments as provided for in Minnesota Statutes, as amended from time to time, and forwarded with or without recommendations directly to the City Council for its decision. Variances may be granted from the literal provisions of an ordinance only where strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration as authorized by Minnesota Statutes, as amended from time to time.

31.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by State statute(s) shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 32:
EMERGENCY MANAGEMENT**

Section

32.01	Policy and purpose
32.02	Definitions
32.03	Establishment of emergency management organization
32.04	Powers and duties of Director
32.05	Local emergencies
32.06	Emergency regulations
32.07	Emergency management a government function
32.08	Participation in labor disputes or politics
32.99	Penalty

32.01 POLICY AND PURPOSE

Because of the existing possibility of the occurrence of disasters of unprecedented size and destruction resulting from fire, flood, tornado, blizzard, destructive winds or other natural causes, or from sabotage, hostile action, or from hazardous material mishaps of catastrophic measure; and in order to insure that preparations of this city will be adequate to deal with those disasters, and generally, to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of this city, it is hereby found and declared to be necessary:

- A. To establish a city emergency management organization responsible for city planning and preparation for emergency government operations in time of disasters.
- B. To provide for the exercise of necessary powers during emergencies and disasters.
- C. To provide for the rendering of mutual aid between this city and other political subdivisions of this state and of other states with respect to the carrying out of emergency-preparedness functions.
- D. To comply with the provisions of Minnesota Statutes, as it may be amended from time to time, which requires that each political subdivision of the state shall establish a local organization for emergency management.

32.02 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DISASTER. A situation which creates an immediate and serious impairment to the health and safety of any person, or a situation which has resulted in or is likely to result in catastrophic loss to property, and for which traditional sources of relief and assistance within the affected area are unable to repair or prevent the injury or loss.

EMERGENCY. An unforeseen combination of circumstances which calls for immediate action to prevent from developing or occurring.

EMERGENCY MANAGEMENT. The preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by fire, flood, tornado, and other acts of nature, or from sabotage, hostile action, or from industrial hazardous material mishaps. These functions include, without limitation, fire-fighting services, police services, emergency medical services, engineering, warning services, communications, radiological, and chemical, evacuation, congregate care, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to civil protection, together with all other activities necessary or incidental for carrying out the foregoing functions. Emergency management includes those activities sometimes referred to as “civil defense” functions.

EMERGENCY MANAGEMENT FORCES. The total personnel resources engaged in city-level emergency management functions in accordance with the provisions of this chapter or any rule or order thereunder. This includes personnel from city departments, authorized volunteers, and private organizations and agencies.

EMERGENCY MANAGEMENT ORGANIZATION. The staff responsible for coordinating city-level planning and preparation for disaster response. This organization provides city liaison and coordination with federal, state, and local jurisdictions relative to disaster preparedness activities and assures implementation of federal and state program requirements.

§ 32.03 ESTABLISHMENT OF EMERGENCY MANAGEMENT ORGANIZATION.

There is hereby created within the city government an emergency management organization which shall be under the supervision and control of the City Emergency Management Director, called the Director. The Director shall be appointed by the Mayor with approval of the City Council for an indefinite term and may be removed by him or her at any time. The Director shall serve with a salary as established by the City Council and shall be paid his or her necessary expenses. The Director shall have direct responsibility for the organization, administration and operation of the emergency preparedness organization, subject to the direction and control of the Mayor.

§ 32.04 POWERS AND DUTIES OF DIRECTOR.

- A. The Director, with the consent of the Mayor, shall represent the city on any regional or state conference for emergency management. The Director shall develop proposed mutual aid agreements with other political subdivisions of the state for reciprocal emergency management aid and assistance in an emergency too great to be dealt with unassisted, and shall present these agreements to the Council for its action. These arrangements shall be consistent with the State Emergency Plan.
- B. The Director shall make studies and surveys of the human resources, industries, resources, and facilities of the city as deemed necessary to determine their adequacy for emergency management and to plan for their most efficient use in time of an emergency or disaster. The Director shall establish the economic stabilization systems and measures, service staffs, boards, and sub-boards required, in accordance with state and federal plans and directions subject to the approval of the Mayor.
- C. The Director shall prepare a comprehensive emergency plan for the emergency preparedness of the city and shall present the plan to the Council for its approval. When the Council has approved the plan, it shall be the duty of all city agencies and all emergency preparedness forces of the city to perform the duties and functions assigned by the plan as approved. The plan may be modified in like manner from time to time. The Director shall coordinate the emergency management activities of the city to the end that they shall be consistent and fully integrated with the emergency plans of the federal government and the state and correlated with emergency plans of the county and other political subdivisions within the state.
- D. In accordance with the State and City Emergency Plan, the Director shall institute training programs, public information programs and conduct practice warning alerts and emergency

exercises as may be necessary to assure prompt and effective operation of the City Emergency Plan when a disaster occurs.

- E. The Director shall utilize the personnel, services, equipment, supplies, and facilities of existing departments and agencies of the city to the maximum extent practicable. The officers and personnel of all city departments and agencies shall, to the maximum extent practicable, cooperate with and extend services and facilities to the city's emergency management organization and to the Governor upon request. The head of each department or agency in cooperation with the Director shall be responsible for the planning and programming of those emergency activities as will involve the utilization of the facilities of the department or agency.
- F. The Director shall, in cooperation with those city departments and agencies affected, assist in the organizing, recruiting, and training of emergency management personnel, which may be required on a volunteer basis to carry out the emergency plans of the city and state. To the extent that emergency personnel are recruited to augment a regular city department or agency for emergencies, they shall be assigned to the departments or agencies and shall be under the administration and control of the department or agency.
- G. Consistent with the state emergency services law, the Director shall coordinate the activity of municipal emergency management organizations within the city and assist in establishing and conducting training programs as required to assure emergency operational capability in the several services as provided by M.S. ' 12.25, as it may be amended from time to time.
- H. The Director shall carry out all orders, rules, and regulations issued by the Governor with reference to emergency management.
- I. The Director shall prepare and submit reports on emergency preparedness activities when requested by the Mayor.

32.05 LOCAL EMERGENCIES

- A. A local emergency may be declared only by the Mayor or his or her legal successor. It shall not be continued for a period in excess of three days except by or with the consent of the Council. Any order, or proclamation declaring, continuing, or terminating a local emergency shall be given prompt and general publicity and shall be filed in the office of the City Clerk.

- B. A declaration of a local emergency shall invoke necessary portions of the response and recovery aspects of applicable local or inter-jurisdictional disaster plans, and may authorize aid and assistance thereunder.
- C. No jurisdictional agency or official may declare a local emergency unless expressly authorized by the agreement under which the agency functions. However, an inter-jurisdictional disaster agency shall provide aid and services in accordance with the agreement under which it functions.

32.06 EMERGENCY REGULATIONS

- A. Whenever necessary, to meet a declared emergency or to prepare for an emergency for which adequate regulations have not been adopted by the Governor or the Council, the Council may by resolution promulgate regulations, consistent with applicable federal or state law or regulation, respecting: the conduct of persons and the use of property during emergencies; the repair, maintenance, and safeguarding of essential public services, emergency health, fire, and safety regulations, drills or practice periods required for preliminary training, and all other matters which are required to protect public safety, health, and welfare in declared emergencies.
- B. Every resolution of emergency regulations shall be in writing; shall be dated; shall refer to the particular emergency to which it pertains, if so limited, and shall be filed in the office of the City Clerk. A copy shall be kept posted and available for public inspection during business hours. Notice of the existence of these regulations and their availability for inspection at the City Clerk's Office shall be conspicuously posted at the front of the city hall or other headquarters of the city or at other places in the affected area as the Council shall designate in the resolution. By resolution, the Council may modify or rescind a regulation.
- C. The Council may rescind any regulation by resolution at any time. If not sooner rescinded, every regulation shall expire at the end of 30 days after its effective date or at the end of the emergency to which it relates, whichever comes first. Any resolution, rule, or regulation inconsistent with an emergency regulation promulgated by the Council shall be suspended during the period of time and to the extent conflict exists.
- D. During a declared emergency, the city is, under the provisions of Minnesota Statutes, as it may be amended from time to time and notwithstanding any statutory or Charter provision to the contrary, empowered, through its Council, acting within or without the corporate limits of the city, to enter into contracts and incur obligations necessary to combat the disaster by protecting

the health and safety of persons and property and providing emergency assistance to the victims of a disaster. The city may exercise these powers in the light of the exigencies of the disaster without compliance with the time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering rental equipment agreements, purchase of supplies and materials, limitations upon tax levies, and the appropriation and expenditure of public funds, including, but not limited to, publication of resolutions, publication of calls for bids, provisions of personnel laws and rules, provisions relating to low bids, and requirement for bids.

32.07 EMERGENCY MANAGEMENT A GOVERNMENT FUNCTION

All functions and activities relating to emergency management are hereby declared to be governmental functions. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this resolution or under the worker's compensation law, or under any pension law, nor the right of any person to receive any benefits or compensation under any act of Congress.

32.08 PARTICIPATION IN LABOR DISPUTES OR POLITICS

The emergency management organization shall not participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes, nor shall it be employed in a labor dispute.

32.99 PENALTY

~~Any person who violates any provision of this chapter or any regulation adopted thereunder relating to acts, omissions, or conduct other than official acts of city employees or officers is guilty of a misdemeanor.~~

32.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by State statute(s) shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

CHAPTER 33: CITY PERSONNEL

Section

33.01 Offices of Clerk and Treasurer Combined

33.02 Employment Background Checks

33.01 OFFICES OF CLERK AND TREASURER COMBINED

The offices of Clerk and Treasurer in the City of Franklin, Renville County, Minnesota, are hereby combined in the office of Clerk-Treasurer.

33.02 EMPLOYMENT BACKGROUND CHECKS

A. **PURPOSE:** The purpose and intent of this section is to establish regulations that will allow law enforcement access to Minnesota's Computerized Criminal History information for specified non-criminal purposes of employment background checks for the positions described in (B)1.

B. CRIMINAL HISTORY EMPLOYMENT BACKGROUND INVESTIGATIONS:

1. The City's law enforcement authority is hereby required to do a criminal history background investigation on the applicants for the following positions within the City, unless the City's hiring authority concludes that a background investigation is not needed:
 - a. All regular part-time or full-time employees; and
 - b. All other positions that work with children or vulnerable adults.

In conducting the criminal history background investigation in order to screen employment applicants, the City's law enforcement authority is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions (BCA) Computerized Criminal History information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the Computerized Criminal History data may be released by the City's law enforcement authority to the hiring authority, including the City Council, the City Clerk, or other city staff involved in the hiring process.

2. Before the investigation is undertaken, the applicant must authorize the City by written consent to undertake the investigation. The written consent must fully comply with the provisions of Minnesota Statutes, Chapter 13, regarding the collection, maintenance and use of the information. Except for the positions set forth in Minnesota Statutes, Section 364, the City will not reject an applicant for employment on the basis of the applicant's prior conviction unless the crime is directly related to the position of employment sought and the conviction is for a felony, gross misdemeanor, or misdemeanor with a jail sentence. If the City rejects the applicant's request on this basis, the City shall notify the applicant in writing of the following:
 - a. The grounds and reasons for the denial;
 - b. The applicant complaint and grievance procedure set forth in Minnesota Statutes, Section 364;
 - c. The earliest date the applicant may reapply for employment; and
 - d. That all competent evidence of rehabilitation will be considered upon reapplication.

**CHAPTER 34:
ANNEXATION AND VACATION OF LAND**

Section

Annexations

- 34.01 Annexation of 5.56 Acres in 1961
- 34.02 Birch Coulee Addition in 1978
- 34.03 Annexation of Former County Boat Landing Site
- 34.04 Birch Coulee Addition in 2006
- 34.05 Birch Coulee Addition in 2008

34.01 ANNEXATION OF 5.56 ACRES IN 1961

An ordinance annexing certain lands to the Village of Franklin.

Pursuant to Chapter 645, laws 1961, Section 3, (N.S.A. 414.03, subd. 2) and;

WHEREAS, the following described lands, abut on the Village of Franklin, a municipal corporation and;

WHEREAS, said described lands are not included in any other municipality, and said land does not exceed 200 acres, and;

WHEREAS, the sole owner of said lands has petitioned the governing body of the Village of Franklin, to have such land included within the municipality and of the territory affected.

NOW THEREFORE, the Village Council of the Village of Franklin do ordain as follows:

That the following described lands, the north 311 feet of the west 518.1 feet of the Northwest quarter of the United States Lot 1 of Section 12, township 112, range 34 west containing 3.70 acres, and the north 311 feet of the east 260 feet of the northwest quarter of the southeast quarter of section 11, township 112, range 34 west, containing 1.86 acres, abutting upon the incorporated Village of Franklin, be and the same are hereby annexed to such village and shall be a part of such village as effectually as if they had been originally a part thereof.

34.02 BIRCH COULEE ADDITION IN 1978

An Ordinance annexing certain Birch Coulee land into the City of Franklin.

WHEREAS, Mary Ann Woelfel, the owner of the following described land, requested the City of Franklin to annex said land in her Petition dated June 12, 1978;

WHEREAS, the town Board of the Township of Birch Coulee, in which the following described land is located, has stated that it has no objection to the annexation of the following described land to the City of Franklin and waives the 90 days before a city ordinance can be adopted by its waiver dated July 14, 1978; and

WHEREAS, The City Council of the City of Franklin has determined that the annexation of said land will be to the best interests of the City of Franklin and of the land itself, in that the land is currently in use as a service station and restaurant of an urban character; in that the annexation of said land will add to the tax base of the City of Franklin and will permit the City of Franklin to extend fire protection to said land; and also in that the annexation of said land will make possible the extension of city services to said land at some time in the future;

NOW THEREFORE, the City Council of the City of Franklin, County of Renville, State of Minnesota, does ordain and declare:

That the following described land is hereby annexed to the City of Franklin, to-wit:

Webb Oil Station Lot in the Northeast Quarter of the Southeast Quarter of Section Two (2) in the Township One Hundred Twelve (112) North of Range Thirty-four (34) West of the Fifth P.M. according to plat thereof on file and of record in the office of the Register of Deeds in and for said County of Renville and State of Minnesota, and

The following property situated in Section Two (2), Township One Hundred Twelve (112), Range Thirty four (34): Beginning at a point where State Highway #19 intersects County Road #5, thence southerly along said County Road #5 a distance of 17.5 feet, thence southerly along said County road #5 a distance of 58 feet, thence westerly at a right angle, a distance of 200 feet, along the northerly edge of a private road as now established, thence northerly at a right angle a distance of 274 feet to a point where Highway #19 intersected thereby, thence southeasterly along said Highway #19 to a point joining the northwest corner of the Webb Oil Station lot according to the plat thereof, thence southerly along westerly boundary of the said Webb Oil Station lot, a distance of 182.5 feet to the southwest corner of said lot, thence easterly a distance of 159 feet, along said south boundary of said Webb Oil Station lot to point of beginning, all in Renville County, Minnesota.

34.03 ANNEXATION OF FORMER COUNTY BOAT LANDING SITE LOCATED IN SECTIONS 11 AND 12 OF BIRCH COOLEY TOWNSHIP (TOWNSHIP 112 NORTH, RANGE 34 WEST)

THE CITY OF FRANKLIN DOES ORDAIN:

1. The City Council hereby determines and finds that the property is now owned by the City of Franklin pursuant to a deed from the County of Renville dated June 14, 1993; that the area is deemed to be urban or suburban in character; and that the annexation of such lands are permitted by Minnesota Statute 414.033, Subd. 2 (1).
2. The Corporate Limits of the City of Franklin are hereby extended to include the former boat landing site, more particularly described on Exhibit A which attach hereto and incorporated herein; and same is hereby annexed to and included in the City of Franklin as if the property had originally been a part thereof.
3. The City Clerk is authorized and directed to file a certified copy of this Ordinance with the Minnesota Municipal Board, Birch Cooley Township, the Renville County Auditor and the Minnesota Secretary of State.

EXHIBIT A:

A piece of land running over and across the Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4) , Section Eleven (11) , Township One Hundred Twelve (112) North, Range Thirty-four (34) West, the description being as follows: Commencing at a point on section line 728 feet south of the east quarter corner of Section 11, Township 112 North, Range 34 West, thence on an angle 74°24' to the left a distance of 330 feet in a northwesterly direction; thence on an angle 135°32' to the left a distance of 630 feet in a southeasterly direction; thence on an angle 150°04' to the left a distance of 460 feet on section line to the point of beginning. This being 1.68 acres, more or less, AND

A piece of land running over and across the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) , Section Twelve (12) , Township One Hundred Twelve (112) North, Range Thirty-four (34) West , the description being as follows: Commencing at a point on section line 728 feet south of the west quarter corner of Section 12, Township 112 North, Range 34 West, thence on an angle 111°12' to the right 419 feet on a southeasterly direction; thence on an angle 77°12' to the right 555 feet in a southerly direction to the south line of the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) of Section 12, Township 112 North, Range 34 West; thence on an angle 81°0' to the right a distance of 175 feet in a westerly direction

(NW1/4SW1/4) of Section 12, Township 112 North, Range 34 West; thence on an angle 60°40' to the right a distance of 275 feet in a northwesterly direction; thence on an angle 29°56' to the right a distance of 460 feet on section line to the point of beginning. This being 4.52 acres, more or less.

34.04 AN ORDINANCE OF THE CITY OF FRANKLIN, MINNESOTA ANNEXING LAND LOCATED IN THE TOWNSHIP OF BIRCH COOLEY, RENVILLE COUNTY, MINNESOTA, TO THE CITY OF FRANKLIN, RENVILLE COUNTY, FRANKLIN, MINNESOTA, PURSUANT TO MINN. STAT. §414.033, SUBD. 2 (3), PERMITTING ANNEXATION BY ORDINANCE.

WHEREAS, a certain petition dated May 8, 2006, requesting annexation of the territory hereinafter described was duly presented to the council on the 12th day of June, 2006; and

WHEREAS, the petition was signed by all owners of the territory to be annexed; and

WHEREAS, no objections to the annexation have been received from the town board, or the government body of any municipality whose boundaries abut upon the boundaries of the land to be annexed; and

WHEREAS, a hearing was duly held on July 10, 2006, by the governing body of the City of Franklin, Minnesota, on the proposed annexation after at least 30 days' written notice by certified mail pursuant to statute; and

WHEREAS, the land described in the petition abuts upon the city limits at the southerly boundary thereof, is approximately 0.80 acres in size and none of it is presently included within the corporate limits of any incorporated city;

WHEREAS, the land is or is about to become urban or suburban in character; is unplatted land less than 60 acres in size and is not presently served by public sewer facilities, with a current population of 5;

WHEREAS, the Township of Birch Cooley and the City of Franklin have duly agreed that no reimbursement of taxes will be made by the municipality to the township, and the city will not levy on the parcel until levy year 2007;

NOW THEREFORE:

The council of the City of Franklin, Minnesota ordains:

Section 1. The city council hereby determines (1) that the territory described herein abuts upon the city limits and is or is about to become urban or suburban in character; and (2) that none of the territory is now included within the limits of any city.

Section 2. The population of the territory is five.

Section 3. Territory annexed. The corporate limits of the city are hereby extended to include the unplatted land described as follows and the same is hereby annexed to and included within the city as effectually as if it had originally been a part thereof:

Real property in the County of Renville, State of Minnesota described as follows:

That part of United States Lot One (1) in the Southwest Quarter of Section Twelve (12), Township One Hundred Twelve (112), Range Thirty-Four (34), described as follows: Commencing at the west quarter corner of said Section 12; then north 90° 00' 00" east, an assumed bearing, along the north line of said United States Lot 1 a distance of 682.84 feet to the point of beginning; then continuing north 90° 00' 00" east along said north line 170.00 feet; then south 00° 00' 00" west 205.00 feet; then south 90° 00' 00" west 170.00 feet; then north 00° 00' 00" east 205.00 feet to the point of beginning.

Section 4. Zoning. The land shall be zoned R-1, Low Density Residential District, as is the contiguous boundary.

Section 5. Filing. The city clerk is hereby directed to file certified copies of this ordinance with the Minnesota Office of Strategic and Long Range Planning, the Secretary of State, the Town Clerk, and the County Auditor.

Section 6. Effective Date. This ordinance takes effect upon its passage and publication and the filing of the certified copies as directed in Section 5, and approval of the ordinance by the Director of the Minnesota Office of Strategic and Long Range Planning.

Adopted by the council of the City of Franklin, Minnesota this 14th day of August, 2006.

34.05 AN ORDINANCE OF THE CITY OF FRANKLIN ANNEXING LAND LOCATED IN THE TOWN OF BIRCH COOLEY, RENVILLE COUNTY, MINNESOTA PURSUANT TO MINNESOTA STATUTES § 414.033 SUBDIVISION 5, PERMITTING ANNEXATION BY ORDINANCE PURSUANT TO PETITION OF PROPERTY OWNERS

WHEREAS, a petition signed by all the property owners requesting that property legally described on the attached Exhibit A be annexed to the City of Franklin, Minnesota, was duly presented to the City Council of the City of Franklin on the 10th day of March, 2008; and

WHEREAS, said property is unincorporated and abuts the City of Franklin on its east boundary; and

WHEREAS, said property is not located within a flood plain or shoreland area, or delineated wetland area; and

WHEREAS, said property is currently agricultural and annexation is requested to facilitate the extension of city services for the commercial/industrial development of the property; and

WHEREAS, the City of Franklin held a hearing on March 10, 2008, following receipt of the petition of all property owners within the area proposed to be annexed; and

WHEREAS, the City has given the petitioners notice that the cost of electric utility service may change upon annexation, and provided an estimate of the cost of impact of any change in electric utility services, including rate changes and assessments, resulting from annexation, as required by Minnesota Statutes section 414.033, subdivision 13.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FRANKLIN HEREBY ORDAINS AS FOLLOWS:

1. The City Council hereby determines that the property as hereinafter described abuts the city limits and is or is about to become urban or suburban in nature in that a commercial/industrial use is being proposed for said property, the construction of which requires or will need city services, including public sewer facilities.
2. None of the property is now included within the limits of any city, or in any area that has already been designated for orderly annexation pursuant to Minnesota Statute § 414.0325.
3. The corporate limits of the City of Franklin, Minnesota, are hereby extended to include the following described property on Exhibit A, pursuant to a petition of all the affected property owners (Exhibit C), said land abutting the City of Franklin to the east.

The described property on Exhibit A consists of 12 acres, more or less. Copies of the corporate boundary map showing the property to be annexed and its relationship to the corporate boundaries and all appropriate plat maps are attached hereto as Exhibit D.

4. That the population of the area legally described on the attached Exhibit A and hereby annexed is -0-.

5. The City of Franklin, pursuant to Minnesota Statutes § 414.036, with respect to the property taxes payable in the area legally described on the attached Exhibit A, hereby annexed, states that the Town of Birch Cooley and the City of Franklin have duly agreed that no reimbursement of taxes will be made by the City to the Town, and the City will not levy on the parcels to be annexed until levy year 2009 and pursuant to Town of Birch Cooley Resolution.

6. That pursuant to Minnesota Statutes § 414.036 for the area legally described on Exhibit A there are no special assessments or debt incurred by the Town on the subject area for which reimbursement is required.

7. That the City Clerk of the City of Franklin is hereby authorized and directed to file a copy of this Ordinance with the Municipal Boundary Adjustment Unit of the Minnesota Office of Administrative Hearings, the Minnesota Secretary of State, the Renville County Auditor, and the Birch Cooley Township Clerk.

8. That this Ordinance shall be in full force and effect and final upon the date this Ordinance is approved by the Office of Administrative Hearings.

EXHIBIT A
Legal Descriptions of Annexed Property

A seven acre portion of parcel 03-00040-00, whose legal description is:
the northern most 7 acres of that part of the Southeast Quarter (SE 1/4) of Section 1, Town 112, Range 34, lying south of State Highway 19;

And parcel 03-00041-00, whose legal description is:
A five acre (more or less) building site located in the South Half of the Southeast Quarter of Section 1, Town 112, Range 34.

**CHAPTER 35:
RURAL SERVICE DISTRICT AND URBAN SERVICE DISTRICT**

City of Franklin Ordinance No. 47 (July 1972), Re-Ordained into the City of Franklin Code of Ordinances as Chapter 35, Rural Service District and Urban Service District.

An ordinance dividing the City of Franklin into a Rural Service District and an Urban Service District.

Section

- 35.01 Purpose
- 35.02 Rural Service District
- 35.03 Urban Service District
- 35.04 Benefit Ratio

35.01 PURPOSE

The purpose of this ordinance is to divide the City of Franklin into an Urban Service District and a Rural Service District, constituting separate taxing districts for the purpose of all municipal property taxes except those levied for the payment of bonds and judgments and interest thereon, in accordance with the laws of the State of Minnesota.

35.02 RURAL SERVICE DISTRICT

The Rural Service District will include the following unplatted lands which are rural in character and are not developed for commercial, industrial, or urban residential purposes, and for these reason are not benefited to the same degree as other lands by municipal services financed by general taxation:

<u>Parcel Number</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Acres</u>
32-00005-00	1	112	34	22.17
32-00010-00	1	112	34	5.00
32-00011-00	1	112	34	7.81
32-00015-00	1	112	34	3.18
32-00020-00	1	112	34	20.48
32-00030-00	1	112	34	19.57
32-00040-00	2	112	34	5.22
32-00050-00	2	112	34	68.53
32-00052-00	2	112	34	4.88
32-00053-00	2	112	34	29.03
32-00055-00	2	112	34	7.96
32-00060-00	2	112	34	7.85
32-00070-00	2	112	34	17.6

32-00075-00	2	112	34	15.09
32-00076-00	2	112	34	0.35
32-00080-00	11	112	34	2.25
32-00085-00	11	112	34	37.87
32-00095-00	11	112	34	7.13
32-00096-00	11	112	34	1.30
32-00115-00	12	112	34	19.80
32-00125-00	12	112	34	33.59
32-00150-00	12	112	34	6.33
32-00151-00	12	112	34	0.08
32-00160-00	12	112	34	40.00
32-00170-00	12	112	34	15.00
32-00180-00	12	112	34	5.84
32-00295-00	2	112	34	7.57

35.03 URBAN SERVICE DISTRICT

The Urban Service District shall include all lands within the boundaries of the City of Franklin which are not included in the Rural Service District.

35.04 BENEFIT RATIO

The approximate ratio which exists between the benefits resulting from tax supported municipal service to parcels of land situated in the Rural Service District to parcels of land of a like full and true value situated in the Urban Service District is 1 to 7 and a benefit ratio of 1 to 7 is hereby established.

**TITLE IV:
FRANCHISES**

CHAPTERS

41. MEDIACOM..... 4-1

CHAPTER 41: MEDIACOM

Section

- 41.01 Purpose
- 41.02 Statement of Intent
- 41.03 Findings
- 41.04 Definitions
- 41.05 Grant of Authority and General Provisions
- 41.06 Constructions Standards
- 41.07 Design Provisions
- 41.08 Service Provisions
- 41.09 Public Access Provisions
- 41.10 Operation and Administration Provisions
- 41.11 General Financial and Insurance Provisions
- 41.12 Sale, Abandonment, Transfer and Revocation of Franchise
- 41.13 Protection of Individual Rights
- 41.14 Unauthorized Connections and Modifications
- 41.15 Miscellaneous Provisions
- 41.16 Publication Effective Date; Acceptance and Exhibits

41.01 PURPOSE

AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA LLC TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF FRANKLIN; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS

41.02 STATEMENT OF INTENT

The City intends, by the adoption of this Franchise, to bring about the further development and continued operation of a Cable Communications System. Such development can contribute significantly to the communication needs and desires of many. Further, the City may achieve better utilization and improvement of public services with the development and operation of a Cable Communication System.

Past studies by the City have led the way for organizing a means of procuring and securing of Cable Communications System which, in the judgment of the Council, is best suited to the City. This has resulted in the preparation and adoption of this Franchise.

41.03 FINDINGS

In the review of the proposal and application of Mediacom Minnesota LLC (“Grantee”), the City Council makes the following findings:

- A. The Grantee’s technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
- B. Grantee’s plans for constructing and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
- C. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
- D. The Franchise granted to Grantee is nonexclusive.

41.04 DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

“**Basic Service**” means any service tier which includes the retransmission of local television broadcast signals.

“**City**” means City of Franklin, a municipal corporation, in the State of Minnesota, acting by and through its City Council.

“**City Council**” means the Franklin, Minnesota City council.

“**Cable Communications System**” or “**System**” means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment, or facilities located in City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and other forms of electronic signals in City. System as defined herein shall not be inconsistent with the definition as set forth in Minn. Stat. §238.02, subd. 3 and 47 U. S. C. §522 (6).

“**Cable Television Service**” means the provision of television reception, communications and/or entertainment services for direct or indirect compensation, or as otherwise provided by this ordinance, and distributing the same over a Cable Communications System.

“**Converter**” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.

“**Drop**” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.

“**FCC**” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

“**Grantee**” is Mediacom Minnesota LLC, its agents, employees, lawful successors, transferees or assignees.

“**Gross Revenues**” means all compensation received directly by the Grantee from the operation of its System within the City, limited to sums received from subscribers, including but not limited to Basic Service Subscriber fees, Pay Television fees, Installation and reconnection fees, Converter rental or Lockout Device fees. Gross Revenues shall not include franchise fees or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

“**Installation**” means the connection of the System from feeder cable to the point of connection, including, Standard Installations and custom installations.

“**Lockout Device**” means an optional mechanical or electrical accessory to a Subscriber’s terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.

“**Pay Television**” means the delivery over the System of per-channel or per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Service.

“**Person**” is any person, firm, partnership, association, corporation, company, or other legal entity.

“**Standard Installation**” means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.

“**Street**” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.

“**Subscriber**” means any Person who receives Basic and/or Pay Television cable communications services. In case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

41.05 GRANT OF AUTHORITY AND GENERAL PROVISIONS

- A. **Franchise Required.** It shall be unlawful for any person to construct, operate or maintain a Cable Communications System in the City unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise granted pursuant to this Ordinance. It shall also be unlawful for any person to provide Cable Television Service in the City unless such person shall have first obtained and shall currently hold a valid Franchise granted pursuant to the provisions of this Ordinance. All Franchises granted by the City pursuant to this Ordinance shall contain the same substantive terms and conditions.
- B. **Grant of Franchise.** This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations.
- C. **Grant of Nonexclusive Authority.**

1. The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a System as herein defined.
2. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if City in its sole opinion determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or with the present use of the Street.
3. This Franchise shall be nonexclusive, and the City reserves the right to grant a similar use of said Streets, alleys, public ways and places, to any Person at any time during the period of this Franchise, provided, however, that any additional Franchise grants shall be under the same substantive terms and conditions as this Franchise.
4. Grantee shall have the authority to use City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to include cable television services as part of any provisions for utilities to serve such subdivisions. Grantee shall also be allowed to maintain Grantee's existing tower located within the City limits throughout the term of the Franchise. Any material modification, shall be subject to all applicable City laws, ordinances and regulations.

D. **Franchise Term.** This Franchise shall be in effect for a period of five (5) years from the date of acceptance by Grantee unless renewed, revoked or terminated sooner, provided, however, that the City shall have the right to extend the term for an additional ten (10) years if, by the end of the initial term there have been no amendments or changes in Minnesota Statutes, Chapter 238 materially impacting the City or Grantee's cable franchising rights or obligations. In the event the City wishes to extend, the City shall give written notice thereof at least ninety (90) days prior to expiration. Grantee shall have thirty (30) days after receipt of a notice of extension in which to contest City's right to extend and, if Grantee does not timely contest, the Franchise term shall thereafter be deemed to extend for fifteen (15) years from the date of acceptance by Grantee.

E. **Compliance with Applicable Laws, Resolutions and Ordinances.** The Grantee shall at all times during the life of this Franchise be subject to all lawful exercise of the police power and the right of eminent domain by the City. This Franchise complies with the Minnesota franchise standards contained in Minn. Stat. §238.01 et seq.

- F. **Rules of Grantee.** The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, the City, or any other body having lawful jurisdiction thereof.
- G. **Territorial Area Involved.** This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. Grantee shall construct the System so as to offer Cable Television Service where there is a minimum of twenty (20) homes per cable mile. In the event of annexation by the City, or as development occurs, any new territory or homes shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty (20) homes per cable mile. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service newly annexed or developed areas.
- H. **Written Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of Franklin
320 Second Avenue East
Franklin, Minnesota 55333
Attention: City Clerk

If to Grantee: Mediacom Minnesota LLC
Regional Manager
1504 Second St. SE
Waseca, MN 56093

With copy to: Mediacom Communications Corp.
Vice President of Legal & Regulatory Affairs
100 Crystal Run Road
Middletown, NY 10941

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

- I. **Drops and Services to Public Buildings.** Grantee shall provide Installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Service without charge to the following institutions and such other public or educational institutions located within one hundred fifty (150) feet of the System which City may designate:

City Hall
Fire Hall
School
Water Tower

Additional Drops and/or outlets in any of the above locations will be provided at the cost of Grantee's time and material. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by City. Grantee shall have one (1) year from the date of City Council designation of additional institution(s) to complete construction of the Drop and outlet.

At City's request, Grantee shall provide cable modem (internet access) service to the City's Water Tower site at a rate equal to or less than Grantee's then-current residential rate for such service.

41.06 CONSTRUCTION STANDARDS

- A. **Construction Standards.** Grantee shall continue to make cable service available for Subscribers upon adoption of this Franchise. If any subsequent rebuild of the System consists of fewer than one hundred (100) plant miles of cable:
1. The Grantee shall promptly apply for the necessary governmental permits, licenses, certificates, and authorizations;
 2. The energized trunk cable must be extended substantially throughout the authorized area within one (1) year after receipt of the necessary governmental permits, licenses, certificates, and authorizations and the Persons along the route of the energized cable shall have individual Drops as desired during the same period of time; and
 3. The above-stated requirements may be waived by the City only upon occurrence of acts beyond the reasonable control of Grantee or acts of God.

B. Construction Codes and Permits.

1. Grantee shall obtain all necessary permits from the City before commencing any construction or extension of the System, including the opening or disturbance of any Street, or private or public property within the City. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.
2. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

- C. **Repair of Streets and Property.** Grantee shall make reasonable efforts to avoid damage or disturbance to Streets, public property and private property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by the City in the case of Streets and other public property.

D. Conditions on Street Use.

1. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining; or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
2. All System transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. The Grantee shall furnish to and file with the City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with the City updates of such maps, plats and permanent records annually if changes have been made in the System.
3. If at any time during the period of this Franchise the City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, upon reasonable

notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System at its own expense, and in each instance comply with the standards and specifications of the City.

4. The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Street shall be so placed as to comply with all requirements of the City.
5. The Grantee shall, on request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
6. The Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.
7. Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

E. Undergrounding of Cable.

1. In all areas of the City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of size and design and shall be so located as not to be unsightly or unsafe.
2. In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
3. Grantee shall be granted access to any easements granted to a public utility or utility district in any areas annexed by the City or new developments.

F. **Erection, Removal and Joint Use of Poles.** No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of the City with regard to location, height, type, and other pertinent aspects.

G. **Safety Requirements.**

1. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. The Grantee shall install and maintain its System wires, cables, fixtures and other equipment in accordance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that they will not interfere with any installations of the City or of any public utility serving the City.
3. All System structures and all System lines, equipment and connections in, over, under and upon the Streets, sidewalks, alleys, and public ways and places of the City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.

H. **Emergency Use of Facilities.**

1. In the case of any emergency or disaster, the Grantee shall, upon request of the City, make available its facilities to the City-during the period of emergency or disaster.
2. The City may, in case of fire, disaster, or other emergency, as reasonably determined by the City, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the System.

41.07 DESIGN PROVISIONS

A. **Minimum Channel Capacity.** Grantee shall provide a System which is capable of delivering a minimum of eighty-five (85) channels. All programming decisions remain the sole discretion of Grantee provided that Grantee notifies the City fifteen (15) days prior to any channel additions or deletions.

B. **Operation and Maintenance of System.** The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice and shall occur during periods of minimum use of the System.

- C. **Technical Standards.** The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications Systems contained in Subpart K of Part 76 of the Federal Communications Commissions rules and regulations and found in Federal Regulations, Title 47, Section 76.601 to 76.617, which regulations are expressly incorporated herein by reference.
- D. **Special Testing.** The City may request special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Request for such special tests shall be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance. Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requesting special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy, the tests shall be conducted by a qualified engineer selected by the City. In the event that special testing is required by the City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by the City.
- E. **FCC Reports.** The results of tests required to be filed by Grantee with the FCC shall also be copied to the City upon request by the City.
- F. **Nonvoice Return Capability.** Grantee is required to use cable having the technical capacity for nonvoice return communications.
- G. **Lockout Device.** Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

41.08 SERVICE PROVISIONS

- A. **Regulation of Service Rates.** The City may regulate rates for the provision of cable service or any other communications service provided over the System only to the extent allowed under federal or state law(s). A list of Grantee's current Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give

City written notice of any change in a rate or change no less than thirty (30) days prior to the effective date of the change.

B. **Sales Procedures.** Grantee shall not exercise deceptive sales procedures when marketing its cable television services within the City. Grantee shall have the right to market its cable services door-to-door during reasonable hours.

C. **Subscriber Inquiry and Complaint Procedures.**

1. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven days-a-week basis.
2. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries.
3. Subscriber requests for repairs shall be performed, to the extent possible, within twenty-four (24) hours of the request.
4. Grantee shall not charge for repair or replacement of equipment due to normal wear and tear.

D. **Subscriber Contracts.** Grantee shall submit any Subscriber contract utilized to the City. If no written contract exists, Grantee shall file with the City Clerk a document completely and concisely stating the terms of the residential Subscriber contract offered to customers, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during normal business hours.

E. **Refund Policy.** In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

41.09 PUBLIC ACCESS PROVISIONS

A. **Public, Educational and Government Access.** Grantee shall provide to each of its Subscribers who receive all, or part of, the total services offered on the System, reception on at least one (1) specially designated noncommercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis. The specially designated access channel may be used by local education authorities and local government on

a first-come, first served, nondiscriminatory basis during those hours when the channel is not in use by the general public. During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government, the Grantee shall lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The Grantee may also use the specially designated access channel for local origination during those hours when the channel is not in use by the general public, local educational authorities, local government or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the specially designated access channel required in the section.

- B. **Charges for Use.** Channel time and playback of prerecorded programming on the specially designated access channel must be provided without charge to the general public, except that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for production costs must be consistent with the goal of affording the public a low cost means of television access.
- C. **Access Rules.** Grantee shall establish rules for use of any specially designated access channel. The initial access rules and any amendments thereto shall be maintained on file with the City and available for public inspection during normal business hours.
- D. **Access Equipment and Facilities.** Grantee shall provide to City the following capital equipment grants for the purchase of public access equipment:
 - a. \$1000.00 upon execution of this agreement, and;
 - b. \$1000.00 on or before April 1, 2010.
- E. Grantee shall have no obligation to purchase or provide access equipment beyond the foregoing grant, or to maintain, repair or replace any access equipment purchased therewith. In this regard, pursuant to Section 7 herein, Grantee has agreed to pay the City a Franchise fee of five percent (5%) of its Gross Revenues.

41.10 OPERATION AND ADMINISTRATION PROVISIONS

A. Franchise Fee.

- 1. Grantee shall pay to the City an annual amount equal to five percent (5%) of its annual Gross Revenues.

2. Payments due the City under this provision shall be payable quarterly. The payment shall be made within ninety (90) days of the end of each of Grantee's fiscal quarters together with a brief report showing the basis for the computation.

3. All amounts paid shall be subject to audit and recomputation by the City.

B. **Access to Records.** The City shall have the right to inspect, upon reasonable notice, at any time during normal business hours, those records maintained by Grantee which relate to System operations and to Gross Revenues, subject to the privacy provisions of 47 U. S. C. §521 et. seq. ("Cable Act").

C. **Reports to be Filed with City.** Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which Grantee and the City may agree upon.

41.11 GENERAL FINANCIAL AND INSURANCE PROVISIONS

A. **Performance Bond.**

1. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond to the City in the amount of Ten Thousand Dollars (\$10,000) in a form and with such sureties as reasonably acceptable to the City. This bond will be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.

2. If at any time Grantee undertakes additional construction of the System in City, by way of a line extension, rebuild, or otherwise, with a projected cost in excess of Seventy Thousand and no/100 Dollars (\$70,000.00), Grantee shall provide a bond to City in the amount equivalent to fifteen percent (15%) of the projected additional construction cost and shall

maintain such bond during the term of said additional construction. Upon completion of said additional construction, Grantee shall provide written notice to City. Within thirty (30) days of receipt of notice of completion of said additional construction, City shall give written notice to Grantee indicating whether City agrees the construction is complete or specifying those items of construction which City determines are not complete. At such time as City and Grantee mutually agree that said additional construction of the System is complete, Grantee shall provide to City a bond in the amount equal to the bond existing immediately before the commencement of said additional construction. Nothing herein shall be construed to require Grantee to maintain more than one (1) bond with City.

B. Procedure for Imposition of Penalties.

1. Whenever the City finds that Grantee has violated one (1) or more material terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee informing it of such violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation. Grantee may, within thirty (30) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall describe in reasonable detail the matters disputed by Grantee.
 - a. The City shall hear Grantee's dispute at a meeting called in a timely manner. Grantee shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at this meeting. The City shall supplement the decision with written findings of fact.
 - b. If after hearing the dispute the claim is upheld by the City, Grantee shall have thirty (30) days from such a determination to remedy the violation or failure. At any time after that thirty (30) days period, the City may draw against the performance bond for all reasonable penalties.
2. The time for Grantee to correct any violation or liability, shall be extended by the City if the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee commences the corrective action within the thirty (30) days period and thereafter uses reasonable diligence to correct the violation or liability.
3. In the event this Franchise is canceled by reason of default of Grantee or revoked, City shall be entitled to collect from the performance bond that amount which is directly attributable to any damages sustained by the City pursuant to said default or revocation.

Grantee, however, shall be entitled to the return of such performance bond, or portion thereof, as remains at the expiration of the term of the Franchise.

4. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have.

C. Indemnification of the City.

1. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System.
2. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of the franchise, except claims because of City's own programming.
3. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system. City shall be liable for negligent acts by the City, its officers, boards, commissions, committees, elected officials, employees, and agents.
4. In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:
 - a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

D. Insurance

1. As a part of the indemnification provided in Section 8.3, but without limiting the foregoing, Grantee shall file with its acceptance, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the City in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured the City, and their capacity as such, their officers, agents and employees. The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000) for personal injury or death of any one person, and Two Million Dollars (\$2,000,000) for personal injury or death of two or more Persons in any one occurrence, Two Million Dollars (\$2,000,000) for property damage to any one person and Two Million Dollars (\$2,000,000) for property damage resulting from any one act or occurrence.
2. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after thirty (30) days' advance written notice have been provided to the City.

41.12 SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

A. City's Right to Revoke.

1. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by § 41.12 B.2. herein, it is determined that:
 - a. Grantee has violated any material provision of this Franchise; or
 - b. Grantee has attempted to evade any of the material provisions of the Franchise; or
 - c. Grantee has practiced fraud or deceit upon the City or Subscriber.
2. City may revoke this Franchise without the hearing required by § 41.12 B.2 herein if Grantee is adjudged a bankrupt.

B. Procedures for Revocation.

1. The City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent or receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. Together with the notice required herein, the City shall provide Grantee with written findings of fact which are the basis of the revocation.
2. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (1) above. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
3. After the public hearing and upon written determination by the City to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.
4. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
5. Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

C. **Abandonment of Service.** Grantee may not abandon the System or any portion thereof without having first given six (6) months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment.

D. Removal after Termination of Forfeiture.

1. In the event of termination or forfeiture of the Franchise, the City shall have the right to require Grantee to remove all or any portion of the System from all Streets and public property within the City.
2. If Grantee has failed to commence removal of System. or such part thereof as was designated by City, within one hundred twenty (120) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U. S. C. 547.

E. Sale or Transfer of Franchise.

1. No sale, transfer, or “fundamental corporate change” as defined in Minnesota Statutes, Section 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with the City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.
2. The City shall have thirty (30) days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Grantee's Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed by Council Resolution. If the City fails to act within thirty (30) days of receipt of said request, the request shall be deemed approved as a matter of law.
3. If a public hearing is deemed necessary pursuant to (2) above, such. hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City. Said hearing may be continued with the consent of Grantee.
4. Within thirty (30) days after the closing of the public hearing, the City shall approve or deny in writing the sale or transfer request. City shall set forth in writing the specific reason(s) for denying approval. The City shall not unreasonably withhold its approval.
5. The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.
6. Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this chapter. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
7. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise.

8. In the event of any proposed sale or assignment, the City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to the City's rights under this Section. This written offer must be conveyed to the City along with the Grantee's written acceptance of the offer contingent upon the rights of the City provided for in this Section.

The City shall be deemed to have waived its rights under this Section in the following circumstances:

- a. If it does not indicate to Grantee in writing, within 30 days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
- b. It approves the assignment or sale of the Franchise as provided within this Section.

41.13 PROTECTION OF INDIVIDUAL RIGHTS

A. **Discriminatory Practices Prohibited.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex or age. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

B. **Subscriber Privacy.**

1. No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be-revocable at any time by the Subscriber without penalty of any kind whatsoever.
2. No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, or any other means, including but not limited to lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available.

3. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in paragraph (2) of this Section.

41.14 UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

- A. **Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.
- B. **Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
- C. **Penalty.** Any firm, Person, group, company, corporation or government body or agency found guilty of violating this section may be fined not less than Twenty dollars (\$20.00) and the costs of the action nor more than Five Hundred dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

41.15 MISCELLANEOUS PROVISIONS

- A. **Franchise Renewal.** Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.
- B. **Work Performed by Others.** All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Grantee shall provide notice to City of the name(s) and address of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
- C. **Amendment of Franchise Ordinance.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to this chapter or at any other time if City and Grantee agree that such an amendment will be in public interest or if such an amendment is required due to changes in federal, state

or local laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

D. Compliance with Federal, State and Local Laws.

1. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
2. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.

E. **Non Enforcement by City.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. Any waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

F. **Administration of Franchise.** The City Clerk or other City designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

G. **Periodic Evaluation.** The field of cable communications is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree

of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:

1. The City may require evaluation sessions at any time during the term of this Franchise, upon thirty days written notice to Grantee, provided, however, there shall not be more than one review session during any two (2) year period.
2. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Grantee deem relevant.
3. As a result of a periodic review or evaluation session, the City and Grantee may, in good faith, develop such changes and modifications to the terms and conditions of the Franchise, as are mutually agreed upon and which are both economically and technically feasible.

H. **Citizens Advisory Board.** The City may appoint a citizen advisory body to monitor the performance of the Grantee pursuant to the Franchise and advise the City of same. As a result of any periodic evaluation session as promulgated in this chapter, the advisory body may submit a report to the City and Grantee assessing the Grantee's performance according to the terms of the Franchise and make recommendations to the City regarding the System's operations.

I. **Rights Cumulative.** All rights and remedies given to City by this Franchise shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

J. **Grantee Acknowledgement of Validity of Franchise.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

41.16 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

A. **Publication: Effective Date.** This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 41.15 B.

B. **Acceptance.**

1. Grantee shall accept this Franchise by May 1, 2009, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.
2. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
3. Grantee shall accept this Franchise in the following manner:
 - A. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - B. Grantee shall have continuing responsibility for this Franchise, and if Grantee be a subsidiary or wholly-owned corporate entity of a parent corporation, performance of this Franchise shall be secured by a written guarantee of the parent corporation in a form and substance acceptable to City, which shall be delivered with the executed Franchise.
 - C. With its acceptance, Grantee shall also deliver any performance bond and insurance certificates required herein that have not previously been delivered.

**TITLE V:
PUBLIC WORKS**

Underlined text (<u>example</u>) represents new language Strikethrough text (example) represents deleted language

CHAPTERS

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CHAPTER 50: GARBAGE AND RUBBISH

Section

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50.01 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GARBAGE. Organic refuse resulting from the preparation of food, and decayed and spoiled food from any source.

RUBBISH. All inorganic refuse matter such as tin cans, glass, paper, ashes and the like.

50.02 SANITATION COLLECTION SERVICE REQUIRED

Every person owning, managing, operating, leasing or renting any premises or any place where garbage or rubbish accumulates shall subscribe to a sanitation collection service.

50.03 CONTAINER REQUIRED; PLACEMENT

- A. It shall be the duty of every person whose garbage and refuse is collected by the sanitation collection service to provide a container or containers for garbage and refuse, sufficient in size and number to accommodate and securely keep all garbage and refuse that may accumulate between collections. Garbage containers shall be watertight and constructed of a solid and durable grade of metal, plastic, or paper material.
- B. It shall be the duty of every person whose garbage and refuse is collected by the sanitation collection service to place their garbage containers directly behind the curblineline of the street abutting their property or in the absence of a curb directly behind the ditch line abutting their property. In no event shall containers be placed in the street or on the sidewalk or in any manner placed where the containers will interfere with vehicular or pedestrian traffic. It shall be the responsibility of the subscriber to place the containers no earlier than 6:00 p.m. of the afternoon preceding the collection day.

50.04 MEDDLING WITH TRASH RECEPTACLES PROHIBITED

- A. It shall be unlawful to meddle with garbage cans, trash or rubbish receptacles or in any way pilfer, search or scatter contents of garbage cans or rubbish receptacles in or upon any street or alley within the city limits.
- B. This section shall not apply to persons authorized by the city or persons authorized by state or federal law to search or otherwise meddle with trash receptacles.

50.05 CONTAINERS TO BE KEPT SANITARY AND SECURE

All containers shall be kept clean and free from accumulation of any substance remaining attached to the inside of the container which would attract or breed flies, mosquitoes, or other insects. The area surrounding garbage containers shall be maintained in a clean and sanitary condition. The contents of all receptacles shall be protected so that the wind cannot scatter the contents over the streets, alleys or other property within the city. All containers shall be securely closed in a manner as to prevent the scattering of the contents and to make them inaccessible to insects, rodents and other animals.

50.06 UNAUTHORIZED PRIVATE COLLECTIONS PROHIBITED

- A. It shall be unlawful for any person to transport garbage or refuse for hire which has been collected from any premises within the city over any public street within the city.
- B. This section shall not apply to any person who at the time of the activity is operating under a valid contract or franchise granted by the city which authorizes that person to use the public streets to conduct that activity.

50.07 SANITATION SERVICE: CITY OPTIONS

The City Council may provide for sanitation collection services within the city by use of city employees and vehicles, or it may grant licenses under the terms and conditions of Section 50.13, or it may contract with one or more contractors for the provision of these services under the terms and conditions negotiated with the contractors, except that the provisions for insurance under Section 50.13(E) shall always apply.

50.08 RATES AND CHARGES; COLLECTION AND LATE PAYMENT

If the city collects charges for the collection, removal and disposal of garbage and trash within the city, the following provisions apply:

- A. *Generally.* The monthly charge for the collection, removal and disposal of garbage and trash from residences and businesses within the corporate limits of the city shall be as established by the Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this code, as that ordinance may be amended from time to time.
- B. *Collection of charges.* The charges fixed herein for the collection, removal and disposal of all garbage and trash shall be entered in their respective amounts on the utility bill. The city may discontinue all utility services, including water, sewer, and garbage and trash services, for failing to pay any assessed charges and until the charges have been paid in full under conditions and procedures detailed in division (C) of this section.
- C. *Disconnection for late payment.*
 - 1. It is the policy of the city to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The city's form for application for utility service and all bills shall contain, in addition

to the title, address, room number, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

- a) That all bills are due and payable on or before the date set forth on the bill;
 - b) That if any bill is not paid by or before that date, a second bill will be mailed containing a disconnection notice. If the bill is not paid within ten days of the mailing of the disconnection notice, service will be discontinued due to nonpayment; and
 - c) That any customer disputing the correctness of his or her bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his or her choosing and may present orally or in writing his or her complaint and contentions to the city official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.
2. Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered. In the absence of payment of the bill rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified, but in no event until the charges have been due and unpaid for at least 30 days.
 3. When it becomes necessary for the city to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid along with a turn-on charge as established by the Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this code, as that ordinance may be amended from time to time.
- D. *Cold weather rule.* Pursuant to M.S. § 216B.097, as it may be amended from time to time, no service of a residential customer shall be disconnected if the disconnection affects the primary heat source for the residential unit when the disconnection would occur during the period between October 15 and April 15, the customer has declared inability to pay on forms provided by the city, the household income of the customer is less than 185% of the federal poverty level as documented by the customer to the city, and the customer's account is current for the billing period immediately prior to October 15 or the customer has entered into a payment schedule and is reasonably current with payments under the schedule. The City Clerk shall, between August 15 and October 15 of each year, notify all residential customers of these provisions.

50.09 REMOVAL OF BUILDING MATERIALS

Waste from building operations, rock waste, building materials or other refuse resulting from building or remodeling operations or resulting from a general cleanup of vacant or improved property shall be removed by the building contractor, owner or occupant of the building at his or her own expense. It shall be unlawful for any person to place those materials in any dumpster or other trash receptacle for disposal by the city or any agent or contractor of the city.

50.10 PROHIBITED ACTS

- A. It shall be unlawful for any person to sweep, throw or deposit any garbage, trash, debris, stagnant water or dead animal into, upon or along any public property or private property of another, except as may be specifically provided by this chapter.
- B. It shall be unlawful for any person owning or otherwise in control of any premises within the city to permit any of the conditions described in division (A) to exist upon property owned or controlled by him or her after having actual or constructive notice thereof.
- C. It shall be unlawful for any person to place in any container any material other than as specifically provided in this chapter.
- D. It shall be unlawful for any person to deposit or maintain garbage or trash except as provided for by this chapter.
- E. It shall be unlawful for any person to deposit any burning match, charcoal, ember, or other material in any container used for the disposal of garbage.

50.11 NON-RESIDENTIAL CUSTOMERS; CONTAINER TYPES; COLLECTION SCHEDULES

- A. It shall be the duty of the owner or person otherwise in charge of multi-family, institutional or industrial premises within the city to cause all garbage and trash accumulated on the premises to be placed in disposable containers, or commercial-type containers. Commercial-type containers may be used and may be placed at a location on the premises as arranged between the customer and the collector, but subject to review by the city at any time.
- B. It shall be the duty of the owner or person otherwise in charge of multi-family, institutional or industrial premises within the city to follow the collection practices of the collector.

- C. The amount and character of garbage shall be considered in establishing size of commercial containers and frequency of pickup. The city shall have final authority to establish the size and frequency based on the history of amount and type of garbage generated by the customer. The collection and removal of garbage and trash from premises used for commercial, institutional, or industrial purposes shall be made as often as necessary in order to maintain the premises free of accumulations. Garbage, except dry trash in contractor-supplied containers, shall be collected not less than one time each week, except for roll-off containers which shall not be subject to this provision so long as they are used solely for brush and dry trash.

50.12 MANNER OF COLLECTION AND TRANSPORTATION

- A. The collection, removal and disposal of all garbage, trash and brush shall be carried on in a systematic, efficient manner to keep the city in a clean and sanitary condition.
- B. All vehicles used for the collection and transportation of garbage and trash shall be equipped with suitable covers which shall be used to prevent blowing or scattering of refuse while garbage and trash are being transported for disposal.

50.13 CONTRACTING FOR COLLECTION

- A. *Purpose.* In order to provide for a continuous system of refuse collection and disposal in a manner which meets the needs and conveniences of the residents of the city and in order to protect the area from the problems of uncoordinated,, unsanitary and improper solid waste disposal, the City Council may determine that it is in the best interests of the residents of the city to have written contracts with persons collecting or hauling garbage and rubbish for hire, reserving to the city the right and authority to contract with one or more operators to provide these services.
- B. *City Contract.* A Municipal Rubbish and Garbage Disposal Agreement contract shall be signed between the City and a person or firm that shall provide such service. The contract shall give the Contractor a refuse collection franchise that will follow mutual agreements for compliances and service issues. No person or firm shall be allowed to provide for regular rubbish or garbage disposal service within the City without first being under contract with the City.

- C. *Franchise.* The City Council may exercise its reserved right to contract with one or more operators for the collection of garbage and rubbish within the city after current contracts are up for renewal.
- D. *Suspension of license or contract.* A contract or license issued under the provisions of this section may be revoked or suspended for a violation of this chapter or other applicable regulations of law upon a showing that the contractor or licensee has failed to comply with that regulation.
- E. *Financial responsibility.* The licensee or contractor shall show financial responsibility or a certificate of insurance coverage prior to obtaining the license or franchise whereby each vehicle to be used by the contractor shall be covered against loss or injury. The amount and type of coverage for public liability insurance shall be made part of the contract agreement between the City and the contractor. The contractor shall hold the city harmless and agrees to defend and indemnify the city, and the city's employees and agents, for any claims, damages, losses, and expenses related to the work under the license or contract. The city shall be named as an additional insured under that insurance for the services provided under the license or contract. The licensee's or contractor's insurance shall be the primary insurance for the city and the licensee or contractor shall provide a certificate of insurance on the city's approved form which verifies the existence of the insurance required, including provisions to hold the city harmless and defend and indemnify the city. The licensee or contractor shall also provide evidence of workers compensation insurance for employees. These insurance policies shall be for the full term of the license or franchise and shall provide for the giving of ten days prior notice to the city of the termination or cancellation of these policies. In case any policies are terminated or cancelled, the license or contract shall be automatically revoked upon receipt by the City Clerk of the termination or cancellation.
- F. *Equipment.* All trucks or motor vehicles used by the licensee or contractor shall be covered with a covering to prevent the scattering of its contents upon the public streets or private properties in the city. The contractor shall keep all trucks and other equipment used in the City in a sanitary and neat condition.
- G. *Inspections.* All vehicles used for garbage or rubbish shall be made available for inspection within the city at the times and places as the City Council may designate.
- H. *Bond.* The contractor or licensee may be required to furnish a surety bond in an amount as the City Council deems necessary running to and approved by the City Council, guaranteeing the franchisee's or licensee's faithful and continuous performance of the terms of the franchise, license or contract and of this chapter.

50.14 COLLECTION OF LEAVES, TREES OR TREE LIMBS

Nothing in this chapter shall be construed to prevent the collection for hire by other persons of leaves, trees or tree limbs.

50.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by State statute(s) shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

CHAPTER 51: SEWER REGULATIONS

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GENERAL PROVISIONS

51.001 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. The Federal Water Pollution Control Act, also referred to as the Clean Water Act, being 33 USC 1251 et seq., as amended.

ASTM. American Society for Testing Materials.

AUTHORITY. This city or its representative thereof.

BIOCHEMICAL OXYGEN DEMAND (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 200 C, expressed in terms of milligrams per liter (mg/l).

BUILDING DRAIN. The part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning three feet outside the building wall.

BUILDING SEWER. The extension from the building drain to the public sewer or other place of disposal, also referred to as a house connection or service connection.

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance or other legal actions at a future time. The term **CITY** when used herein may also be used to refer to the City Council and its authorized representative.

CONTROL MANHOLE. A structure specially constructed for the purpose of measuring flow and sampling of wastes.

EASEMENT. An acquired legal right for the specific use of land owned by others.

GARBAGE. Animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

INDUSTRIAL WASTE. Gaseous, liquid and solid wastes resulting from industrial or manufacturing processes, trade or business, or from the development, recovery and processing of natural resources, as distinct from residential or domestic strength wastes.

INDUSTRY. Any nongovernmental or nonresidential user of a publicly owned treatment works which is identified in the *Standard Industrial Classification Manual*, latest edition, which is categorized in Divisions A, B, D, E and I.

INFILTRATION. Water entering the sewage system (including building drains and pipes) from the ground through means as defective pipes, pipe joints, connections and manhole walls.

INFILTRATION/INFLOW (I/I). The total quantity of water from both infiltration and inflow.

INFLOW. Water other than wastewater that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, surface runoff, street wash waters or drainage.

INTERFERENCE. The inhibition or disruption of the city's wastewater disposal system processes or operations which causes or significantly contributes to a violation of any requirement of the city's NPDES or SDS permit. The term includes sewage sludge use or disposal by the city in accordance with published regulations providing guidelines under Section 405 of the Act (33 USC 1345) or any regulations developed pursuant to the Solid Waste Disposal Act (42 USC 6901 et seq.), the Clean Air Act (42 USC 7401 et seq.), the Toxic Substances Control Act (15 USC 2601 et seq.), or more stringent state criteria applicable to the method of disposal or use employed by the city.

MAY. The term is permissive.

MPCA. The Minnesota Pollution Control Agency.

NATIONAL CATEGORICAL PRETREATMENT STANDARDS. Federal regulations establishing pretreatment standards for introduction of pollutants in publicly-owned wastewater treatment facilities which are determined to be not susceptible to treatment by those treatment facilities or would interfere with the operation of those treatment facilities, pursuant to Section 307(b) of the Act (33 USC 1317(b)).

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT. A permit issued by the MPCA, setting limits on pollutants that a permittee may legally discharge into navigable waters of the United States pursuant to Sections 402 and 405 of the Act (33 USC 1342 and 33 USC 1345).

NATURAL OUTLET. Any outlet, including storm sewers and combined sewers, which overflow into a watercourse, pond, ditch, lake or other body of surface water or ground water.

NON-CONTACT COOLING WATER. The water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added is heat.

NORMAL DOMESTIC STRENGTH WASTE. Wastewater that is primarily introduced by residential users with a BOD₅ concentration not greater than 287 mg/l and a suspended solids (TSS) concentration not greater than 287 mg/l.

PERSON. Any individual, firm, company, association, society, corporation or group.

pH. The logarithm of the reciprocal of the concentration of hydrogen ions in terms of grams per liter of solution.

PRETREATMENT. The treatment of wastewater from industrial sources prior to the introduction of the waste effluent into a publicly-owned treatment works.

PROPERLY SHREDED GARBAGE. The wastes from the preparation, cooking and dispensing of food that have been shredded to a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than 2-inch (1.27 cm) in any dimension.

SEWAGE. The spent water of a community. The preferred term is wastewater.

SEWER. A pipe or conduit that carries wastewater or drainage water.

1. **COLLECTION SEWER.** A sewer whose primary purpose is to collect wastewaters from individual point source discharges and connections.
2. **INTERCEPTOR SEWER.** A sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.
3. **PRIVATE SEWER.** A sewer which is not owned and maintained by a public authority.
4. **PUBLIC SEWER.** A sewer owned, maintained and controlled by a public authority.
5. **SANITARY SEWER.** A sewer intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters which are not admitted intentionally.

6. **STORM SEWER** or **STORM DRAIN**. A drain or sewer intended to carry storm waters, surface runoff, ground water, subsurface water, street wash water, drainage and unpolluted water from any source.

SHALL. The term is mandatory.

STATE DISPOSAL SYSTEM (SDS) PERMIT. Any permit (including any terms, conditions and requirements thereof) issued by the MPCA pursuant to M.S. § 115.07, as it may be amended from time to time for a disposal system as defined by M.S. § 115.01(8), as it may be amended from time to time.

SUSPENDED SOLIDS (SS) or TOTAL SUSPENDED SOLIDS (TSS). The total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in *Standard Methods for the Examination of Water and Wastewater*, latest edition, and referred to as non-filterable residue.

TOXIC POLLUTANT. The concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Act (33 USC 13 17(a)).

UNPOLLUTED WATER. Water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards, and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities.

USER. Any person who discharges or causes or permits the discharge of wastewater into the city's wastewater disposal system.

UTILITIES SUPERINTENDENT. The person appointed by the City Council to supervise the sewer and water systems of the city.

WASTE WATER. The spent water of a community and referred to as sewage. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any ground water, surface water and storm water that may be present.

WASTEWATER TREATMENT WORKS or TREATMENT WORKS. An arrangement of any devices, facilities, structures, equipment or processes owned or used by the city for the purpose of the transmission, storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers, outfall sewers, collection sewers, pumping, power and other equipment and

their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from that treatment.

WPCF. The Water Pollution Control Federation.

51.002 CONTROL OF SEWERS; ADMINISTRATION OF CHAPTER

The Utilities Superintendent, or other official designated by the City Council shall have control and general supervision of all public sewers and service connections in the city, and shall be responsible for administering the provisions of this chapter to the end that a proper and efficient public sewer is maintained.

51.003 BUILDING SEWERS; GENERAL REQUIREMENTS

Building sewer construction shall meet the pertinent requirements of the Minnesota State Building Code, which is those chapters of Mi Rules referenced in Mm. Rules part 1300.2400, subpart 6, as they may be amended from time to time, and the Minnesota Plumbing Code, Mm. Rules Ch. 4715, as it may be amended from time to time. The applicant shall notify the City Clerk when the building sewer and connection is ready for inspection. The connection shall be made under the supervision of the Building Official or the Building Official's representative, if the city has adopted the State Building Code. If the city has not adopted the State Building Code, the Utilities Superintendent shall perform the inspection. If the city does not have a Utilities Superintendent, an installer licensed under § 51.064 shall certify that the building sewer and connection comply with the State Building Code. No backfill shall be placed until the work has been inspected and approved, or until the certification has been received.

51.004 TAMPERING WITH WASTEWATER FACILITIES

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under the charge of a misdemeanor.

51.005 COST OF REPAIRING OR RESTORING SEWERS

In addition to any penalties that may be imposed for violation of any provision of this chapter, the city may assess against any person the cost of repairing or restoring sewers or associated facilities damaged as a result of the discharge of prohibited wastes by that person, and may collect the assessment as an additional charge for the use of the public sewer system or in any other manner deemed appropriate by the city.

GENERAL REGULATIONS

51.015 DEPOSITS OF UNSANITARY MANNER PROHIBITED.

It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the city's jurisdiction, any human or animal excrement, garbage or objectionable waste.

51.016 DISCHARGE OF WASTEWATER OR OTHER POLLUTED WATERS

It shall be unlawful to discharge to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and the city's NPDES/SDS permit.

51.017 RESTRICTIONS ON WASTEWATER DISPOSAL FACILITIES

Except as otherwise provided in this chapter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.

51.018 INSTALLATION OF SERVICE CONNECTION TO PUBLIC SEWER

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes from which wastewater is discharged, and which is situated within the city and adjacent to any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the city shall be required at the owner's expense to install a suitable service connection to the public sewer in accordance with provisions of this code within 365 days of the date the public sewer is operational; ~~provided, the public sewer is within 200 feet of the structure generating the wastewater.~~ All future buildings constructed on property adjacent to the public sewer shall be required to immediately connect to the public sewer. If sewer connections are not made pursuant to this section, an official ten-day notice shall be served instructing the affected property owner to make the connection.

51.019 FAILURE TO CONNECT TO A PUBLIC SEWER

In the event an owner shall fail to connect to a public sewer in compliance with a notice given under § 51.018, the city shall undertake to have the connection made and shall assess the cost thereof against the benefitted property. The assessment, when levied, shall bear interest at the rate determined by the City Council and shall be certified to the County Auditor and shall be collected and remitted to the city in the same manner as assessments for local improvements. The rights of the city shall be in addition to any remedial or enforcement provisions of this chapter.

PRIVATE WASTEWATER DISPOSAL

51.035 PUBLIC SEWER NOT AVAILABLE

Where a public sewer is not available under the provisions of § 51.018, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this subchapter and Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time.

51.036 PERMITS

- A. ***Required.*** Prior to commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the city. The application for the permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary to the city.

B. **Inspections.** A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the city or its authorized representative. The city or its representative shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the city when work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice.

51.037 TYPE, CAPACITIES, LOCATION AND LAYOUT

The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

51.038 DIRECT CONNECTION REQUIRED

At the time as a public sewer becomes available to a property serviced by a private wastewater disposal system, a direct connection shall be made to the public sewer within 365 days in compliance with this chapter, and within 365 days any septic tanks, cesspools and similar private wastewater disposal systems shall be cleaned of sludge. The bottom shall be broken to permit drainage, and the tank or pit filled with suitable material.

51.039 OPERATION AND MAINTENANCE BY OWNER

The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times at no expense to the city.

51.040 APPLICATION OF SUBCHAPTER

No statement contained in this subchapter shall be construed to interfere with any additional requirements that may be imposed by the MPCA or the Minnesota Department of Health.

BUILDING SEWERS AND CONNECTIONS

51.055 RESTRICTIONS ON NEW CONNECTIONS

Any new connections to the sanitary sewer system shall be prohibited unless sufficient capacity is available in all downstream facilities, including but not limited to capacity for flow, BOD₅ and suspended solids, as determined by the Utilities Superintendent.

51.056 BUILDING SEWER PERMITS

- A. *Required.* No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city.

- B. *Applications.* Applications for permits shall be made by the owner or authorized agent and the party employed to do the work, and shall state the location, name of owner, street number of the building to be connected and how occupied. No person shall extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.

- C. *Classes.* There shall be two classes of building sewer permits: one for residential and commercial service, and one for service to establishments producing industrial wastes. In either case, the application shall be supplemented by any plans, specifications or any other information considered pertinent in the judgement of the city. The industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics and type of activity.

- D. *Inspection and connection.* The applicant for the building sewer permit shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The connection and inspection shall be made under the supervision of the Utilities Superintendent or authorized representative thereof.

51.057 COSTS AND EXPENSES

All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer.

51.058 SEPARATE BUILDING SEWERS REQUIRED

A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway. The building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The city does not and will not assume any obligation or responsibility for damage caused by or resulting from any connection.

51.059 OLD BUILDING SEWERS; RESTRICTIONS ON USE

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Utilities Superintendent or his or her representative, to meet all requirements of this chapter.

51.060 CONFORMANCE TO STATE BUILDING AND PLUMBING CODE REQUIREMENTS

- A. The size, slopes, alignment, materials of construction of building sewers and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the State Building and Plumbing Code or other applicable rules and regulations of the city.
- B. The connection of the building sewer into the public sewer shall conform to the requirements of the State Building and Plumbing Code or other applicable rules and regulations of the city. All connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of infiltration/inflow. Any deviation from the prescribed procedures and materials must be approved by the city prior to installation.

51.061 ELEVATION BELOW BASEMENT FLOOR

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by the building drain shall be lifted by an approved means and discharged to the building sewer.

51.062 SURFACE RUNOFF OR GROUNDWATER CONNECTIONS PROHIBITED

No person shall make connection of roof downspouts, sump pumps, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or indirectly to the wastewater disposal system.

51.063 EXCAVATIONS

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

51.064 LICENSES

- A. *Required.* No person shall make a service connection with any public sewer unless regularly licensed under this chapter to perform the work, and no permit shall be granted to any person except a regularly licensed person.
- B. *Application.* Any person desiring a license to make a service connection with public sewers shall apply in writing to the City Council with satisfactory evidence that the applicant or employer is trained or skilled in the business and qualified to receive a license. All applications shall be referred to the Utilities Superintendent for recommendations to the Council. If approved by the Council, the license shall be issued by the City Clerk upon the filing of a bond as hereinafter provided.
- C. *Issuance.* No license shall be issued to any person until a policy of insurance to the city, approved by the Council, is filed with the City Clerk conditioned that the licensee will indemnify and save harmless the city from all suits, accidents and damage that may arise by reason of any opening in any street, alley or public ground made by the licensee or by those in the licensee's employment for any purpose whatever, and that the licensee will replace and restore the street and alley over that opening to the condition existing prior to installation, adequately guard with barricades and lights, and will keep and maintain the same to the satisfaction of the Utilities Superintendent, and shall conform in all respects to any rules and regulations of the Council relative thereto, and pay all fines that may be imposed on the licensee by law.
- D. *Fee.* The license fee for making service connections shall be as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this Code, as that ordinance may

be amended from time to time. All licenses shall expire on December 31 of the license year unless the license is suspended or revoked by the Council for cause.

- E. *Suspension or revocation.* The Council may suspend or revoke any license issued under this subchapter for any of the following causes:
1. Giving false information in connection with the application for a license.
 2. Incompetence of the licensee.
 3. Willful violation of any provisions of this chapter or any rule or regulation pertaining to the making of service connections.

USE OF PUBLIC SERVICES

51.080 DISCHARGES OF UNPOLLUTED WATER

- A. No person shall discharge or caused to be discharged any water such as stormwater, ground water, roof runoff, surface drainage or non-contact cooling water to any sanitary sewer.
- B. Stormwater and all other unpolluted drainage shall be discharged to those sewers as are specifically designed as storm sewers or to a natural outlet approved by the city and other regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet on approval of the city and upon approval and the issuance of a discharge permit by the MPCA.

51.081 DISCHARGES OF WATERS OR WASTES

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

- A. Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the wastewater disposal system or to the operation of the system. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.

- B. Solid or viscous substances which will cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as but not limited to grease, garbage with particles greater than 2-inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.
- C. Any wastewater having a pH of less than 5.0 or greater than 9.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater disposal system.
- D. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater disposal system. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act (33 USC 13 17(a)).

51.082 LIMITED DISCHARGES

- A. The following described substances, materials, water or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either sewers, the wastewater treatment works, treatment process or equipment, will not have an adverse effect on the receiving stream and soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Utilities Superintendent may set limitations lower than limitations established in the regulations below if, in his or her opinion, the more severe limitations are necessary to meet the above objectives. In forming his or her opinion as to the acceptability of wastes, the Utilities Superintendent will give consideration to factors as the quantity of subject waste in reaction to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, the city's NPDES/SDS permit, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors.
- B. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the Utilities Superintendent are as follows:
 - 1. Any wastewater having a temperature greater than 1500 F (65.6° C), or causing, individually or in combination with other wastewater, the influent at the wastewater

treatment plant to have a temperature exceeding 104° F (40° C), or having heat in amounts which will inhibit biological activity in the wastewater treatment works resulting in interference therein.

2. Any wastewater containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32° F and 150° F (0° C and 65.6° C); and any wastewater containing oil and grease concentrations of mineral origin of greater than 100 mg/l, whether emulsified or not.
3. Any quantities of flow, concentrations, or both which constitute a “slug” as defined in § 51.001.
4. Any garbage not properly shredded, as defined in § 51.001 of this chapter. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food on the premises or when served by caterers.
5. Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair.
6. Any wastewater with objectionable color not removed in the treatment process such as but not limited to dye wastes and vegetable tanning solutions.
7. Non-contact cooling water or unpolluted storm, drainage or ground water.
8. Wastewater containing inert suspended-solids such as but not limited to fullers earth, lime slurries, and lime residues, or of dissolved solids such as but not limited to sodium chloride and sodium sulfate, in quantities that would cause disruption with the wastewater disposal system.
9. Any radioactive wastes or isotopes of half-life or concentration as may exceed limits established by the Utilities Superintendent in compliance with applicable state or federal regulations.
10. Any waters or wastes containing the following substances to the degree that any material received in the composite wastewater at the wastewater treatment works is detrimental to treatment process, adversely impacts land application, adversely effects receiving waters, or is in violation of standards pursuant to Section 307(b) of the Act (33 USC 13 17(b)): Arsenic, Cadmium, Copper, Cyanide, Lead, Mercury, Nickel, Silver, total Chromium, Zinc

and Phenolic compounds which cannot be removed by the city's wastewater treatment system.

11. Any wastewater which creates conditions at or near the wastewater disposal system which violates any statute, rule, regulation or ordinance of any regulatory agency, or state or federal regulatory body.
12. Any waters or wastes containing BOD₅ or suspended solids of character and quantity that unusual attention or expense is required to handle the materials at the wastewater treatment works, except as may be permitted by specific written agreement subject to the provisions of § 51.094.

51.083 DISCHARGES HAZARDOUS TO LIFE OR CONSTITUTE PUBLIC NUISANCES

- A. If any waters or wastes are discharged or are proposed to be discharged to the public sewers which contain substances or possess the characteristics enumerated in § 51.082, or which in the judgement of the Utilities Superintendent may have a deleterious effect upon the wastewater treatment facilities, processes, or equipment, receiving waters or soil, vegetation, and ground water, or which otherwise create a hazard to life or constitute a public nuisance, the city may:
 1. Reject the wastes;
 2. Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307(b) of the Act (33 USC 1317(b)) and all amendments thereof;
 3. Require control over the quantities and rates of discharge; and
 4. Require payment to cover the added costs of handling, treating and disposing of wastes not covered by existing taxes or sewer service charges.
- B. If the city permits the pretreatment or equalization of waste flows, the design, installation and maintenance of the facilities and equipment shall be made at the owner's expense and shall be subject to the review and approval of the city pursuant to the requirements of the MPCA.

§ 51.084 INCREASING USE OF PROCESS WATER.

No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in Section 51.081 and 51.082, or contained in the National Categorical Pretreatment Standards or any state requirements.

51.085 PRETREATMENT OR FLOW-EQUALIZING FACILITIES

Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner.

51.086 GREASE, OIL AND SAND INTERCEPTORS

Grease, oil, and sand interceptors shall be provided when, in the opinion of the Utilities Superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in § 51.082(B)(2), any flammable wastes as specified in § 51.081(A), sand or other harmful ingredients; except that interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured materials by appropriate means, and shall maintain a record of dates and means of disposal which are subject to review by the Utilities Superintendent. Any removal and hauling of the collecting materials not performed by the owner's personnel must be performed by a currently licensed waste disposal firm.

51.087 INDUSTRIAL WASTES; INSTALLATIONS

Where required by the city, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure, or control manhole, with necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of wastes. The structure shall be accessible and safely located, and shall be constructed in accordance with plans approved by the city. The structure shall be installed by the owner at his or her expense and shall be maintained by the owner to be safe and accessible at all times.

51.088 INDUSTRIAL WASTES; REQUIREMENTS

The owner of any property serviced by a building sewer carrying industrial wastes may, at the discretion of the city, be required to provide laboratory measurements, tests or analyses of waters or wastes to illustrate compliance with this chapter and any special condition for discharge established by the city or regulatory agencies having jurisdiction over the discharge. The number, type and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the city. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with federal, state and local standards are being met. The owner shall report the results of measurements and laboratory analyses to the city at times and in the manner as prescribed by the city. The owner shall bear the expense of all measurements, analyses and reporting required by the city. At those times as deemed necessary, the city reserves the right to take measurements and supplies for analysis by an independent laboratory.

51.089 MEASUREMENTS, TESTS AND ANALYSES OF WATERS AND WASTES

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association. Sampling methods, location, times, duration and frequencies are to be determined on an individual basis subject to approval by the Utilities Superintendent.

51.090 PROTECTION FROM ACCIDENTAL DISCHARGE OF PROHIBITED MATERIALS

Where required by the city, the owner of any property serviced by a sanitary sewer shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this chapter. Where necessary, facilities to prevent accidental discharges of prohibited materials shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Utilities Superintendent for review and approval prior to construction of the facility. Review and approval of the plans and operating procedures shall not relieve any user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. Users shall notify the Utilities Superintendent immediately upon having a slug or accidental discharge of substances of wastewater in violation of this chapter to enable countermeasures to be taken by the Utilities Superintendent to minimize damage to the wastewater treatment works. The notification will not relieve any user of any liability for any expense, loss or damage to the wastewater treatment system or treatment process, or for any fines imposed on the city on account thereof under any state and

federal law. Employers shall insure that all employees who may cause or discover a discharge are advised of the emergency notification procedure.

51.091 PERMITTING SUBSTANCE OR MATTER TO FLOW OR PASS INTO PUBLIC SEWERS

No person having charge of any building or other premises which drains into the public sewer shall permit any substance or matter which may form a deposit or obstruction to flow or pass into the public sewer. Within 30 days after receipt of written notice from the city, the owner shall install a suitable and sufficient catch basin or waste trap, or if one already exists, shall clean out, repair or alter the same, and perform other work as the Utilities Superintendent may deem necessary. Upon the owner's refusal or neglect to install a catch basin or waste trap or to clean out, repair, or alter the same after the period of 30 days, the Utilities Superintendent may cause the work to be completed at the expense of the owner or representative thereof.

51.092 REPAIRING SERVICE CONNECTION

Whenever any service connection becomes clogged, obstructed, broken or out of order, or detrimental to the use of the public sewer, or unfit for the purpose of drainage, the owner shall repair or cause the work to be done as the Utilities Superintendent may direct. Each day after 30 days that a person neglects or fails to so act shall constitute a separate violation of this section, and the Utilities Superintendent may then cause the work to be done, and recover from the owner or agent the expense thereof by an action in the name of the city.

51.093 CATCH BASIN OR WASTE TRAPS REQUIRED FOR MOTOR VEHICLE WASHING OR SERVICING FACILITIES

The owner or operator of any motor vehicle washing or servicing facility shall provide and maintain in serviceable condition at all times a catch basin or waste trap in the building drain system to prevent grease, oil, dirt or any mineral deposit from entering the public sewer system.

51.094 SPECIAL AGREEMENT AND ARRANGEMENT

No statement contained in this subchapter shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the

industrial concern; provided, that National Categorical Pretreatment Standards and the city's NPDES/SDS Permit limitations are not violated.

USER RATE SCHEDULE FOR CHARGES

51.110 CHARGES GENERALLY

Each user of sewer service shall pay the charges applicable to the type of service, and in accordance with the provisions set forth in this subchapter.

51.111 PURPOSE

The purpose of the subchapter is to provide for sewer service charges to recover costs associated with operation, maintenance and replacement to ensure effective functioning of the city's wastewater treatment system, and local capital costs incurred in the construction of the city's wastewater treatment system.

51.112 DEFINITIONS

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATION. Those fixed costs attributable to administration of the wastewater treatment works such as billing and associated bookkeeping and accounting costs.

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance or other legal actions at a future time. When used herein the term ***CITY*** may also refer to the City Council or its authorized representative.

DEBT SERVICE CHARGE. A charge levied on users of wastewater treatment facilities for the cost of repaying money bonded to construct the facilities.

INCOMPATIBLE WASTE. Waste that either singly or by interaction with other wastes interferes with any waste treatment process, constitutes a hazard to humans or animals, creates a public nuisance or creates any hazard in the receiving waters of the wastewater treatment works.

INDUSTRIAL USERS or ***INDUSTRIES.***

- A. Entitles that discharge into a publicly owned wastewater treatment works liquid wastes resulting from the processes employed in industrial or manufacturing processes, or from the development of any natural resources. These are identified in the *Standard Industrial Classification Manual*, latest edition, Office of Management and Budget, as amended and supplemental under one of the following divisions:
1. Division A. Agriculture, forestry and fishing
 2. Division B. Mining
 3. Division D. Manufacturing
 4. Division E. Transportation, communications, electric, gas, and sanitary sewers
 5. Division I. Services
- B. For the purpose of this definition, domestic waste shall be considered to have the following characteristics: BOD₅ - less than 287 mg/l; Suspended solids - less than 287 mg/l.

Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity either singly or by interaction with other wastes to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

MAY. The term is permissive.

OPERATION AND MAINTENANCE. Activities required to provide for the dependable and economical functioning of the treatment works, throughout the design or useful life, whichever is longer of the treatment works, and at the level of performance for which the treatment works were constructed. The term includes replacement.

OPERATION AND MAINTENANCE COSTS. Expenditures for operation and maintenance, including replacement.

REPLACEMENT. Obtaining and installing of equipment, accessories or appurtenances which are necessary during the design life or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which the works were designed and constructed.

REPLACEMENT COSTS. Expenditures for replacement.

SANITARY SEWER. A sewer intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters which are not admitted intentionally.

SEWER SERVICE CHARGE. The aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facilities.

SEWER SERVICE FUND. A fund into which income from sewer service charges is deposited along with other income, including taxes intended to retire debt incurred through capital expenditure for wastewater treatment. Expenditure of the sewer service fund will be for operation, maintenance and replacement costs and to retire debt incurred through capital expenditure for wastewater treatment.

SHALL. The term is mandatory.

TOXIC POLLUTANT. The concentration of any pollutant or combination of pollutants as defined in standards issued pursuant to Section 307(a) of the Act (33 USC 13 17(a)), which upon exposure to or assimilation into any organism, will cause adverse effects.

USER CHARGE. A charge levied on a user of a treatment works for the user's proportionate share of the cost of operation and maintenance, including replacement.

USERS. Those residential, commercial, governmental, institutional and industrial establishments which are connected to the public sewer collection system.

WASTEWATER. The spent water of a community, also referred to as sewage. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any ground water, surface water and storm water that may be present.

WASTEWATER TREATMENT WORKS or TREATMENT WORKS. An arrangement of any devices, facilities, structures, equipment or processes owned or used by the city for the purpose of the transmission, storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers, outfall sewers, collection sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from the treatment.

51.113 ESTABLISHMENT OF A SEWER SERVICE CHARGE SYSTEM

- A. The city hereby establishes a Sewer Service Charge System whereby all revenue collected from users of the wastewater treatment facilities will be used to affect all expenditures incurred for annual operation, maintenance and replacement and for debt service on capital expenditure incurred in constructing the wastewater treatment works.
- B. Each user shall pay its proportionate share of operation, maintenance, and replacement costs of the treatment works, based on the user's proportionate contribution to the total wastewater loading from all users.
- C. Each user shall pay debt service charges to retire local capital costs as determined by the City Council.
- D. Sewer service rates and charges to users of the wastewater treatment facility shall be determined and fixed in a "Sewer Service Charge System" developed according to the provisions of this subchapter. The Sewer Service Charge System shall be the system enacted prior to the adoption of this code. The Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this Code may be amended from time to time to include subsequent changes in sewer service rates and charges.
- E. Revenues collected for sewer service shall be deposited in a separate fund known as "The Sewer Service Fund." Income from revenues collected will be expended to off-set the cost of operation, maintenance and equipment replacement for the facility and to retire the debt for capital expenditure.
- F. Sewer service charges and the sewer service fund will be administrated in accordance with the provisions of Section 51.116.
- G. A connection fee as fixed in the Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this Code, as that ordinance may be amended from time to time, shall be charged to each user connecting a new service to the Sanitary Sewer System. The connection fee shall be due and payable within 90 days of the date the connection is completed.

51.114 DETERMINATION OF SEWER SERVICE CHARGES

The sewer service rates and charges to users of the wastewater treatment facility shall be as established by ordinance or resolution prior to the adoption of this code, unless amended or modified in the Ordinance Establishing Fees and Charges, adopted pursuant to Section 30.11, as that ordinance may be amended from time to time.

51.115 SEWER SERVICE FUND

- A. The city hereby establishes a “Sewer Service Fund” as an income fund to receive all revenues generated by the sewer service charge system, and all other income dedicated to the operation, maintenance, replacement and construction of the wastewater treatment works, including taxes, special charges, fees and assessments intended to retire construction debt. The city also establishes the following accounts as income and expenditure accounts within the sewer service fund:
1. Operation and maintenance account.
 2. Equipment replacement account.
 3. Debt retirement account.
- B. All revenue generated by the sewer service charge system, and all other income pertinent to the treatment system, including taxes and special assessments dedicated to retire construction debt, shall be held by the City Clerk separate and apart from all other funds of the city. Funds received by the sewer service fund shall be transferred to the “Operation and Maintenance Account,” the “Equipment Replacement Account,” and the “Debt Retirement Account” in accordance with state and federal regulations and the provisions of this chapter.
- C. Revenue generated by the sewer service charge system sufficient to insure adequate replacement throughout the design life or useful life, whichever is longer, of the wastewater facility shall be held separate and apart in the “Equipment Replacement Account” and dedicated to affecting replacement costs. Interest income generated by the “Equipment Replacement Account” shall remain in the “Equipment Replacement Account.”
- D. Revenue generated by the sewer service charge system sufficient for operation and maintenance shall be held separate and apart in the “Operation and Maintenance Account.”

51.116 ADMINISTRATION

The sewer service charge system and sewer service fund shall be administrated according to the following provisions:

- A. The City Clerk shall maintain a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the treatment works, and shall furnish the City Council with a report of those costs annually in December. The City Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the treatment works, and whether sufficient revenue is being generated for debt retirement. The Council will also determine whether the user charges are distributed proportionately to each user in accordance with Section 51.113(B). The city shall thereafter, but not later than the end of the year, reassess and as necessary revise the Sewer Service Charge System then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt.
- B. In accordance with federal and state requirements, each user will be notified annually in conjunction with a regular billing of that portion of the sewer service charge attributable to operation, maintenance and replacement.
- C. In accordance with federal and state requirements, the City Clerk shall be responsible for maintaining all records necessary to document compliance with the Sewer Service Charge System adopted.
- D. Bills for sewer service charges shall be rendered on a monthly basis succeeding the period for which the service was rendered and shall be due twenty days from the date of rendering. Any bill not paid in full 10 days after the due date will be considered delinquent. At that time the city shall notify the delinquent owner/occupant in writing regarding the delinquent bill and subsequent penalty. ~~The penalty shall be computed at 10% of the original bill and shall be increased the same 10% for every quarter the bill is outstanding.~~ Disconnection of services for late payment shall follow the procedures established in this code.
- E. The owner of the premises shall be liable to pay for the service to their premises, and the service is furnished to the premises by the city only upon the condition that the owner of the premises is liable therefore to the city.
- F. Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up

and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger of the wastes, at no expense to the city.

51.117 DISCONNECTION FOR LATE PAYMENT

- A. It is the policy of the city to discontinue sewer service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The city's form for application for utility service and all bills shall contain, in addition to the title, address, room number, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:
1. That all bills are due and payable on or before the date set forth on the bill;
 2. That if any bill is not paid by or before that date, a second bill will be mailed containing a cutoff notice that if the bill is not paid within ten days of the mailing of the second bill, service will be discontinued for nonpayment; and
 3. That any customer disputing the correctness of his or her bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his or her choosing and may present orally or in writing his or her complaint and contentions to the city official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.
- B. Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered. In the absence of payment of the bill rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified, but in no event until the charges have been due and unpaid for at least 30 days.
- C. When it becomes necessary for the city to discontinue sewer service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid, along with a turn-on charge as established by the Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this Code, as that ordinance may be amended from time to time.

POWERS AND AUTHORITY OF INSPECTORS

51.130 AUTHORIZED EMPLOYEES PERMITTED TO ENTER ALL PROPERTIES

The Utilities Superintendent or other duly authorized employees of the city, bearing proper credentials and identification, shall be permitted to enter all properties for the purpose of inspection, observations, measurement, sampling and testing pertinent to the discharges to the city's sewer system in accordance with the provisions of this chapter.

51.131 AUTHORIZED EMPLOYEES OBTAINING INFORMATION FOR INDUSTRIAL PROCESSES

The Utilities Superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the type and source of discharge to the wastewater collection system. An industry may withhold information considered confidential; however, the industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

51.132 AUTHORIZED EMPLOYEES TO OBSERVE SAFETY RULES

While performing necessary work on private properties, the Utilities Superintendent or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the property owner shall be held harmless for injury or death to the city employees and the city shall indemnify the property owner against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the company to maintain safe conditions as required in Section 51.087.

51.133 AUTHORIZED EMPLOYEES PERMITTED TO ENTER ALL PROPERTY WITH EASEMENTS

The Utilities Superintendent or other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of but not limited to inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying

within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

51.999 PENALTY

- A. Any person found to be violating any provisions of Section 51.001 through 51.094 and 51.130 through 51.133 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations.
- B. Any person who shall continue any violation beyond the time limit provided for in division (A) of this section shall be punished as provided in Section 10.99. Each day in which any violation occurs shall be deemed as a separate offense.
- C. Any person violating any of the provisions of Section 51.001 through 51.094 and 51.130 through 51.133 shall become liable to the city for any expense, loss or damage occasioned by the city by reason of that violation.
- D. Each and every sewer service charge levied by and pursuant to Section 51.110 through 51.118 is made a lien upon the lot or premises served, and all charges which are on October 31 of each year past due and delinquent shall be certified to the County Auditor by November 30 as taxes or assessments on the real estate. Nothing in Section 51.110 through 51.118 shall be held or construed as in any way stopping or interfering with the right of the city to levy as taxes or assessments against any premises affected any delinquent or past due sewer service charges.
- E. As an alternative to levying a lien, the city may, at its discretion, file suit in a civil action to collect amounts as are delinquent and due against the occupant, owner or user of the real estate, and shall collect as well all attorney's fees incurred by the city in filing the civil action. Attorney's fees shall be fixed by order of the court.
- F. In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at the rate of 8% per annum.
- G. Failure to comply with the provisions set forth in this Chapter and/or referenced by State statute(s) shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

CHAPTER 52: WATER REGULATIONS

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GENERAL PROVISIONS

52.01 GENERAL OPERATION

The city does hereby make provision for the establishment of a municipal water system (hereinafter called the water system) to be operated as a public utility.

52.02 USE OF WATER SERVICE

No person other than a city employee shall uncover or make or use any water service installation connected to the city water system except in the manner provided by this chapter. No person shall make or use any installation contrary to the regulatory provisions of this chapter.

52.03 USE TO CIRCUMVENT CHAPTER PROHIBITED

No person shall permit water from the water system to be used for any purpose to circumvent this chapter.

52.04 DAMAGE TO WATER SYSTEM

- A. No unauthorized person shall remove or damage any structure, appurtenance, or part of the water system or fill or partially fill any excavation or move any gate valve used in the water system.

- B. No person shall make any connection of an electrical welder to the city water main, appurtenance or service or use an electric welder for the purpose of thawing frozen water mains, appurtenances or services.

52.05 CONNECTIONS BEYOND CITY BOUNDARIES

Where water mains of the city are in any street or alley adjacent to or outside the corporate limits of the city, the City Council may issue permits to the owners or occupants of properties adjacent or accessible to the water main to make proper water service pipe connections with the water mains of the city and to be supplied with water in conformity with the applicable provisions of this chapter and subject to any contract for the supply of water between the city and any other city.

52.06 CONNECTION TO SYSTEM REQUIRED; USE OF PRIVATE WELLS

- A. Except where municipal water is not available, it shall be unlawful to construct, reconstruct, or repair any private water system which is designed or intended to provide water for human consumption. Private wells, to provide water for other than human consumption, may be constructed, maintained and continued in use after connection is made to the water system; provided, there is no means of cross-connection between the private well and municipal water supply at any time. Hose bibbs that will enable the cross-connection of the two systems are prohibited on internal piping of the well system supply. Where both private and city systems are in use, outside hose bibbs shall not be installed on both systems.
- B. All new homes or buildings shall connect to the municipal water system if water is available to the property. At the time as municipal water becomes available to existing homes or buildings, a direct connection shall be made to the public system within a period of time as determined by the City Council. If the connection is not made pursuant to this chapter, a charge shall be made in an amount established by Section 52.51.
- C. Where new homes or buildings do not have water available to the property, the city shall determine whether and under what conditions the municipal water system will be extended to serve the property.
- D. If the well is not to be used after the time a municipal water connection is made:
 - 1. The well pump and tank shall be disconnected from all internal piping;
 - 2. The casing shall be filled with sandy soil from the bottom to a point eight feet from the top;

3. The remaining eight feet shall be filled with concrete to the floor level and the well casing cut off as close to the floor level as possible;
4. Within 30 days after the municipal water connection is made, the owner or occupant must advise the City Utilities Superintendent that the well has been sealed.
5. Notwithstanding the foregoing, all well abandonment shall be done in accordance with M.S. § 1031.301 to 1031.345 and Minn. Rules Ch. 4725, Wells and Borings, as it may be amended from time to time.

52.07 USE OF WATER FOR AIR CONDITIONING; PERMITS

- A. All air conditioning systems which are connected directly or indirectly with the public water system must be equipped with water conserving and water regulating devices as approved by the City Engineer or City Utilities Superintendent.
- B. Permits shall be required for the installation of all air conditioning systems to the public water system. The fee shall be established pursuant to Section 52.51.

52.08 USE OF WATER FROM FIRE HYDRANTS; TEMPORARY CONNECTIONS

- A. *Use of fire hydrants.* Except for extinguishment of fires, no person, unless authorized by the Public Works Director or Public Utilities department, shall operate fire hydrants or interfere in any way with the water system without first obtaining a permit to do so from the city as follows:
 1. A permit to use a fire hydrant shall be issued for each individual job or contract and for a minimum of 30 days and for the additional 30 day period as the city shall determine. The permit shall state the location of the hydrant and shall be for the use of that hydrant and none other.
 2. The user shall make an advance cash deposit to guarantee payment for water used and to cover breakage and damage to the hydrant and meter, which shall be refunded upon expiration of the permit, less applicable charges for use.
 3. The user shall relinquish the use of the hydrant to authorized city employees in emergency situations.

4. The user shall pay a rental charge as established pursuant to Section 52.51 for each day including Sundays and legal holidays, and a fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this code, as that ordinance may be amended from time to time for each 1,000 gallons of water used.

B. *Temporary connection to fire hydrants.* An owner of a private water system may make a temporary above ground connection to a fire hydrant, subject to the time periods, conditions, and payment specified in Section 52.51. In addition, the method of connection to the private system shall conform to all existing requirements of this chapter and city ordinance and the type of meter used shall meet the approval of the Utilities Superintendent.

52.09 WATER DEFICIENCY, SHUT OFF AND USE RESTRICTIONS

The city shall not be liable for any deficiency or failure in the supply of water to consumers, whether occasioned by shutting the water off for the purpose of making repairs or connections or from any other cause whatsoever. In case of fire, or alarm of fire, or in making repairs of construction of new works, water may be shut off without notice at any time and kept off as long as necessary. In addition, the City Council shall have the right to impose reasonable restrictions on the use of the city water system in emergency situations. For non-payment of charges, water service may be discontinued according to the procedures established in Section 52.72.

WATER REGULATIONS

52.25 SUPPLY FROM ONE SERVICE

No more than one housing unit or building shall be supplied from one service connection except by permission of City Council. Each unit served shall have a separate water meter.

52.26 TAPPING OF MAINS RESTRICTED

No person, except persons authorized by the City Council, shall tap any distributing main or pipe of the water supply system or insert stopcocks or ferrules therein.

52.27 REPAIRS

- A. *Determination of need for repairs.* Based on the information supplied by the property owner or available to the city, the city will make a determination whether a problem exists in that portion of the service which is the city's responsibility. If the problem appears to exist in the areas for which the city has no responsibility, the private owners will be responsible for correction of the problem.
- B. *Thawing of water services.* The city will attempt to thaw water services on request of the resident. If the problem is found within that portion of the service for which the private owner is responsible, the private owner thereafter will be responsible for thawing the service and correction of the problem.
- C. Excavation or repair of water service.
1. The city will arrange for the investigative digging up and repair of any water service where the problem apparently exists within that area for which the city has responsibility.
 2. Unless it is clearly evident, however, that the problem is the responsibility of the city, the excavation and repair will not be made until the property owner requests the city in writing to excavate or repair the service and agrees to pay the cost.
 3. The owner further agrees to waive public hearing and be special assessed the cost of the excavation and repair if the problem is found to be other than the city's responsibility. The city will make the determination for responsibility of the cost of investigation or repair.
 4. The matter of whether the dig up is done by city forces or contracted would depend on the urgency or need of repair and the availability of city forces to do the work. Recovery by the city for faulty construction will depend upon the circumstances and the decision of the City Attorney on the likelihood of recovery.
- D. *Failure to repair.* In case of failure upon the part of any consumer or owner to repair any leak occurring in his or her service pipe within 24 hours after verbal or written notice thereof, the water may be turned off by the city and shall not be turned on until the leak has been repaired and a fee pursuant to Section 52.51 has been paid to the city.

52.28 ABANDONED OR UNUSED SERVICES

- A. If the premises served by water have been abandoned, or if the service has not been used for one year, then the service shall be shut off at the curb stop box by the city and the water meter will be removed.
- B. When new buildings are erected on the site of old ones, and it is desired to increase or change the old water service, no connections with the mains shall be made until all the old service has been removed and the main taps plugged or yoked connections installed by the city at the owner's expense.

52.29 DISCONNECTION PERMIT

A permit must be obtained to disconnect from the existing water service leads at the curb stop box. The fee for the permit shall be set pursuant to Section 52.51.

52.30 SERVICE PIPES

Every service pipe shall be laid so as to allow at least one foot of extra length in order to prevent rupture by settlement. The service pipe must be placed no less than seven feet below the ground and in a manner as to prevent rupture by freezing. Service pipes must extend from the curb stop box to the inside of the building, or if not taken into the building, then to the hydrant or fixtures which it is intended to supply. Type K copper tubing shall be used up to and including two-inch services, unless otherwise authorized by the City. All underground joints are to be mechanical, except joints under floors shall be silver soldered, unless otherwise approved by the Utilities Superintendent. Joints of copper tubing shall be kept, to a minimum, with not more than one joint used for service for each 70 feet in length. Splicing may be approved with three-piece unions only. All joints and connections shall be left uncovered until inspected by the Utilities Superintendent and tested at normal water line pressure. Unions must be three-part type. All services over two inches shall be cast iron. Connections with the mains for domestic supply shall be at least three-quarter inch up to the curb stop box.

52.31 EXCAVATION AND CONSTRUCTION REQUIREMENTS

- A. No excavation shall be made until a permit for the connection has been issued by the city.
- B. No water service pipe or water connection shall be installed in the same trench or closer than ten feet horizontally to a sewer trench or drain laid, or to be laid, either in the street or in private property, except that the water pipe on private property may be in a common trench with a sewer drain which is of a material that is in conformance with the current Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time.
- C. Where it is desired to lay the water service pipe and the building sewer pipe in the same trench, or in separate trenches less than ten feet apart, the water service pipe shall be above the sewer pipe unless approved by the City Engineer. It shall be placed at least one foot above the sewer and on a solid shelf excavated at one side of the trench. The sewer pipe shall be of a material that is in conformance with the Minnesota Plumbing Code with tested watertight joints. The water service pipe shall be watertight and corrosion resistant. Copper pipe and cast iron water pipe with specially protected joints is acceptable for this construction. Cast iron pipe shall conform to the American Water Works Association specifications for this pipe. Bell joint clamps with rubber gaskets are provisionally acceptable as extra protection for the joints on cast iron water pipe. In all cases, precautions shall be taken to assure a firm foundation for the pipes. The intervening space between the pipes shall be backfilled with compacted earth.
- D. In case the installation is on a surfaced street, the following shall apply: All backfill materials shall be mechanically compacted in 12-inch layers to the density of the adjacent material in the roadway area and to the existing street grades in accordance with the Minnesota Department of Transportation Standards. Complete surface restoration shall be made.

52.32 CONNECTION TO OTHER WATER SUPPLIES/POTENTIAL CONTAMINATION SOURCES RESTRICTED

- A. No water pipe of the water system shall be connected with any pump, well, tank, or piping that is connected with any other source of water supply except to service municipal systems.
- B. It is required that no physical connection exist between any public water supply intended for potable use and any system, equipment or device that may serve as a source of contamination unless protected by a properly maintained backflow preventer.

52.33 WATER CONNECTIONS; APPLICATIONS AND CHARGES

A. Connection applications.

1. All applications for service installations and for water service shall be made to the City Clerk. All applications for service installations and water service shall be made by the owner or agent of the property to be served and shall state the size and location of service connection required. The applicant shall, at the time of making application, pay to the city the amount of fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this code, as that ordinance may be amended from time to time or deposit required for the installation of the service connection as hereinafter provided. Applications for services larger than one inch shall be accompanied by two sets of plans or sketches indicating preferred location of service pipe and size of service based on building demand.
2. The size of the water service connections and meter shall be subject to approval of the City Engineer.
3. Water billing shall start at the time of installation of the water meter, or in the event the meter is not installed, seven days after completion of outside piping, and shall be calculated upon the minimum quarterly rate, prorated on a semi-monthly basis.

B. Connection charges.

1. A permit must be obtained to connect to the existing water service leads at the curb stop box. The fee for the permit shall be set pursuant to Section 52.51. The city shall install or have installed all service connections from the water main to the curb stop box including the stop box. Payment for service connections must be made before the work is started and should be based upon 12 times the estimate of costs provided by the City Engineer. Any excess deposit shall be returned to the applicant.
2. Additional charges shall be paid at the time of making application for tapping and making connections with the water main to where a curb stop box and service lead is not previously installed. The charge shall include the tapping of the water main, corporation cocks, the installation of a service line, the installation of a curb stop box, cost of restoring disturbed areas and all other costs related to the installation.
3. There shall be a connection charge pursuant to Section 52.51 levied by the city to contribute to the payment of the costs of the Public Water System Facilities. The City Council shall set by resolution the charges to be made for non-residential installations.

4. When water services have been stopped because of a violation of this chapter, the city shall collect the fee established pursuant to Section 52.51 before service is recommenced.
5. If a person desires to connect to the system and service a parcel that has not been assessed for the cost of water main and lateral construction, then before a permit is granted, the city shall collect an amount from the applicant that is established pursuant to Section 52.51.

52.34 LOCATION OF CURB STOP BOX

Curb stop boxes will be installed on the right-of-way line or easement limits at a location as determined by the City Engineer to be best suitable to the property and shall be left in a vertical position when backfilling is completed. Curb stop boxes will be installed at an approximate depth of seven feet below the finished ground elevation and the top of the curb stop box shall be adjusted to be flush with the finished ground elevation. Curb stop boxes must be firmly supported by a masonry block. No person shall erect any fence or plant any tree or other landscaping that would obstruct the use of the curb stop box, or cause damage to the same.

52.35 WATER METERS

- A. *Generally.* Except for extinguishment of fires, no person, unless otherwise authorized by the City Council or Public Utilities Department, shall use water from the water system or permit water to be drawn therefrom unless the same be metered by passing through a meter supplied or approved by the city. No person not authorized by the City Council or Utilities Superintendent shall connect, disconnect, take apart, or in any manner change or cause to be changed or interfere with any meter or the action thereof, or break any meter or valve seal.
 1. A charge established pursuant to Section 52.51 shall be paid by customers to the city for water meters including installations and check valves and payment for same shall be made at the time of water service application. This payment shall be made only once, subject to the following.
 2. Where a consumer has need for a larger line in addition to his or her domestic line, as in the case of a commercial consumer who needs a one-inch line for normal use and a six-inch or larger line for a fire sprinkler system, he or she will be permitted to run one line into the premises and “Y” off into two lines at the building. When this is done, the meter will be attached to the small or domestic line and a check valve as well as one-inch detection meter shall be put on the large line.

3. The city shall maintain and repair all meters when rendered unserviceable through ordinary wear and tear and shall replace them if necessary. When replacement, repair, or adjustment of any meter is rendered by the act, neglect (including damage from freezing or hot water backup) or carelessness of the owner or occupant of the premises, any expense caused the city thereby shall be charged against and collected from the water consumer.
4. A consumer may, by written request, have his or her meter tested by depositing the amount established pursuant to Section 52.51. In case a test should show an error of over 5% of the water consumed, a correctly registering meter will be installed, and the bill will be adjusted accordingly and the testing deposit refunded. This adjustment shall not extend back more than one billing period from the date of the written request.
5. All water meters and remote readers shall be and remain the property of the city.
6. Authorized city employees shall have free access at reasonable hours of the day to all parts of every building and premises connected with the water system for reading of meters and inspections.
7. It shall be the responsibility of the consumer to notify the city to request a final reading at the time of the customer's billing change.

B. *Water meter setting.* All water meters hereafter installed shall be in accordance with the Minnesota Plumbing Code and any standards established by resolution of the City Council.

RATES AND CHARGES

52.50 WATER UNIT

A water unit (hereinafter called unit) shall be one residential equivalent connection based on usage of 100,000 gallons per year or portion thereof.

52.51 RATES, FEES AND CHARGES GENERALLY

The City Council shall establish a schedule of all water rates, fees and charges for permits or services in the Ordinance Establishing Fees and Charges adopted pursuant to Section 30.11 of this Code, as that ordinance may be amended from time to time.

52.52 WATER SERVICE BILLING; CHANGE OF ADDRESS

All bills and notices shall be mailed or delivered to the owner of the property address where service is provided. If nonresident owners or agents desire personal notice sent to a different address, they shall so note on the water service application. Any change or error in address shall be promptly reported to the City Clerk.

52.53 WATER RATES

- A. The rate due and payable by each user within the city for water taken from the water system shall be established pursuant to Section 52.51.
- B. In case the meter is found to have stopped, or to be operating in a faulty manner, the amount of water used will be estimated in accordance with the amount used previously in comparable periods of the year.
- C. Rates due and payable by each water user located beyond the territorial boundaries of the city shall be determined by special contract.
- D. The minimum rates established pursuant to Section 52.51 shall begin to accrue after connection of the service pipe with the curb stop box.
- E. A meter shall be installed on the water valve in the house and a remote register outside regardless of whether inside piping is connected.
- F. In the event a water customer elects to discontinue the use of the municipal water, the regular or minimum charge shall continue until the date as service is disconnected at the curb box.

52.54 PAYMENT OF CHARGES; LATE PAYMENT; COLLECTION

- A. Any prepayment or overpayment of charges may be retained by the city and applied on subsequent monthly charges.
- B. If a monthly service charge is not paid when due, then a penalty of 10% shall be added thereto.
- C. In the event a user fails to pay his or her water user fee within a reasonable time following discontinuance of service, the fee shall be certified by the City Clerk and assessed against the

property on which the charges have incurred, and forwarded to the County Auditor for collection.

- D. It is the policy of the City to discontinue water service to users by reason of nonpayment of bills. Any portion of any utility bill remaining unpaid upon the next billing cycle shall be considered cause for termination of service. Following 10 days mailed notice, water service will be discontinued.
- E. Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered.
- F. When it becomes necessary for the City to discontinue water service to a user for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid in full, along with a reconnection fee as established by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.
- G. Cold Weather Rule. Water service disconnections for residential users will be done pursuant to M.S. 216B.097.
- G. In the event that the user fails to pay his/her bill and the water remains disconnected, the remaining bill shall be certified by the City Clerk and assessed against the property on which the charges have been incurred, and forwarded to the County Auditor for collection. See section 52.72 for a complete explanation to the City's late payment provision.

ADMINISTRATION AND ENFORCEMENT

52.70 SUPERVISION BY UTILITIES SUPERINTENDENT; LICENSING

- A. All piping connections from the curb stop box to house supply piping shall be made under the supervision of a licensed plumber subject to inspection by the Utilities Superintendent. The piping connection made to the curb stop box on the house side shall be inspected by the Utilities Superintendent. The water meter installation shall be inspected, tested and the meter sealed by the Utilities Superintendent.
- B. No person, firm or corporation shall engage in the business of altering, repairing, installing or constructing municipal water connections within the city without first obtaining a license to carry on the occupation from the city. A master plumber licensed by the state under the provisions of M.S. § 326.40, as it may be amended from time to time, is exempt from the provisions of this section.

1. The applicant shall file with the City Clerk evidence of public liability insurance, including products liability insurance with limits of at least \$50,000 per person and \$100,000 per occurrence and property damage insurance with limits of at least \$10,000. Evidence of insurance required pursuant to M.S. § 326.40, Subd. 2, as it may be amended from time to time, shall satisfy this requirement.
 2. The applicant shall file with the City Clerk a surety bond guaranteeing the conformance and compliance of work with this chapter. The bond shall be in the amount of \$2,000. The city shall hold the bond for one year following the license period. Failure to comply with provisions and requirements of this chapter shall result in forfeiture of the bond. The applicant may comply with the requirements of M.S. § 326.40, Subd. 2, as it may be amended from time to time in lieu of these requirements.
 3. Applications for licenses shall be filed with the City Clerk and shall be reviewed and subject to approval of the city.
 4. Any installation, construction, alteration of a water connection by a license in violation of any provision of this chapter or refusal on the part of a licensee to correct the defective work shall be cause for revocation of or refusal to renew a license. This license may be revoked or refused for renewal by the city at any time for cause which shall be documented in writing.
- C. All licenses required in this section shall be renewable annually. Applications for licenses shall be made annually on a form furnished by the City Clerk. Licenses shall be in effect from January 1 to December 31 of the same year. The license fee shall be established pursuant to Section 52.51.
- D. Before any license issued under the provisions of this section may be revoked or its renewal refused, the licensee shall be given a hearing by the City Council to show cause why the license should not be revoked or refused. Notice of the time, place and purpose of the hearing shall be in writing.

52.71 POWERS AND AUTHORITY OF INSPECTORS

The Utilities Superintendent and other duly authorized employees of the city, upon proper identification, shall be permitted to enter upon all properties for the purpose of inspections, observation and testing in accordance with the provisions of this chapter.

52.72 DISCONTINUANCE OF SERVICE

A. *Generally.* Water service may be shut off at any connection whenever:

1. The owner or occupant of the premises served or any person working on any pipes or equipment thereon which are connected with the water system has violated, or threatens to violate, any of the provisions of this chapter.
2. Any charge for water, service, meter, or any other financial obligations imposed on the present or former owner or occupant served is unpaid.
3. Fraud or misrepresentation by the owner or occupant of the premises serviced in connection with an application for service.

B. Disconnection for late payment.

1. It is the policy of the city to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The city's form for application for utility service and all bills shall contain, in addition to the title, address, room number, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:
 - a) That all bills are due and payable on or before the date set forth on the bill;
 - b) That if any bill is not paid by or before that date, a second bill will be mailed containing a cutoff notice that if the bill is not paid within ten days of the mailing of the second bill, service will be discontinued for nonpayment; and
 - c) That any customer disputing the correctness of his or her bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his or her choosing and may present orally or in writing his or her complaint and contentions to the city official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.
2. Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered. In the absence of payment of the bill rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified. ~~but in no event until the charges have been due and unpaid for at least 30 days.~~

3. When it becomes necessary for the city to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid. ~~along with a turn-on charge as established by City Council resolution.~~

C. Cold weather rule. Pursuant to M.S. § 216B.097, as it may be amended from time to time, no service of a residential customer shall be disconnected if the disconnection affects the primary heat source for the residential unit when the disconnection would occur during the period between October 15 and April 15, the customer has declared inability to pay on forms provided by the city, the household income of the customer is less than 185% of the federal poverty level as documented by the customer to the city, and the customer's account is current for the billing period immediately prior to October 15 or the customer has entered into a payment schedule and is reasonably current with payments under the schedule. The City Clerk shall, between August 15 and October 15, of each year, notify all residential customers of these provisions.

52.73 AUTHORIZED EMPLOYEES TO TURN WATER ON AND OFF

No person, except an authorized city employee, shall turn on or off any water supply at the curb stop box.

52.74 LIABILITY FOR EXPENSE, LOSS OR DAMAGE

Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned by the city by reason of the violation.

52.75 CITY RESPONSE FOR LATE PAYMENT

That if any bill is not paid by or before that date, a past due notice of the past due amount shall be mailed to the property owner. The past due notice shall describe the City's assessment policy.

52.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by State statute(s) shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 53:
STORM SEWER REGULATIONS**

Section

53.01	Provisions of State Law Adopted
53.02	Creation
53.03	Assessments
53.99	Penalty

53.01 PROVISIONS OF STATE LAW ADOPTED

The provisions of Minnesota Statutes 444.16 through 444.21, as amended, relating to storm sewer improvement districts are adopted and made part of this ordinance as if set out in full.

53.02 CREATION

A storm sewer improvement tax district is hereby established for the purpose of assessing the costs of major storm sewer improvement programs. The City of Franklin Storm Sewer Improvement District shall consist of all property within the corporate limits of the City of Franklin as the same may be located from time to time.

53.03 ASSESSMENTS

Assessments for any storm sewer improvements which are assessed to the City of Franklin Storm Sewer Improvement District shall be assessed to all property within the boundaries of the district on an ad valorem basis. Any such assessments shall be levied collected and disbursed as provided by Section 444.20 of Minnesota Statutes.

53.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by State statute(s) shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

TITLE VII: TRAFFIC

Underlined text (example) represents new language
Strikethrough text (~~example~~) represents deleted language

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CHAPTER 70: TRAFFIC REGULATIONS

Section

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GENERAL PROVISIONS

70.01 STATE HIGHWAY TRAFFIC REGULATIONS ADOPTED BY REFERENCE

- A. The Highway Traffic Regulations Act is hereby adopted by reference. The regulatory provisions of M.S. Chapter 169, as it may be amended from time to time, are hereby adopted as a traffic ordinance regulating the use of highways, streets and alleys within the city and are hereby incorporated in and made a part of this section as completely as if set out in full herein.
- B. The penalty for violation of the provisions of state statutes adopted by reference in this section shall be identical with the penalty provided for in the statutes for the same offense.

70.02 TRUCKS PROHIBITED ON CERTAIN STREETS

- A. The City Council by resolution may designate streets on which travel by commercial vehicles in excess of 10,000 pounds axle weight is prohibited. The Chief of Police shall cause appropriate signs to be erected on those streets. No person shall operate a commercial vehicle on posted streets in violation of the restrictions posted.
- B. No truck shall be driven or operated within the city limits except upon designated truck routes with the following exceptions:
 - 1. Notwithstanding any language to the contrary above, individuals owning land adjoining the City which is devoted to agricultural purposes whose access is limited to outlets onto the city streets are hereby exempted from the restrictions founding said Ordinance as it relates to the operation. This exception, however, is limited to the most direct route from their farm across city streets to an approved truck route within the City limits. The properties affected are more fully set forth on the map on file in the Clerk's office for the City of Franklin which map is incorporated herein by reference.
 - 2. The weight restrictions established in division (A) shall not apply to city or emergency vehicles, public school buses or to garbage and refuse trucks making regular collections and are under contract with the city, nor shall the weight restrictions in division (A) apply if a commercial vehicle must use the particular street in question for the purpose of local pick-up or delivery.
- C. All trucks will be limited to a thirty minute idling time, in a 12 hour period.

70.03 STOP INTERSECTIONS

The city may designate intersections as a stop intersection and require all vehicles to stop at one or more entrances to those intersections. The city shall post signs at those designated intersections, giving notice of the designation as a stop intersection. It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

70.04 THROUGH STREETS AND ONE-WAY STREETS

The City Council by resolution may designate any street or portion of a street as a through street or one-way street where necessary to preserve the free flow of traffic or to prevent accidents. No trunk highway shall be so designated unless the consent of the Commissioner of Transportation to the designation is first secured. The city shall cause appropriate signs to be posted at the entrance to designated streets. It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

70.05 TURNING RESTRICTIONS

- A. The City Council by resolution may, whenever necessary to preserve a free flow of traffic or to prevent accidents, designate any intersection as one where turning of vehicles to the left or to the right, or both, is to be restricted at all times or during specified hours. No intersection on a trunk highway shall be so designated until the consent of the Commissioner of Transportation to the designation is first obtained.
- B. The city shall mark by appropriate signs any intersection so designated.
- C. No person shall turn a vehicle at any intersection contrary to the direction on those signs.

70.06 U-TURNS RESTRICTED

No person shall turn a vehicle so as to reverse its direction on any street in the business district or at any intersection where traffic is regulated by a traffic control signal.

70.07 EXCESSIVE NOISE

- A. As used in this section, ***LIGHT-MOTOR VEHICLES*** means any automobile, van, motorcycle, motor-driven cycle, motor scooter, go cart, minibike, trail bike, or truck with a gross vehicular weight of less than 10,000 pounds.
- B. It shall be unlawful for any person to operate, or cause to operate, or use a light-motor vehicle in a manner as to cause, or allow to be caused, excessive noise levels as a result of unreasonable rapid accelerations, deceleration, revving of engine, squealing of tires, honking of horns, or as a result of the operation of audio devices including but not limited to radios, phonograph, tape players, compact disc players or any other sound-amplifying device on or from the light-motor vehicle.
- C. No person shall operate, or cause to operate, or use a light-motor vehicle in violation of the noise standards contained in Mm. Rules parts 7030.1050 and 7030.1060, as it may be amended from time to time.
- D. No person shall operate, or cause to operate, or use a light-motor vehicle that discharges its exhaust other than through a muffler or other device that effectively prevents loud or explosive noises. No person shall operate, or cause to operate, or use a light-motor vehicle whose exhaust system has been modified, altered, or repaired in any way, including the use of a muffler cut-out or by-pass, that amplifies or otherwise increases noise above that emitted by the light-motor vehicle as originally equipped.
- E. The following are exempted from the provisions of this section:
 - 1. Sound emitted from sirens of authorized emergency vehicles;
 - 2. Burglar alarms on light-motor vehicles of the electronic signaling type which also transmit an audible signal to a receiver which can be carried by the owner or operator of the vehicle; and
 - 3. Celebrations on Halloween and other legal holidays and celebrations in connection with duly authorized parades.

70.08 EXHIBITION DRIVING PROHIBITED

No person shall turn, accelerate, decelerate or otherwise operate a motor vehicle within the city in a manner which causes unnecessary engine noise or backfire, squealing tires, skidding, sliding, swaying, throwing of sand or gravel, or in a manner simulating a race. Unreasonable squealing or screeching sounds emitted by tires or the unreasonable throwing of sand or gravel by the tires is prima facie evidence of a violation of this section.

70.09 CRUISING PROHIBITED

- A. As used in this section, *CRUISING* means the operation of a motor vehicle as defined in Minnesota Statutes, as it may be amended from time to time, past a traffic control point as determined by a peace officer, ~~on a street in an area designated a No Cruising Zone by City Council resolution four~~ three or more times between the hours of 9:00 p.m. and 3:30 a.m.
- B. The passing of a traffic control point under the conditions previously stated, shall constitute unnecessary repetitive driving and is a violation of this section.
- C. The following use of vehicles shall constitute valid exceptions to this prohibition: taxicabs for hire, buses, authorized emergency vehicle, vehicles use used by or under contract with any governmental jurisdiction, any vehicle being used to conduct legitimate business activities.
- ~~D. This section may be enforced only in an area that has been posted as a A No Cruising Zone. Signs shall be posted at the beginning and the end of any public street, alley or highway, or portion thereof which is a no cruising zone.~~

PARADES

70.20 DEFINITIONS

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PARADE. Any parade, march, ceremony, show, exhibition, pageant, or procession of any kind, or any similar display in or on any street, sidewalk, park, or other public place in the city.

PARADE PERMIT. A permit required by this subchapter.

PARKING LOT. Any paved or unpaved area used by a place of business or shopping center for the parking of vehicles of their customers, but shall not include those operated for hire.

70.21 PERMIT REQUIRED

- A. No person or persons shall engage or participate in, aid, form or start any parade unless a parade permit has been obtained from the City Clerk or other authorized city official.
- B. This subchapter shall not apply to:
 - 1. Funeral processions;
 - 2. Students going to and from school classes or participating in educational activities; provided, that the conduct is under the immediate direction and supervision of the proper school authorities;
 - 3. A governmental agency acting within the scope of its functions.

70.22 APPLICATION FOR PERMIT

- A. *Generally.* A person seeking issuance of a parade permit shall file an application with the City Clerk.
- B. *Filing period.* The application for a parade permit shall be filed not less than 72 hours but not more than 60 days before the date on which it is proposed to conduct the parade. Failure to file an application 72 hours in advance will not result in automatic denial of the permit; provided, that the applicant shows reasonable grounds why the application could not be filed 72 hours in advance.
- C. *Required information.* The application for a parade permit shall set forth the following information:
 - 1. The name, address, and telephone number of the person seeking to conduct the parade;
 - 2. If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization and of the authorized and responsible heads of the organization;

3. The name, address, and telephone number of the person who will be the parade chairperson and who will be responsible for its conduct;
 4. The date when the parade is to be conducted;
 5. The route to be traveled, the starting point, and the termination point;
 6. The approximate number of persons, animals, and vehicles which will constitute the parade, the type of animals, if any, and the description of the vehicles;
 7. The hours when the parade will start and terminate;
 8. A statement as to whether the parade will occupy all or only a portion of the width of the streets, sidewalk, park or other public place proposed to be traversed;
 9. The location by street of any assembly area for the parade;
 10. The time at which units of the parade will begin to assemble at any assembly area or areas;
 11. The interval of space to be maintained between units of the parade;
 12. If the parade is designed to be held by, and on behalf of or for, any person other than the applicant, the applicant for the permit shall file a communication in writing from the person authorizing the applicant to apply for the permit on his or her behalf;
 13. Any additional information reasonably necessary to a fair determination as to whether a permit should be issued.
- D. There shall be paid at the time of filing an application for a parade permit a fee in an amount as established by the City Council, as it may be amended from time to time.

70.23 STANDARDS FOR ISSUANCE OF PERMIT

The City Clerk shall issue a permit when, from a consideration of the application and from other information obtained, he or she finds that:

- A. The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;

- B. The conduct of the parade will not require the diversion of so great a number of police officers of the city to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the city;
- C. The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to the assembly areas;
- D. The conduct of the parade will not interfere with the movement of firefighting equipment en route to a fire;
- E. The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays.

70.24 NOTICE OF REJECTION OF PERMIT APPLICATION

If the City Clerk disapproves the application, he or she shall mail to the applicant within the three regular business days after the date on which the application was filed a notice of his or her action stating the reasons for his or her denial of the permit.

70.25 APPEAL PROCEDURE WHEN PERMIT DENIED

Any person aggrieved shall have the right to appeal the denial of a parade permit to the City Council. The appeal shall be taken within 30 days after notice of denial. The City Council shall act on the appeal within 30 days after its receipt.

70.26 ALTERNATIVE PERMIT

The City Clerk or other authorized city official, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time, or over a route different than that named by the applicant. An applicant desiring to accept an alternate permit shall file a written notice of his or her acceptance. An alternate parade permit shall conform to the requirements of, and shall have the effect of, a parade permit under this subchapter.

70.27 NOTICE TO CITY AND OTHER OFFICIALS WHEN PERMIT ISSUED

Immediately on the issuance of a parade permit, a copy thereof shall be sent to the Police Chief and the Fire Chief.

70.28 CONTENTS OF PERMIT

- A. Starting time;
- B. Minimum speed;
- C. Maximum speed;
- D. Maximum interval of space to be maintained between the units of the parade;
- E. The portions of the street, sidewalk, park or other public place to be traversed that may be occupied by the parade;
- F. The maximum length of the parade in miles or fractions thereof;
- G. Other information as is reasonably necessary to the enforcement of this subchapter.

70.29 DUTIES OF PERMITTEE

A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. The parade chairperson or other person heading or leading the activity shall carry the parade permit on his or her person during the conduct of the parade.

70.30 PUBLIC CONDUCT DURING PARADES

- A. *Interference.* No person shall unreasonably hamper, obstruct, impede or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.
- B. *Driving through parades.* No driver of a vehicle except a police car or other emergency vehicle shall drive between the vehicles or persons comprising a parade when the vehicles or persons are in motion and are conspicuously designated as a parade.

C. *Parking on parade route.* The Police Chief or other authorized city official shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street or other public thoroughfare or part thereof constituting a part of the route of a parade. Signs shall be posted to the effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street or other public thoroughfare unless signs have been posted in accordance with this section.

70.31 REVOCATION OF PERMIT

The city shall have the authority to revoke a parade permit issued hereunder on application of the standards for issuance as herein set forth.

70.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 71:
GENERAL PARKING REGULATIONS**

Section

71.01	No parking where posted
71.02	Limited parking
71.03	Other parking restrictions
71.04	Declaration of snow emergency; parking prohibited
71.05	Parking certain semi-trailers or tractors on public streets prohibited
71.06	Overnight parking
71.07	Repairing of vehicles
71.08	Prohibiting parking areas in front yards in residential zones
71.09	Impoundment
71.10	Prima facie violation
71.00	Penalty

71.01 NO PARKING WHERE POSTED

No person shall stop, stand or park a vehicle upon the public streets of the city at any place where official signs or where appropriate devices, marks, or painting, either upon the surface of the street or the curb immediately adjacent thereto, prohibit these acts.

71.02 LIMITED PARKING

No person shall stop, stand or park a vehicle upon the public streets of the city where official signs are erected limiting the parking time thereon, for a period of time in excess of the time as designated by the official signs.

71.03 OTHER PARKING RESTRICTIONS

The City Council may by resolution order the placing of signs, devices or marks, or the painting of streets or curbs prohibiting or restricting the stopping, standing or parking of vehicles on any street where, in its opinion, as evidenced by a finding in its official minutes, the stopping, standing or parking is dangerous to those using the highway, or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic. The signs, devices, marks or

painting shall be official signs, devices, marks or painting, and no person shall stop, stand or park any vehicle in violation of the restrictions thereon or as indicated thereby.

71.04 REGULATING PARKING ON CITY STREETS DURING SNOW REMOVAL

- A. Vehicles shall not be parked on city streets or public ways after accumulation of two (2) or more inches of snowfall until the street or public way is plowed from curb to curb.
- B. During a declared snow emergency, any police officer who finds a motor vehicle in violation of this section shall attempt to contact the owner of the motor vehicle and require the owner to immediately move the motor vehicle so as not to be in violation of this section. If the owner does not immediately remove the motor vehicle or the owner cannot be located, the police officer is authorized to have the motor vehicle removed at the owner's expense.

71.05 TRUCK PARKING WITHIN THE CITY OF FRANKLIN

There shall be no truck parking allowed within the City of Franklin except in the areas designated below:

1. The South side of First Avenue between First Street and Fourth Street.
2. Trucks will be allowed to park on truck routes with a 4 ton axle limit.
3. The term "trucks" as used in this Ordinance shall not be interpreted to include: Moving vans; delivery vehicles to residential customers; emergency vehicles; and school buses.

71.06 OVERNIGHT PARKING

The following vehicles shall not be allowed to park on city streets overnight: repair, delivery, rented vehicles with commercial plates and refuse and recycling haulers or any other vehicle not registered as a passenger vehicle.

71.07 REPAIRING OF VEHICLES

Minor repairs and tune-ups, such as replacement of spark plugs, spark plug wires, thermostat, radiator or heater hoses, oil changes and brake jobs shall be permitted on city streets; provided, that they can be accomplished within the same day and completed by 10:00 p.m. All other repairs shall be considered major repairs and shall not be permitted on any city street, unless the repairs are made within an enclosed structure allowed within the zoning district. Damage to city streets because of repairs or lack of repairs shall be charged to the person responsible for the damage to the city streets.

71.08 PROHIBITING PARKING AREAS IN FRONT YARDS/RESIDENTIAL ZONES

- A. The front part of any lot shall not be used for the parking of a commercial motor vehicle, farm tractor, travel trailer, camper, camper top, tent, wagon, trailer, boat, boat trailer, storage area or motor home. Definitions of commercial motor vehicle, farm tractor and travel trailer shall be the same definitions as given under Minnesota Statutes.
- B. No person, being the owner or having control of any building, shall violate or fail to conform to any provision of this section, or fail to obey any lawful order of an officer charged with its enforcement. Each and every day on which any person continues to violate the provisions of this section, after having been notified of the violation, shall constitute a separate offense. This conviction shall not relieve any person from thereafter complying with the provisions of this section, and shall be sufficient cause to refuse further building or land use permits to the offender until a time as the orders have been complied with.

71.09 IMPOUNDMENT

Any police officer may order the removal of a vehicle from a street to a garage or other place of safety when the vehicle is left unattended and constitutes an obstruction to traffic or hinders snow removal, street improvements or maintenance operations. The vehicle shall not be released until the fees for towing and storage are paid in addition to any fine imposed for violation of this chapter.

71.10 PRIMA FACIE VIOLATIONS

The presence of any motor vehicle on any street when standing or parked in violation of this chapter is prima facie evidence that the registered owner of the vehicle committed or authorized the commission of the violation.

71.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 72:
SPECIFIC PARKING REGULATIONS**

Section

- 72.01 Parking Restrictions on C.S.A.H. No. 5
- 72.02 Restrictive Parking on Second Avenue
- 72.99 Penalty

72.01 PARKING RESTRICTIONS ON C.S.A.H. No. 5

A. Definitions as use herein:

1. “Vehicle” shall mean every device and machine, in, upon, or which any person is or may be transported or drawn upon a highway.
2. “Park” and “Parking” shall mean the leaving of a vehicle unattended.
3. “Driving” shall mean every person who drives or is in actual physical control of a vehicle.

B. Parking Regulations:

1. No parking of vehicles shall be allowed on the West side of County State Aid Highway No. 5, also known as First Street in the City of Franklin.
2. On the East side of County State Aid Highway No. 5, vehicles may be parked parallel to the curb, or with the right hand wheels of such vehicle within 12 inches of the curb.
3. No vehicles shall be double parked on this County State Aid Highway No. 5, also known as First Street.

C. Vehicles Removed By Police. Any vehicle parked on the West side of the County State Aid Highway No. 5, also known as First Street, in violation of the provisions of this ordinance may be removed by and under the direction of the City Police or the Superintendent of Streets at the expense of the owner or driver of such vehicle.

72.02 RESTRICTIVE PARKING ON SECOND AVENUE

Parking shall be prohibited during the hours from 2:00 A.M. to 6:00 A.M. on Second Avenue between First Street and Fourth Street.

72.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

CHAPTER 73: SNOWMOBILES

Section

73.01	Intent
73.02	Definitions
73.03	Application of traffic ordinances
73.04	Restrictions
73.05	Stopping and yielding
73.06	Persons under 18
73.07	Equipment
73.08	Unattended snowmobiles
73.09	Emergency operation permitted
73.99	Penalty

73.01 INTENT

It is the intent of this chapter to supplement Minnesota Statutes, as these statutes may be amended from time to time, and Minnesota Rules, as these rules may be amended from time to time, with respect to the operation of snowmobiles. These statutes and rules are incorporated herein by reference. This section is not intended to allow what the state statutes and rules prohibit, nor to prohibit what the state statutes and rules allow.

73.02 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEADMAN THROTTLE or ***SAFETY THROTTLE***. A device which, when pressure is removed from the engine accelerator or throttle, causes the motor to be disengaged from the driving mechanism.

OPERATE. To ride in or on and control the operation of a snowmobile.

OPERATOR. Every person who operates or is in actual physical control of a snowmobile.

OWNER. A person, other than a lien holder having the property in or title to a snowmobile, or entitled to the use or possession thereof.

PERSON. Includes an individual, partnership, corporation, the state and its agencies and subdivision, and any body of persons, whether incorporated or not.

RIGHT-OF-WAY. The entire strip of land traversed by a highway or street in which the public owns the fee or an easement for roadway purposes.

ROADWAY. That portion of a highway or street improved, designed or ordinarily used for vehicular travel.

SNOWMOBILE. A self-propelled vehicle designed for travel on snow or ice, steered by skis or runners.

STREET. A public thoroughfare, roadway, alley or trail used for motor vehicular traffic which is not an interstate, trunk, county-state aid, or county highway.

73.03 APPLICATION OF TRAFFIC ORDINANCES

The provisions of Ch. 70 of this code shall apply to the operation of snowmobiles upon streets and highways, except for those relating to required equipment, and except those which by their nature have no application.

73.04 RESTRICTIONS

- A. It is unlawful for any person to enter, operate or stop a snowmobile within the limits of the city:
1. On the roadway of any street, except the most right hand lane then available for traffic or as close as practicable to right hand curb or edge of the roadway, except when overtaking and passing another vehicle stopped in the lane or proceeding in the same direction, or in making a left turn. Snowmobiles may also be operated upon the outside slope of trunk, county-state aid and county highways where the highways are so configured within the corporate limits.
 2. On a public sidewalk provided for pedestrian travel.

3. On boulevards within any public right-of-way.
4. On private property of another without specific permission of the owner or person in control of the property.
5. Upon any school grounds, except as permission is expressly obtained from responsible school authorities.
6. On public property, playgrounds and recreation areas, except areas previously listed or authorized for the use by resolution of the City Council, in which case the use shall be lawful, and snowmobiles may be driven in and out of those areas by the shortest route.
7. On streets as permitted by this chapter at a speed exceeding 10 miles per hour.
8. During the hours of 10:00 p.m. to 7:00 a.m., Sunday through Thursday, and 12:01 a.m. to 8:00 a.m. on other days closer than 100 feet from any residence. This provision is not intended to prohibit snowmobiles from operating on city streets during the hours specified herein.

B. It is unlawful for any person to operate a snowmobile within the limits of the city:

1. So as to tow any person or thing in a public street or highway except through use of a rigid tow bar attached to the rear of the snowmobile; provided, that a disabled snowmobile may be towed to a private residence or a place of business where snowmobiles are repaired without the use of a rigid tow bar.
2. Within 100 feet of any fisherman, pedestrian, skating rink or sliding area where the operation would conflict with use or endanger other persons or operation.
3. To intentionally drive, chase, run over or kill any animal.

73.05 STOPPING AND YIELDING

No snowmobile shall enter any uncontrolled intersection without making a complete stop. The operator shall then yield the right-of-way to any vehicles or pedestrians at the intersection, or so close to the intersection as to constitute an immediate hazard.

73.06 PERSONS UNDER 18

- A. No person under 14 years of age shall operate on streets or make a direct crossing of a city street as the operator of a snowmobile. A person 14 years of age or older, but less than 18 years of age, may operate a snowmobile on streets as permitted under this chapter and make a direct crossing of those streets only if he or she has in his or her immediate possession a valid snowmobile safety certificate issued pursuant to M.S. § 84.872, as it may be amended from time to time.
- B. It is unlawful for the owner of a snowmobile to permit the snowmobile to be operated contrary to the provision of this section.

73.07 EQUIPMENT

It is unlawful for any person to operate a snowmobile any place within the limits of the city unless it is equipped with the following:

- A. Standard mufflers which are properly attached and which reduce the noise of operation of the motor to the minimum necessary for operation. No person shall use a muffler cutout, by-pass straight pipe or similar device on a snowmobile motor.
- B. Brakes adequate to control the movement of and to stop and hold the snowmobile under any condition of operation.
- C. When operated between the hours of one-half hour after sunset to one-half hour before sunrise, or at times of reduced visibility, at least one clear lamp attached to the front, with sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead during the hours of darkness under normal atmospheric conditions. The head lamp shall be so aimed that glaring rays are not projected into the eyes of an oncoming snowmobile operator. It shall also be equipped with at least one red light plainly visible from a distance of 500 feet to the rear during hours of darkness under normal atmospheric conditions.
- D. Reflective material at least 16 square inches on each side, forward of the handlebars and at the highest practical point on any towed object, so as to reflect lights at a 90 degree angle.

73.08 UNATTENDED SNOWMOBILES

Every person leaving a snowmobile on a public place shall lock the ignition, remove the key and take the same with him or her.

73.09 EMERGENCY OPERATION PERMITTED

Notwithstanding any prohibitions in this chapter, a snowmobile may be operated on a public thoroughfare in an emergency during the period of time and at locations where snow upon the roadway renders travel by automobile impractical.

73.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 74:
SPECIAL VEHICLE USE**

An Ordinance relating to and regulating the use and operation of all-terrain vehicles, mini-trucks, utility task vehicles, or motorized golf carts on designated Renville County roadways under its jurisdiction and on public lands, private property, and public rights-of-way within the boundaries of the City of Franklin.

Section

- 74.01 Purpose and Intent
- 74.02 Definitions
- 74.03 County Permit Required
- 74.04 Operating Conditions
- 74.05 Permit Suspension
- 74.06 Permit Revocation
- 74.07 Right to Appeal
- 74.99 Penalty

§74.01 PURPOSE AND INTENT

This Ordinance is adopted pursuant to authorization and policies contained in Minnesota Statutes, Section 169.045, as amended, to allow special vehicle use on designated roadways under the jurisdiction of Renville County and the City of Franklin. This Ordinance is adopted for the purposes of:

- A. Authorizing the operation of all-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts on designated County roadways and city streets and alleys within Renville County, Minnesota.
- B. Providing an economic benefit to Renville County citizens by allowing operation of all-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts on designated County roadways and city streets and alleys to access businesses, golf courses, parks, and trails.
- C. Restricting all-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts from operating in ditch bottoms and along right-of-way slopes to ensure the integrity of the roadway system from excessive erosion and to allow the mowing and baling of grass along County roadways.

74.02 DEFINITIONS

For the purpose of this Ordinance, certain words and phrases are defined as follows:

All-Terrain Vehicle (ATV). An all-terrain vehicle has the meaning given in Minnesota Statutes, Section 84.92.

Board. The Renville County Board of County Commissioners.

City. The cities of Renville County, Minnesota.

City Council. The Franklin City Council.

County. Renville County, Minnesota.

Designated County Roadway Map. The official County map, approved by the Renville County Board of County Commissioners as part of this Ordinance, indicating all highways and roads or portions thereof designated for the operation of all-terrain vehicles, mini-trucks, utility task vehicles, or motorized golf carts within Renville County.

Designated County Roadways. All highway s and roads or portions thereof, under the jurisdiction of the Renville County Board of County Commissioners, authorized by Ordinance for the operation of all-terrain vehicles, mini-trucks, utility task vehicles, or motorized golf carts. This definition does not include the designation and operation of all-terrain vehicles, mini-trucks, utility task vehicles, or motorized golf carts on federal or state highways, township roads, or city streets.

Designated City Roadways. All City streets and alleys within the City right-of-way, and all designated county roadways, shall be designated for the operation of all-terrain vehicles, mini-trucks, utility task vehicles, or motorized golf carts within the city limits.

Mini-Truck. A mini-truck has the meaning given in Minnesota Statutes, Section 169.011, Subd. 40a.

Motorized Golf Cart. A self-propelled motor vehicle designed and manufactured for sporting and recreational purposes that typically is not capable of exceeding speeds of 20 miles per hour.

Public Road Right-of-Way. The entire right-of-way of a public road, including the traveled portions , banks, ditches, shoulders, and medians of a roadway, which is not privately owned.

Renville County Special Vehicle Use Permit. A permit issued by Renville County allowing the use of all-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts on designated County roadways in Renville County.

Roadway. That portion of a County road or highway or City street or alley improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder.

Utility Task Vehicle (UTV). A utility task vehicle means a side-by-side, four-wheel drive, off-road vehicle that has four wheels, is propelled by an internal combustion engine with a piston displacement capacity of 1,200 cubic centimeters or less, and has a total dry weight of 1,800 but less than 2,600 pounds.

74.03 COUNTY PERMIT REQUIRED

- A. Unless otherwise legally permitted, no person shall operate all-terrain vehicles, mini-trucks, utility task vehicles, or motorized golf carts on designated County roadways, City Roadways, or portions thereof, without a valid, current, unrevoked Renville County Special Vehicle Use Permit, except during city-approved celebrations (i.e., Catfish Days, KMS Memorial Ride, etc.).
- B. Permit Application. Application for a Renville County Special Vehicle Use Permit must be made on a form supplied by the County and must contain the following information for each all-terrain vehicle, mini-truck, utility task vehicle, or motorized golf cart permitted:
 - 1. Date of application.
 - 2. The name, address, phone number, and email address of the registered vehicle owner.
 - 3. Year, make, model, and DNR registration, vehicle identification, or serial number of the vehicle to be permitted.
 - 4. Proof of vehicle insurance.
 - 5. Such other information as the Board may require.
- C. Permit Fees. The Board may establish an annual fee for a permit.

- D. Term of Permit. Permits are valid for two calendar year(s) beginning January 1 and ending December 31 of the last year the permit is valid. Vehicle owners are responsible for renewal of the Renville County Special Vehicle Use Permit every two years.
- E. Proof of Permit. Permits decals shall be located on a plate that is clearly visible on the back of the all-terrain vehicle, mini-truck, utility task vehicle, or motorized golf cart.
- F. Exemptions. The provisions of this Ordinance shall not apply to the use of all-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts used by governmental agencies in the pursuit of their duties or during emergency use and during an organized and approved parade.

74.04 OPERATING CONDITIONS

- A. Operation on Designated County Roadways. All-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts may only be operated on designated County roadways, as noted on the Designated County Roadway Map and on City Roadways with an approved Renville County Special Vehicle Use Permit. Operation on federal and state highways and roads and streets under the jurisdiction of a city or township is not permitted by this Ordinance.
- B. Regulations for Operation. All-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts must be operated on the extreme right-hand side of a designated County roadway or City Roadway, making left turns across the roadway only if it is safe to do so under prevailing conditions. All-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts shall not be operated on the inside slope, ditch bottom, or outside slope of the right-of-way, unless such operation is otherwise permitted by appropriate signage.
- C. Times of Operation. All-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts may only be operated on designated County Roadways and City Roadways from sunrise to sunset unless equipped with original equipment headlamps, tail lamps, and rear-facing brake lamps. They shall not be operated in inclement weather or when visibility is impaired by weather, smoke, fog, or other conditions, or at any time when there is insufficient light to clearly see persons and vehicles on the roadway at a distance of 500 feet. Mini-trucks are not restricted from operation at night or in inclement weather.
- D. Required Equipment on Mini-Trucks. A mini-truck may be operated on designated County roadways and City Roadways if it is equipped with the following:
 - 1. At least two headlamps.

2. At least two tail lamps.
 3. Front and rear turn-signal lamps.
 4. An exterior mirror mounted on the driver 's side of the vehicle and either:
 - a) An exterior mirror mounted on the passenger's side of the vehicle, or
 - b) An interior mirror.
 5. A windshield.
 6. A seatbelt for the driver and front passenger.
 7. A parking brake.
- E. Required Equipment on Motorized Golf Carts. Motorized golf carts shall display the slow-moving vehicle emblem provided for in Minnesota Statutes and shall be equipped with a rear-view mirror when operated on designated County and City roadways.
- F. Required Equipment on All-Terrain and Utility Task Vehicles. All-terrain and utility task vehicles shall be equipped with a rear-view mirror when operated on designated County and City roadways.
- G. Crossing Intersecting Highways. The operator of an all-terrain vehicle, mini-truck, utility task vehicle, or motorized golf cart, who has attained a Renville County Special Vehicle Use Permit, may cross any street or highway intersecting a designated County and City roadways.
- H. Application of Traffic Laws. Every person operating an all-terrain vehicle, mini-truck, utility task vehicle, or motorized golf cart, who has attained a Renville County Special Vehicle Use Permit to operate on designated County and City roadways, has all the rights and duties applicable to the driver of any other vehicle under Minnesota Statutes, except when those provisions cannot reasonably be applied to all-terrain vehicles, mini-truck s, utility task vehicles, or motorized golf carts and except as otherwise specifically provided in Minnesota Statutes.
- I. Application of Other Laws. Every person operating an all-terrain vehicle, mini-truck , utility task vehicle, and motorized golf cart who has attained a Renville County Special Vehicle Use Permit to operate on designated County and City roadways shall abide by the provisions of all

Minnesota Statutes and rules governing the vehicle's use and operation requirements including but not limited to Minnesota Statutes, Chapter 169 (Traffic Regulations), and Minnesota Statutes, Chapter 84.92 - 84.929 (All-Terrain Vehicles), as amended.

- J. Non-Application of Certain Laws. The provisions of Minnesota Statutes, Chapter 171, are applicable to persons operating mini trucks but are not applicable to persons operating all-terrain vehicles, utility task vehicles, or motorized golf carts, who have attained a Renville County Special Vehicle Use Permit to operate on designated County and City roadways, pursuant to this Ordinance. Except for the requirements of Minnesota Statutes, Section 169.70, the provisions of this chapter relating to equipment on vehicles are not applicable to all-terrain vehicles, utility task vehicles, or motorized golf carts operating, under permit, on designated County and City roadways.
- K. Speed Limit. No person shall drive or operate an all-terrain vehicle, mini-truck, utility task vehicle, or motorized golf cart on a designated County roadway at a speed in excess of 40 miles per hour, and on any City roadway in excess of the posted speed limit, or at a speed greater than is reasonable and prudent under the conditions.
- L. Insurance. Owners and operators of all-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts shall be able to furnish evidence of insurance coverage pursuant to Minnesota Statutes, Section 658.48, as amended.
- M. Age and License Requirements. Every person operating a utility task vehicle or motorized golf cart on a designated County roadway must be at least 16 years of age and have successfully completed a state-approved drivers' education course or a certified all-terrain vehicle safety training course. A driver's license is required to operate an all-terrain vehicle or mini-truck on a designated County or City roadway.

74.05 PERMIT SUSPENSION

Renville County Special Vehicle Use Permits may be temporarily suspended by the Board or County Sheriff if it is determined that use of designated County roadways or by the City Council if it is determined that use of City roadways by all-terrain vehicles, mini-trucks, utility task vehicles, and motorized golf carts is a threat to public safety.

74.06 PERMIT REVOCATION

A Renville County Special Vehicle Use Permit may be revoked for any of the following reasons:

- A. Violation of any requirements of this Ordinance.
- B. There is evidence that the permittee cannot safely operate the all-terrain vehicle, mini-truck, utility task vehicle, or motorized golf cart on a designated County roadway.
- C. Violation of any Minnesota laws or rules governing vehicle use and operation requirements including but not limited to provisions of Minnesota Statutes, Chapter 171, Chapter 169, or Chapter 84.92 - 84.929, as amended.

74.07 RIGHT TO APPEAL

A permit applicant or permittee may appeal, in writing within five business days, the denial or revocation of a Renville County Special Vehicle Use Permit to the Board. The Board shall conduct a hearing within 30 days after the written appeal has been filed. The appealing party shall receive notice of the time and place of the meeting at least 10 days prior to the public hearing. The Board shall determine whether there is sufficient cause to support the denial or revocation of the Renville County Special Vehicle Use Permit. The Board shall make written findings in support of its decision immediately following the hearing, which shall be final.

§74.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

TITLE IX: GENERAL REGULATIONS

Underlined text (example) represents new language
Strikethrough text (~~example~~) represents deleted language

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CHAPTER 90: ABANDONED PROPERTY

Section

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GENERAL PROVISIONS

90.01 DISPOSITION OF ABANDONED PROPERTY

- A. *Procedure.* Except for abandoned and junked vehicles, all property lawfully coming into possession of the city shall be disposed of as provided in this section which is adopted pursuant to Minnesota Statutes, as it may be amended from time to time. Abandoned and junked vehicles shall be disposed of according to the procedures outlined in Minnesota Statutes and all corresponding Minnesota Rules.
- B. *Storage.* The department of the city acquiring possession of the property shall arrange for its storage. If city facilities are unavailable or inadequate, the department may arrange for storage at a privately-owned facility.

- C. *Claim by owner.* The owner may claim the property by exhibiting satisfactory proof of ownership and paying the city any storage or maintenance costs incurred by it. A receipt for the property shall be obtained upon release to the owner.
- D. *Sale.* If the property remains unclaimed in the possession of the city for 60 days, the property may be sold to the highest bidder at a public auction conducted by the City ~~Clerk or his or her designee~~ after two weeks' published notice setting forth the time and place of the sale and the property to be sold.
- E. *Disposition of proceeds.* The proceeds of the sale shall be placed in the general fund of the city. If the former owner makes application and furnishes satisfactory proof of ownership within six months of the sale, the former owner shall be paid the proceeds of the sale of the property less the costs of storage and the proportionate part of the cost of published notice and other costs of the sale.

ABANDONED VEHICLES

90.15 FINDINGS AND PURPOSE

M.S. Ch. 168B, and Minn. Rules Ch. 7035, as they may be amended from time to time, are hereby adopted by reference. Sections 90.15 through 90.25 of this code are adopted under the authority of M.S. § 168B.09, Subd. 2, as it may be amended from time to time. If any of these provisions are less stringent than the provisions of § M.S. 168B or Minn. Rules Ch. 7035, as it may be amended from time to time, the statute or rule shall take precedence.

90.16 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED VEHICLE.

- A. A motor vehicle, as defined in Minnesota Statutes as it may be amended from time to time, that:
 - 1. Has remained illegally:

- a) For a period of more than 48 hours on any property owned or controlled by a unit of government, or more than four hours on that property when it is properly posted; or
 - b) On private property for a period of time, as determined under § 90.18(B), without the consent of the person in control of the property; and
2. Lacks vital component parts or is in an inoperable condition that it has no substantial potential for further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building.
- B. A classic car or pioneer car, as defined in Minnesota Statutes, as it may be amended from time to time, is not considered an abandoned vehicle.
- C. Vehicles on the premises of junk yards and automobile graveyards that are defined, maintained, and licensed in accordance with Minnesota Statutes, as it may be amended from time to time, or that are licensed and maintained in accordance with local laws and zoning regulations, are not considered abandoned vehicles.
- D. A vehicle being held for storage by agreement or being held under police authority or pursuant to a writ or court order is not considered abandoned, nor may it be processed as abandoned while the police hold, writ or court order is in effect.

DEPARTMENT. The Minnesota Department of Public Safety.

IMPOUND. To take and hold a vehicle in legal custody. There are two types of impounds: public and nonpublic.

IMPOUND LOT OPERATOR or OPERATOR. A person who engages in impounding or storing, usually temporarily, unauthorized or abandoned vehicles. **OPERATOR** includes an operator of a public or nonpublic impound lot, regardless of whether tow truck service is provided.

JUNK VEHICLE. A vehicle that:

- A. Is three years old or older;
- B. Is extensively damaged, with the damage including things as broken or missing wheels, motor, drive train or transmission;
- C. Is apparently inoperable;

D. Does not have a valid, current registration plate; and

E. Has an approximate fair market value equal only to the approximate value of the scrap in it.

MOTOR VEHICLE or **VEHICLE**. Has the meaning given “motor vehicle” in M.S. § 169.01, as it may be amended from time to time.

MOTOR VEHICLE WASTE. Solid waste and liquid wastes derived in the operation of or in the recycling of a motor vehicle, including such things as tires and used motor oil, but excluding scrap metal.

MPCA or **AGENCY**. The Minnesota Pollution Control Agency.

NON-PUBLIC IMPOUND LOT. An impound lot that is not a public impound lot.

PUBLIC IMPOUND LOT. An impound lot owned by or contracting with a unit of government under section § 90.24.

UNAUTHORIZED VEHICLE. A vehicle that is subject to removal and impoundment pursuant to § 90.18(B), or M.S. § 169.041 as it may be amended from time to time, but is not a junk vehicle or an abandoned vehicle.

UNIT OF GOVERNMENT. Includes a state department or agency, a special purpose district, and a county, statutory or home rule charter city, or town.

VITAL COMPONENT PARTS. Those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including such things as the motor, drive train and wheels.

90.17 VIOLATION TO ABANDON MOTOR VEHICLE

Any person who abandons a motor vehicle on any public or private property, without the consent of the person in control of the property, is guilty of a misdemeanor.

90.18 AUTHORITY TO IMPOUND VEHICLES

A. *Abandoned or junk vehicles*. The City Clerk or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle.

B. *Unauthorized vehicles.* The City Clerk, or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any unauthorized vehicle under M.S. § 169.041 as it may be amended from time to time. A vehicle may also be impounded after it has been left unattended in one of the following public or private locations for the indicated period of time:

1. In a public location not governed by Minnesota Statutes, as it may be amended from time to time:
 - a. On a highway and properly tagged by a peace officer, four hours;
 - b. Located so as to constitute an accident or traffic hazard to the traveling public, as determined by a peace officer, immediately; or
 - c. That is a parking facility or other public property owned or controlled by a unit of government, properly posted, four hours; or

C. On private property:

- a. That is single-family or duplex residential property, immediately;
- b. That is private, nonresidential property, properly posted, immediately;
- c. That is private, nonresidential property, not posted, 24 hours; or
- d. That is any residential property, properly posted, immediately.

90.19 SALE; WAITING PERIODS

A. *Sale after 15 days.* An impounded vehicle is eligible for disposal or sale under § 90.23, 15 days after notice to the owner, if the vehicle is determined to be:

1. A junk vehicle, except that it may have a valid, current registration plate and still be eligible for disposal or sale under this subdivision; or
2. An abandoned vehicle.

- B. *Sale after 45 days.* An impounded vehicle is eligible for disposal or sale under § 90.23, 45 days after notice to the owner, if the vehicle is determined to be an unauthorized vehicle.

90.20 NOTICE OF TAKING AND SALE

- A. *Contents; notice given within five days.* When an impounded vehicle is taken into custody, the city or impound lot operator taking it into custody shall give notice of the taking within five days. The notice shall:

1. Set forth the date and place of the taking; the year, make, model and serial number of the impounded motor vehicle if the information can be reasonably obtained; and the place where the vehicle is being held;
2. Inform the owner and any lienholders of their right to reclaim the vehicle under § 90.21; and
3. State that failure of the owner or lienholders to exercise their right to reclaim the vehicle and contents within the appropriate time allowed under § 90.19 shall be deemed a waiver by them of all right, title and interest in the vehicle and contents and a consent to the transfer of title to and disposal or sale of the vehicle and contents pursuant to § 90.23.

- B. *Notice by mail or publication.* The notice shall be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lienholders of record. The Department makes this information available to impound lot operators for notification purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy.

- C. *Unauthorized vehicles; notice.* If an unauthorized vehicle remains unclaimed after 30 days from the date the notice was sent under division (B) of this section, a second notice shall be sent by certified mail, return receipt requested, to the registered owner, if any, of the unauthorized vehicle and to all readily identifiable lienholders of record.

90.21 RIGHT TO RECLAIM

- A. *Payment of charges.* The owner or any lienholder of an impounded vehicle shall have a right to reclaim the vehicle from the city or impound lot operator taking it into custody upon payment

of all towing and storage charges resulting from taking the vehicle into custody within 15 or 45 days, as applicable under § 90.19, after the date of the notice required by § 90.20.

- B. *Lienholders.* Nothing in this chapter shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a lienholder to foreclose. For the purposes of this section, **GARAGEKEEPER** is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair or maintenance of motor vehicles.

90.22 OPERATOR'S DEFICIENCY CLAIM; CONSENT TO SALE

- A. *Deficiency claim.* The nonpublic impound lot operator has a deficiency claim against the registered owner of the vehicle for the reasonable costs of services provided in the towing, storage and inspection of the vehicle minus the proceeds of the sale or auction. The claim for storage costs may not exceed the costs of:

1. Twenty-five (25) days storage for a vehicle described in section § 90.19(A); and
2. Fifty-five (55) days storage for a vehicle described in § 90.19(B).

- B. *Implied consent to sale.* A registered owner who fails to claim the impounded vehicle within the applicable time period allowed under section § 90.19 is deemed to waive any right to reclaim the vehicle and consents to the disposal or sale of the vehicle and its contents and transfer of title.

90.23 DISPOSITION BY IMPOUND LOT

- A. *Auction or sale.*

1. If an abandoned or unauthorized vehicle and contents taken into custody by the city or any impound lot is not reclaimed under § 90.21, it may be disposed of or sold at auction or sale when eligible pursuant to § 90.20 and 90.21.
2. The purchaser shall be given a receipt in a form prescribed by the Registrar of Motor Vehicles which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. Before a vehicle is issued a new certificate of title, it must receive a motor vehicle safety check.

- B. *Unsold vehicles.* Abandoned or junk vehicles not sold by the city or public impound lots pursuant to division (A) of this section shall be disposed of in accordance with section § 90.24.
- C. *Sale proceeds; public entities.* From the proceeds of a sale under this section by the city or public impound lot of an abandoned or unauthorized motor vehicle, the city shall reimburse itself for the cost of towing, preserving and storing the vehicle, and all administrative, notice and publication costs incurred in handling the vehicle pursuant to this chapter. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for 90 days and then shall be deposited in the treasury of the city.
- D. *Sale proceeds; nonpublic impound lots.* The operator of a nonpublic impound lot may retain any proceeds derived from a sale conducted under the authority of division (A) of this section. The operator may retain all proceeds from sale of any personal belongings and contents in the vehicle that were not claimed by the owner or the owner's agent before the sale, except that any suspected contraband or other items that likely would be subject to forfeiture in a criminal trial must be turned over to the appropriate law enforcement agency.

90.24 DISPOSAL AUTHORITY

The city may contract with others or may utilize its own equipment and personnel for the inventory of impounded motor vehicles and abandoned scrap metal and may utilize its own equipment and personnel for the collection, storage and transportation of these vehicles and abandoned scrap metal. The city may utilize its own equipment and personnel only for the collection and storage of not more than five abandoned or unauthorized vehicles without advertising for or receiving bids in any 120-day period.

90.25 CONTRACTS; REIMBURSEMENT BY MPCA

- A. *MPCA review and approval.* If the city proposes to enter into a contract with a person licensed by the MPCA pursuant to this section or a contract pursuant to section § 90.24, the MPCA may review the proposed contract before it is entered into by the city, to determine whether it conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules. A contract that does so conform may be approved by the MPCA and entered into by the city. Where a contract has been approved, the MPCA may reimburse the city for the costs incurred under the contract that have not been reimbursed under section § 90.23. Except as otherwise provided in § 90.24, the MPCA shall not approve any contract that has been entered into without prior notice to and request for bids from all persons duly licensed by the MPCA

to be a party to a disposal contract pursuant to M.S. § 116.07, as it may be amended from time to time; does not provide for a full performance bond; or does not provide for total collection and transportation of abandoned motor vehicles, except that the MPCA may approve a contract covering solely collection or transportation of abandoned motor vehicles where the MPCA determines total collection and transportation to be impracticable and where all other requirements herein have been met and the unit of government, after proper notice and request for bids, has not received any bid for total collection and transportation of abandoned motor vehicles.

- B. *The city may perform work.* If the city utilizes its own equipment and personnel pursuant to its authority under § 90.24, and the use of the equipment and personnel conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules, the city may be reimbursed by the MPCA for reasonable costs incurred which are not reimbursed under section § 90.23.
- C. *The city required to contract work.* The MPCA may demand that the city contract for the disposal of abandoned motor vehicles and other scrap metal pursuant to the MPCA's plan for solid waste disposal. If the city fails to contract within 180 days of the demand, the MPCA, through the Department of Administration and on behalf of the city, may contract with any person duly licensed by the MPCA for the disposal.

90.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

CHAPTER 91: ANIMALS

Section

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- 91.02 Running at Large
- 91.03 Animal Pound
- 91.04 Disturbing the Peace
- 91.05 License Requirements
- 91.06 Vaccinations
- 91.07 Non-Domestic Animals
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91.01 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMAL. Any mammal, reptile, amphibian, fish, bird (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. Animals shall be classified as follows:

- A. **DOMESTIC ANIMALS.** Those animals commonly accepted as domesticated household pets. Unless otherwise defined, domestic animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.
- B. **FARM ANIMALS.** Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, farm animals shall include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, and other animals associated with a farm, ranch, or stable.

C. **NON-DOMESTIC ANIMALS.** Those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, non-domestic animals shall include:

1. Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats.
2. Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.
3. Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.
4. Any member or relative of the rodent family including any skunk (whether or not descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.
5. Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators.
6. Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.

AT LARGE. Off the premises of the owner and not under the custody and control of the owner or other person, either by leash, cord, chain, or otherwise restrained or confined.

CAT. Both the male and female of the felidae species commonly accepted as domesticated household pets.

DOG. Both the male and female of the canine species, commonly accepted as domesticated household pets, and other domesticated animals of a dog kind.

OWNER. Any person or persons, firm, association or corporation owning, keeping, or harboring an animal.

RELEASE PERMIT. A permit issued by the Police Department or other person in charge of the pound for the release of any animal that has been taken to the pound. A release permit may be

obtained upon payment of a fee to the City Clerk in accordance with the regular license requirement if the animal is unlicensed, payment of a release fee, and any maintenance costs incurred in capturing and impounding the animal. The release fee shall be as established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time.

POUND MASTER. The Pound Master shall be appointed annually by the City Council. The Pound Master may be a full time City Employee or a Volunteer City Employee.

ANIMAL POUND. Any dog or cat found in the City of Franklin without a tag, or running at large, that can be caught shall be placed in the Animal Pound and the Pound Master shall keep an accurate record of the time of such placement of each dog and cat. Every dog or cat so placed in the Animal Pound shall be retained for a period of five (5) days, Sundays and legal holidays excluded, unless claimed by the owner. If unclaimed, the dog or cat will become the property of the City of Franklin and may be disposed of in the most economical way at the discretion of the Pound Master and may include donation of the animal to the ~~Renville/Sibley~~ Humane Society or Animal Shelter.

91.02 RUNNING AT LARGE PROHIBITED

Running At Large. It shall be unlawful for the dog or cat of any person who owns, harbors, or keeps a dog or cat, to run at large. A person, who owns, harbors, or keeps a dog or cat which runs at large shall be guilty of a misdemeanor. Dogs or cats on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the city has posted an area with signs reading “Dogs or Cats Prohibited.”

91.03 ANIMAL POUND

Every police officer shall attempt to impound any dog found unlicensed or running at large and shall give notice of the impounding to the owner of such dog if known. Release may be obtained upon payment of a fee to the City Clerk in accordance with the regular license requirements, if the animal is unlicensed, payment of an impound fee, and any boarding and maintenance costs incurred in capturing and impounding the animal. The impound fee shall be as established in the Ordinance Establishing Fees and Charges adopted pursuant to §30.11, as it may be amended from time to time. If unable to impound but the owner is identifiable and verified, a citation shall be issued. In case the owner is unknown, such officer shall post notice at city hall that if the dog is not claimed within five regular business days of the posting of the notice, it will be destroyed. If

such dog is not claimed within the five business days, the dog shall be disposed of in accordance with Minnesota law. The owner of the dog is responsible for all costs associated with the impounding, housing, and euthanizing of the animal. If the cost is not paid, the City may undertake all legal remedies available to collect the costs from the owner including assessing the costs against the property in accordance with Chapter 429 of the Minnesota Statutes.

91.04 DISTURBING THE PEACE

Every police officer shall attempt to impound any dog found unlicensed or running at large and shall give notice of the impounding to the owner of such dog if known. Release may be obtained upon payment of a fee to the City Clerk in accordance with the regular license requirements, if the animal is unlicensed, payment of an impound fee, and any boarding and maintenance costs incurred in capturing and impounding the animal. The impound fee shall be as established in the Ordinance Establishing Fees and Charges adopted pursuant to §30.11, as it may be amended from time to time. If unable to impound but the owner is identifiable and verified, a citation shall be issued. In case the owner is unknown, such officer shall post notice at city hall that if the dog is not claimed within five regular business days of the posting of the notice, it will be destroyed. If such dog is not claimed within the five business days, the dog shall be disposed of in accordance with Minnesota law. The owner of the dog is responsible for all costs associated with the impounding, housing, and euthanizing of the animal. If the cost is not paid, the City may undertake all legal remedies available to collect the costs from the owner including assessing the costs against the property in accordance with Chapter 429 of the Minnesota Statutes.

91.05 LICENSE REQUIREMENTS

An annual license shall be required for every dog and cat over the age of six (6) months kept in the City of Franklin. This shall not apply to any dog or cat temporarily present within the City of Franklin for a period of less than thirty (30) days. The owner shall apply to the City Clerk for a license for such animal. The Clerk shall record the licenses issued and furnish the applicant with a tag and certificate bearing the corresponding tag number. The applicant shall attach said tag to the collar or chain around the neck of the dog in a secure manner, cats are not required to wear a tag. Licenses for dogs and cats shall be issued annually. The City Clerk shall not issue any license for a dog or cat until the applicant furnishes a certificate from veterinarian indicating that such animal has a current rabies vaccination. Each dog application shall also be accompanied by proof that the applicant has at least \$50,000 in homeowner's, renters, or occupant liability insurance coverage. License fees shall be set by the City Council of the City of Franklin as established by the Ordinance Establishing Fees and Charges pursuant to §30.11 of this code, as the ordinance may be amended

from time to time. The penalty for non-licensed animals shall be a petty misdemeanor, the fine as provided by state law.

91.06 VACCINATION

- A. *Dogs and Cats Vaccinated.* All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every three years by a licensed veterinarian for rabies - with a live modified vaccine.
- B. *Certificate of Vaccination.* A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk/Treasurer or a Police Officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven business days in which to present the certificate(s) to the City Clerk or officer. Failure to do so shall be deemed a violation of this section.

91.07 NON-DOMESTIC ANIMALS

It shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the city. Any owner of a non-domestic animal at the time of adoption of this code shall have 30 days in which to remove the animal from the city after which time the city may impound the animal as provided for in this section. An exception shall be made to this prohibition for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

91.08 FARM ANIMALS

Farm animals, except chickens, shall only be kept in an agricultural district of the city, or on a residential lot of at least ten acres in size provided that no animal shelter shall be within 300 feet of an adjoining piece of property. An exception shall be made to this section for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition. Current owners grandfathered in will be exempt. Files will be kept on these particular situations.

- A. **CHICKENS LIMITED.** It shall be unlawful for any person to keep or harbor more than 6 chickens on any premise within the city limits unless the property is located in an agricultural zoning district. The keeping of roosters is prohibited.
- B. **CONFINEMENT.** Every person who owns, controls, keeps, maintain or harbors hen chickens must keep them confined on the premises at all times in a chicken coop or chicken run while in the city. Any coop or run shall be screened from view with a solid fence or landscaped buffer with a minimum height of 4 feet. Chickens are not allowed to be located in any part of the home and/or garage.
- C. **CHICKEN COOPS AND CHICKEN RUNS.**
1. Any chicken coop or run fencing must be consistent with building and zoning codes.
 2. All chicken coops and runs must be locate within the rear yard and shall be set back at least twenty-five (25) feet from any residential structure on any adjacent lot.
 3. All chicken coops must be a minimum of four (4) square feet per chicken in size, must not exceed ten (10) square feet per chicken in size and must not exceed six (6) feet total in height.
 4. Fenced in chicken runs must not exceed twenty (20) square feet per chicken and fencing must not exceed six (6) feet in total height. Chicken runs may be enclosed with wood and/or woven wire materials, and may allow chickens to contact the ground.
 5. Chicken coops must either be elevated a minimum of twelve (12) inches and a maximum of twenty-four (24) inches above the ground; or the coop floor, foundation and footings must be constructed using rodent resistant construction.
 6. Chicken grains and feed must be stored in rodent proof containers and chicken manure shall not be placed in yard compost piles.
- D. **CONDITION AND INSPECTIONS.** No person who owns, controls, keeps, maintains or harbors hen chickens shall permit the premises where the hen chickens are kept to be or remain in an unhealthy, unsanitary or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property. Any chicken coop and chicken run authorized under this chapter may be inspected at any reasonable time the city animal control officer or other agent of the city, and such officer or agent shall make the determination as to whether or not an unhealthy, unsanitary or noxious condition exists.

- E. VIOLATIONS. Any person who owns, controls, maintains or harbors hen chickens in contrary to any section of this ordinance shall be guilty of a petty misdemeanor, punishable as provided in §10.99.

91.09 KENNELS

- A. *Definition of kennel.* The keeping of three or more dogs on the same premises, whether owned by the same person or not and for whatever purpose kept, shall constitute a “kennel;” except that a fresh litter of pups may be kept for a period of three (3) months before that keeping shall be deemed to be a “kennel.”
- B. *Kennel as a nuisance.* Because the keeping of three or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of three or more dogs on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the City. Current owners grandfathered in will be exempt from this Section with files kept on this particular situation.

91.10 SUMMARY DESTRUCTION OF CERTAIN DOGS

Whenever an officer has reasonable cause to believe that a particular dog presents a clear and immediate danger to residents of the city, the officer, after making reasonable attempts to impound such dog, may summarily destroy such dog. The owner is responsible for any costs to dispose of the dog. The City may undertake all legal remedies available to collect the costs from the owner including assessing the costs against the property in accordance with Chapter 429 of the Minnesota Statutes.

91.11 POTENTIALLY DANGEROUS AND DANGEROUS DOGS

- A. Dogs will be declared by the City to be potentially dangerous or dangerous in accordance with the provisions of Chapter 347 of the Minnesota Statutes as amended. All owners that have an animal so declared potentially dangerous or dangerous will be subject to all requirements set forth therein. Additionally, any owner that after already having one animal previous declared dangerous, has a subsequent animal declared dangerous will be required to pay a \$300 fine in addition to all other requirements and obligations.
- B. Attack by an animal. It shall be unlawful for any person who owns, harbors, or keeps any animal, or the parents or the guardians of any such person under 18 years of age, to negligently

or intentionally permit or fail to prevent the animal from inflicting or attempting to inflict bodily injury upon any person or other animal whether or not the owner is present. This section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home without permission.

91.12 DISEASED ANIMALS

- A. *Running at large.* No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the City, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this section.
- B. *Confinement.* Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any city employee or a police officer. The police officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations. This amount is established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.
- C. *Release.* If the animal, upon examination, is not found to be diseased the animal shall be released to the owner or keeper free of charge.
- D. *Biting animals.* Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the city pound for a period of not less than ten days, at the owner's expense. The animal may be released at the end of the time if healthy and free from symptoms of rabies, and after the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for the confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of Renville county, and provide immediate proof of confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property for the required ten day period.

91.13 BASIC CARE

- A. All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section.
- B. Excrement Cleanup. (Prior Ordinance Number 127 Amendment, 6/11/2001) It is unlawful for any person to allow animal excrement to accumulate, by failing to clean up excrement no less than once per week. It is unlawful to leave animal excrement on public property or the private property of another person.

91.14 INTERFERENCE WITH OFFICERS

No person shall in any manner molest, hinder, or interfere with any person authorized by the City Council to capture dogs, cats or other animals and convey them to the pound while engaged in that operation. Nor shall any unauthorized person break open the pound, or attempt to do so, or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter, or interfere with, hinder any device used for capture of animals or in any manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.

91.40 BEEKEEPING

- A. Beekeeping Definitions. The following words, terms and phrases, when used in this Section, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:
 - 1. Apiary means any place or location where one or more colonies or nuclei of bees are kept.
 - 2. Bees means any stage of the common honeybee, *Apis mellifera*, or other bees kept for the production of honey or wax.
 - 3. Hive means any domicile for keeping bees. One hive houses one swarm consisting of one queen and workers.
 - 4. Wild Swarms of Bees means any colony of bees which becomes established upon a lot or parcel or in anything other than a hive.

B. Within Corporate Limits. It shall be unlawful for any person to place, establish, or maintain any hive, stand, box, apiary, or keep any bees in or upon premises within the corporate limits of the city unless the bees are kept in accordance with the provisions of this article.

C. Requirements for Hives, Stands, Boxes, or Apiaries:

1. No person shall establish or maintain any hive, stand, box or apiary or keep any bees on any premises within 50 feet of any occupied dwelling, except the dwelling of the owner of such bees, or within 25 feet of any property line, sidewalk, alley, or other public way. No person shall establish or maintain a number of hives, stands, boxes or apiaries on any premises such as to constitute a nuisance to neighboring property owners as determined by the Chief of Police or his designee based on all provisions of this article. No hive, stand, box or apiary shall be kept or maintained within 200 feet of a school, licensed child day care center or a dwelling occupied by any person systemically allergic to bee stings. The distance requirements shall be enforced with the exception of an adjacent property owner or occupant who may request in a written affidavit to the Chief of Police that the distance requirements be waived pertaining to their property line. The affidavit may be voided at any time upon the request from the submitting owner or occupant.
2. No bees shall be kept upon any land not owned or possessed by the keeper of such bees without first obtaining written permission to do so from the owner or person lawfully in possession of such land, which permission may be revoked at anytime.
3. All hives, stands, boxes or apiaries shall be oriented so that their entrances face a house or building on the premises and shall be surrounded by a solid fence not less than four (4) feet in height, located no further than thirty (30) feet from such hives. All gates must be locked with a key or combination lock at all times.
4. A conspicuous sign identifying the site as housing bees and warning of danger shall be posted at entrance and exit points of all apiary enclosures.
5. No hive shall be kept or maintained within any front or side yard.
6. With the exception to property located within agriculture districts, no more than two (2) hives, stands, boxes or apiaries shall be maintained on any lot or parcel. If more than two hives are kept on land zoned as agricultural, such beehives shall be situate not less than two hundred (200) feet from any dwelling, excluding the dwelling on the lot or parcel whereon such hives are situate, and at least two hundred (200) feet from any public street or roadway or public access.

- D. Subsequent Development of Adjacent Properties. If adjacent property is later developed, or residential structures located closer than distances prescribed § 91.40 (B), above, the keeper shall move such hives, stands, boxes, or apiaries to comply with this article.
- E. Water Facilities. Fresh clean water facilities for the bees shall be provided within twenty-five (25) feet of each hive, stand, box or apiary.
- F. Power of Chief of Police to Remove or Destroy Bees. Whenever the Renville County Public Health Director shall find, and so declare, that a public health nuisance or emergency exists by reason of beekeeping within the city limits, or if the Beekeeper fails to comply with the provisions of this article, the Chief of Police may order the removal or destruction of any apiary in order to preserve the public health and welfare.
- G. Exemptions. Nothing in this article shall be deemed or construed to prohibit the keeping of bees within a school for the purpose of observation, or within a physician's office or laboratory for the purpose of medical research, treatment, or other scientific purposes.
- H. Wild Swarms of Bees. No person shall keep, maintain, or allow to remain on any lot or parcel which such person owns and/or resides any wild swarms of bees.

91.99 VIOLATIONS, PENALTIES, AND FEES

- ~~A. *Separate offenses.* Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.~~
- ~~B. *Misdemeanor.* Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in § 10.99. Specific fines may be charged by resolution of the City Council.~~
- ~~C. *Fees.* Any and all fees addressed on this ordinance shall be set by resolution of the City Council.~~
- D. Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 92:
HEALTH AND SAFETY NUISANCES**

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GENERAL PROVISIONS

92.01 ASSESSABLE CURRENT SERVICES

Definition. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning:

CURRENT SERVICE. Shall mean one or more of the following: snow, ice, or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S. § 463.15 through 463.26 as they may amended from time to time; installation or repair of water service lines; street sprinkling, street flushing, light street oiling, or other dust treatment of streets; repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.

A. Snow, ice, dirt and rubbish.

1. *Duty of owners and occupants.* The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep the walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt or rubbish to remain on the walk longer than 24 hours after its deposit thereon. Failure to comply with this section shall constitute a violation.

2. *Removal by city.* The City Clerk or other person designated by the City Council may cause removal from all public sidewalks all snow, ice, dirt and rubbish as soon as possible beginning 24 hours after any matter has been deposited thereon or after the snow has ceased to fall. The City Clerk or other designated person shall keep a record showing the cost of removal adjacent to each separate lot and parcel.

B. Public health and safety hazards. When the city removes or eliminates public health or safety hazards from private property under the following provisions of this chapter, the administrative

officer responsible for doing the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and annually deliver that information to the City Clerk.

C. *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property under Chapter 52 of this code, the City Clerk shall keep a record of the total cost of the installation or repair against the property.

D. *Repair of sidewalks and alleys.*

1. *Duty of owner.* The owner of any property within the city abutting a public sidewalk or alley shall keep the sidewalk or alley in repair and safe for pedestrians. Repairs shall be made in accordance with the standard specifications approved by the City Council and on file in the office of the City Clerk.

2. *Inspections; notice.* The City Council or its designee shall make inspections as are necessary to determine that public sidewalks and alleys within the city are kept in repair and safe for pedestrians or vehicles. If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering the owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so and that the expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned.

3. *Repair by city.* If the sidewalk or alley is not repaired within 30 days after receipt of the notice, the City Clerk shall report the facts to the City Council and the City Council shall by resolution order the work done by contract in accordance with law. The City Clerk shall keep a record of the total cost of the repair attributable to each lot or parcel of property.

E. *Personal liability.* The owner of property on which or adjacent to which a current service has been performed shall be personally liable for the cost of the service. As soon as the service has been completed and the cost determined, the City Clerk, or other designated official, shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the City Clerk.

F. *Damage to public property.* Any person driving any vehicle, equipment, object or contrivance upon any street, road, highway or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight

permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. § 514.67, as it may be amended from time to time.

- G. *Assessment.* On or before September 1 of each year, the City Clerk shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefited as a special assessment under the authority of M.S. § 429.101 as it may be amended from time to time and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

92.02 SHADE TREE DISEASE CONTROL

- A. **Policy and Purpose.** The City has determined that the health of oak and elm trees is threatened by fatal diseases know as Oak Wilt and Dutch Elm disease. It has further been determined that the loss of oak and elm trees located on public and private property would substantially depreciate the value of the property and impair the safety, good order, general welfare and convenience of the public. It has further determined that conditions of trees may exist that could create risks of injury to persons or damage to property or a hazard to public traffic safety. It is declared to be the intention of the council to control and prevent the spread of diseases, and provide for the removal of dead, diseased trees or nuisances as prescribed.
- B. **Definitions.** The following terms, as used in this Section, shall have the meanings stated:
1. **SHADE TREE DISEASE** Shall mean Dutch Elm Disease, Oak Wilt Disease, or any other epidemic tree diseases.
 2. **TREE INSPECTOR** shall mean the City employee or other such person as the City Council may designate and who thereafter qualify, together with his/her duly designated assistants.
 3. **NUISANCE** means a) any living or standing tree infected to any degree with a shade tree disease; or b) any logs, branches, stumps, or other parts of any dead or dying tree, so infected, unless such parts have been fully burned or treated under the direction of the Tree Inspector; or 3) any tree that by its position or condition creates a risk of injury to persons

or damage to property, or that creates a hazard to public traffic safety. Note: See § 92.18 (B) for non-disease related tree nuisances.

C. **Scope and Adoption by Reference.** Minnesota Statutes, Sections 18.01 through 18.023, inclusive, are hereby adopted by reference together with the Rules and Regulations of the Minnesota Commissioner of Agriculture relating to shade tree diseases; provided, that this Section shall supercede such Statutes , Rules and Regulations, only to the extent of inconsistencies.

D. **Unlawful Act.** It is a petty misdemeanor for any person to keep, maintain or permit upon premises owned by him or upon public property where he has the duty of tree maintenance, any nuisance as herein defined.

E. **Inspection and Diagnosis.** It is the power and duty of the Tree Inspector to enter upon public or private property, at any reasonable time, for the purpose of inspecting for, and diagnosing shade tree disease damage or to determine if the risk of injury or damage to property or safety hazard. Such abatement procedures shall be carried out in accordance with the current technical and expert methods and plans as may be designed by the Commissioner of Agriculture of the State of Minnesota. The City shall establish specifications for tree removal and disposal methods consistent therewith.

F. **Procedures for Removal of Trees and Wood.**

1. Whenever the Tree Inspector finds with reasonable certainty that the infection, or danger of infection, or risk or hazard exists in any tree or wood on any public or private property, he shall proceed as follows:

a). If the Tree Inspector finds that the danger of infection or other trees is not imminent because of dormancy of shade tree disease, he shall make a written report of his findings to the Council which shall proceed by (1) abating the nuisance as a public improvement under Minnesota Statutes, Chapter 429, or (2) abating the nuisance as provided in Subparagraph b of this Subdivision.

b). If the Tree Inspector finds that danger of infection of other trees, risk of injury or damage to property or a hazard to public traffic safety is imminent, he shall notify the owner of the property, or the abutting property, as the case may be, by mail that the nuisance will be abated within a specified time, not less than ten (10) days from the date of mailing of such notice. The Tree Inspector shall immediately report such action to the Council and after the expiration of the time limited by the notice he may abate the nuisance.

- c). If the Tree Inspector finds with reasonable certainty that immediate action is required to prevent the spread of shade tree disease, or to eliminate a risk of injury to persons or damage to property, or hazard to public traffic safety, he may proceed to abate the nuisance forthwith. He shall report such action immediately to the Council and to the abutting property owner, or to the owner of the property where the nuisance is located.
2. Upon receipt of the Tree Inspector's report required by Subparagraph (1) Item a, the Council shall by resolution order the nuisance abated. Before action is taken on such resolution, the Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners no less than 3 days prior to such meeting. The notice shall state the time and place of the meeting, the streets affected, action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or adjournment thereof, the Council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for doing of the work by day labor or by contract.
3. The Tree Inspector shall keep a record of the costs of abatements done under this Subdivision and shall report monthly to the City Clerk all work done for which assessments are to be made stating and certifying the description of the land, lots, parcels involved and the amount chargeable to each.
4. On or before September 1 of each year the City Clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this Section. The Council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes Section 429.101 and other pertinent statutes for certification to the County Auditor and collection the following year. Penalty, see § 10.99
5. No damage shall be awarded the owner for destruction of any tree, wood, or part thereof pursuant to this Ordinance.

G. Spraying Trees

1. Whenever the Tree Inspector determines that any tree or wood is infected or threatened with infection, he may spray or treat all nearby high value trees with an effective concentrate or fungicide or both. Activities authorized by this Subdivision shall be conducted in accordance with technical and expert opinions and plans of the Commissioner and his agents whenever possible.

2. The notice and assessment provisions of Subdivision (F) apply to spraying and treatment operations conducted under this Subdivision.

H. **Transporting Wood Prohibited.** It is a petty misdemeanor for any person to transport any elm wood, or in the months of April, May or June, to transport any oak wood without having obtained a permit from the Tree Inspector. The Tree Inspector shall grant such permits only when the purpose of this Section will be served thereby.

I. **Interference Prohibited.** It is a petty misdemeanor for any person to prevent, delay or interfere with the Tree Inspector while he is engaged in the performance of duties imposed by this Ordinance.

J. **Additional Duties of Tree Inspector.** It is the additional duty of the Tree Inspector to coordinate, under the direction and control of the Council, all activities of the City relating to the control of shade trees and prevention of shade tree disease. He shall recommend to the Council the details of a program for the control of the disease and perform the duties incident to such a program adopted by the Council.

K. **Subsidies.** The duty of any property owner to bear the cost of removing or maintaining trees, weather by private contract or assessment, shall be subject to a subsidy policy, if any, established by the State of Minnesota for the treatment or removal of trees infected with shade tree disease.

NUISANCES

92.15 PUBLIC NUISANCE

Whoever by his or her act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

- A. Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public;
- B. Interferes with, obstructs or renders dangerous for passage any public highway or right-of-way, or waters used by the public; or
- C. Is guilty of any other act or omission declared by law or § 92.16, 92.17 or 92.18, or any other part of this code to be a public nuisance and for which no sentence is specifically provided.

92.16 PUBLIC NUISANCES AFFECTING HEALTH

The following are hereby declared to be nuisances affecting health:

- A. Exposed accumulation of decayed or unwholesome food or vegetable matter;
- B. All diseased animals running at large;
- C. All ponds or pools of stagnant water;
- D. Carcasses of animals not buried or destroyed within 24 hours after death;
- E. Accumulations of manure, refuse or other debris;
- F. Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- G. The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances;
- H. All noxious weeds and other rank growths of vegetation upon public or private property;
- I. Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities;
- J. All public exposure of people having a contagious disease; and
- K. Any offensive trade or business as defined by statute not operating under local license.

92.17 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY

The following are hereby declared to be nuisances affecting public morals and decency:

- A. All gambling devices, slot machines and punch boards, except as otherwise authorized by federal, state or local law;
- B. Betting, bookmaking and all apparatus used in those occupations;
- C. All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame and bawdy houses;

- D. All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor, or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place;
- E. Any vehicle used for the unlawful transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.

92.18 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY

The following are declared to be nuisances affecting public peace and safety (also see § 92.85 Noises Prohibited):

- A. All snow and ice not removed from public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;
- B. All trees, hedges, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection. A tree shall also be deemed a nuisance if it or any part of it:
 - 1. Appears dead, dangerous or likely to fall;
 - 2. Is not pruned to a height of eight (8) feet above a sidewalk, or fourteen (14) feet above the street to accommodate vehicles such as garbage trucks and street maintenance trucks;
 - 3. Obstructs a curb, gutter, street or sidewalk.
- C. All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;
- D. Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks or public grounds except under conditions as are permitted by this code or other applicable law;
- E. Radio aerials or television antennae erected or maintained in a dangerous manner;
- F. Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or sidewalk;

- G. All hanging signs, awnings and other similar structures over streets and sidewalks, so situated so as to endanger public safety, or not constructed and maintained as provided by ordinance;
- H. The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;
- I. Any barbed wire fence less than six feet above the ground and within three feet of a public sidewalk or way;
- J. All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;
- K. Waste water cast upon or permitted to flow upon streets or other public properties;
- L. Accumulations in the open of discarded or disused machinery, household appliances, furniture, bathroom fixtures, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;
- M. Any well, hole or similar excavation which is left uncovered or in another condition as to constitute a hazard to any child or other person coming on the premises where it is located;
- N. Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash or other materials;
- O. The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over the substance;
- P. The depositing of garbage or refuse on a public right-of-way or on adjacent private property;
- Q. All other conditions or things which are likely to cause injury to the person or property of anyone.

92.19 DUTIES OF CITY OFFICERS

Law Enforcement ~~The Police Department or Sheriff, if the city has at the time no Police Department,~~ shall enforce the provisions relating to nuisances. Any peace officer shall have the

power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.

92.20 ABATEMENT

A. *Notice.* Written notice of violation; notice of the time, date, place and subject of any hearing before the City Council; notice of City Council order; and notice of motion for summary enforcement hearing shall be given as set forth in this section.

1. *Notice of violation.* Written notice of violation shall be served by a peace officer on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.
2. *Notice of City Council hearing.* Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of the City Council hearing, notice of City Council hearing shall be served by posting it on the premises.
3. *Notice of City Council order.* Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in M.S. § 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.
4. *Notice of motion for summary enforcement.* Written notice of any motion for summary enforcement shall be made as provided for in M.S. § 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.

A. *Procedure.* Whenever a peace officer determines that a public nuisance is being maintained or exists on the premises in the city, the officer shall notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the officer shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may

seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement.

- B. *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.
- C. *Immediate abatement.* Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

92.21 RECOVERY OF COST

- A. *Personal liability.* The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.
- B. *Assessment.* If the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the City Clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other the charges as well as other charges for current services to be assessed under M.S § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and other

pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

92.22 Registration of Vacant Buildings

A. *Purpose.* The purpose of this amendment is to protect the public health, safety and welfare presented by unregistered vacant buildings in the City by:

1. Identification and registration of vacant buildings.
2. Determination of the responsibilities of owners of vacant buildings and structures.
3. Providing for administration, enforcement and penalties.

B. *Procedure.* The City shall identify vacant properties as follows:

1. The Owner of a vacant building shall register the building within ten (10) business days of the building becoming vacant on a form provided by the City.
2. In the event the building owner does not register the vacant building as required, the City may administratively register the building as provided hereafter based on the following information:
 - a) The City may maintain a list of properties that have utilities shut-off pursuant to Minnesota Statute 216B.0976. The list will be shared with the police, fire, and utility billing as required by the statute. The City shall inspect properties with utilities shut-off for occupancy.
 - b) The City may use property maintenance complaints of suspected vacant properties.
 - c) The City may use the City's water/utility billing uses to identify unoccupied homes.
 - d) The City may use information from the County based on sheriff sale/notice of pendency filings.

C. Those properties deemed as unoccupied shall be considered vacant and be registered on behalf of the identified owner and shall then be required to comply with this ordinance. Property owners will be notified of their Vacant Property Registration and sent a copy of this ordinance.

1. The City shall keep a list of the responsible party/owner and share the information internally for public safety and property maintenance issues.
2. Once a vacant building is registered, the City shall regularly inspect for compliance with this ordinance on a schedule to be developed by the City.
3. The owner or designated property manager is responsible for maintaining the property. In the event the City is required to perform work on private property to achieve compliance with city ordinances relating to nuisance and property maintenance due to the failure of the owner/manager to perform the required maintenance, the City may assess any costs against the registered property. One notice of noncompliance will be sent via certified mail to the owner or authorized manager/agent, allowing 7 days to achieve compliance. To address any ongoing nuisance and enforcement subsequent to the sending of the notice, the City will continue to maintain the property (i.e., lawn mowing, boarding windows) on a regular basis until the property is sold. In the event of non-payment, the City shall assess such costs and fees for the city services as required by law. All assessments shall be paid prior to conveyance and occupancy of the vacant structure.
4. The City shall inspect for property maintenance compliance, which includes any items that the City would enforce upon any other occupied structure and include exterior items such as maintenance of the yard, rotten/deteriorated exterior of the home, garbage/debris in the yard, graffiti, or other nuisance conditions.
5. For single family residential properties and multi-family properties with separate water meters, the City will turn the water service off by request of the owner, agent/manager or other responsible party, or in the event of absentee maintenance the City will shut the water off to prevent water loss/damage in the event of broken pipes. The City shall turn the water back on upon completion of the City inspection and after payment (or acceptable arrangement of payment) of any pending related assessments and/or fees and other reasonable costs of enforcement.
6. Properties shall be registered and processed quarterly. The quarters are January-March, April-June, July-September, and October-December.

WEEDS

92.35 SHORT TITLE

This subchapter shall be cited as the “Weed Ordinance.”

92.36 JURISDICTION

This subchapter shall be in addition to any state statute or county ordinance presently in effect, subsequently added, amended or repealed.

92.37 DEFINITIONS; EXCLUSIONS

A. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DESTRUCTION ORDER. The notice served by the City Council or designated city official, in cases of appeal, on the property owner of the ordinance violation.

PROPERTY OWNER. The person occupying the property, the holder of legal title or a person having control over the property of another, such as a right-of-way, easement, license or lease.

WEEDS, GRASSES and RANK VEGETATION. Includes but is not limited to the following:

1. Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip
2. Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated, or otherwise maintained for two consecutive years;

3. Bushes of the species of tall, common, or European barberry, further known as *berberis vulgaris* or its horticultural varieties;
4. Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding 12 inches.
5. Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennial plants.
6. The term **WEEDS** does not include shrubs, trees, cultivated plants or crops.

B. In no event shall cultivated plants or crops include plants which have been defined by state statute or administrative rule as being noxious or detrimental plants.

92.38 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE

All property owners shall be responsible for the removal, cutting, or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of 12 inches in height.

92.39 FILING COMPLAINT

Any person, including the city, who believes there is property located within the corporate limits of the city which has growing plant matter in violation of this subchapter shall make a written complaint signed, dated and filed with the City Clerk. If the city makes the complaint, an employee, officer or Council Member of the city shall file the complaint in all respects as set out above.

92.40 NOTICE OF VIOLATIONS

A. Upon receiving notice of the probable existence of a violation of this subchapter, a person designated by the City Council shall make an inspection and upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification of the violation, a "Destruction Order", to the property owner or the person occupying the property, via first class mail. If the owner or occupant thereof fails, within five (5) business days after the posting by first class mail of a notice to remove the weeds on any property, the City by and through its authorized personnel may enter upon any such property and remove the weeds by any reasonable means, including contracting with a private person to do so.

B. Notices.

1. All notices are to be in writing and all filings are to be with the City Clerk.
2. Certified mailing to the City Clerk or others is deemed filed on the date of posting to the United States Postal Service.
3. **Only one (1) mailed notice to the property owner per calendar year shall be required.**

92.41 APPEALS

- A. The property owner may appeal by filing written notice of objections with the City Council within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council. It is the property owner’s responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants or crops or is not otherwise in violation of this subchapter, and should not be subject to destruction under the subchapter.
- B. An appeal by the property owner shall be brought before the City Council and shall be decided by a majority vote of the Council Members in attendance and being at a regularly scheduled or special meeting of the City Council.

92.42 ABATEMENT BY CITY

In the event that the property owner shall fail to comply with the “Destruction Order” within five (5) business days and has not filed a notice within 48 hours to the City Clerk of an intent to appeal, the City Council may employ the services of city employees or outside contractors to conform to this subchapter by all lawful means.

92.43 LIABILITY

- A. The property owner is liable for all costs of removal, cutting or destruction of weeds as defined by this subchapter.
- B. The property owner is responsible for all collection costs associated with weed destruction, including but not limited to court costs, attorney’s fees and interest on any unpaid amounts incurred by the city. If the city uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals which may be used.

- C. All sums payable by the property owner are to be paid to the City Clerk and to be deposited in a general fund as compensation for expenses and costs incurred by the city.
- D. All sums payable by the property owner may be collected as a special assessment as provided by M.S. § 429. 101, as it may be amended from time to time.

OPEN BURNING

92.60 PURPOSE

The purpose of this Ordinance is to establish a permitting process for ~~permitted~~ categories of open burn events for properties located residences and farms within the City of Franklin. ~~and provide for a permitting process for residential and agricultural burning, except when such open burning is defined as a “Camp or Recreation Fire” as prescribed in this Section.~~

92.61 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIRE CHIEF, ~~CAPTAIN~~ ASSISTANT FIRE CHIEF AND LIEUTENANTS. The Fire Chief, Assistant Fire Chief, ~~Captain~~ and Lieutenants of the Fire Department which provides fire protection services to the city.

OPEN BURNING or OPEN FIRE. A fire burning in matter, whether concentrated or dispersed, which is not contained within a fully enclosed fire box, structure or vehicle, and from which the products of combustion are emitted directly to the open atmosphere without passing through a stack duct, or chimney, except a “recreational fire” as defined herein. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices are not defined as “open burning.”

CAMP FIRE. A fire set for cooking, warming, or ceremonial purposes, which is not more than three (3) feet in diameter by three (3) feet high, and has had the ground five (5) feet from the base of the fire cleared of all combustible material.

RECREATIONAL FIRE BURN REQUIREMENTS. When a camp fire is used for recreational purposes, it must be ignited with an approved starter fluid using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; extinguished completely before quitting the occasion; and respecting

weather conditions, neighbors, burning bans, and air quality so that nuisance health or safety hazards will not be created. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices, are not defined as camp or recreational fires. No more than one recreational fire is allowed on any property at one time.

RECREATIONAL FIRE SITE. An area of no more than a three foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks or ferrous metal only an which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels or burners are not a “recreation fire site” as defined herein. Recreational fire sites shall not be located closer than fifty (50) feet to any structure.

STARTER FUELS. Dry, untreated, unpainted wood or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution must be used to start an Open Fire.

WOOD. Dry, clean fuel only such as twigs, branches, limbs, “presto logs,” charcoal, cord wood or untreated dimensional lumber. The term does not include wood that is green with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three foot lengths.

92.62 OPEN BURNING PROHIBITED WITHOUT A PERMIT

~~—From and after the effective date of this Ordinance, except as herein otherwise provided, open burning shall be prohibited within the City of Franklin.~~

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, ~~except that a permit is not required for any fire which is a recreational fire as defined in § 92.60. Penalty, see § 10.99.~~ with the following additional regulations and exceptions:

- A. Permits from the city shall be required for all open burning that takes place between April 1 through October 31 with the following conditions:
 1. All open burning shall take place between the hours of 6:00 p.m. to 9:00 p.m.; and
 2. All burning piles shall be supervised. Only light the number of piles that can be adequately supervised at any one time with a maximum of three piles burning at once; and

3. All burning piles shall have an available and adequate water supply readily available to dispense the fire if needed; and
 4. All burning piles shall be sufficiently spaced away from potential combustible sources, such as building, vegetation or any material that radiant heat could cause a fire. A person should be able to comfortable stand between the burning pile and any structure; and
 5. Under no circumstance should any organic soils (peat) be allowed to ignite; and
 6. All burning piles shall be fully extinguished before they are abandoned; and
 7. All of the other provisions of this ordinance shall be followed.
- B. Any open burning that takes place after October 31 and before April 1 shall follow the other provisions set forth in this Ordinance.

92.63 PROHIBITED MATERIALS

- A. No person shall conduct, cause or permit open burning oils, petro fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint or paint fillers.
- B. No person shall conduct, cause or permit open burning of hazardous waste or salvage operations, open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment or building material generated from demolition of commercial or institutional structures.
- C. No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.
- D. No person shall conduct, cause or permit open burning of any household garbage, painted wood, or paper.
- E. No person shall conduct, cause or permit open burning of any grass clippings. Penalty, see § 10.99.

92.63 EXEMPTIONS

Exemption to conduct fires under this section does not excuse a person from the consequences, damages or injuries which may result therefore nor does it exempt any person from regulations promulgated by the Minnesota Pollution Control Agency or any other governmental unit exercising jurisdiction in matters of pollution or fire hazard regulation.

The following types of fires are hereby exempt from this ordinance:

~~—Open burning of the types, and subject to the conditions, as hereinafter stated, shall be exempt from the prohibition within the City of Franklin:~~

- A. Recreational Fires.
- B. Fires under managed supervision for which a burning permit has been obtained from the City Clerk and, where required by state law, from the Department of Natural Resources, but limited to the following:
 - a) Fires purposely set for the instruction and training of public and industrial fire fighting personnel. Note: Fire Training permits can only issued by the Minnesota Department of Natural Resources.
 - b) Fires set for the elimination of a fire hazard which cannot be abated by any other practicable means.
 - c) Ground thawing for utility repairs and construction.
 - d) The burning of piled ~~trees~~, branches, brush, leaves and other vegetable matter shall be permitted to occur from 6:00 p.m. through 9:00 p.m., from April through October.
- C. Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, landspreading or other alternative methods are not practical.
- D. Disposal of diseased trees generated on site, diseased or infected nursery stock, diseased bee hives.
- E. Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.

92.64 FIRE LIMITS

It shall be unlawful to burn on any public owned or controlled lot or parcel of land, street, public sidewalk or other public place which has not been set aside by public authorities for such purposes.

92.65 PERMITS REQUIRED FOR OPEN BURNING

Open burning permits shall be obtained by making application on a form prescribed by the Department of Natural Resources (DNR) and adopted by the City. The permit application shall be presented to the City Clerk for review and processing.

92.66 PERMIT HOLDER RESPONSIBILITY

- A. Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect. Every open burn event shall be constantly attended by the permit holder or his or her competent representative. The open burning site shall have available appropriate communication and fire suppression equipment.
- B. The open burn fire shall be completely extinguished before the permit holder or his or her representative leaves the site. No fire may be allowed to smolder with no person present. It is the responsibility of the permit holder to have a valid permit, as required by this subchapter, available for inspection on the site by the Police Department, Fire Department, MPCA representative or DNR forest officer.
- C. The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and the burn event safety plan as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

92.67 REVOCATION OF OPEN BURNING PERMIT

The open burning permit is subject to revocation at the discretion of DNR forest officer, the Fire Chief, Assistant Fire Chief, ~~Captain~~ and Lieutenants of the City's Fire Department, or the City's ~~Chief of Police~~ Law Enforcement. Reasons for revocation include but are not limited to a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developing during the course of the burn, or a fire smoldering with no flame present.

92.68 DENIAL OF OPEN BURNING PERMIT

If established criteria for the issuance of an open burning permit are not met during review of the application, it is determined that a practical alternative method for disposal of the material exists, or a pollution or nuisance condition would result, or if a burn event safety plan cannot be drafted to the satisfaction of the Fire Chief, Assistant Fire Chief, ~~Captain~~ and Lieutenants of the City's Fire Department, these officers may deny the application for the open burn permit.

92.69 BURNING BAN OR AIR QUALITY ALERT

No recreational fire or open burn will be permitted when the city or DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an Air Quality Alert.

~~92.70 RULES ADOPTED BY REFERENCE~~

~~Minnesota Statutes and Minnesota Uniform Fire Code, as amended, are hereby adopted by reference and made a part of this Ordinance as if fully set forth at this point.~~

92.71 AREA OF ENFORCEMENT

This Ordinance shall effect the area as set forth and on file with the clerk of the City of Franklin, which is incorporated in and made a part of this Ordinance.

92.72 SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

92.73 PENALTY

~~Any person violating the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine and/or imprisonment as described under § 10.99.~~

92.74 RULES AND LAWS ADOPTED BY REFERENCE

The provisions of Minnesota Statutes, Minnesota Rules, and the Minnesota Uniform Fire Code, as amended from time to time, are hereby adopted by reference and made a part of this subchapter as if fully set forth at this point.

92.80 BURNING OF SOLID FUELS

A. Definitions:

1. “External solid fuel-fired heating device” means a device designed for external solid fuel combustion so that usable heat is derived for the interior of a building, and includes solid fuel-fired stoves, solid fuel-fired cooking stoves, and combination fuel furnaces or boiler which burn solid fuel. Solid fuel-fired heating devices do not include natural gas-fired fireplace logs or wood-burning fireplaces or wood stoves in the interior of a dwelling.
2. “Stacks or chimneys” means any vertical structure incorporated into a building and enclosing a flue or flues that carry off smoke or exhaust from a solid fuel-fired heating device, especially, the part of such a structure extending above a roof.
3. “Person” means an individual, partnership, corporation, company or other association.

B. Permit Required. The City of Franklin requires any person to obtain a zoning permit for any external solid fuel-fired heating device or external storage unit that is sold or purchased after the date this ordinance becomes effective.

C. Other Requirements.

1. All external solid fuel-fired heating devices, used, installed, or purchased within the city limits of Franklin, Minnesota, are required to meet emission standards currently required by the Environmental Protection Agency (EPA) and Underwriters Laboratories (UL) listing. No person shall use an external solid fuel-fired heating device in violation of this paragraph.
2. All outdoor external solid fuel-fired heating devices are subject to public nuisance as described in Ordinance §92.15.
3. Any dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities, or any use of an external solid fuel-fired heating device to burn solid fuels other than those

solid fuels for which the external solid fuel-fired heating device was designed, is declared a public nuisance.

4. All stacks or chimneys must be so constructed to withstand high winds or other related elements and according to the specifications of the manufacturer of the external solid fuel-fired heating device. The stack height shall be a minimum of 25 feet above ground level. All stacks or chimneys must be of masonry or insulated metal with a minimum six-inch flue. No person shall use an external solid fuel-fired heating device in violation of this paragraph.
5. Only fuels designed for burning in an external solid fuel-fired heating device may be burned. No garbage may be burned in an external solid fuel-fired heating device. No person shall use an external solid fuel-fired heating device in violation of this paragraph.
6. No person may use an external solid fuel-fired heating device in the City of Franklin during the months of May, June, July, August and September.
7. External storage units shall not include storage bins or wagons. Allowed storage includes interior storage within the residence or garage, or a free-standing storage shed.

~~D. Penalty. Any violation of this ordinance is a misdemeanor. Each day a violation occurs is a separate offense.~~

REGULATION OF NOISE LEVELS

92.85 NOISES PROHIBITED

- A. General Prohibition. No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, health, peace, safety or welfare of any persons or precludes their enjoyment of property or affects their property's value.

All obnoxious noises in violation of Minn. Rules Ch. 7030, as they may be amended from time to time which are hereby incorporated by reference into this code. This general prohibition is not limited by the specific restrictions of the following sections.

- B. Motor Vehicles. No person shall operate a motor vehicle in the city in violation of motor vehicle noise limits of the Minnesota Pollution Control Agency as per Minn. Stat. Sec. 169.69 and 169.693, et. al.

The discharging of the exhaust or permitting the discharging of the exhaust of any stationary

internal combustion engine, motor boat, motor vehicle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations.

- C. Stereo Systems, Sound Devices, Etc. No person shall use or operate or permit the use or operation of any stereo system, musical instrument, paging system, or other device for the production or reproduction of sound in a distinctly and loudly audible manner as to unreasonably disturb the peace, quiet, and comfort of any person nearby or otherwise in violation of Sub-Section A, above.

Operation of any such device in such a manner as to be plainly audible at the property line of the structure or building in which it is located, in the hallway or apartment adjacent, shall be considered by the City as prima facie evidence of a violation of Sub-Section A.

Load sounds from stereo systems from a motor vehicle may form the basis of a violation of Section A, above. Sounds from a stereo system of a motor vehicle that is plainly audible outside the vehicle shall be considered by the City as prima facie evidence of a violation of Sub-Section A.

- D. Animals. (See also Chapter 91, Section 91.10 for additional regulations on animal noise.) No person shall keep any animal that unreasonably disturbs the comfort of person in the vicinity by its frequent or continued noise or otherwise violates Sub-Section A, above. For purposes of this sub-section, the following shall be considered by the City as prima facie evidence of a violation of this sub-section:

The animal noise occurs and can be heard from a location past the property line of the premises where the animal is being kept and the animal has made such noises intermittently for more than three minutes with one minute or less lapse of time between each animal noise during the three minute period.

- E. Special Events – Exemptions. It is recognized by the City that public policy requires discretion in enforcing this noise ordinance in the context of certain special events. It is further recognized that special events are by their nature unique and infrequent. Therefore, noise levels relating to special events operating with approval of the City, including, but not necessarily limited to, the annual town celebration of Catfish days; public dances; and other special events sanctioned by the City, shall be exempt from the prima facie provisions of Sub-Section C.

Furthermore, the City Police Department shall have the authority to grant variances and exceptions to this City Ordinance for special events. A person aggrieved by the decision and

seek a decision by the City Council as to how the noise levels of a particular special event will be regulated in the future.

~~§ 92.86. CRIMINAL PENALTIES.~~

~~Any violation of this ordinance by an owner, caretaker or person otherwise in charge of the motor vehicle, sound, device, or animal is a petty misdemeanor. Penalty see § 10.99.~~

92.87. ENFORCEMENT

The police department shall enforce the provisions of this Noise Ordinance.

92.88. CIVIL REMEDIES

This Ordinance may be enforced by injunction, action for abatement, or other appropriate civil remedy.

92.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

CHAPTER 93: STREETS AND SIDEWALKS

Section

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GENERAL PROVISIONS

93.01 UNLOADING ON STREET OR SIDEWALK

No person shall unload any heavy material in the streets of the city by throwing or letting the material fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.

93.02 STREET AND SIDEWALK OBSTRUCTION

No person shall obstruct any street, alley, sidewalk, or other public way within the city by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

93.03 MATERIALS ON STREET OR SIDEWALK

No person shall encumber any street or sidewalk. No owner, occupant or person having the care of any building or lot of land, bordering on any street or sidewalk, shall permit it to be encumbered with barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof.

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

93.20 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY

In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage rights-of-ways within its jurisdiction.

93.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE

Minn. Rules Ch. 7819, as it may be amended from time to time is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in Minn. Rules part 7819.0100 subps. 1 through 23, as it may be amended from time to time are the definitions of the terms used in the following provisions of this subchapter.

93.22 PERMIT REQUIREMENT

- A. *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.
1. *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
 2. *Obstruction permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- B. *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.
- C. *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the Ordinance Establishing Fees and Charges, adopted pursuant to ' 30.11 of this code, as it may be amended from time to time.
- D. *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director.

93.23 PERMIT APPLICATIONS

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- A. Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:
 - 1. Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
 - 2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - 3. A certificate of insurance or self-insurance:
 - a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the Director;
 - b) Verifying that the registration is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;
 - d) Requiring that the Director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
 - e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient

to protect the city and the public and to carry out the purposes and policies of this chapter.

4. The city may require a copy of the actual insurance policies.
5. If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as it may be amended from time to time as recorded and certified to by the Secretary of State.
6. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

B. Payment of money due the city for:

1. Permit fees as established by the Ordinance Establishing Fees and Charges adopting pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, estimated restoration costs and other management costs;
2. Prior obstructions or excavations;
3. Any undisputed loss, damage, or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or
4. Franchise fees or other charges as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, if applicable.

93.24 ISSUANCE OF PERMIT; CONDITIONS

- A. *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Director shall issue a permit.
- B. *Conditions.* The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

93.25 PERMIT FEES

Permit fees shall be in an amount established in the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11, as it may be amended from time to time.

- A. *Excavation permit fee.* The city shall establish an excavation permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, in an amount sufficient to recover the following costs:
1. The city management costs; and
 2. Degradation costs, if applicable.
- B. *Obstruction permit fee.* The city shall establish the obstruction permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.
- C. *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.
- D. *Non-refundable.* Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, that were paid for a permit that the Director has revoked for a breach as stated in § 93.33 are not refundable.
- E. *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.
- F. All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.100, as it may be amended from time to time.

93.26 RIGHT-OF-WAY PATCHING AND RESTORATION

- A. *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit,

increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this subchapter.

- B. *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the city restore the right-of-way or to restore the right-of-way itself.
1. *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.
 2. *Permittee restoration.* If the permittee restores the right-of-way itself, it shall be at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.
- C. *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule part 7819.1100, as it may be amended from time to time. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.
- D. *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Director, shall correct all restoration work to the extent necessary, using the method required by the Director. The work shall be completed within five calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under § 93.34.
- E. *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do the work. In that event the permitted shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.
- F. *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the Ordinance Establishing Fees and

Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

93.27 SUPPLEMENTARY APPLICATIONS

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

93.28 DENIAL OF PERMIT

The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

93.29 INSTALLATION REQUIREMENTS

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules, as amended from time to time and other applicable local requirements, in so far as they are not inconsistent with Minnesota Statutes, as amended from time to time.

93.30 INSPECTION

- A. *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, as amended from time to time.
- B. *Site inspection.* The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- C. *Authority of Director.*
 - 1. At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
 - 2. The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If proof has not been presented within the required time, the Director may revoke the permit pursuant to § 93.40.

93.31 WORK DONE WITHOUT A PERMIT

- A. *Emergency situations.*
 - 1. Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.
 - 2. If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

- B. *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for the permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

93.32 SUPPLEMENTARY NOTIFICATION

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Director of the accurate information as soon as this information is known.

93.33 REVOCATION OF PERMITS

- A. *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:
1. The violation of any material provision of the right-of-way permit;
 2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
 3. Any material misrepresentation of fact in the application for a right-of-way permit;
 4. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees' control; or
 5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 93.37.
- B. *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy that violation. The demand shall state that continued violations may be cause for revocation of the permit. A

substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

- C. *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- D. *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

93.34 MAPPING DATA; INFORMATION REQUIRED

Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules, as amended from time to time.

93.35 LOCATION OF FACILITIES

- A. Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.
- B. *Corridors.* The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
- C. *Limitation of space.* To protect the health, safety and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

93.36 DAMAGE TO OTHER FACILITIES

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the Director shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that owner's facilities.

93.37 RIGHT-OF-WAY VACATION

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

93.38 INDEMNIFICATION AND LIABILITY

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rule 7819.1250, as it may be amended from time to time.

93.39 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Director.

93.40 APPEAL

A right-of-way user that has been denied registration; has been denied a permit; has had permit revoked; or believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee as imposition will be writing and supported by written findings establishing the reasonableness of the decision.

93.41 RESERVATION OF REGULATORY AND POLICE POWERS

A permittees or registrants rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

RIGHT-OF-WAY MAINTENANCE REGULATIONS

93.60 INTENT

The purpose of this Ordinance is to enforce the maintenance of certain portions of the public right-of-way situated within the City of Franklin.

There are portions of platted public street and alley right-of-way situated within the City of Franklin which are not improved or used at the present time for public street purposes; and upon which the abutting property owners have planted grass, gardens, shrubs, trees or other vegetation. Such use of the surface of the right-of-way by an abutting property owner does not presently interfere with use of the remainder of the platted right-of-way for public street purposes; and such use of the surface of the public right-of-way is otherwise lawful and consistent with the rights of the abutting owner, but is subject to the superior right of the public to use, if necessary, the entire right-of-way for street purposes. Limitations of the financial resources of the City of Franklin require that the responsibility for maintenance of grass, shrubs, trees and other vegetation growing on public right-of-way not presently improved or used for public street purposes be clearly established.

93.61 INTERFERENCE PROHIBITED

~~No Person, including an abutting property owner, shall plant or maintain tiny grass, garden other vegetation, shrub, or tree on public street or alley right-of-way situated within the City of Franklin that interferes with the use of such right of way by the traveling public, the safety of users of the right of way, or the efficient maintenance of such right of way by the City of Franklin.~~

No Person, including an abutting property owner, shall plant a garden or other vegetation, shrub, or tree on public street or alley right-of-way situated within the City of Franklin that interferes with the use of such right-of-way by the traveling public, the safety of users of the right-of-way, or the efficient maintenance of such right-of-way by the City of Franklin. Prior to planting any vegetation other than tiny grass, the abutting property owner must apply for a permit for approval by the City Tree Inspector.

93.62 RESPONSIBILITY OF VEGETATION MAINTENANCE

A person owning land abutting public right-of-way who lawfully plants or thereafter maintains any grass, garden, other vegetation, shrub or tree on a portion of the public street or which the above vegetation is situated; the abutting land owner is also responsible for the expense of removal of any dead or diseased tree or shrub on such right-of-way.

93.63 VIOLATIONS AND ABATEMENT

If an abutting property owner plants or maintains any grass, garden, shrub, tree or other vegetation in violation of this section, such is a public nuisance and may be summarily abated by the City of Franklin. The cost of such abatement may be assessed against the abutting property as provided in Minnesota Statutes, Chapter 429, following thirty days written notice to the abutting property owner.

93.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

TITLE XI: BUSINESS REGULATIONS

Underlined text (example) represents new language
Strikethrough text (~~example~~) represents deleted language

CHAPTERS

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**CHAPTER 110:
GENERAL LICENSING PROVISIONS**

Section

- 110.01 Licenses required to engage in certain businesses
- 110.02 Application for license
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- 110.05 License not transferable
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110.01 LICENSES REQUIRED TO ENGAGE IN CERTAIN BUSINESSES

No person shall engage in any of the trades, businesses, or professions for which licenses are required by Title XI of this code or by any other ordinance of the city or provision of this code without first applying for and obtaining a license from the City Clerk or other duly authorized issuing authority.

110.02 APPLICATION FOR LICENSE

- A. All original applications for licenses, unless otherwise specifically provided, shall be made to the City Clerk or other authorized official in writing upon forms to be furnished by him or her and shall contain:
1. The applicant's full name, address, and telephone number, and the full name of each officer, partner or business associate, if applicable;
 2. His or her present occupation and principal place of business;
 3. His or her place of residence for the preceding five years;
 4. The nature and location of the intended business or enterprise;
 5. The period of time for which the license is desired;

6. A description of the merchandise, goods or services to be sold;
 7. If a motor vehicle is to be used, a full description of the motor vehicle, including the make, model, year, color, license number, and vehicle registration (VIN) number of the vehicle.
 8. Other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.
- B. Any change in the information required by division (A) of this section must be reported to the City Clerk or other authorized official within 14 days of that change.
- C. Renewal of an annual license may be granted to a licensee in good standing on the basis of the original application, unless otherwise provided. However, if a request for renewal is not submitted to the City Clerk or other authorized official within 21 days after the date of expiration for the preceding license, the applicant must fill out an original application.
- D. With each original or renewal application, the applicant shall deposit the fee required for the license requested.
- E. It shall be unlawful to knowingly make any false statement or representation in the license application.

110.03 ISSUANCE OF LICENSE

Upon receipt of an application for a license, accompanied by the proper fee if approval by another officer or department is not required, the City Clerk, shall deposit the fee in the general fund of the city and issue to the applicant a proper license certificate signed by the City Clerk.

110.04 DATE AND DURATION OF LICENSE

A license shall not be valid beyond the expiration date therein specified and, unless otherwise provided, shall not extend beyond December 31 of the year issued. However, at any time after December 1, licenses may be issued for the next calendar year. Unless otherwise specified, the full annual fee will be required of licensees irrespective of the date of issuance of the license.

110.05 LICENSE NOT TRANSFERABLE

Every license shall be issued to a real party in interest in the enterprise or business, and unless otherwise provided, no license shall be assigned or transferred.

110.06 LICENSE CERTIFICATE TO BE DISPLAYED

Every licensee carrying on business at a fixed location shall keep posted in a prominent place upon the premises the license certificate. Other licensees shall carry their licenses at all times, and whenever requested by any officer or citizen, shall exhibit the license.

110.07 REVOCATION OR SUSPENSION

A. Any license may be suspended or revoked by the City Clerk or City Council at any time for the following reasons:

1. For conditions or considerations which, had they existed at the time of issuance, would have been valid grounds for its denial;
2. For any misrepresentation of a material fact in the application discovered after issuance of the license;
3. For any misrepresentation or materially false statement made in the course of carrying on the trade, business or profession;
4. For violation of any provision of this chapter or other federal, state or municipal law or ordinance relating to the operation of the business or enterprise for which the license has been issued; or
5. Upon conviction of a licensee for any federal, state or municipal law or ordinance involving the creation of a nuisance, a breach of the peace, interference with the rights of property owners, or any other offense constituting a threat to the public health, safety, morals or general welfare of the public.

B. The suspension or revocation shall become effective upon notice served upon the licensee. The notice shall contain a written summary of the reasons for the suspension or revocation and a statement concerning the right to appeal the decision. The notice shall be delivered by certified mail, return receipt requested, to the address given on the licensee's application.

110.08 APPEAL AND REVIEW

In case any applicant has been denied a license by the City Clerk, or if his or her license has been suspended or revoked by the City Clerk, the applicant or licensee shall within ten business days have the right to appeal to the City Council from the denial, suspension or revocation. Notice of appeal shall be filed in writing with the City Clerk or other authorized official the Mayor shall call a special meeting of the City Council for the purpose of holding the hearing unless a regular meeting of the City Council will occur within the 21-day period, and who shall fix the time and place for a hearing which shall be held not later than 21 days thereafter. Notice of appeal shall be filed in writing with the City Clerk.

Unless a regular meeting of the City Council at which the appeal can be heard is scheduled within 21 days after receiving the notice of appeal, the Mayor shall schedule a special meeting of the City Council for the hearing within the 21-day period. Three members of the City Council shall constitute a quorum to hear the appeal. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of the City Council present at the meeting declare in favor of the applicant, the license shall be issued or fully reinstated as the case may be; otherwise the suspension or revocation shall become final.

110.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 111:
COMMERCIAL AMUSEMENTS**

Section

- 111.01 Bowling; billiards and pool
- 111.02 Circuses, carnivals, shows and other entertainment
- 111.03 Deposit required
- 111.04 License fee for public entertainment or exhibition

111.01 BOWLING; BILLIARDS AND POOL

Each proprietor of a billiard or pool table or of a bowling alley, or a combination of both, shall pay an annual license fee in an amount established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time.

111.02 CIRCUSES, CARNIVALS, SHOWS AND OTHER ENTERTAINMENT

- A. Each person, desiring to conduct, stage or give a circus, carnival, theatrical exhibition, public show, athletic game or other entertainment, for which there is a charge for admission, shall first obtain a license and pay the license fee or fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.

Local school entertainment, charitable organizations, lecture courses, and lectures on historic, literary or scientific subjects are not subject to the provisions of this section; provided, that the entertainment is not for profit.

- B. In addition to any other requirements, the applicant for a license shall give at least one week's notice in writing to the City Clerk or other authorized official, stating the dates of the performances and the location at which the performances are to be presented. The City Clerk shall give his or her consent to the issuance of the license if he or she deems that the location is suitable for the purpose; that it will properly accommodate the patrons; that the nature of the performance or exhibition does not pose a threat to the health, safety or general welfare of the public; and that the use of the location will not create too great a burden upon the police department or the fire department.

- C. No circus, carnival, theatrical exhibition, public show, athletic game or other entertainment shall be given for more than two consecutive days, except in cases where the City Council by resolution allows a longer period, or where the exhibition is to be conducted on municipal property and the use thereof for a longer period shall have been approved by the City Council.

111.03 DEPOSIT REQUIRED

- A. At the time application for a license is made, where use of municipal grounds is contemplated, the applicant shall deposit with the City Clerk or other designated municipal official a cash bond in an amount to be determined by the City Council, conditioned upon the restoration and cleaning up of the grounds in a manner satisfactory to the Mayor. In the event the grounds are restored and cleaned up properly following the exhibition, the deposit shall be returned; otherwise the same shall be forfeited to the city to the extent of actual costs to the city for restoration and cleaning up of the grounds.
- B. No licensee shall fail to restore or clean up the grounds upon which the circus, carnival or other entertainment has taken place.

111.04 LICENSE FEE FOR PUBLIC ENTERTAINMENT OR EXHIBITION

The fee for the license shall be in an amount as established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this Code, as that ordinance may be amended from time to time.

111.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

CHAPTER 112: LIQUOR REGULATIONS

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GENERAL PROVISIONS

112.01 ADOPTION OF STATE LAW BY REFERENCE

The provisions of M.S. Chapter 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hour of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. Chapter 340A are hereby adopted by reference or referenced as they had been in existence at the time this Chapter is adopted.

112.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW

The Council is authorized by the provisions of M.S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Chapter 340A, as it may be amended from time to time.

112.03 DEFINITIONS

In addition to the definitions contained in Minnesota Statutes, as amended from time to time, the following terms are defined for purposes of this chapter:

LIQUOR. As used in this chapter, without modification by the words “intoxicating” or “3.2 percent malt,” includes both intoxicating liquor and 3.2 percent malt liquor.

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a “restaurant” as defined by this section, an establishment shall have a license from the state as required by M.S. § 157.16, as it may be amended from time to time, and meet the definition of either a “small establishment”, “medium establishment”, or “large establishment” as defined in M.S. ' 157.16, Subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this chapter unless it meets the definitions of “small establishment”, “medium establishment” or “large establishment”.

112.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED

- A. The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this chapter. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this chapter, as set forth in this section, reflects the prevailing community standards of the city.
- B. It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.
- C. A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or the imposition of a civil penalty under the provisions of § 112.99(B).

112.05 CONSUMPTION IN PUBLIC PLACES

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this chapter, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted.

LICENSING

112.20 NUMBER OF LICENSES WHICH MAY BE ISSUED

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this chapter is limited to the number of license which were issued as to the effective date of this chapter, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by M.S. Chapter 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of M.S. ' 340A.413, Subd. 3, as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

112.21 TERM AND EXPIRATION OF LICENSES

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on December 31 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

112.22 KINDS OF LIQUOR LICENSES

The Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in § 112.20.

- A. 3.2 percent malt liquor on-sale licenses, which may be issued only to restaurants, hotels, clubs, bowling centers, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.
- B. 3.2 percent malt liquor off-sale license.
- C. Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious or nonprofit organization.

- D. Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an off-sale intoxicating liquor license established by the Council under § 112.23 shall not exceed \$100 or a greater amount which may be permitted by M.S. § 340A.408, Subd. 3, as it may be amended from time to time.
- E. On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. § 340A.101, as it may be amended from time to time, and this chapter: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under § 112.23 shall not exceed the amounts provided for in M.S. § 340A.408, Subd. 2b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M.S. § 340A.404, Subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of M.S. § 340A.404, Subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.
- F. Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S. § 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in § 112.03, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of § 112.23, shall not exceed \$200, or the maximum amount provided by M.S. ' 340A.504, Subd. 3c, as it may be amended from time to time.
- G. Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000.
- H. Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

- I. On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. § 340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in § 112.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. § 340A.401, Subd. 1, as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of § 112.23 shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.
- J. One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.
- K. Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of § 112.23 shall not exceed \$300, or the maximum amount permitted by M.S. § 340A.14, Subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.
- L. Caterers: Special Provisions
 - 1. City Council findings. The City council makes the following findings regarding the need to enact additional sale provisions governing persons selling or furnishing alcoholic beverages pursuant to a caterer's permit issued pursuant to M.S. §340A.404(12), as it may be amended from time to time. This statute authorizes the holder of such a permit to provide alcoholic beverages at unlicensed locations provided that the sale is incidental to a larger food service. This division is enacted in order to preserve the incidental nature of the caterer's permit and to preserve the underlying state and local framework for permanent on-sale intoxicating liquor licenses. The issuance of a caterer's permit does not allow a person to, in effect, operate a permanent on-sale intoxicating liquor establishment; rather it entitles the person to provide temporary alcoholic beverages as an incidental part of a food service that prepares meals at special locations apart from the licensee's permanent location. The location requirements in this section for the sale of alcoholic beverages at catered events are enacted to assure compliance with existing state and local provisions regarding on-sale licenses. Numerous events conducted at one location where alcoholic beverages are provided by caterer's thwarts the licensing scheme for permanent on-sale intoxicating liquor establishments.

2. Regulations. Events that are catered in accordance with M.S. §340A.404(12), as it may be amended from time to time, shall comply with the following additional sale provisions.
 - a. No one location shall have more than 48 days of catered events in one calendar year at which alcoholic beverages are served to the general public, and in no case shall any one event of this type be for more than four consecutive days.
 - b. All such caterer's licenses shall be approved by the City Council, although no public hearing shall be required.

112.23 LICENSE FEES; PRO RATA

- A. No license or other fee established by the city shall exceed any limit established by M.S. Chapter 340A, as it may be amended from time to time, for a liquor license.

- B. The Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.
- C. The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.
- D. All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.
- E. A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. § 340A.408, Subd. 5, as it may be amended from time to time.

122.24 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter.

122.25 APPLICATION FOR LICENSE

- A. *Form.* Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.
- B. *Financial responsibility.* Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 340A.801, as it may be amended from time to time. This proof will be filed with the city and Commissioner of Public

Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

112.26 DESCRIPTION OF PREMISES

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

112.27 APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

112.28 TRANSFER OF LICENSE

No license issued under this chapter may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

112.29 INVESTIGATION

A. Preliminary background and financial investigation. On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner

of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

- B. Comprehensive background and financial investigation. If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

112.30 HEARING AND ISSUANCE

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

112.31 RESTRICTIONS ON ISSUANCE

- A. Each license shall be issued only to the applicant for the premises described in the application.
- B. Not more than one license shall be directly or indirectly issued within the city to any one person.
- C. No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.
- D. No license shall be issued for any place or any business ineligible for a license under state law.

- E. No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this chapter or to the renewal of an existing license.
- F. No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

112.32 CONDITIONS OF LICENSE

The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

- A. Within 90 days after employment, every person selling or serving liquor in an establishment which has an “on-sale” license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.
- B. Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.
- C. Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.
- D. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.
- E. Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.

112.33 HOURS AND DAYS OF SALE

- A. The hours of operation and days of sale shall be those set by M.S § 340A.504, as it may be amended from time to time.
- B. No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- C. No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.
- D. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- E. Any violation of any condition of this section may be grounds for revocation or suspension of the license.

112.34 MINORS ON PREMISES

- A. No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services in places defined as a restaurant, hotel, motel or other multi-purpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.
- B. No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

112.35 RESTRICTIONS ON PURCHASE AND CONSUMPTION

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. § 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

112.36 SUSPENSION AND REVOCATION

- A. The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. § 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.
- B. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M.S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time:
1. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of § 112.04, the license shall be revoked.
 2. The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:
 - a.) For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.
 - b.) For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
 - c.) For the third violation within any three-year period, the license shall be revoked.
 - d.) For a fourth violation within any three-year period, the license shall be revoked.
 3. The council shall select the day or days during which the license will be suspended.
- C. Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council

shall be granted within ten days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this chapter have again been met.

- D. The provisions of § 112.99 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

MUNICIPAL LIQUOR STORES

112.50 APPLICATION OF THIS SUBCHAPTER

This subchapter, consisting of § 112.50 through 112.55, applies only to a city that has in existence on the effective date of this chapter a municipal liquor store.

§ 112.51 EXISTING MUNICIPAL STORES CONTINUED.

If the city has in existence on the effective date of this chapter a municipal liquor store for the sale of intoxicating liquor, the store is continued. Except as provided in § 112.55, no intoxicating liquor may be sold at retail elsewhere in the city.

112.52 LOCATION

The municipal liquor store shall be located at a suitable place in the city as the Council determines by motion. However, no premises upon which taxes, assessments, or other public charges are delinquent shall be leased for municipal liquor store purposes. The Council shall have the right to establish additional off-sale and on-sale stores at other locations as it may, from time to time, by motion, determine.

112.53 OPERATION

- A. *Manager.* The municipal liquor store shall be in the immediate charge of a Liquor Store Manager selected by the Council and paid compensation as it is fixed by the Council. The Manager shall not be a person who would be prohibited by law or any provision of this chapter from being eligible for an intoxicating liquor license. The Manager shall furnish a surety bond to the city, conditioned upon the faithful discharge of the duties of the office, in a sum as specified by the Council. The bond premium may be paid by the city or the Manager, in the discretion of the Council. The Manager shall operate the municipal liquor store under the

Council's direction and shall perform those duties in connection with the store as may be established by the Council. The Manager shall be responsible to the Council for the conduct of the store in full compliance with this chapter and with the laws relating to the sale of intoxicating liquor and 3.2 percent malt liquor.

- B. *Other employees.* The Council may also appoint additional employees as may be required and shall fix their compensation. All employees, including the Manager, shall hold their positions at the pleasure of the Council. No person under the age of 18 shall be employed in the store. The Council may require the employees to furnish surety bonds conditioned for the faithful discharge of their duties in a sum as specified by the Council. The premium on the bond may be paid by the city or the employees, as the Council determines.
- C. *Municipal liquor store fund.* All the revenues received from the operation of a municipal liquor store shall be deposited in a municipal liquor store fund from which all ordinary operating expenses, including compensation of the Manager and employees, shall be paid. Surpluses accumulating in the fund may be transferred to the general fund of the city or to any other appropriate fund of the city by resolution of the Council, and may be expended for any municipal purpose. The handling of municipal liquor store receipts and disbursements shall comply with the procedure prescribed by law and charter for the receipts and disbursements of city funds generally.
- D. *Financial statement.* The Council shall provide within 90 days following the end of the calendar year for publication a balance sheet using generally accepted accounting procedures and a statement of operations of the municipal liquor store for that year. The balance sheet and statement shall be published in accordance with the provisions of M.S. § 471.6985, as it may be amended from time to time.
- E. *Hours of operation.* The hours during which the sale of intoxicating liquor may be sold shall be as provided in § 112.33. No person, other than the Manager or a store employee, may remain in the municipal liquor store longer than one-half hour after the time when the sale of intoxicating liquor must cease.

112.54 PROOF OF FINANCIAL RESPONSIBILITY

The city shall demonstrate proof of financial responsibility required by licenses of retail intoxicating liquor establishments under the provisions of M.S. § 340A.409, as it may be amended from time to time.

112.55 ISSUANCE OF OTHER LICENSES

- A. *On-sale licenses for the sale of intoxicating liquor.* The Council may issue in its sound discretion on-sale licenses to a club under M.S. § 340A.404, Subd. 1(4), as it may be amended from time to time. If the voters have authorized their issuance at a special election called for that purpose, the Council may issue on its sound discretion on-sale liquor licenses to hotels and restaurants. The number of on-sale licenses issued under this section is governed by M.S. § 340A.413, as it may be amended from time to time, as limited by the provisions of this chapter. The issuance of these licenses is governed by the provisions of this chapter.
- B. *Off-sale licenses for the sale of intoxicating liquor.* State law does not authorize the issuance of off-sale licenses for the sale of intoxicating liquor by cities which operate a municipal liquor dispensary.
- C. *On- and off-sale 3.2 percent malt liquor licenses.* The Council may issue 3.2 percent malt liquor licenses in its sound discretion as provided in this chapter.

112.99 PENALTIES

- A. Any person violating the provisions of this chapter or M.S. Chapter 340A as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law and Section 10.99 Penalty of the Code.
- B. The Council shall impose a civil penalty of up to \$2,000 for each violation of M.S. Chapter 340A, as it may be amended from time to time, and of this chapter. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M.S. § 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the license is revoked:
 - 1. For the first violation within any three-year period, \$500.
 - 2. For the second violation within any three-year period, \$1,000.
 - 3. For the third and subsequent violations within any three-year period, \$2,000.

C. The term “violation” as used in this section includes any and all violations of the provisions of this chapter, or of M.S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.

**CHAPTER 113:
PEDDLERS AND SOLICITORS**

Section

- 113.01 Definitions
- 113.02 Exceptions to definitions
- 113.03 Licensing; exemptions
- 113.04 License ineligibility
- 113.05 License suspension and revocation
- 113.06 License transferability
- 113.07 Registration
- 113.08 Prohibited activities
- 113.09 Exclusion by placard
- 113.99 Penalty

113.01 DEFINITIONS

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PEDDLER. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personal property that the person is carrying or otherwise transporting. The term peddler shall mean the same as the term hawker.

PERSON. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term shall include each member, officer, partner, associate, agent or employee.

REGULAR BUSINESS DAY. Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be counted as regular business days.

SOLICITOR. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property or services of which

he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term "canvasser."

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days.

113.02 EXCEPTIONS TO DEFINITIONS

- A. For the purpose of the requirements of this chapter, the terms **PEDDLER, SOLICITOR, and TRANSIENT MERCHANT** shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.
- B. In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of **PEDDLERS, SOLICITORS, and TRANSIENT MERCHANTS**: as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

113.03 LICENSING; EXEMPTIONS

- A. *County license required.* No person shall conduct business as a peddler, solicitor or transient merchant within the city limits without first having obtained the appropriate license from the county as required by Minnesota Statutes, as amended from time to time.

- B. *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to § 113.07.
- C. *Application.* Application for a city license to conduct business as a peddler or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Clerk. All applications shall be signed by the applicant. All applications shall include the following information:
1. Applicant's full legal name.
 2. All other names under which the applicant conducts business or to which applicant officially answers.
 3. A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).
 4. Full address of applicant's permanent residence.
 5. Telephone number of applicant's permanent residence.
 6. Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.
 7. Full address of applicant's regular place of business (if any).
 8. Any and all business related telephone numbers of the applicant.
 9. The type of business for which the applicant is applying for a license.
 10. Whether the applicant is applying for an annual or daily license.
 11. The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).
 12. Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.

13. A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.
 14. A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.
 15. Proof of any requested county license.
 16. Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.
 17. A general description of the items to be sold or services to be provided.
 18. All additional information deemed necessary by the City Council.
 19. The applicant's driver's license number or other acceptable form of identification.
 20. The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.
- D. *Fee.* All applications for a license under this chapter shall be accompanied by the fee established in the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11, as it may be amended from time to time.
- E. *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Clerk, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Clerk determines that the application is incomplete, the City Clerk must inform the applicant of the required necessary information that is missing. If the application is complete, the City Clerk must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Clerk must issue the license unless there exist grounds for denying the license under § 113.04, in which case the Clerk must deny the license. If the City Clerk denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council

following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

F. *Duration.* An annual license granted under this chapter shall be valid for one calendar year from the date of issue. All other licenses granted under this chapter shall be valid only during the time period indicated on the license.

G. *License exemptions.*

1. No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm.
2. No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when the activity is for the purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
3. Professional fundraisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

113.04 LICENSE INELIGIBILITY

The following shall be grounds for denying a license under this chapter:

- A. The failure of the applicant to obtain and show proof of having obtained any required county license.
- B. The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.
- C. The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

- D. The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant.
- E. The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

113.05 SUSPENSION AND REVOCATION

- A. *Generally.* Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:
 - 1. Fraud, misrepresentation or incorrect statements on the application form.
 - 2. Fraud, misrepresentation or false statements made during the course of the licensed activity.
 - 3. Conviction of any offense for which granting of a license could have been denied under § 113.04.
 - 4. Violation of any provision of this chapter.
- B. *Multiple persons under one license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.
- C. *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.
- D. *Public hearing.* Upon receiving the notice provided in division (C) of this section, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Clerk within ten regular business days following the service of the notice, the city may

proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated timeframe, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

- E. *Emergency.* If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in division (C) of this section.
- F. *Appeals.* Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

113.06 TRANSFERABILITY

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

113.07 REGISTRATION

All solicitors, and any person exempt from the licensing requirements of this chapter under § 113.03, shall be required to register with the city. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Clerk shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

113.08 PROHIBITED ACTIVITIES

No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

- A. Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.
- B. Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.

- C. Conducting business in a way as to create a threat to the health, safety and welfare of any individual or the general public.
- D. Conducting business before 7:00 a.m. or after 9:00 p.m.
- E. Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person.
- F. Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.
- G. Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

113.09 EXCLUSION BY PLACARD

No peddler, solicitor or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating “No Peddlers, Solicitors or Transient Merchants,” or “Peddlers, Solicitors, and Transient Merchants Prohibited,” or other comparable statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section.

113.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 114:
TATTOO AND BODY PIERCING SERVICES**

Section

- 114.01 Definitions
- 114.02 Prohibitions
- 114.03 Application for license; fees; issuance
- 114.04 Inspection of facilities
- 114.05 Suspension or revocation of license
- 114.06 Consent for performing procedures on persons under 18
- 114.07 Prohibitions relating to persons under 18
- 114.08 Defenses to violations
- 114.09 Training standards; records; safety and sanitation; equipment
- 114.99 Penalty

114.01 DEFINITIONS

For the purpose of this chapter, the definitions found in Minnesota Statutes 146B shall apply, as amended, in addition to the following definitions:

BOARD OF HEALTH. A Board of Health established under the provisions of Minnesota Statutes. If the city does not have a Board of Health, then this term means the authority having the duties of a Board of Health in the city, including but not limited to the County Board of Health.

BUSINESS. Any entity that provides services for compensation.

EAR PIERCING GUN. A mechanical device that pierces the ear by forcing a disposable single-use stud or solid needle through the ear.

GUARDIAN. A person who is entrusted by law with the care of another person.

PARENT. A person's biological mother or father. Parents can also be non-biological through mans of marriage (i.e., step-parents) and/or by adoption.

114.02 PROHIBITIONS

No person shall do any of the following:

- A. Operate a business that offers tattooing or body piercing services unless the City Council issues it a license to do so;
- B. Perform a tattooing or body piercing procedure in a manner that does not meet the safety and sanitation standards established by this chapter and any federal, state or local laws, rules or regulations;
- C. Perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun in a manner that does not meet the standards for appropriate disinfection and sterilization of invasive equipment or parts of equipment used in performing the procedures established by this chapter and any federal, state or local laws, rules or regulations.

114.03 APPLICATION FOR LICENSE; FEES; ISSUANCE

- A. A person seeking approval to operate a business that offers tattooing or body piercing services shall apply to the city on forms the city or the Board of Health shall prescribe and provide. The applicant shall submit all information the city and the Board of Health determines is necessary to process the application. The applicant shall include the fee established under the city's Ordinance Establishing Fees and Charges authorized by § 30.11 as it may be amended from time to time, or as established by the Board of Health.
- B. To receive approval to offer tattooing or body piercing services, a business must demonstrate to the Board of Health the ability to meet the requirements established by this chapter and any federal, state or local laws, rules or regulations for safe performance of the tattooing or body piercing procedures, training of the individuals who perform the procedures, and maintenance of records.
- C. If the Board of Health determines, following an inspection conducted under § 114.04, that a business meets the requirements for approval, it shall so advise the city. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

Approval remains valid for one year unless earlier suspended or revoked under § 114.05. A business's approval may be renewed. Approval is not transferable.

114.04 INSPECTION OF FACILITIES

The Board of Health, or a person or another body designed by the city, shall conduct at least one inspection of a business prior to approving the business under § 114.03 to offer tattooing or body piercing services. The Board may conduct additional inspections as necessary for the approval process. The Board of Health may inspect an approved business at any time the Board considers necessary. In an inspection, the Board of Health shall be given access to the business's premises and to all records relevant to the inspection.

114.05 SUSPENSION OR REVOCATION OF LICENSE

The City Council may suspend or revoke the approval of a business to offer tattooing or body piercing services at any time it determines that the business is being operated in violation of this chapter or any federal, state or local laws, rules or regulations. Proceedings for suspensions and revocations shall be conducted in accordance with rules adopted in Chapter 110 for the suspension or revocation of business licenses.

114.06 CONSENT FOR PERFORMING PROCEDURES ON PERSONS UNDER 18

- A. No person shall perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun on an individual who is under 18 years of age unless consent has been given by the individual's parent, guardian, or custodian in accordance with division (B) of this section. The consent must include both the custodial and non-custodial parents, where applicable.

- B. A parent, guardian or custodian of an individual under age 18 who desires to give consent to a business to perform on the individual under age 18 a tattooing procedure, body piercing procedure, or ear piercing procedure performed with an ear piercing gun shall do both of the following:
 - 1. Appear in person at the business at the time the procedure is performed;
 - 2. Sign a document provided by the business that explains the manner in which the procedure will be performed and methods for proper care of the affected body area following performance of the procedure.

114.07 PROHIBITIONS RELATING TO PERSONS UNDER 18

- A. Unless consent has been given in accordance with § 114.06, no individual who is under age 18 shall obtain or attempt to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.
- B. No individual who is under age 18 shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.
- C. No individual shall knowingly show or give any false information as to the name, age, or other identification of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.
- D. No individual shall impersonate the parent, guardian or custodian of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

114.08 DEFENSES TO VIOLATIONS

- A. An operator or employee of a business that performs tattooing services, body piercing services, or ear piercing services performed with an ear piercing gun may not be found guilty of a violation of § 114.06(A) or any federal, state or local laws, rules or regulations in which age is an element of the provisions if:
 - 1. The individual obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun, at the time of so doing, exhibited to the operator or employee of the tattooing, body piercing, or ear piercing business a driver's or commercial driver's license or an identification card issued under state law showing that the individual was then at least age 18;
 - 2. The operator or employee made a bona fide effort to ascertain the true age of the individual obtaining a tattooing, body piercing, or ear piercing service by checking the identification presented, at the time of the service, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way; and
 - 3. The operator or employee had reason to believe that the individual obtaining a tattooing, body piercing, or ear piercing service was at least age 18.

- B. In any action or proceeding before a court of record in which a defense is raised under this section, the Registrar of Motor Vehicles or the Registrar's Deputy who issued a driver's or commercial driver's license or an identification card shall be permitted to submit certified copies of the records, in the Registrar's or Deputy's possession, of the issuance in lieu of the testimony of the personnel of the Bureau of Motor Vehicles at the hearing, action or proceeding.

114.09 TRAINING STANDARDS; RECORDS; SAFETY AND SANITATION; EQUIPMENT

- A. Each operator of a business that offers tattooing or body piercing services shall do all of the following:
1. Maintain procedures for ensuring that the individuals who perform tattooing or body piercing procedures are adequately trained to perform the procedures properly;
 2. With respect to tattooing services, maintain written records that include the color, manufacturer and lot number of each pigment used for each tattoo performed;
 3. Comply with the safety and sanitation requirements for preventing transmission of infectious diseases, as established in any federal, state or local laws, rules or regulations;
 4. Require the individuals who perform tattooing and body piercing procedures to disinfect and sterilize all invasive equipment or parts of equipment used in performing the procedures by using methods that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations;
 5. Ensure that weekly tests of the business's heat sterilization devices are performed to determine whether the devices are functioning properly. In having the devices tested, the operator of the business shall use a biological monitoring system that indicates whether the devices are killing microorganisms. If a test indicates that a device is not functioning properly, the operator shall take immediate remedial action to ensure that heat sterilization is being accomplished. The operator shall maintain documentation that the weekly tests are being performed. To comply with the documentation requirement, the documents must consist of a log that indicates the date on which each test is performed and the name of the person who performed the test or, if a test was conducted by an independent testing entity, a copy of the entity's testing report. The operator shall maintain records of each test performed for at least two years.

- B. Each operator of a business that offers ear piercing services performed with an ear piercing gun shall require the individuals who perform the ear piercing services to disinfect and sterilize the ear piercing gun by using chemical solutions that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations.

114.99 PENALTY

Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.

**CHAPTER 115:
TOBACCO REGULATIONS**

Sections

115.01 Renville County Oversight

115.02 Adoption of Renville County Tobacco Licensing Ordinance, as Amended

§ 115.01 Renville County Oversight.

Renville County regulates the sale, possession, and use of tobacco, tobacco related devices, electronic devices, and nicotine or lobelia delivery products in Renville County and to reducing the illegal sale, possession, and use of such items to and by minors.

§ 115.02 Adoption of Renville County Tobacco Licensing Ordinance, as Amended

In order to minimize duplicative oversight, the City of Franklin has adopted the Renville County Tobacco Licensing Ordinance, as amended as necessary from time to time. As such, Renville County assumes all regulatory authority and enforcement responsibilities within the City of Franklin. Please contact Renville County for a current version of the tobacco licensing ordinance.

**CHAPTER 116:
ADULT ENTERTAINMENT BUSINESS**

Section

116.01	Purpose
116.02	Definitions
116.03	Location Restrictions
116.04	Conditional Use Permit and License Requirement
116.05	Physical Layout
116.06	Prohibited Conduct
116.07	Sale Violations
116.08	Hours of Operation
116.09	Signs
116.10	Public Health Standards
116.11	Inspections
116.12	Amortization Period
116.13	Vicarious Liability
116.14	Penalty
116.15	Exceptions
116.16	Severability
116.99	Penalty

116.01 PURPOSE

The purpose of this section is to regulate adult businesses, which, unless closely regulated, may have serious secondary effects on the community. These secondary effects include, but are not limited to, the following: depreciation of property values, deterioration of neighborhoods, increases in vacancy rates in residential and commercial areas, increases in incidences of criminal activity, increases in litter, noise, and the interference with residential property owners' enjoyment of their property in the vicinity of such businesses. It is the intent of this section to prevent City-wide adverse impacts which can be brought about by the concentration of adult businesses in close proximity to each other or proximity to incompatible uses such as schools, churches, parks, public buildings and residentially zoned uses. It has been demonstrated in various communities that the concentration of adult businesses causes adverse impacts described above and can cause businesses and residents to move elsewhere. This section establishes reasonable and uniform regulations to prevent the concentration of adult businesses or their close proximity to incompatible uses, while permitting the location of adult businesses in certain areas.

116.02 DEFINITIONS

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All words and phrases used in this ordinance, which are not defined herein, shall have the meaning ascribed to such words and phrases in common usage.

ADULT BUSINESS. Any establishment having as a substantial or significant portion of its stock in trade or business activity in a use such as, but not limited to the following:

Adults-Only Bookstores, Adults-Only Motion Picture Theaters, Adult Entertainment Centers, Massage Parlors, Rap Parlors, Adults-Only Cabarets or Adults-Only Saunas, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

ADULT ENTERTAINMENT BUSINESS. Synonymous with "Adult Business," as defined herein.

ADULT ENTERTAINMENT CENTER. An enclosed building or part of an enclosed building, which allows a customer to view a live person nude or in such attire, costume or clothing as to expose to view the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; or, female breast, at or below the areola thereof. In addition, the viewing of a live person, in the above-described manner, after paying of any admission or fee for the viewing of same activity.

ADULTS-ONLY. Any items or activities emphasizing, depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity.

ADULTS-ONLY BOOKSTORE. An adults-only establishment having as a substantial or significant portion of its stock-in-trade and offers for sale, for any form of consideration, any one or more of the following: 1) books, magazines, periodicals, or other printed matter, or photographs, films motion pictures, video cassettes, DVDs, CD-ROMs, slides, or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or 2) viewing on premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual, or otherwise), bestiality or sadomasochistic activity; or 3) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

ADULTS-ONLY CABARETS. A nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, CD-ROMs, or other photographic reproductions in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

ADULTS-ONLY MOTION PICTURE THEATER. An establishment where, for any form of consideration, films, motion pictures, video cassettes, DVDs, CD-ROMs, slides, or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

BOOTH. Any enclosure that is specifically offered to patrons of an Adult Business for the private viewing of any adults-only item or movie. Said definition does not include enclosure that are used as private offices by any operator, employee or agent for attending to the tasks of their employment and are not offered for use by the public.

CUBICLE. Synonymous with "booth," as defined herein.

DOOR. Full, complete, non-transparent closure device that obscures the view or activity taking place within the enclosure.

EMPLOYEE. Means any person and all persons, including entertainers, who work in or at or render any services directly related to the operation of a public place of adult business.

ENTERTAINER. Means any person who provides adult entertainment within a public place of adult entertainment as defined in this section whether or not a fee is charged or accepted for entertainment.

ENTERTAINMENT. Means any exhibition or dance of any type, pantomime, modeling, or of any performance.

MANAGER. Means any person who manages, directs, administers or is in charge of the affairs and/or the conduct of any portion of any activity within the adult business.

MASSAGE PARLOR. An establishment or place primarily in the business of providing massage services, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

NUDITY. The display of the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; female breast, at or below the areola thereof, with no covering or with a less than fully opaque covering; or, male genitalia, in a discernible turgid state, with or without covering.

OBSCENE. Any material or performance is obscene if: (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; and (2) the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions or lewd exhibition of the genitals; and (3) taken as a whole, it lacks serious literary, artistic, political or scientific value.

OPERATOR. Any person, (whether said persons be an individual, partner, corporation, joint stock company, fiduciary, officer, director, stockholder, employee, or manager), that conducts, maintains or owns any Adult Business.

PATRON. Any customer, patron or visitor to an Adult Business who is not employed by any operator of said establishment.

RAP PARLOR. An establishment or place primarily in the business of providing non-professional conversation or similar services for adults, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

ROOM. Synonymous with "booth," as defined herein.

SADOMASOCHISTIC ACTIVITY. Flagellation or torture by or upon a nude person, a person clad in undergarments, a mask or bizarre costume. In addition, the condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator and or the recipient.

SAUNA. An establishment or place primarily in the business of providing a steam bath and or massage services, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

SELL. Includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

SEXUAL CONDUCT. Ultimate sex acts (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity. In addition, physical contact, intended to

stimulate or arouse sexually the initiator and or the recipient, with a person's unclothed genitalia, buttocks, perineum, anal or pubic regions, or female breast.

SEXUALLY ORIENTED BUSINESS-ACCESSORY. Means any business as described in the adult business definition above that meets the following requirements:

- A. Comprise less than twenty (20) percent of the floor area of the establishment in which they are located; and
- B. Comprise no more than two thousand (2000) square feet of floor area in total; and
- C. Comprise less than twenty (20) percent of the stock on hand; and
- D. Comprise less than twenty (20) percent of the gross receipts of the entire business operation from such adult business; and
- E. Not involve or include any activity except the sale or rental of merchandise.

SPECIFIED ANATOMICAL AREAS. Include any of the following, whether actual or simulated: (1) less than completely and opaquely covered: (a) human genitals or pubic region, buttock, and (c) female breast below a point immediately above the top of the areola; or (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Means and includes any of the following: (1) the fondling or sexual touching of human genitals, pubic regions, buttocks, anus, or female breasts; or (2) sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation, or sodomy; or (3) masturbation, actual or simulated; or (4) excretory functions as part of, or in connection with any of the activities set forth above.

UNDERAGE. Any person under eighteen (18) years of age, the legally minimum age at which one can purchase or view adults-only items.

WALL SIGN. Any flat sign which is placed against a building or other structure and attached thereto in such manner that only one side is visible.

116.03 LOCATION RESTRICTIONS

All Adult Business, except non-conforming uses as described below, must comply with the following location restrictions:

- A. All Adult Businesses shall be located within a B-2 or 1-1 District.
- B. No Adult Business shall be located within the following distances:
1. Adult businesses shall be prohibited within one thousand (1000) feet of any of the city zoned for residential purposes. Residential zones shall include the R-1, R-2, zones and any other residential zone hereafter adopted by the city.
 2. Adult businesses shall be prohibited within one thousand (1000) feet of any church, synagogue, mosque or temple. For purposes of this section, land uses for which the principal use is not a church, synagogue, mosque or temple but which include such a use as an accessory or incidental use to the principal use shall not be deemed to be a church, synagogue, mosque, or temple.
 3. Adult businesses shall be prohibited within one thousand (1000) feet of any public or private school offering general education for students between the years kindergarten through grade twelve. For purposes of this section, athletic training facilities such as gymnastics, judo, karate, and dance and similar uses shall not be deemed a school.
 4. Adult businesses shall be prohibited within one thousand (1000) feet of any child/family day care facility, center, or pre-school.
 5. Adult use businesses shall be prohibited within one thousand (1000) feet of any public park or playground. For the purposes of this section, bike paths, trails, waterways and boat launches shall not be deemed to be a public park.
 6. Adult use businesses shall be prohibited within one thousand (1000) feet of any group home facility.
 7. Adult businesses shall be prohibited from locating within five hundred (500) feet of any other adult business.
- C. Distances provided for herein shall be measured following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or the land use district boundary line from which the proposed land use is to be separated.
- D. All Adult Businesses shall have a direct access to a hard surfaced road.
- E. No Adult Business shall be located in any temporary or portable structure.

- F. No residential structure or any other nonconforming structure shall be converted for use as an Adult Business.
- G. Minnesota Statutes 617.23 through 617.299, or its successors, shall be adhered to in addition to this Ordinance.
- H. Adult Businesses in violation of paragraphs (A), (B), (C), (D), (E), and (F) shall be permitted as non-conforming uses where said Adult Businesses were established and operated continuously prior to the effective date of this Ordinance, provided that no such Adult Business may be enlarged or increased in size or may be discontinued in use for a period of more than one-hundred eighty (180) days.

116.04 CONDITIONAL USE PERMIT AND LICENSE REQUIRED

The use of property for an Adult Business in a B-2 or 1-1 District may be desired by a property owner, but could have a potentially harmful influence on other uses in this district. An Adult Business, because of its nature, may have a deleterious effect upon the use and enjoyment of adjacent properties. As such, a Conditional Use permit and an annual license is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood areas. Thus, Adult Business shall be a Conditional Use in B-2 and 1-1 Districts. No person, firm or corporation shall own or operate an adult business without having first secured a license as provided in this chapter.

- A. No Adult Business may operate within the incorporated territory of this City without first having obtained a Conditional Use permit. Requirements for a Conditional Use permit shall be in addition to all other requirements of the City of Franklin Zoning Ordinance, and shall be in addition to all other requirements of other applicable ordinances.
- B. In addition to other applicable information required by the City, an application for a license is required by this section. This application shall be submitted on a form provided by the City and include the following information:
 - 1. The name, residence, phone number and birth date of the applicant, if an individual; and if a corporation, the names, residences, phone number and birth dates of those owners holding more than five percent of the outstanding stock of the corporation.
 - 2. The name, address, phone number and birth date of the manager(s) of such an operation, if different from the owner(s).

3. The address and legal description of the premises where the adult establishment is to be located.
4. A statement detailing each gross misdemeanor or felony relating to a sex offence and/or the operation of adult uses and related activities of which the applicant, or in the case of a corporation, the owners of more than five percent of the outstanding stock of the corporation, have been convicted, and whether or not the applicant has ever applied for or held a license to operate a similar type of business in other communities.
5. The activities and types of business to be conducted.
6. The hours of operation.
7. The provisions made to restrict access by minors.
8. A building plan of the premises detailing all internal operations and activities.

C. License Fees.

1. Each application for a license shall be accompanied by a receipt from the City for payment in full of the required fee for the license. All fees shall be paid into the general fund of the municipality. Upon rejection of any applications for a license, the City Clerk shall refund the amount paid.
2. All licenses shall expire on the last day of March in each year. Each license shall be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro-rated fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.
3. The annual license fee for adult businesses shall be \$1,500.00.
4. No part of the fee paid for any license shall be refunded except in the following instances upon application to the City Clerk within 30 days from the happening of the event. There shall be refunded a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license because of:
 - a. Destruction or damage of the licensed premises by fire or other catastrophe;

- b. The licensee's illness;
- c. The licensee's death;
- d. A change in the legal status making it unlawful for the licensed business to continue.

D. Granting of License.

1. The Mayor or Police Chief, or such persons as they shall designate, shall complete their investigation within 30 days after the City Clerk receives a complete application and all license and investigation fees.
2. If the application is for a renewal, the applicant shall be allowed to continue business until the Council has determined to renew or refuse to renew a license.
3. If, after such investigation, it appears that the applicant and the place proposed for the business are eligible for a license under the criteria set forth in this chapter, then the license shall be issued by the City Council within 30 days after the investigation is completed. Otherwise the license shall be denied.
4. Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another premise without the approval of the City Council. If the licensee is a partnership or a corporation, a change in identity of any of the principals of the partnership or corporation shall be deemed a transfer of the license. All adult businesses existing at the time of the adoption of this chapter shall be required to obtain an annual license.
5. An applicant for any license under this chapter shall deposit with the City at the time an application is submitted, \$500 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this chapter. If the investigation and verification process is conducted outside the state of Minnesota, the City may require the actual investigation costs not exceeding \$1,500.

E. Conditions of an Adult Business Conditional Use Permit and Annual License.

1. Every Conditional Use permit shall be granted subject to all of the conditions of this Ordinance, and of any other applicable county, state or federal law, including Minnesota Statutes 617.23 through 617.299, or its successors.

2. All licensed premises shall have the license posted in a conspicuous place at all times.
 3. No minors shall be permitted on the permitted premises. Provisions to restrict access by minors shall prohibit any entry or view into the portion of the premises in which the sexually oriented business takes place. All entrances to an Adult Business shall be clearly and legibly posted by a notice indicating that minors are prohibited.
 4. Every permittee shall be responsible for the conduct of the place of business and shall maintain a condition of order.
 5. No Adult Business shall allow any obviously intoxicated person on the property.
 6. Trash dumpsters shall be enclosed by a screening enclosure so as not to be accessible to the public. At no time shall trash be viewable from the public.
 7. The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times.
 8. All exterior areas of the adult business, including buildings, landscaping and parking areas shall be maintained in a clean and orderly manner at all times.
 9. No residence or sleeping rooms shall be located on the parcel where an adult business is located.
 10. The adult business shall not conduct normal business or sponsor any special events, promotions, festivals, concerts, or similar activities that would create a demand for parking spaces beyond the number of spaces required for the business.
 11. The traffic generated by the business shall not overload the capacity of the surrounding street system and shall not create a hazard to public safety, as determined by Franklin City Council.
 12. No loudspeakers or sound equipment shall be used by an adult business for the amplification of sound to a level audible beyond the premise.
- F. No Conditional Use permit or license shall be held in existence by the mere payment of fees.
- G. Persons ineligible for an Adult Business Conditional Use permit and license. No permit or license shall be granted to or held by any person:

1. Under eighteen (18) years of age;
2. Who has been convicted of a felony or of violating any law of this State or local ordinance relating to sex offenses and/or adult use; or
3. Who is not the proprietor of the establishment for which the permit is issued.

H. Places ineligible for an Adult Business Conditional Use permit and license.

1. No permit and license shall be granted for adult uses on any premises where a permittee has been convicted of a violation of this Chapter, or where any permit or license hereunder has been revoked for cause, until one (1) year has elapsed after such conviction or revocation.
2. Except for uses lawfully existing at the time of the adoption of this section, no permit shall be granted for any adult use which is not in compliance with the City of Franklin Zoning Ordinance.
3. No sexually oriented business shall locate in any place that is also used to dispense or consume alcohol, including 3-2 alcohol.

I. Existing Adult Businesses. All existing businesses shall be required to conform with this section on or before the adoption of this Ordinance.

J. In addition to the findings normally required for a conditional use, the following factors may be considered:

1. That the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this Ordinance will be observed.
2. That the proposed use will not enlarge or encourage the development of a "skid row" area.
3. That the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation, nor will it interfere with any program of urban renewal.
4. That all applicable regulations of the Ordinance, other City Ordinances, State and Federal law will be observed.

116.05 PHYSICAL LAYOUT

The use of booths, rooms or cubicles in an Adult Business can, by reason or their design and intended use, facilitate the spread of sexually transmitted diseases (both fatal and non-fatal). As the City has a substantial government interest in protecting the public health, safety and welfare of its citizens and all persons within the City, the following standards have been propounded to eliminate the possibility of infection by contagious sexually transmitted diseases.

- A. No commercial building, structure, premises, or part thereof, or facility therein used by an Adult Business classified as an adult use-principal shall be so constructed, used, designed or operated for the purpose of engaging in, or permitting persons to engage in sexual activities as defined in this Ordinance.
- B. No person shall own, operate, manage, rent, lease, or exercise control of any commercial building, structure, premises, or portion or part thereof, which contains partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partition.
- C. The following standards shall apply to all booths, stalls, or partitioned portions of a room, or individual rooms, used for adult uses:
 - 1. They must be totally accessible both to and from lighted aisles and public areas of the Adult Business;
 - 2. The bottom surfaces of any doors must measure at least forty-two (42) inches from the floor surfaces;
 - 3. No surfaces intended for seating may be located therein;
 - 4. No doors may be confined with or obstructed by any lock mechanism or other control-type device;
 - 5. They must be separated from adjacent booths, rooms or cubicles and any non-public areas by a solid wall without any opening and extending from the floor to a height of at least six feet;
 - 6. They must be lit by light bulbs of at least twenty-five (25) watts when the Adult Business is open for business;

7. All doors or openings must be sufficiently unobstructed such that an operator, employee or agent may determine the number of persons within any booth, room or cubicle;
- D. Only one person shall occupy a booth, room or cubicle at any time; and, at no time, shall the occupant therein engage in any type of sexual conduct resulting in the discharge of any bodily fluids while within a booth, room or cubicle.
- E. All wall and floor surfaces must be of a light-colored, non-absorbent, smooth texture that is easily cleaned.
- F. All public areas of an Adult Business must be lit by light bulbs of at least sixty (60) watts when the Adult Business is in open for business.
- G. All performances shall be on a raised stage. The stage must be raised from the surrounding floor by at least two (2) feet.
- H. All persons viewing any performance shall be at least three (3) feet from the stage.
- I. The stage on which adult entertainment is provided shall be visible from the common areas of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes, or any other obstruction whatsoever.
- J. All entrances to an Adult Business, with the exception of emergency fire exits not usable to enter the business, shall be visible from a public right-of-way.
- K. Physical layout standards for "Sexually Oriented Business-Accessory" shall be:
 1. Sexually oriented business-accessory shall be restricted from and prohibit access to minors by physical separation of such items from areas of general public access:
 - a. Movie Rentals. Display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view and under the control of the persons responsible for the operation or shall be in catalogs under the direct control and distribution of the operator.
 - b. Magazines. Publications classified or qualifying as sexually oriented shall not be physically accessible to minors and shall be covered with wrapper or other means to prevent display of any material other than the publication title.

2. Sexually oriented business-accessory activities shall be prohibited at any public show, movie, caravan, circus, carnival, theatrical or other performance or exhibition presented to the general public where minors are admitted.

116.06 PROHIBITED CONDUCT

The operator of any Adult Business shall neither participate in, nor suffer or permit any of the following prohibited acts to occur on the premises:

- A. The following standards of conduct must be adhered to by employees and entertainers of any public place of adult entertainment which offers, conducts or maintains adult entertainment:
 1. No employee or entertainer shall be unclothed or in such costume, attire or clothing as to expose any portion of the male or female pubic region, anus, buttocks, or genitals, any portion of the female breast below the top of the areola, vulva, or male genitals in a discernibly turgid state, even if completely and opaquely covered, except upon a stage at least two (2) feet above the immediate floor level and removed at least three (3) feet from the nearest patron.
 2. No employee or entertainer shall touch, fondle or caress any patron for the purpose of arousing or exciting the patron's sexual desires; sit on the patron's lap or separate a patron's legs.
 3. No employee or entertainer shall allow a patron to touch an employee or entertainer on the breast, in the pubic region, buttocks or anal region. No patron shall touch an employee or entertainer for the purpose of arousing or exciting the sexual desires of either party.
 4. No employee or entertainer mingling with patrons shall conduct any dance, performance or exhibition in or about the non-stage area of the public place of adult entertainment unless that dance, performance or exhibition is performed at a torso-to torso distance of no less than four (4) feet from the patron or patrons for whom the dance, performance or exhibition is performed.
- B. Admission of any underage patron into or upon the premises of the Adult Business.
- C. Patronage, frequenting or loitering of any underage person in any Adult Business.
- D. Allowance of any underage person to view, accept or otherwise possess any adults-only item on the licensed premises.

- E. Employment or use of the services of any underage person in or upon the premises of the Adult Business.
- F. Drunkenness, fighting, unlawful games, riotous or disorderly conduct whatsoever, in any premises kept or occupied as an Adult Business.

116.07 SALES VIOLATIONS

- A. No operator, agent or employee shall knowingly sell, deliver or provide, or offer or agree to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene.
- B. No operator, agent or employee shall sell, deliver or provide, or offer, or agree to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene after recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof.
- C. No operator, agent or employee shall create, buy, procure or possess obscene matter or material with intent to disseminate it in violation of this Ordinance.
- D. No operator, agent or employee shall advertise or otherwise promote the sale of material represented or held out by him to be obscene, whether or not it is obscene.
- E. No operator, agent or employee shall knowingly sell, deliver or provide, or offer or agree to sell, deliver or provide any child pornography.
- F. No operator, agent or employee shall create, buy, procure or possess any child pornography with intent to disseminate it in violation of this Ordinance.
- G. No operator, agent or employee shall advertise or otherwise promote the sale of material represented or held out by him to be child pornography, whether or not it is child pornography.
- H. No person, after purchasing or otherwise obtaining an adults-only item shall sell, deliver or allow any underage person to view an adults-only item.
- I. If an operator, agent or employee believes or has reason to believe that a sale, delivery or viewing of any adults-only item is prohibited because the prospective recipient is underage, said operator, agent or employee shall (before making or allowing such sale, gift, delivery or

viewing), demand presentation of some form of positive identification containing proof of age, issued by a public officer in the performance of his official duties.

J. An operator, agent or employee may refuse to sell, deliver or allow any person to view any adults-only item, where said person is unable to produce adequate written evidence of identity and age by production of a document issued by the federal, State, or County government, or subdivision or agency thereof, including but not limited to the following documents:

1. A motor vehicle operator's license;
2. A registration certificate issued under the Federal Selective Act; or
3. An identification card issued to a member of the Armed Forces.

K. Proof that the operator, employee or agent, demanded, examined and reasonably relied upon such written evidence listed in paragraph (J) above in any transaction forbidden by this Ordinance is competent evidence that may be offered as an affirmative defense to a violation of this Ordinance. In order to reasonably rely upon written evidence regarding a patron's identity and age, an operator, agent or employee shall use the prudent judgment of a reasonable and informed person, and shall scrutinize said written evidence of age and identity by doing the following:

1. Determine if the physical description and photograph (if any) on the document presented matches that of the presenting person;
2. Determine whether the plastic seal on the identification card is intact or broken; and,

If from the foregoing, a reasonable person would or should doubt the authenticity of the identification card, then the person offering the identification must not be sold, delivered or allowed to view any adults-only items.

L. No operator, agent or employee shall give away or otherwise make available any adults-only item or viewing of any adults-only item for the purpose of evading any provision of this Ordinance, when the sale or viewing of said adults-only item is prohibited shall constitute unlawful selling.

M. Offers or agreements to sell, deliver, provide or allow the viewing of any adults-only item at or within any premises when the sale or viewing of said adults-only item is prohibited shall constitute unlawful selling.

- N. The use of any other shift or device to evade any provision of this Ordinance is prohibited and shall constitute unlawful selling.

116.08 HOURS OF OPERATION

The unlimited operation of an Adult Business can, by reason of their intended use, facilitate secondary effects including but not limited to prostitution, disorderly conduct, performance of sexual acts or conduct in public, traffic congestion and parking problems. Insofar as the City has a substantial government interest in preserving character and preventing deterioration of its neighborhood and minimizing the disruptive effect of such Adult Businesses on neighborhoods, the following limitations on operation times have been propounded:

- A. Adult Businesses shall be restricted from operating between the hours of 1:01 a.m. and 6:00 a.m. No operator, employee or agent of an Adult Business shall permit any person to remain on the premises between the hours of 1:30 a.m. and 6:00 a.m.
- B. No operator, employee or agent of an Adult Business shall sell, deliver or allow any person to view any adults-only item between the hours of 10:00 p.m. and 10:00 a.m. on Mondays through Saturdays, nor on Sundays or recognized federal holidays. The time referred to shall be either Central Standard Time or Daylight Savings Time, whichever is in effect at the time in this State.

116.09 SIGNS

The unregulated use of signs can result in secondary effects that create dangers to the public in periods of high winds or inclement weather, defeat the sign's informational or advertising functions as competitors escalate sign size and expense to attract patrons, reduce the ability of the public to interpret the intended message safely and quickly, and destroy the aesthetic quality of the community. Insofar as the City has a substantial government interest in these matters, all signs advertising or promoting the sale of adults-only items must meet the following restrictions:

- A. All signs must be flat wall signs.
- B. The amount of allowable sign area for an adult business shall be limited to a maximum of ten percent (10%) of any wall area, provided that the maximum wall area devoted to signs on any side of a building will be no larger than one hundred twenty (120) square feet.

- C. No merchandise or depictions of adults-only items shall be displayed in window areas or any other area that may be viewed from a public street, alley, public way or sidewalk located in front of the building.
- D. A one square foot sign may be placed on the door to state the hours of operation and adults-only admittance.
- E. All provisions of the Sign Regulation section of the City of Franklin Zoning Ordinance shall control except as clearly contradicted by this paragraph. In the event that the provisions conflict, this paragraph shall prevail.

116.10 PUBLIC HEALTH STANDARDS

- A. All premises operated as an Adult Business shall be kept in clean and sanitary condition and shall be kept in full compliance with regulations issued by the County Health Department or the Minnesota Department of Public Health.
- B. Any Adult Business shall keep and maintain the premises equipped with running hot and cold water, shall provide separate and adequate toilet facilities for both males and females, and shall comply with all health, sanitary, zoning and inspection requirements of the City and the State of Minnesota.

116.11 INSPECTIONS

Any Adult Business shall permit representatives of the police department, health department (City, County or State), fire department, zoning department or building department shall have the unqualified right to enter, inspect and search the premises of an Adult Business for the purpose of insuring compliance with this Ordinance and with State statutes, at any time the Adult Business is open for business.

116.12 AMORTIZATION PERIOD

Adult Businesses in violation of any restriction or regulation contained herein, excepting any location restrictions, must come into full compliance within six (6) months from the effective date of this Ordinance.

116.13 VICARIOUS LIABILITY

- A. Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Ordinance, by any employee or agent of any operator, shall be deemed and held to be the act of said operator if such act or omission either with the authorization, knowledge or approval of the operator.
- B. Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Ordinance, by any employee or agent of any operator, shall be deemed and held to be the act of said operator if such act or omission occurs as a result of the operator's negligent failure to supervise the conduct of the employee or agent.
- C. Such an offense shall be punishable in the same manner as if said act or omission had been done or omitted by the operator personally.

~~116.14 PENALTY – replaced by section 116.99~~

- ~~A. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by state law. Penalty, see § 10.99~~
- ~~B. Any person violating the provisions of this Ordinance shall be subject to an offense for each and every day on which such violation continues, and each day that the offense continues shall be regarded as constituting a separate offense.~~
- ~~C. Any violation of this chapter shall be a basis for the suspension or revocation of any license granted hereunder. In the event that the City Council proposes to revoke or suspend the license, the licensee shall be notified in writing of the basis for such proposed revocation or suspension. The Council shall hold a hearing for the purpose of determining whether to revoke or suspend the license, which hearing shall be within 30 days of the notice.~~
- ~~D. The City Council shall determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner, and shall notify the licensee of its decision within that period.~~
- ~~E. Any prosecution for violations of this Ordinance does not prohibit the City from pursuing injunctive relief or the State Attorney's Office from pursuing criminal charges.~~

116.15 EXCEPTIONS

This Ordinance shall not be construed to prohibit:

- A. Plays, operas, musicals, or other dramatic works which are not obscene;
- B. Classes, seminars and lectures held for serious scientific or educational purposes;
- C. Exhibitions, performances or dances, which are not obscene. For the purposes of this section, obscene is defined under Minnesota Statutes 617.241.

116.16 SEVERABILITY

If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

116.99 PENALTY

- A. Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.
- B. Any violation of this chapter shall be a basis for the suspension or revocation of any license granted hereunder. In the event that the City Council proposes to revoke or suspend the license, the licensee shall be notified in writing of the basis for such proposed revocation or suspension. The Council shall hold a hearing for the purpose of determining whether to revoke or suspend the license, which hearing shall be within 30 days of the notice.
- C. The City Council shall determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner, and shall notify the licensee of its decision within that period.
- D. Any prosecution for violations of this Ordinance does not prohibit the City from pursuing injunctive relief or the State Attorney's Office from pursuing criminal charges.

TITLE XIII: GENERAL OFFENSES

Underlined text (example) represents new language
Strikethrough text (~~example~~) represents deleted language

CHAPTERS

130. GENERAL PROVISIONS..... 13-1

CHAPTER 130: GENERAL PROVISIONS

Section

General Provisions

- 130.01 Damage to property; graffiti
- 130.02 Discharging firearms
- 130.03 Curfew for Minors
- 130.99 Penalty

GENERAL PROVISIONS

130.01 DAMAGE TO PROPERTY; GRAFFITI

A. *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GRAFFITI. In addition to its usual and customary meaning of defacing walls or structures with messages or slogans, **GRAFFITI** shall also mean any letter, numeral, figure, emblem, insignia, picture, outline, character, spectacle, delineation, announcement, word, phrase, diagram, symbol, sketch, inscription or representation, wherein the contents thereof are visible to any member of the general public and which contains references to sexual activity, diagrams relating to sexual activity or sexual organs, references to criminal activities or groups which promote or are involved in criminal activity, swearing or fighting words, defamatory materials about any person, references to relationships, or any marking of any kind whatsoever which results in damage to, defacing of, marring of, or discoloring of any sidewalk, street, or other public surface, any vehicle, any equipment, lamp, lamp post or other city property, or of the exterior surface of a wall, fence, door, building or other structure, whether publicly or privately owned.

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OWNER. Means and includes the owner of record of the subject property, whether public or private, at the time of the placement or discovery of the graffiti or at a subsequent time, the beneficial owner under a land trust, the contract purchaser, or that person or persons or trust in whose name the general taxes for the last preceding year were paid, except that *OWNER* shall not include the city.

B. Conduct prohibited.

1. It is unlawful for any person to inscribe, draw, or otherwise place or cause to be placed any graffiti upon the surface of any building, structure, wall or surface of other property that is publicly or privately owned.
2. It shall be unlawful for any parent or legal guardian to knowingly permit any minor child in his or her custody or control to violate division (B)(1) of this section.
3. The parent or legal guardian of a minor defendant who resides with the parent or legal guardian at the time of the offense may be held liable for any fine or condition of restitution or reparation imposed by a court upon a minor for violation of this section; provided, that minor has not paid the fine or made restitution or reparation within the time ordered by the court; and further provided that the parent or legal guardian has been served with summons or notice to appear whether in the original cause or in any subsequent proceedings arising therefrom, including sentencing or collection actions, as provided by law.

C. Removal by owner.

1. *Owner's responsibility.* It shall be the duty of the owner of the structure or wall or other private property upon which any graffiti is placed or made to remove, eradicate, or eliminate the inscription or representation within 30 days of the occurrence unless granted additional time by the City Council.
2. *Notice to remove graffiti.* In the event the owner has failed to eliminate the graffiti, the owner shall be notified by certified mail or personal notice that he or she has 30 days from the date of the notice in which to remove the graffiti. In the event that charges have been filed against the person believed responsible for placement of the graffiti and the owner can show to the city that there is a reasonable likelihood that the person will be required to make restitution or restore the premises to its previous condition, the owner may be given additional time to meet the removal requirements. In no event shall the owner be granted more than a total of six months' time to remove graffiti, but any extensions shall be based

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solely upon a reasonable likelihood of apprehension and conviction of the person responsible. In the absence of the reasonable likelihood, the owner is responsible for removal within the time allowed in divisions (C)(1) and (2) of this section.

3. *List of contractors and cleaning materials.* The city may make available a list of contractors in the business of removing graffiti and list of cleaning materials generally recognized in the industry as effective in the removal of graffiti. By providing lists of contractors and cleaning materials, the city does not guarantee the quality or adequacy of work performed by anyone selected by owner or the effectiveness or safety of the materials listed, and the city expressly disclaims responsibility or liability for the quality or adequacy of the work or materials or any claims for damage or injury arising therefrom.

D. Removal by the city.

1. The city shall have the right but not the duty to remove graffiti from the exterior of private property if the owner informs the city of the presence of the graffiti and of the owner's inability to remove it. Prior to the city entering any private property to remove graffiti, the owner must sign a statement authorizing removal by the city and agreeing to pay the reasonable costs of the removal and to allow the recording of a lien against the real estate upon which the work was performed if the cost is not paid to the city within 30 days of the date of the invoice sent to the owner. The owner must also sign a release holding the city harmless from any claims or suits brought for damages pursuant to any adverse or injurious effects of such chemicals or from the actions taken by the city or its employees to remove the graffiti prior to the city commencing work on the property. If the property owner does not remove the graffiti within the time specified or extended time requested and granted by the city or if the city is unable to perform the work at the request of the owner, the owner shall be subject to the penalties listed in division (E) of this section.
2. If the city performs the graffiti removal pursuant to division (D)(1) of this section, it shall be entitled to a lien and to file a notice of lien against the property upon which the work was performed for the cost of the removal.

E. Penalty.

1. Upon a finding of guilty for violation of division (B) of this section, an offender shall be punished as provided in § 130.99. Additionally, the court may, as a condition of probation, supervision, or conditional discharge, require that the party guilty of violating the provisions of division (B) of this section make full and complete restitution to the owner of the property for expenses incurred in the removal of the graffiti or, with the consent of the owner, restore the structure, wall, building or surface to its previous condition. In

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addition, the court may order as a further penalty community service in the form of time to be spent in cleaning property that has been defaced by graffiti in any location in the city.

2. Upon a finding of guilty for violation of division (C)(1) of this section, an offender shall be punished as provided in §130.99. Each and every day that graffiti is permitted to remain beyond the time specified in division (C)(2) of this section shall constitute a separate violation.

F. *Compliance by the city.*

1. It is the intention of the city that graffiti discovered upon city property or public property under the jurisdiction and control of the city will be removed within the time periods for graffiti removal imposed upon other governmental bodies and owners of private property under this section. The City Council shall have the authority to order and direct the removal of graffiti.
2. A designated city officer, or his or her designee, shall provide, no less than semi-annually, a written report to the City Council of graffiti incidents involving city property and removal efforts by the city. The report shall include at a minimum the location of the graffiti, charges filed against or convictions of offenders where relevant, the date and methods of graffiti removal undertaken by the city and the cost of the removal.

130.02 FIREARM AND BOW REGULATIONS

A. Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ARROW. Means a slender shaft, pointed at one end, or designed to have a pointed head or tip attached, and feathered at the other end.

BOW. Means a flexible, curved strip of wood, metal, fiberglass, plastic, or other material, with a cord connecting the two ends, designed to shoot arrows. This definition shall include a device popularly known as a crossbow.

FIREARM. Means a cannon, shotgun, rifle, handgun, or similar firearm of any description.

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B. Unlawful Acts.

1. It shall be unlawful for any person while in city limits to have in possession out-of- doors or in a motor vehicle, except on a target range to which a permit has been duly issued, any firearm unless it is unloaded and contained in a gun case, or unloaded and broken down.
2. It shall be unlawful for any individual to fire or discharge a firearm of any form of explosive, including firecrackers, skyrockets or other fireworks that are prohibited by Minnesota state law, while in the city limits.
3. It shall be unlawful for any individual to shoot an arrow from a bow, while in the city limits or to shoot an arrow from a bow, so that the arrow will fly into the city limits.
4. It shall be unlawful for any individual to fire or discharge any air gun, paintball gun, air rifle or other similar device commonly referred to as a B-B gun, while in the city limits.
5. It shall be unlawful for any individual to hunt or pursue any animal or bird, whether wild or domestic at any time while in the city limits, or to shoot or discharge a firearm of any description, a bow and arrow, or any other form of weapon, potentially inimical to wildlife and dangerous to human safety, into the city limits from outside the city limits.

C. Exceptions.

1. This section shall not apply to that portion of the City of Franklin legally described as follows: All that portion in the Northeast Quarter of Section (2), Township One Hundred Twelve (112) North, Range Thirty-Four (34) West, City of Franklin, County of Renville, State of Minnesota. This area is expected due to it being primarily rural and agricultural in nature.
2. This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation's armed forces acting under military authority or by American Legion members acting under the authority of the Legion's Commander or his designee, and shall not apply to law enforcement officials in the proper enforcement of the law, or to any person in the proper exercise of the right of self-defense, or to any person otherwise lawfully permitted by proper federal, state or local authorities to discharge a firearm in a manner contrary to the provisions of this section. This section shall not apply to businesses that require the discharge of a firearm. Some examples of, but not limited to, are the Butcher or a Licensed Gunsmith. A professionally licensed person or business may set off firework displays if approved by the City.

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3. If any of the above provisions are found to be in conflict with M.S. § 624.717, as it may be amended from time to time, the provisions of that statute shall prevail.

130.03 CURFEW FOR MINORS

A. *Purpose.* The curfew for minors established by this section is maintained for four primary reasons:

1. To protect the public from illegal acts of minors committed during the curfew hours;
2. To protect minors from improper influences that prevail during the curfew hours, including involvement with gangs;
3. To protect minors from criminal activity that occurs during the curfew hours; and
4. To help parents control their minor children.

B. *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMERGENCY ERRAND. A task that if not completed promptly threatens the health, safety, or comfort of the minor or a member of the minor's household. The term shall include, but shall not be limited to, seeking urgent medical treatment, seeking urgent assistance from law enforcement or fire department personnel, and seeking shelter from the elements or urgent assistance from a utility company due to a natural or human-made calamity.

OFFICIAL CITY TIME. The time of day as determined by reference to the master clock used by the Police Department.

PLACES OF AMUSEMENT, ENTERTAINMENT OR REFRESHMENT. Those places that include, but are not limited to, movie theaters, pinball arcades, shopping malls, nightclubs catering to minors, restaurants, and pool halls.

PRIMARY CARE or PRIMARY CUSTODY. The person who is responsible for providing food, clothing, shelter, and other basic necessities to the minor. The person providing primary care or custody to the minor shall not be another minor.

SCHOOL ACTIVITY. An event which has been placed on a school calendar by public or parochial school authorities as a school sanctioned event.

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C. Hours.

1. *Minors under the age of 16 years.* No minor under the age of 16 years shall be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; nor in or upon places of amusement, entertainment or refreshment; nor in or upon any vacant lot, between the hours of 10:30 p.m. and 5:00 a.m. the following day, official city time.
2. *Minors ages 16 years to 18 years.* No minor of the ages of 16 or 17 years shall be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; nor in or upon places of amusement, entertainment or refreshment; nor in or upon any vacant lot, between the hours of 12 midnight and 5:00 a.m. the following day, official city time.

D. *Effect on control by adult responsible for minor.* Nothing in this section shall be construed to give a minor the right to stay out until the curfew hours designated in this section if otherwise directed by a parent, guardian, or other adult person having the primary care and custody of the minor; nor shall this section be construed to diminish or impair the control of the adult person having the primary care or custody of the minor.

E. *Exceptions.* The provisions of this section shall not apply in the following situations:

1. To a minor accompanied by his or her parent or guardian, or other adult person having the primary care and custody of the minor;
2. To a minor who is upon an emergency errand at the direction of his or her parent, guardian, or other adult person having the primary care and custody of the minor;
3. To a minor who is in any of the places described in this section if in connection with or as required by an employer engaged in a lawful business, trade, profession, or occupation; or to a minor traveling directly to or from the location of the business trade, profession, or occupation and the minor's residence. Minors who fall within the scope of this exception shall carry written proof of employment and proof of the hours the employer requires the minor's presence at work.
4. To a minor who is participating in or traveling directly to or from an event which has been officially designated as a school activity by public or parochial school authorities; or who is participating in or traveling directly to or from an official activity supervised by adults and sponsored by the city, a civic organization, school, religious institution, or similar

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entity that takes responsibility for the minor and with the permission of the minor's parent, guardian, or other adult person having the primary care and custody of the minor.

5. To a minor who is passing through the city in the course of interstate travel during the hours of curfew.
 6. To a minor who is attending or traveling directly to or from an activity involving the exercise of First Amendment rights of free speech, freedom of assembly, or freedom of religion.
 7. To minors on the sidewalk abutting his or her residence or abutting the residence of a next-door neighbor if the neighbor does not complain to the city's designated law enforcement provider about the minor's presence.
 8. To a minor who is married or has been married, or is otherwise legally emancipated.
- F. *Duties of person legally responsible for minor.* No parent, guardian, or other adult having the primary care or custody of any minor shall permit any violation of the requirements of this section by the minor.
- G. *Duties of other persons.* No person operating or in charge of any place of amusement, entertainment, or refreshment shall permit any minor to enter or remain in his or her place of business during the hours prohibited by this section unless the minor is accompanied by his or her parent, guardian or other adult person having primary care or custody of the minor, or unless one of the exceptions to this section apply.
- H. *Defense.* It shall be a defense to prosecution under this section that the owner, operator, or employee of an establishment promptly notified the city's designated law enforcement provider that a minor was present on the premises of the establishment during curfew hours and refused to leave.

130.99 PENALTY

- A. Failure to comply with the provisions set forth in this Chapter and/or referenced by Minnesota Statutes shall be considered a misdemeanor unless otherwise stated in the Code or by state/federal law. The penalties and procedures associated with all violations are set forth in Chapter 1 Code Provisions under Subsection 10.99 General Penalties.
- B. *Curfew penalties.*

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1. *Minors.* Any minor found to be in violation of § 130.05 may be adjudicated delinquent and shall be subject to the dispositional alternatives set forth in M.S. § 260.185, as it may be amended from time to time.
2. *Adults.* Any adult person found to be in violation of § 130.05 shall be guilty of a misdemeanor.