

ST. CHARLES CODE BOOK

St. Charles, Mn. 55972

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**APPENDIX A. Related Material on File in City
Administrator's Office**

**AN ORDINANCE ADOPTING A REVISION AND
CODIFICATION OF ORDINANCES TO BE KNOWN
AS THE ST. CHARLES CITY CODE**

THE CITY COUNCIL OF ST. CHARLES ORDAINS:

Section 1. Code adopted. There is hereby adopted that certain revision and codification of the ordinance of the City contained in a printed compilation entitled "St. Charles City Code." A copy of such Code shall be marked "Official Copy" and filed as part of the City's official records in the Clerk Administrator's office.

Section 2. Repeals. The Clerk/Administrator has filed all past City ordinances numbered one (1) through three hundred twenty-nine (329). Those ordinances, except those which are special and limited in nature and application, are hereby repealed. Those which are special or limited in nature and application are continued in force but not set forth in this Code.

Section 3. Copies. The Clerk/Administrator shall provide a sufficient quantity of the St. Charles City Code for general distribution to the public and shall give notice in the official newspaper for at least two (2) successive weeks that copies are available in the Clerk/Administrator's office for examination or purchase.

Section 4. Prima facie evidence. The St. Charles City Code shall be prima facie evidence of City law.

Section 5. Effective date. This ordinance becomes effective August 11, 1987.

CHAPTER 1: GENERAL PROVISIONS AND DEFINITIONS

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CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

101.01 CITY CODE

Subd. 1. How cited. This code of ordinance shall be known as the St. Charles, Minnesota, City Code and may be so cited.

Subd. 2. Additions. New ordinances, proposed amendments, or additions to the Code shall be assigned appropriate numbers and shall be incorporated as of their effective date. Reference or citation to the Code shall be deemed to include such amendments and additions. When an ordinance is integrated into the Code, there may be omitted from the ordinance the title, enacting clause, section numbers, definitions of terms identical to those contained in this ordinance, the clause indicating date of adoption, and validating signatures and dates. In integrating ordinances, the Clerk/Administrator, in cooperation with the City Attorney, may correct obvious grammatical, punctuation, and spelling errors; change reference numbers to conform with sections, articles, and

chapters; substitute figures for written words and vice versa; substitute dates for the words "the effective date of this ordinance"; and perform like actions to insure a uniform code of ordinances without altering the meaning of the ordinances enacted.

Subd. 3. Numbering. Each section number of this Code consists of two (2) components separated by a decimal point. The first digit of the first component designates the chapter number; the third digit of the first component designates the part number, if any. The component after the decimal point designates the section's position within the part.

Subd. 4. Title headings; cross references. Chapter, part, section, subdivision, and other titles shall not be considered part of the subject matter of this Code but are intended for convenience only and not necessarily as comprehensive titles.

Subd. 5. Copies. Copies of this Code shall be kept in the Clerk/Administrator's office for public inspection or sale at a reasonable charge.

101.02 DEFINITIONS

Unless the context clearly indicates otherwise, the following definitions apply. The pronoun "he" is used throughout this Code, but is not intended in any way to limit reference by gender.

<u>Administrator</u>	- City Administrator
<u>Charter</u>	- City of St. Charles Home Rule Charter and any amendments thereto.
<u>City</u>	- City of St. Charles, Minnesota
<u>Clerk</u>	- City Administrator
<u>Code</u>	- St. Charles City Code
<u>Council</u>	- St. Charles City Council

1.1.01

<u>Person</u>	- Any natural individual, firm, partnership, association or corporation. As applied to partnerships or associations, the term includes the partners to members; as applied to corporations, the term includes the officers, agents or employees.
<u>State</u>	- State of Minnesota
<u>Statute</u>	- Minnesota Statute

101.03 STATUTORY RULES ADOPTED

The definitions and construction of words, phrases, and laws contained in Minn. Stat., Chapter 645 (Interpretation of Statutes), are adopted by reference and made a part of this Code, except where such provisions are in conflict with this Code. As so adopted, references in that chapter to laws and statutes mean provisions of this Code and references to the legislature mean the Council.

101.04 EXISTING RIGHTS AND LIABILITIES

The repeal of prior ordinances and adoption of this Code are not to be construed to affect in any manner rights and liabilities existing at the time of repeal and the enactment of this Code. Insofar as Code provisions are substantially the same as pre-existing ordinances, they shall be considered as continuations thereof and not as new enactment's. Any act done, offense committed, or right accruing, or any liability, penalty, forfeiture, or punishment incurred or assessed prior to the effective date of this Code is not affected by the enactment of the Code.

101.05 HEARINGS

Subd. 1. **General.** Unless otherwise provided in this Code, or by law, every public hearing required by law, ordinance, or resolution to be held on any legislative or administrative matter shall be conducted in accordance with this section.

Subd. 2. **Notice.** Every hearing shall be preceded by ten (10) days mailed notice to all persons entitled thereto by law, ordinance, or regulation unless only published notice is required, or unless a different notice requirement is specified. The notice shall state the time, place, and purpose of the hearing. Failure to give the notice or defects in it shall not invalidate the proceedings if a good faith effort has been made to comply with this subdivision.

Subd. 3. **Conduct of hearing.** At the hearing, each party in interest shall have an opportunity to be heard and to present such evidence as is relevant to the proceeding. The Council may adopt rules governing the conduct of hearings, records to be made, and such other matters as it deems necessary.

1.1.02

Subd. 4. **Record.** Upon the disposition of any matter after hearing, the Council shall have prepared a written summary of its findings and decisions and enter the summary in the official Council minutes.

101.06 SEVERABILITY

If any Code provision is found unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Code shall not be affected.

101.07 PENALTIES

Subd. 1. **Petty offenses.** Whenever an act or omission is declared by this Code to be a petty offense or a petty misdemeanor, any person violating the provision may, upon conviction, be subject to a fine of not more than One Hundred Dollars (\$100.00).

Subd. 2. **General misdemeanors.** In any other case, unless another penalty is expressly provided in this Code, any person violating this Code, or any rule or regulation adopted in pursuance thereof, or any other

provision adopted in this Code by reference, including any provision declaring an act or omission to be a misdemeanor, may, upon conviction, be subject to a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment for a term not to exceed ninety (90) days or both, plus, in any case, the cost of prosecution.

Subd. 3. **Separate violations.** Unless otherwise provided, each act of violation and every day in which a violation occurs or continues to occur constitutes a separate offense.

1.1.03
CHAPTER 2: OPERATIONS AND ADMINISTRATION

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CHAPTER 2. OPERATIONS AND ADMINISTRATION

Part 1. The Council

201.01 MEETINGS

Subd. 1. Regular meetings. Regular meetings of the Council shall be held on the second Tuesday of each calendar month at seven (7) p.m. Any regular meeting falling on a holiday shall be held on the next business day at the regular time and place. All meetings, including special and adjourned meetings, shall be held in the City Hall unless other notice is given.

Subd. 2. Initial meeting. At the first Council meeting on the first business day in January of each year, the Council shall do the following:

- (a) Designate the depositories of the City funds.
- (b) Designate the official newspaper.
- (c) Choose one (1) of the councilmembers as Acting Mayor, who shall perform the duties of the Mayor during the Mayor's disability or absence from the City or, in

case of a vacancy in the office of Mayor, until a successor has been appointed.

(d) Appoint such officers and employees and such members of boards, commissions and committees as may be necessary.

Subd. 3. Public meetings. All Council meetings, including special and adjourned meetings, and meetings of Council committees and boards shall be open to the public.

201.02 PRESIDING OFFICER

Subd. 1. Procedure. The presiding officer shall preserve order, enforce the rules of procedure prescribed below, and determine without debate, subject to the final decision of the Council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these rules, the proceedings of the Council shall be conducted in accordance with Roberts' Rules of Order, Revised.

Subd. 2. Rights of presiding officer. The presiding officer may second motions or speak on any question except that on demand of any councilmember, the presiding officer shall vacate the chair and designate a councilmember to preside temporarily. The presiding officer must vacate the chair to make a motion.

201.03 MINUTES

Subd. 1. Who keeps. Minutes of each Council meeting shall be kept by the City Administrator. In the City Administrator's absence, 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 Administrator and can be accurately identified from the description given in the minutes.

2.1.01

Subd. 2. Approval. The minutes of each meeting shall be reduced to typewritten form and signed by the City Administrator; copies shall be delivered to each councilmember as soon as practical after the meeting. At the next regular Council meeting following such delivery, approval of the minutes shall be considered by the 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 Council. If there is an objection, the Council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

201.04 ORDER OF BUSINESS

Subd. 1. Order established. Each meeting of the Council shall convene at the appointed time and place. Council business shall be conducted in the following order:

- (a) Call to order
- (b) Appointment of a secretary pro tem if the City Administrator is absent
- (c) Roll call
- (d) Approval of minutes
- (e) Petitions, complaints, visitors
- (f) Reports of officers, boards and committees
 - (1) Standing committee

- (2) Special committee
- (3) Administration officer
- (g) Notices and communications
- (h) Unfinished business
- (i) New business
- (j) Miscellaneous, announcements
- (k) Adjournment

Subd. 2. Varying order. The order of business may be varied by the presiding officer, but all public hearings shall be held at the time specified in the notice of hearing.

Subd. 3. Agenda. An agenda for each regular Council meeting shall be prepared and filed in the City Administrator's office not later than two (2) working days before the meeting. The agenda shall be prepared in accordance with the order of business and copies shall be delivered to each councilmember, and others as appropriate as far in advance of the meeting as possible. No item of business shall be considered unless it appears on the agenda for the meeting or is approved for addition to the agenda by a unanimous vote of the councilmembers present.

201.05 QUORUM AND VOTING

Subd. 1. Quorum. A majority of the combined councilmembers and Mayor shall constitute a quorum to do business. A simple majority of any Board or Committee shall constitute a quorum for that Board or Committee to do business.

2.1.02

Subd. 2. Voting. The votes of the members on any question may be taken in any manner which signifies the intention of the individual members, and the votes of the members on any action taken shall be recorded in the minutes. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute. If any member is present but does not vote, the minutes shall indicate that member abstained.

Subd. 3. Votes required. A majority vote of all councilmembers shall be necessary for approval of any modification of or addition to this Code unless a larger number is required by statute. Except as otherwise provided by statute or this Code, a majority vote of a quorum shall prevail in all other cases.

201.06 AMENDMENTS, RESOLUTIONS, MOTIONS, PETITIONS AND COMMUNICATIONS

Subd. 1. Writing requirement. Amendments to this Code and resolutions shall be in writing and presented and adopted in accordance with the provisions of Chapter 3 of the Home Rule Charter.

Subd. 2. Motions, petitions, communications. Every motion shall be stated in full before it is submitted to a vote by the presiding officer and shall be recorded in the minutes. Every petition or other communication addressed to the Council shall be in writing and shall be read in full upon presentation to the Council unless the Council dispenses with the reading. Each petition or other communication shall be recorded in the minutes by title and filed with the minutes in the Clerk Administrator's office.

201.07 COMMITTEES

Subd. 1. Creation. The Council may create by resolution such Committees, standing or special, and such Boards as it deems necessary to administer City affairs.

Subd. 2. Membership.

(a) Each Committee shall consist of councilmembers. The members shall be designated by the Mayor. Each Committee member shall serve as appointed unless excused by a majority of the councilmembers. If the Committee does not provide otherwise, Committee meetings shall be given the same notice as for special meetings of the Council.

Subd. 3. Referral and reports. Any matter brought before the Council for consideration may be referred by the presiding officer to an appropriate Committee or to a special Committee appointed by the presiding officer. The Committee shall submit a written report and recommendation before the matter is considered by the Council as a whole. Minority reports may be submitted. Each Committee shall act promptly and faithfully on any matter referred to it.

2.1.03

Subd. 4. Term limitations.

(a) No appointed member of the Park Board, the Public Safety Commission, Planning Commission and Cable TV Board may serve more than two consecutive three year terms plus the expired term of an immediate predecessor.

(b) No appointed member of the Economic Development Authority may serve more than two consecutive six year terms plus the expired term of an immediate predecessor.

(c) Following a lapse of one year, the name of a former member may be submitted to the City Council for appointment.

(d) A member who has completed two consecutive terms may be reappointed by the City Council for an additional year in the event that an existing vacancy cannot be filled.

Subd. 5. Compensation. Any member of a Board, Commission or Committee shall receive, as compensation for services rendered to the City, the right to attend an annual dinner.

201.08 BOARDS AND COMMISSIONS

The following Boards shall exist:

Subd. 1. Cable TV Board

(a) Performance monitoring of the cable TV franchise shall be accomplished by the accomplished by

the Cable TV Board. Board members shall be appointed by the Mayor, subject to confirmation by the Council, and shall consist of at least three (3) and not more than seven (7) members who advise the Council of the franchisee's performance at least annually. Each member shall serve without compensation. Such report shall be submitted to the franchise and the Minnesota Cable Communications Board and shall contain recommendations regarding upgrading the system to meet current standards.

(b) In addition to the annual reports described in paragraph (a), the Board shall submit a report twenty-four (24) months prior to expiration of a franchise and to the expiration of a Certificate of Confirmation, and the report shall include the following

- (1) Written appraisal of franchisee's performance over the entire length of the franchise with regard to the provisions of the franchise.
- (2) Recommendations for revised or additional provisions for the franchise, considering:
 - 1) Channel capacity;
 - 2) Channels for access cable casting;
 - 3) Facilities and staff assistance for cable casting;
 - 4) Two (2) way capability;
 - 5) Need for further service to be extended within franchised area.
- (3) A copy of the report shall be sent to the Council, the franchisee, and the Minnesota Cable Communications Board within ten (10) days of its submission.

2.1.04

Subd. 2. Park and Recreation Board.

(a) The Park and Recreation Board shall consist of nine (9) members. Each member shall serve without compensation shall be appointed by the Council, and shall serve a term of three (3) years.

(b) The Board shall, with the consent of the Council, have general supervision, management, and control of all work, improvements and programs on or in any public park, parkway, or recreational facility, and shall make recommendations to the Council to hire or replace employees and to prescribe duties and fix the compensation of all park employees.

(c) The Board may promulgate such rules and regulations for the use of park and recreational facilities as it deems necessary and proper to promote the public use and preservation of the park lands. All rules and regulations must be adopted by a majority of the Board members and shall be published periodically in the City's official newspaper and shall be posted prominently in park areas.

(d) Any violations of Board rules and regulations shall be a misdemeanor and shall be punishable by a fine not to exceed Three Hundred Dollars (\$300.00) or ninety (90) days in jail or both.

Subd. 3. Public Safety Advisory Commission.

(a) The St. Charles Public Safety Advisory Commission shall advise the Council on matters involving the City Police, Fire and Ambulance Departments. Subject to the limitations of

the Charter, the Commission may investigate and make recommendations to the Council regarding any matter of public safety as may properly come before the Commission.

(b) The St. Charles Public Safety Advisory Commission shall consist of seven (7) members. Two (2) shall be councilmembers, each with a one (1) year term; two (2) shall be non-council citizen members who reside within the City corporate limits each with a three (3) year term; and three (3) shall be members of the St. Charles Ambulance Department, the St. Charles Fire Department, and the St. Charles Police Department.

(c) The St. Charles Public Safety Advisory Commission shall assume the duties and responsibilities granted in Section 206.02 of the Code.

201.09 OFFICE OF DEPUTY REGISTRAR

Subd. 1. Appointment and qualifications. The Council may seek to have appointed a Deputy Registrar for motor vehicles pursuant to Minn. Stat. 168.33, if the public interest and convenience so require.

Subd. 2. Duties. The deputy registrar shall have those duties, which are assigned by the State Registrar of Motor Vehicles or Minnesota Statutes, or both.

2.1.05

201.10 SUSPENSION OR AMENDMENT OF RULES

These Rules may be suspended only by a four-fifths (4/5) vote of the members present and voting.

201.11 COUNCIL SALARIES

The salary of the duly elected or appointed Mayor shall be Four Thousand Eight Hundred Dollars (\$4,800.00) per annum.

The salary for each of the duly elected or appointed councilmembers shall be Three Thousand Six Hundred Dollars (\$3,600.00) per annum.

2.1.06

Part 2. Police Department

202.01 POLICE DEPARTMENT

The department head shall be known as the Chief of Police and the number of additional police officers, together with their ranks and titles, shall be determined by the Council. The compensation to be paid to department members shall be fixed by the Council.

202.02 CHIEF OF POLICE

The Chief of Police shall have supervision and control of the police department and its members. The Chief shall conduct the department and act according to the directions given by the Council and pursuant to any job descriptions promulgated by the Council. The Chief shall report administratively to the City Administrator. Every member of the department subordinate to the Chief shall obey the instructions of the Chief and any superior officer. The Chief and the Council shall also prepare and promulgate an official policy for the regular operation of the department. The Chief and police officers shall follow this official policy.

202.03 DUTIES OF POLICE

Department members shall enforce the laws applicable to the City, bring violators before the district court, and make complaints for offenses coming to their knowledge. Department members shall serve processes on behalf of the City and shall serve such notices as may be required by the Council of 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 Minn. Stat. 157.12 for town constables. All such fees shall be paid into the City treasury. The

Council, along with the Chief, shall promulgate job descriptions for the Chief and police officers, and they shall be guided by these descriptions in performing their duties.

202.04 POLICE RESERVE

Subd. 1. Establishment. The City Council has the power to create within the police department a police reserve, which shall consist of such number of volunteer members as the Council deems necessary. The police reserve shall be under the control and supervision of the Chief of Police. Members shall be appointed by the Council and may be removed by it at any time. They shall serve under the direction of the superior officers of the regular police force and such others as the Chief may appoint from their own number.

Subd. 2. Duties. When assigned to duty by the Chief, each member shall perform duties as described by the Chief.

Subd. 3. Oath, insignia. Each police reserve member shall take the oath prescribed by Minn. Stat. 12.43. Each member shall be issued a badge, suitable items of clothing, and such other insignia or evidence of identification as the Chief may prescribe. Upon termination of membership, a member shall surrender to the Department all City property.

2.2.01

Subd. 4. Personnel rules. Personnel ordinances and rules applicable to regular employees of the City do not apply to police reserve members, but each such member shall be covered as a City employee under the workers' compensation insurance policy of the City.

Subd. 5. Other restrictions. No member of the police reserve shall exercise any authority over the persons or property of others without displaying identification as such a member. No person except a police reserve member shall use such identification or otherwise represent him or herself to be a member of the police reserve. No police reserve member shall carry any firearm while on duty. Members of the police reserve shall serve with such compensation as determined by the Council.

2.2.02

Part 3. Fire Department

203.01 FIRE DEPARTMENT

There is hereby in this City a volunteer fire department consisting of a Chief, an Assistant Chief, and such other officers as the department shall determine are necessary.

203.02 SELECTION

The Chief and such other officers shall be elected annually by the department members, subject to confirmation by the Council. Each shall hold office for one (1) year and until a successor has been duly elected, except that the Chief may be removed by the Council for cause after a public hearing. Firefighters and probationary firefighters shall be appointed by the department members, subject to confirmation by the Council. Firefighters shall continue as department members during good behavior and may be removed by the Council only for cause after a public hearing.

203.03 DUTIES OF CHIEF

The Chief shall have control of all fire fighting apparatus and shall be solely responsible for its care and condition. The Chief shall make an annual report to the Council at its September meeting, including the equipment condition and department needs. The Chief may submit additional reports and recommendations at any Council meeting. The Chief shall be responsible for the proper training and discipline of the department members, and may suspend any member for refusal or neglect to obey orders pending final action by the Council on that members' discharge or retention. The Chief shall report each suspension of a fire department member at the first meeting of the Council following such suspension. The Chief shall be charged with the enforcement of

all parts of this Code aimed at fire prevention. The Chief shall have full authority to inspect all premises and to cause the removal or abatement of all fire hazards.

203.04 RECORDS

The Chief shall keep in convenient form a complete record of all fires. This record shall include the time of the alarm, location of fire, cause of fire (if known), type of building, name of owner and/or tenant, purpose for which building was occupied, value of building and contents, members of the department responding to the alarm, and such other information as the Chief may deem advisable or as may be required from time to time by the Council or State Fire Marshall or Commissioner of Public Safety.

203.05 FEES

The St. Charles Volunteer Fire Department, for fire calls within the City of St. Charles and within the fire contracted areas, will charge the property owner a fee for services for the firefighting and rescue equipment, with fees to be established by Council Resolution.

2.3.01

203.06 ASSISTANT CHIEF

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

203.07 FIREFIGHTERS

The Assistant Chief and firefighters shall be able-bodied and not less than eighteen (18) years of age. They shall become members of the fire department only after a six (6) month probationary period. The Council may require that each candidate, before becoming a probationary firefighter, satisfy certain minimum requirements of height, weight, education, and any other qualifications, which may be specified by the Council. Each candidate must satisfactorily pass a physical examination.

203.08 RELIEF ASSOCIATION

The members and officers of the fire department may organize a Firefighters' Relief Association in accordance with Minn. Stat. Chapter 69.

203.09 INTERFERENCE WITH DEPARTMENT

No person shall give or make, or cause, to be given or made, a fire alarm without probable cause, or neglect or refuse to obey any reasonable order of the Chief at a fire, or interfere with the fire department in the discharge of its duties.

203.10 BY-LAWS

The fire department shall adopt and present to the Council a set of by-laws which shall govern the operation and policies of the Fire Department. The Council shall approve or modify said by-laws by resolution and, upon adoption, they shall carry the force and effect of law.

2.3.02

Part 4. Ambulance Association

204.01 VOLUNTEER AMBULANCE ASSOCIATION

There is hereby in this City a Volunteer Ambulance Association. This organization shall operate as a separate association under the jurisdiction of the Council.

204.02 OFFICERS

The following and such other officers as the Association shall determine necessary shall be the Association's elected officers:

Subd. 1. Director. The Director shall preside at the regular meetings, special meetings and meetings of the Board of Directors. the Director shall coordinate all activities of the Association and assign duties to the members if necessary.

Subd. 2. Assistant Director. The Assistant Director shall fulfill the duties of the Director in the Director's absence or upon the Director's request.

Subd. 3. Secretary-Treasurer. The Secretary-Treasurer shall keep all records of all proceedings, regular meetings, special meetings and Board of Director meetings. The Secretary-Treasurer shall keep an account of all money received and distributed by the Association. A committee of three (3) members appointed by the Board of Directors will audit the financial records of the Association and report to the Association membership at its February meeting.

Subd. 4. Training Officer. The Training Officer shall coordinate all training activities of the Association.

204.03 BOARD OF DIRECTORS

The Board of Directors shall be composed of the Association's elected officers.

204.04 BY-LAWS

The Ambulance Association shall adopt and present to the Council a set of by-laws, which shall govern the Association's operation. The Council shall approve or modify said by-laws by resolution and, upon adoption, they shall carry the force and effect of law.

204.05 PART-TIME EMPLOYEES

The members of the St. Charles Volunteer Ambulance Association are part-time employees of the City of St. Charles subject to the rules and regulations set forth in the St. Charles Employment Policy (Chapter Two, Part 7).

2.4.01

Part. 5 Planning Commission

205.01 COMMISSION

The Commission shall be a City planning agency authorized by Minn. Stat. 462.354 (Organization for Planning).

205.02 COMPOSITION

The Planning Commission shall consist of eleven (11) members. All nine (9) members shall be appointed by the Council, and at least one (1) appointee must be a councilmember. Board members may be removed by a four-fifths (4/5) vote of the Council. The City Engineer and the City Attorney shall be members ex officio.

Members shall be appointed for terms of three (3) years. Appointees shall hold offices until their successors are appointed and qualified. The terms of ex officio members shall correspond to their respective official tenures. Vacancies during the term shall be filled by the Council for the unexpired portion of the term. Upon appointment to the Commission each member shall take an oath to faithfully perform the duties of the office. All members shall serve without compensation.

205.03 MEETINGS

Subd. 1. Organization. The Commission shall elect someone as chair from among the appointed members for a term of one (1) year. The Commission may create and fill such other offices as it may determine. The City Administrator shall act as secretary of the Planning Commission, but shall not be a member.

Subd. 2. Meetings and Reports. The Commission shall hold at least one (1) regular meeting each month. It shall adopt rules for the transaction of business and shall keep a public record of its resolutions, transactions and findings. On or about January first of each year the Commission shall submit to the Council a report of its work

during the preceding year. Expenditures of the Commission shall be within amounts appropriated for the purpose by the Council.

Subd. 3. Program of work. The Commission shall revise and adopt a program-of-work resolution outlining proposed activities in the exercise of its powers and the performance of its duties, and shall report such revision annually to the Council. Such a report shall include outlines of the following:

- (a) Data and information to be assembled as a basis for the City plan;
- (b) Subjects to be covered by the City plan;
- (c) Types of procedure necessary to make the City plan effective.

2.5.01

205.04 ZONING PLAN

The Planning Commission, upon instructions by the Council, shall prepare a revised zoning plan for the City. Before recommending such plan to the Council, the Commission shall hold at least one (1) public hearing thereon after published notice.

205.05 PLATS

Subd. 1. Filing required. Every proposed plat of land within the City or within two (2) miles of the City limits and not within a town which itself requires the approval of the plats, shall be submitted to the Council before being filed. No plat of land shall be filed unless and until first approved by the Council.

Subd. 2. Penalty. Any person who violates this provision or who sells land or offers land for sale or contracts for the sale of land by reference to or by other use of any plat before such plat has been approved by the Planning Commission and the Council in accordance with the provisions of this section shall be guilty of a misdemeanor. Before acting on such plat the Council shall submit the plat to the Planning Commission for its recommendations.

2.5.02

Part 6. Emergency Management

206.01 ACT ADOPTED

The Minnesota Civil Defense Act of 1951, Minn. Stat., Chapter 12 (Division of Emergency Services), insofar as it relates to cities, is adopted by reference.

206.02 EMERGENCY MANAGEMENT AGENCY

Subd. 1. Director. There is hereby created the position of Emergency Management Director and an Emergency Management Team, which shall be under the supervision, and control of the Director. The Director shall be appointed by the Mayor without salary but shall be paid necessary expenses. The Director shall have direct responsibility for the organization, administration, and operation of the Emergency Management Team, subject to the direction and control of the Mayor.

Subd. 2. Organization and Functions. The Emergency Management Team shall be organized; consistent with State and local emergency operations plans, as the Director deems local emergency operations plans, as the Director deems necessary for efficient performance of management operations during emergency conditions. The team shall perform outside the City as may be required pursuant to Minn. Stat., Chapter 12 (Division of Emergency Services), or this code.

Subd. 3. Public Safety Commission. It shall be the duty and responsibility of the Public Safety Advisory Commission to advise the Director on matters concerning emergency management planning and operations.

206.03 POWERS AND DUTIES OF DIRECTOR

Subd. 1. Intergovernmental arrangements. With the Mayor's consent, the Director shall represent the City at any regional or state organization for civil defense. The Director shall develop proposed mutual aid agreements with other political subdivisions within or outside the state for reciprocal civil defense aid and assistance in civil defense emergency if required. The Director shall present such agreements to the Council for its action. Such

agreements shall be consistent with the civil defense plan and, during a civil defense emergency, the Civil Defense Agency and civil defense forces shall render assistance in accordance with the provisions of such agreements.

Subd. 2. Civil defense plan. The Director shall prepare a comprehensive general plan for the City's civil defense and shall present such plan to the Council for its approval. When the Council has approved the plan by resolution, all civil defense forces of the City shall perform the duties and functions assigned by the plan.

Subd. 3. Reports. The Director shall prepare and present to the Council annually a report of activities and recommendations.

2.6.01

Part 7. Employment Policy

207.01 SCOPE

The Council intends this personnel policy to be uniform and equitable and within the laws of the State and the Charter of the City. The following rules, regulations, and policies shall apply to City employees under the direct and indirect jurisdiction of the Council.

207.02 EMPLOYMENT

Subd. 1. Equal Employment Opportunity. The policy and intent of the City is to provide equal employment opportunity to all persons regardless of race, color, religion, national origin, marital status, political affiliation, status with regard to public assistance, disability, sex, sexual preference, or age. This policy applies to all aspects of full, part-time, and seasonal employment practices including selection, promotion, transfer, compensation, benefits, layoffs, and terminations. Equal employment opportunity problems should be brought to the attention of the City Administrator, who will address the problem according to the procedures outlined in the City's "Equal Employment Policy/Affirmative Action Program."

Subd. 2. Personnel Covered. Except as otherwise specifically provided, this policy applies to all employees of the City except the following:

1. All elected officials;
2. The City attorney and the health officer;
3. Members of City boards, commissions and committees;
4. Volunteer firefighters, ambulance crew and other volunteer personnel;
5. Emergency employees;
6. Other employees not regularly employed in permanent positions.

Subd. 3. Probationary Period.

(a) The first six- (6) months of employment of a permanent employee shall be probationary period. During this period, the employee will be helped to effectively adjust to the position, the employee's work will be observed and evaluated, and employees who do not meet the required standards will be removed. An employee who has completed the probationary period and who has not received, before completion of that period, a written notice from the department head that the employee's services are terminated, shall have successfully completed the probationary period and attained the status of a permanent employee. The probationary period may be extended by written notice to the employee from the City Administrator or department head.

(b) Vacation and sick leave benefits shall be earned during a probationary period, but may not be used until after its completion. Probationary employees shall not be entitled to leaves of absence. If employment is terminated during a probationary period, no sick leave, vacation, or other benefits are due.

2.7.01

(c) The requirement for a probationary period shall not be applied to veterans.

207.03 OUTSIDE EMPLOYMENT

The Council does not encourage outside work by City employees. Each department shall be responsible for regulating its employees' outside work in accordance with the following policy:

(a) Employees may not engage in any occupation, employment, or business which hinders the impartial or objective performance of their public duties, embarrasses the City Government, is incompatible with their City employment, or impairs their efficiency on the job.

(b) Outside work shall be regarded as work secondary to regular City employment and shall not interfere with the availability of employees for emergency or call-in duty. There shall be no worker's compensation or sick leave payments to any individual injured in the course of outside work.

207.04 RESIDENCY REQUIREMENT

All full-time City employees employed in the Police, Electric, Water, Sewer and Street Departments must reside within a radius of ten (10) miles from the building or facility to which they normally report to work. The City Council has specifically found that the employees covered by this requirement provide essential services to the City in times of emergency, catastrophe, or other critical events and must be available for call-back to maintain these essential services.

Exceptions to this policy may only be granted upon specific recommendation of the City Administrator that special circumstances and an undue hardship exists and the City Council then concurring therewith. Any new employee hired and covered under the terms of the policy must make arrangements to comply with the terms of the policy not later than six months after he or she commences employment.

For the purpose of this provision, the term "residence" means the physical place where the employee actually resides along with other members of his or her immediate family and would entitle the

employee to become a registered voter at such residence and if owned by the employee, to homestead the property for real estate tax purposes.

207.05 ON-CALL

All City employees employed in the Electric, Water, Sewer and Street Departments are required to be on-call according to a schedule established by the Public Works Superintendent. When on-call, they shall be on-call for one (1) week and compensation shall be \$100.00 per week. The amount of compensation may change from year to year as determined by the City Council annually.

Employees are required to arrive at the building or facility to which they normally report to work as soon as possible but no later than 30 minutes from the time they were first contacted. In the event

2.7.02

that one (1) of the holidays recognized and granted to employees for holiday pay shall fall within the week of on-call, the employee shall be given additional compensation of \$20.00. It shall not be necessary that any of the on-call hours be worked in order to be eligible for the compensation. In the event the hours are worked, such employee shall be paid or granted compensatory time-off in addition to the on-call compensation. Such employee shall be credited with a minimum of two (2) hours worked for each separate occasion that he or she is called out.

In the event it becomes necessary due to illness or other reasons that the employee on standby duty cannot fulfill their week of on-call, such employee must arrange with someone else to fill in their time, and the pay will go to the employee with whom the arrangement was made. This arrangement, however, must be approved by the Public Works Superintendent.

207.06 SENIORITY

Subd. 1. Benefits. Seniority as a City employee shall be considered in determining benefits which are based on total length of service, such as vacation and sick leave. Time employed for more than one (1) City department is cumulative, unless there is an interruption in employment when the employee transfers from one (1) department to another.

Subd. 2. Vacancies. Seniority in a particular department shall be considered when filling vacancies in higher paying jobs. Qualifications will be determined by the department head and confirmed by the proper Board or Council.

Subd. 3. Lay-offs. Seniority in a job classification shall be considered, but shall not be binding in the event of lay-off. The last employee hired in a job classification may be the first to be laid off, and the last employee laid off may be the first rehired. Employees promoted from jobs shall have the right to resume lesser jobs in the event of lay offs, providing they have more department seniority than the worker being displaced. An employee may exercise job classification seniority only within the department in which the employee currently works.

207.07 TRANSFERS

When an employee transfers from one City department to another, such transfer shall not be regarded as permanent until a six (6) month trial period in the new department has been completed. The employee may use sick leave, vacation, and other benefits during the trial period. If the work and adjustment of the transferred employee is not satisfactory, the new supervisor may request that the employee return to the former department.

207.08 WORK PERIODS AND PAY DAYS

Subd. 1. Regular workday and week. Except for employees in the Police Department, the full-time regular workweek shall be forty (40) hours, generally with at least two (2) consecutive days off each week, and the regular workday generally shall be eight (8) working hours. Management personnel shall work such additional hours necessary to satisfactorily fulfill the duties of their position.

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Subd. 2. Full-time service. Full-time service is working the number of hours which make up the regularly scheduled week or other service period in a particular classification, exclusive of leave with pay.

Subd. 3. Prorate basis. When permanent employees work for a period of less than the regularly established number of hours per day, days per week, or weeks per month, the amount paid shall have the same relationship to the full-time rate for the classification as the time actually worked has to the time required for full-time service.

Subd. 4. Pay days. All employees are to be paid weekly. Should a pay day fall on a holiday, the pay day will be the preceding business day. No advances will be made before the regular pay day except in an emergency, and then only with the approval of the City Administrator.

207.09 OVERTIME PAY

Subd. 1. Compensatory time. Compensatory time off shall be the usual method of overtime payment. Employees will receive their normal pay, with all hours in excess of the regular work credited to the employees' overtime account. Hours worked in excess of forty (40) per week shall be credited at a rate of one and one-half (1.5) hour's credit for each hour of overtime worked. This overtime will then be used as time off at a time mutually agreeable to the employee and supervisor, or during periods of work shortage. The above procedure will permit the City to provide each permanent employee with a full pay check throughout the year and to avoid interruptions in insurance and other benefits resulting from unpaid lay offs in departments with seasonal work requirements.

Subd. 2. Use and carry over. Compensatory time off shall be used as soon as is practical. Not more than eighty (80) hours of compensatory time shall be carried over from one (1) fiscal year to the next. Also, not more than 40 hours of vacation shall be carried over from one (1) fiscal year to the next without approval from the Public Works Director or City Administrator. No employee will be allowed to accrue more than 120 hours of comp time during the year unless emergency conditions or approval has been granted by the Public Works Director or City Administrator.

Subd. 3. Compensatory payment. Compensatory payment for overtime will be paid for each hour of overtime worked up to a maximum of eighty (80) hours per calendar year at the employee's regular hourly rate.

Where applicable, the Federal Fair Labor Standards Act shall apply. The minimum number of hours that may be cashed in per week is twenty (20).

207.10 HOLIDAYS

Holidays shall include New Years Day, Martin Luther King, Jr.'s birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day. When any holiday falls on a Sunday, the following day shall be considered the holiday, and when any holiday falls on a Saturday, the day before is a holiday, in accordance with national protocol.

Employees required to work on a holiday shall receive in lieu of the holiday, time and one-half for such work where otherwise stated in this policy.

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207.11 VACATIONS

Subd. 1 Employees eligible. Permanent, full-time salaried employees, permanent full-time hourly employees, and permanent, part-time employees who are regularly scheduled to work at least thirty (30) hours per week on a year-round basis shall be eligible for an annual vacation paid at their regular rate of pay. Permanent part-time employees' vacation is calculated on a pro rata basis for actual hours worked. Only work time while the employee is so classified shall count toward vacation eligibility and benefits. Employees are eligible for vacation only after completing their probationary employment period.

Subd. 2 Employees not eligible. Employees regularly scheduled to work less than thirty (30) hours per week, as well as hourly, temporary, or seasonal employees, shall not be eligible for vacation benefits.

Subd. 3 Calculating vacations. Vacation calculations are based on a forty (40) hour work week; the hours are to be prorated for employees working more or less than forty (40) hours per week exclusive of overtime.

Vacation is earned as follows:

Years of Service	Hours of Vacation earned each year	Days of Vacation earned each year
1	40	5
2-5	80	10
6	88	11
7	96	12
8	104	13
9	112	14
10-15	120	15
16	128	16
17	136	17
18	144	18
19	152	19
20	160	20

Subd. 4 Vacation scheduling. Vacation leave shall be credited and available on an annual basis on January 1st of each year, except the department head shall approve the time at which the vacation leave may be taken. The department heads will establish working and vacation schedules with first consideration given

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to the efficient operation of the department and second consideration to the employees' wishes. Senior employees shall be given schedule preference.

In no case will any time be taken as vacation without advance approval by the department head. Unauthorized time off will result in a payroll deduction.

Subd. 5 Accumulated time. Vacation time shall not accumulate from one (1) year to the next, except the employee may accumulate one and one-half (1 2) times the amount earned in a year at the discretion of the Council. Any vacation credited but unused and not accumulated with the Council's approval at the end of the anniversary year shall be forfeited.

Subd. 6 Employment ends. Upon leaving employment with the City, employees are paid accumulated vacation computed to the nearest hour based on their hourly wage at the time of termination.

Subd. 7 Waiver. Vacation is granted for the purpose of employee recreation. No employee shall be permitted to waive such vacations for the purpose of receiving double pay except where unusual circumstances exist at the discretion of the Council.

207.12 SICK LEAVE

Subd. 1 Eligibility. Employees shall be eligible for sick leave on the following basis:

(a) Permanent, full-time salaried employees, permanent, full-time hourly employees, and permanent part-time employees who are regularly scheduled to work at least thirty (30) hours per week throughout the year, shall be eligible for sick leave at their regular rate of pay, with the latter on a pro rata basis. Only work time while the employee is so classified shall count towards sick leave eligibility and benefits.

(b) Employees regularly scheduled to work less than thirty (30) hours per week and temporary or seasonal employees, shall not be eligible for sick leave benefits.

Subd. 2 Conditions. Sick leave may be granted under the following conditions:

(a) Sick leave with pay will be granted for bona fide personal illness or injury, medical examination, medical treatment, legal quarantine, dental appointments or for other sickness prevention measures or in case of a work-related injury.

(b) When the worker is eligible for Worker's Compensation, the worker may choose to be paid his or her regular wage with the excess of the regular wage over the Worker's Compensation payment being the amount charged in time against the employee's sick leave account. When the sick leave account is exhausted, the employee will receive Worker's Compensation payments only.

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(c) Sick leave may be used in case of death or serious illness in the immediate family, and shall be for the actual time required, not to exceed a reasonable time at the discretion of the Council or department head. This time will be charged against the employee's sick leave account.

Immediate family shall mean the employee's brothers, sisters, parents, children, spouse, spouse's parents, spouse's brothers or sisters, sons-in-law or daughters-in-law, grandparents, grandchildren.

(d) Employee sick leave may be used for the birth of child.

(e) No sick leave shall be granted to an employee during the first six- (6) months of employment, but leave shall accrue from the start of employment and may be used after the completion of six- (6) months' service.

(f) It is the intention of this policy to be fully compliant with the Family and Medical Leave Act (FMLA), and in no case will this policy precede the FMLA.

Sub. 3 Accrual. One (1) work day of sick leave shall be granted for each calendar month of employment or major fraction thereof. Additions to or deductions from each employee's sick leave account shall be made monthly. Unused sick leave shall accrue until one hundred and twenty (120) days have accumulated.

Subd. 4 Considered working. Employees using earned sick leave shall be considered to be working for the purpose of accumulating additional vacation leave or sick leave except that total consecutive sick leave used may not exceed the maximum accumulation allowed. Only days which an employee would normally have worked will be charged against his sick leave account.

Subd. 5 Proof required. An employee claiming sick leave may be required to file competent written evidence that the absence was authorized. If the employee has been incapacitated, the employee may be required to provide evidence of physical ability to perform work duties.

Subd. 6 Privilege. Sick leave is a privilege designed for the purposes stated herein. Each employee and department head shall be held accountable for the reasonable, prudent, and bona fide use of sick leave privileges.

Subd. 7 Personal time. Employees may use up to sixteen (16) hours annually of sick time as personal time.

Subd. 8 Penalty. Claiming sick leave when physically fit, except as provided in this section, may be cause for disciplinary action, including cancellation of sick leave benefits, suspension, demotion, or termination. The employee must notify the department head of the need for leave at the earliest possible moment and preferably before the start of the scheduled working hours. Failure to make diligent effort to give such notification may result in payroll deduction for such time taken.

207.13 LEAVE OF ABSENCE AND OTHER TIME OFF

Subd. 1 Approved absences. Department heads, Boards or Commissions may, at their discretion and with the concurrence of the Council, approve the absence of an employee, without pay, not to exceed thirty (30) calendar days. Any absence of more than thirty (30) days, whether with or without pay, shall be approved by the Council in advance. Where appropriate, the Council will grant an official leave of absence in order to preserve the employee's status as a public employee and his or her benefit rights in the Public Employees Retirement Association (PERA).

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Subd. 2 Jury Duty. When an employee has been absent from work because of jury duty, the employee shall be paid the employee's regular salary by the City, with the understanding that upon the completion of jury service, the employee shall show the jury check to the department head and the amount of the jury check, less the amount for traveling expenses, shall be deducted from the employee's next regular pay check.

Subd. 3 Military leave. Permanent employees, who have completed their probationary period, shall be entitled to the following:

(a) Employees ordered by proper authority to National Guard or Reserve Military Service not exceeding fifteen (15) days in any calendar year shall be entitled to leave of absence without loss of status. Such employees shall receive compensation equal to their regular pay rate.

(b) Employees called and ordered by proper authority to active military service shall be entitled to leave of absence without pay during such service. Upon completion of such service employees shall be entitled to the same or similar employment of like seniority, status, and pay as if such leave had not been taken, subject to the specific provisions of Minn. Stat. Chapter 192 (National Guard).

Subd. Maternity, Paternity and Adoption Leave. This policy will be consistent with the FMLA.

Subd. 5 School Conferences and Activities Leave. An employee may take unpaid leave or compensatory time off to attend school conferences or classroom activities related to the employee's child, provided the conference or classroom activities cannot be scheduled during non-work hours.

207.14 RETIREMENT

Subd. 1 Age. The City cannot require retirement prior to age seventy (70). An employee with at least one (1) year of service may retire at age sixty-five (65). An employee with at least twenty (20) years of service may retire between ages fifty-eight (58) and sixty-five (65), but with reduced annuity. An employee with at least thirty (30) years of service may retire at age sixty-two (62) with no reduction of annuity.

Subd. 2 State law. A copy of Minn. Stat. Chapter 181 (Employment; Wages, Conditions, Hours, Restrictions) shall be available in the City Administrator's office.

Subd. 3 Extensions in special cases. In special cases, the Council may grant work extensions to employees after the age of seventy (70) on a year-to-year basis.

- (a) An extension will be granted only when it is in the City's best interest.
- (b) Extension requests will be dealt with on an individual basis. Any employee requesting an extension shall demonstrate physical fitness to perform the required work by way of an annual physical examination. In addition, recommendations by the department head, governing Boards or Commissions shall be considered together with any pertinent facts in determining extension requests.

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- (c) An employee desiring a work extension shall submit the request to the Council in writing not less than thirty (30) days prior to the employee's seventieth (70th) birthday. In the absence of a Council-approved work extension, employees shall retire from City employment by their seventieth (70th) birthday.

207.15 RESIGNATION

Subd. 1 Notice. Two (2) weeks shall constitute proper notice for an employee who is planning to resign in good standing, except supervisors who shall give thirty (30) days notice.

Subd. 2 Unauthorized leave. An unauthorized leave of absence by an employee for three (3) consecutive work days may be considered by the department a voluntary resignation.

207.16 TEMPORARY EMPLOYMENT BENEFITS

Temporary employees, seasonal employees, and permanent part-time employees shall not be entitled to benefits described in this employment policy.

207.17 LAYOFFS

On the City Administrator's recommendation, the Council may lay off permanent employees because of work or fund shortages, abolition of positions, or other reasons, fourteen (14) calendar days after written notice has been given to the affected employees. On the Clerk Administrator's recommendation, the Council may lay off temporary employees with minimal notice. Permanent employees shall not be laid off while there are temporary or probationary employees serving in the same positions for which permanent employees are qualified, eligible, and available. Length of service in the same position classification shall be considered, but shall not be binding.

207.18 DISCIPLINE

Subd. 1 Measures. Employees may be warned, reprimanded, suspended, and demoted, dismissed or subject to other disciplinary measures.

Subd. 2 City Superintendent. Superintendent may, upon his or her own motion or upon the recommendation of a department head, discipline employees of all departments under their jurisdiction by using oral or written warnings and reprimands, or by recommending suspension, demotion, or dismissal to the City Administrator.

Subd. 3 By the City Administrator. The City Administrator may, upon his or her own motion or upon the recommendation of the City Superintendent discipline employees.

Subd. 4 Procedure. In all cases of disciplinary action other than oral reprimand, a dated written notice of the proposed disciplinary action shall be presented to the employee.

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Subd. 5 Dismissal. Employees subject to the provision of this chapter may be dismissed from municipal service by the Council as recommended by the City Administrator as a result of any of the following:

- (a) Incompetence or ineffective performance of duties;
- (b) Conviction of a criminal offense involving moral turpitude;
- (c) Insubordination;
- (d) Violation of any lawful or official rule, regulation or order, or failure to obey any lawful direction made and given by a superior;
- (e) Intoxication on duty or the consumption of alcoholic beverages while on duty;
- (f) The use of drugs or under the influence of drugs while on duty except where described by a licensed physician;
- (g) Intentional violation of safety rules;
- (h) Theft of the City's or an employee's property;
- (i) Misuse of City property;
- (j) Use of abusive language
- (k) Excessive absence or tardiness;
- (l) Excessive use of telephone for personal calls;
- (m) Immoral conduct;
- (n) Illegal acts;
- (o) Non-compliance with all occupational safety and health standards, rules, or regulations;
- (p) Physical or mental defect, which, in the judgement of the appointing authority, incapacitates the employee to such an extent as to materially interfere with the proper performance of the employee's duties; an examination by a licensed physician may be required and imposed by the appointing authority;
- (q) Wanton use of offensive conduct toward the public, municipal officers, superiors or fellow employees;
- (r) Inducing or attempting to induce a City officer or employee to commit an unlawful act or to act in violation of any unlawful and reasonable official regulation or order;
- (s) Soliciting or accepting any gift, gratuity, loan, reward, discount, valuable favor or any such thing of value which is sought or offered on a basis reasonably considered to be related to City employment and not generally available to the public;
- (t) Misuse of company property;
- (u) Use of abusive language;
- (v) Violations of the provisions of this Employment Policy (Section 207);
- (w) Holding any other public office or employment, which is incompatible with City employment responsibilities, as determined by the City Administrator;
- (x) Failure to report any interest with respect to any relationship which may create a substantial conflict of interest with respect to official duties for the City;
- (y) Carelessness or negligence in handling or controlling City property.

Subd. 6 Sexual Harassment. For purposes of this personnel policy, sexual harassment shall be defined as unwelcome sexual advances, request for sexual favors, and verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; or submission to or rejection of the conduct is used as the basis for employment decisions; or

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2. The conduct has the purpose or affect of substantially interfering with the individuals work performances or creating an intimidating, hostile or offensive working environment.

(a) Sexual harassment by one City employee against another City employee will not be tolerated and will be grounds for dismissal. Similarly, retaliatory action taken against an employee who has made complaints or sexual harassment will not be tolerated and will be grounds for dismissal.

(b) Any employee who feels they have been sexually harassed shall report such incidents immediately to the department head and the City Administrator and/or the City Attorney who shall immediately investigate all complaints.

207.19 GRIEVANCE POLICY

The City will deal promptly and fairly with grievances arising out of terms and conditions of employment.

Any employee claiming a grievance shall submit such grievances to the employee's immediate supervisor who shall consider and examine the grievances and attempt to resolve it to the extent of the supervisor's authority. If the grievance is not satisfactorily resolved at that level, the employee may present the grievance in writing to the Clerk Administrator for disposition.

Any employee who has followed the above procedure and who feels the dispute is still not satisfactorily resolved may present the grievance in writing to the Council for consideration.

207.20 COMPUTER USE POLICY

Subd. 1 Purpose. The purpose of this policy is to protect the quality and integrity of the City's information system and to provide employees with standards of behavior when using the computer system. The system is vital to performing city functions. The underlying goal is to further enhance the ability of employees to be effective in their job while maintaining system security and reliability. Achieving this goal is a task shared by all system users. All employees are expected to read and comply with this policy.

Subd. 2 Data Management and Protection.

(a) Management of files – Although large, the storage capacity of the system does have a limit and all users are responsible for deleting outdated files. This includes data files and e-mail messages.

(b) Portable files – To facilitate off-site work, appropriate files may be copied to and from diskettes including work processing, spreadsheets, and presentation graphic files. No other files or information may be copied to or from St. Charles computers.

(c) Computer files – All information developed in or introduced to a City computer system is the property of the City of St. Charles. All information developed by a St. Charles employee on computers outside of the City Offices, if in conjunction with their employment with the City, is the property of the City of St. Charles.

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GENERAL

Subd. 1 Health and life insurance. The City provides to employees who are regularly scheduled for work at least thirty (30) hours per week a comprehensive hospital and major medical group health insurance plan providing major medical benefits. The City pays the full cost of single coverage for all such employees. If the employee requests dependent coverage, the City will pay one hundred percent (100%) of employee coverage and fifty percent (50%) of the cost of dependent coverage. The remaining cost is paid by deductions from the employee's paychecks.

(a) If any employee terminates employment with the City for any reason, the employee may continue to participate in the group health-care program, single or family coverage at the employee's own expense, until the employee secures new coverage or for a period of eighteen (18) months after termination.

(b) Employees on unpaid leaves of absence may retain insurance coverage at their own expense.

(c) If any employee retires from the City at the age of fifty-five (55) or older, the employee may continue to participate in the group health-care program, single or family coverage at the employee's own expense, until the employee secures new coverage or until the employee reaches the age of sixty-five (65).

Subd. 2 Safety. The City shall at all times provide the safest working conditions possible. Each department supervisor has the duty to establish safety regulations and to instruct workers in accident prevention. Workers shall be expected to adhere strictly to all safety requirements. Safety suggestions will be welcomed from all employees.

(a) When an employee is injured on the job, the employee shall report the injury to his supervisor immediately.

(b) The supervisor shall first acquire medical aid for the injured employee. Then the supervisor shall file promptly an accident report with the City Administrator describing the full details.

Subd. 3 Payroll deductions. The City is required to deduct from employees' checks federal and state income taxes and social security tax. The City serves as the collection agency and passes the money on to the state and federal governments. The City is also required to deduct for contribution to the Public Employee Retirement Association for eligible employees. If an employee selects dependent coverage under the group health insurance plan, the employee's share of the premium will be deducted. Any other deductions, unless required by law, must be requested in writing by the employee and will be made only at the Council's discretion.

Subd. 4 Public relations. Every employee shall be courteous to the public. Favorable impressions created by courteous public relations develop citizens' good will and support for the City as a whole.

Subd. 1 Schedule. Due to the unique schedule of the Police Department, the Chief shall submit a work schedule outline and compensation proposal to the Council for approval when the proposed department budget is submitted.

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Subd. 2 Pay. Police overtime will be paid at one and one-half times the regular hourly rate for work performed outside the regular shift. Officers shall make every attempt to perform work-related duties during their regular shifts.

Subd. 3 Holidays. The legal holidays shall be accrued to each officer's record of time off, prorated on a monthly basis, over a calendar year.

Subd. 4 Vacations. An officer's vacation shall be applied to the record of time off, prorated on a monthly basis. The officer's employment date shall be used to determine the appropriate number of days per month. The vacation schedule described in 207.10 of this Code shall be used to determine the number of vacation days.

The Police Chief shall keep a monthly record of all vacation and holiday hours accrued to each officer. Every officer shall submit a written request for time off or payment for holidays.

No payment will be allowed in place of using earned vacation days, unless specifically approved by the Council. No more than forty-five (45) hours shall be carried over to the next calendar year without prior approval of the Chief. Hours worked on holidays may be taken as time off subject to approval from the Chief, or may be submitted for payment.

2.7.13
Part 8. Abandoned Property

208.01 PROCEDURE

Subd. 1 Storage. All property other than motor vehicles lawfully coming into the possession of the City shall be disposed of as provided in this section. The City department acquiring possession of property shall arrange for its storage. If City facilities for storage are unavailable or inadequate, the department may arrange for storage at privately owned facilities.

Subd. 2 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. A receipt for the property shall be obtained upon release to the owner.

Subd. 3 Sale. If the property remains unclaimed in the possession of the City for sixty (60) days, the property shall be sold to the highest bidder at a public auction conducted by the City Police Chief after two (2) weeks' published notice setting forth the time and place of the sale and the property to be sold.

Subd. 4 Disposition of proceeds. The sale proceeds shall be placed in the City's general fund. If the former owner makes application and furnishes satisfactory proof of ownership within six (6) months of the sale, the former owner shall be paid the proceeds from the sale of the former owner's property less the costs of storage and the proportionate part of the cost of published notice and other costs of the sale.

2.8.01
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CHAPTER 3. PUBLIC WORKS

Part 1. General Provisions

301.01 DEPARTMENTS ESTABLISHED

There are hereby established the following departments for furnishing utilities services:

- (a) Water Department
- (b) Sewer Department
- (c) Electrical Department

Each department shall be under the supervision of the Public Works Superintendent. These departments shall be responsible for the management, maintenance, care and operation of its respective area.

301.02 USE OF WATER OR SEWER SYSTEM RESTRICTED

No person shall make or use any public utility service installation connected to the City public utility system except pursuant to application and permit as provided in this chapter. No person shall make or use any such installation contrary to the regulatory provisions of this chapter.

301.03 APPLICATIONS FOR SERVICE

Subd. 1. Application procedure. Application for a water, sewer, or electric service installation and for utility service shall be made to the City Administrator on forms prescribed by the City Administrator and furnished by the City. By signing, the application shall agree to conform to this chapter and to rules and regulations that may be established by the City as conditions for use of the Public Utilities.

Subd. 2. Conditions of service.

(a) The utility service supplied by the City is supplied upon the express condition that the product becomes the customer's property after it passes the point of delivery, and the City shall not in any event be liable for loss or damage to any person or property, resulting directly or indirectly from the use, misuse, or presence of the utility service on the customer's premises, or elsewhere, after it passes the point of delivery to the customer. Each of the parties shall hold the other free and harmless of and from all liability, damages, actions, and causes of action caused by or through the ownership, maintenance, or operation of its utility property and equipment, and the liability division point shall be the point of delivery as herein defined or as stated in a specific contract between City and customer.

3.1.01

(b) The City may refuse to connect service at a new location for any applicant indebted to the City for utility service rendered at another location until the applicant has paid, or made

satisfactory arrangements to pay, such indebtedness and has complied with other requirements for service.

(c) Application for a service installation shall be made by the property owner to be served or by the owner's representative. The applicant shall pay the City the fees or deposit required for the service connection installation as provided in this chapter when making application. When a service connection has been installed, application for service may be made by the owner, the owner's representative, the tenant, or the occupant of the premises.

(d) Customers are responsible for securing information from the City pertaining to service availability at a specific location. The City shall be notified of the service connections and metering equipment. The customer is advised to secure such information prior to installation of interior wiring to assure service at a mutually agreeable time and location.

(e) A separate application or contract, where required, may be made to cover each class of service to each individual, firm, or corporation, at each separate address or location. Each application shall require the installation of one (1) meter, except that the City may install more than one (1) meter for its convenience.

(f) The parties understand and agree that a signed agreement shall be binding upon and inure to the benefits of the successors, legal representatives, and assigns of the respective parties, but no assignment by the customer of any agreement shall be binding upon the City unless the City consents to such assignment in writing. Any agreements are subject to the approval of the City Council.

(g) The term of any signed agreement may be stated in the agreement, and service after the term's expiration shall be continued on a month to month basis until terminated according to 301.06, Subd. 7 (Procedure for service shutoff), unless other specific cancellation or continuation stipulations are made a part of the signed agreement.

301.04 METERS

Subd. 1. Meters required. Except for extinguishing fires, no person other than an authorized City employee shall use water from the City water supply system or permit water to be drawn unless the water passes through a meter supplied or approved by the City. No person not authorized by the Public Works Superintendent shall connect, disconnect, take apart, or in any manner change or interfere with any such meter or its use.

Subd. 2. Deposit. 5/8" meters shall be installed by the City at its expense; meters larger than 5/8" shall be billed to the customer at cost plus ten percent (10%). Each customer shall pay a connection fee as stated in 301.05 (Charges for Service Connections).

3.1.02

Subd. 3. Maintenance. The City shall maintain and repair at its expense any meter that has become unserviceable through ordinary wear and tear and shall replace it if necessary. Where repair or replacement is made necessary by act or neglect of the owner or occupant of the premises it serves, the City expense shall be a

charge against and collected from the consumer, and service may be discontinued until the cause is corrected and the amount charged is paid.

Subd. 4. Complaints; meter testing.

(a) When a customer complains that the bill for any past water service period is excessive, the customer may have the meter reread on request. If the customer remains dissatisfied, the customer may, upon written request and a deposit of at least fifty dollars (\$50.00), have the meter tested. If the meter is found to be accurate within five percent (5%) of the water consumed, the actual cost of the test will be charged to the customer, and the deposit shall be applied to this charge. If the meter is found not accurate, a new meter shall be installed and the bill shall be adjusted accordingly. Such adjustment shall not extend back more than one (1) quarter period from the date of the written request.

(b) Upon written request and the deposit of at least fifty dollars (\$50.00) by a customer, the City shall test the electric meter serving the customer, but such tests need not be made more than once in twelve (12) months. The City will notify the customer in advance of the time and date of such test so the customer, or the customer's representative, may be present when the meter is tested. If the meter is found accurate within two percent (2%), the actual cost of such meter test will be charged to the customer and the deposit shall be applied to this charge. If the meter is found not accurate within two percent (2%), the City will pay for the test. The test results will be given or mailed to the customer within a reasonable time after completion. All billing adjustments based on meter testing results shall be in accordance with rates in effect at the time of the error. Such adjustment shall not extend back more than one (1) month from the date of the written request.

Subd. 5. Meters property of City. Meters shall be City property and may be removed or replaced as to size and type when deemed necessary.

Subd. 6. Meter reading and inspection. Authorized meter readers shall have free access at reasonable hours of the day to all parts of every building, structure, or lot connected with the City utilities to read meters and make inspections.

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301.05 CHARGES FOR SERVICE CONNECTIONS

Subd. 1. Permit and Fee. Connection shall be made to the City utility only after a permit has been obtained from the City Administrator. Permit fees for premises not containing a mobile home or manufactured home are as follows:

Fifteen Dollars (\$15.00) for an electrical permit;
Five Hundred Dollars (\$500.00) for a water connection;
Two Hundred Dollars (\$200.00) for a sewer connection;
One Thousand Dollars (\$1,000.00) for a sanitary district fee.

Permit fees for premises containing a mobile home or manufactured home are as follows:

Fifteen Dollars (\$15.00) for an electrical permit;
Five Hundred Dollars (\$500.00) per four (4) units for water connection;
Two Hundred Dollars (\$200.00) for a sewer connection.
(see 701.02 for definitions)

Subd. 2. Connection fees.

(a) When a water connection requires installing a service line from the main to the property line, the permit applicant may pay the City an amount not less than the cost of making the necessary connections, taps, and installation of pipe and appurtenance to provide service to the property and the necessary street repairs based on time and material, or the applicant may provide this installation in accordance with City specifications.

(b) For electrical service connection fees, see 304.09 (Electrical Service Policy-Extensions and Connections).

Subd. 3 Determination of adequacy. No permit shall be issued until the City Administrator has determined that adequate utility service exists serving the property, or that proper provisions for installing adequate service have been made. An assessment project or bond by a contractor is required to ensure the project will be completed. Adequacy of main service shall be determined according to the main extension policies the Council adopts by resolution.

Subd. 4. Disconnect/Reconnect fee. If a customer requests a temporary interruption of service, a fee of Ten Dollars (\$10.00) per meter shall be paid in advance. This fee shall cover one (1) disconnection and subsequent reconnection.

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301.06 ACCOUNT, BILLING AND COLLECTING

Subd. 1. Application for Service and Owner-Customer Responsibility.

Application for water, sewer and electric utility service shall be made to the City of St. Charles on forms prescribed by the City and furnished by the City. Every person applying for utility service from the City, and every owner of property for which such application is made, shall be deemed by such application to consent to all ordinances, rules and regulations of the City relating to the municipal water, sewer and electric systems.

(a) All utility accounts shall be carried in the name of the customer who personally, or by his authorized agent, shall apply for such service. The customer shall be liable for utility service supplied to his property.

Subd. 2. Billing. Utility service shall be billed to the party contracting said service.

Subd. 3. Meter deposits. At the time of filing an application for utility service, any applicant who does not have a 12 month history of payment for electric service with the City is required to pay a meter deposit.

(a) The meter deposit shall be in the amount of \$75.00 for applicants residing at rental properties, \$50.00 for applicants residing at applicant-owned residential property and \$100.00 for applicants renting, owning or operating a commercial business.

(b) The meter deposits established in Subd. 3(a) shall be reduced by \$25.00 if the applicant submits evidence of prompt payment history from a prior utility company.

(c) The deposit shall be refunded after 12 consecutive months of prompt payment or upon prior termination of service with all bills paid. Deposits shall bear interest rate of six percent (6%) from the date of deposit to the date of refund. If the customer is delinquent in his account, his deposit shall be applied on the delinquent account and an additional deposit shall be required to bring the deposit up to the amount originally required.

Subd. 4 Interest payable.

(a) The rate of interest payable by the City on its security deposits will be six percent (6%) simple interest per annum from the date of deposit or January 1, 1975, whichever is later or as otherwise specified from time to time by appropriate state law. Payment of interest to the customer may be made annually, or at the time the deposit is returned.

(b) The deposit shall cease to draw interest when any of the following occur:

- (1) the deposit is returned;
- (2) the customer's account becomes delinquent;

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- (3) notice is sent to the customer's last known address that the deposit is no longer required;
- or
- (4) service is disconnected.

Subd. 5. Refund of deposits. The deposit plus interest, if any, is to be refunded under any of the following conditions:

- (a) Upon customer's request after twelve (12) consecutive months of the customer's bill being paid on time;
- (b) Without customer request after twenty-four (24) consecutive months of the customer's billing being paid on time;
- (c) After the customer has paid the final bill upon termination of service; or
- (d) If the service is discontinued and there are charges due the City for service to the customer, the cash deposit plus interest will be applied to the charges, and the remaining balance of the deposit plus interest, if any, will be returned to the customer together with a statement of such charges, credits, and balance. If there is a balance due or credit of less than One Dollar (\$1.00), no refund or billing shall be made.

Subd. 6. Discounts. Statements for total water charges for the preceding quarterly period and for total sewer and electrical charges for the preceding month shall be mailed by the City to each customer on the 1st day of each month. The amount listed on the statement shall be due on or before the 10th day of each month. If payment is not made by that time, there shall be added to the amount due a ten percent late fee.

Subd. 7. Shut-off for non-payment.

- (a) The City shall endeavor to collect delinquent accounts promptly. In any case where satisfactory arrangements for payment have not been made, the St. Charles Utility Department may discontinue service to the delinquent customer after the procedural requirements of Subd. 7(b) and, if applicable, the Winter Disconnect Rule, have been satisfied. When service to any premises has been discontinued, service shall not be restored except upon payment of all delinquent amounts due or the establishment of a satisfactory payment arrangement plus a fee for disconnection and reconnection of \$10.00.
- (b) Service shall not be shut off under Subd. 7(a) until a mailed and a delivered notice have been given to the customer. The final delivered notice shall state that if payment is not made by a certain date, the service to the premises will be shut off. The final notice shall clearly inform the customer of the amount of the past due bill, the options available to the customer and shall identify the telephone number, address and officer who will handle the customer's complaint.

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Subd. 8. Collection with taxes. Delinquent water and sewer accounts shall be certified to the City Administrator who shall prepare an assessment roll each year providing for assessment of the delinquent amounts against the respective properties served. The assessment roll shall be delivered to the Council for adoption on or before October 1 of each year. Upon such adoption, the Clerk shall certify the assessment roll to the Council Auditor for collection along with taxes.

301.07 WINTER DISCONNECT

Subd. 1. Application: Notice to Residential Customers

The St. Charles Utility Department will not disconnect the utility service of a residential customer if the disconnection affects the primary heat source for the residential unit and if a mutually agreeable payment schedule has been established when the following conditions are met:

- (1) the disconnection would occur during the period between October 15 and April 15;
- (2) the customer has declared inability to pay on forms provided by the utility;
- (3) the household income of the customer is less than 185 percent of the federal poverty level, as documented by the customer to the utility; and
- (4) 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.

Subd. 2. Notification. The St. Charles utility department will notify all residential customers of the provisions of Subd. 1.

Subd. 3. Notice to residential customers facing disconnection. Before disconnecting service to a residential customer during the period between October 15 and April 15, the St. Charles utility department will provide the following information to a customer:

- (1) a notice of proposed disconnection;
- (2) a statement explaining the customer's rights and responsibilities;
- (3) a list of local energy assistance providers;
- (4) a form on which to declare inability to pay; and
- (5) a statement explaining the available time payment plans and other opportunities to secure continued utility service.

Subd. 4. Restrictions if disconnection necessary.

(1) If a residential customer must be involuntarily disconnected between October 15 and April 15 for failure to comply with the provisions of Subd. 1, the disconnection must not occur on a Friday or on the day before a holiday. Further, the disconnection must not occur until at least 20 days after the notice required in Subd. 2 has been mailed to the customer or 15 days after the notice has been personally delivered to the customer.

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(2) If the customer does not respond to a disconnection notice, the customer must not be disconnected until the utility investigates whether the residential unit is actually occupied. If the unit is found to be occupied, the utility must immediately inform the occupant of the provisions of this section. If the unit is unoccupied, the utility must give seven days written notice of the proposed disconnection to the local energy assistance provider before making a disconnection.

(3) If, prior to disconnection, a customer appeals a notice of involuntary disconnection, the utility must not disconnect until the appeal is resolved.

301.08 PROTECTION OF PUBLIC AND CITY

The owner shall bear the costs and expenses incident to installing and connecting the building sewer or extending water service to private property. The owner shall indemnify the City for any loss or damage directly or indirectly caused by the installation and connection. To the extent deemed necessary, the City Administrator shall establish rules and regulations for the proper implementation of these requirements which, when adopted by Council resolution, shall govern installing and connecting building sewers and extending water service to private property.

301.09 PENALTIES

Subd. 1. Correction. Any person found to be violating any provision of this part shall be served by the City with written notice stating the nature of the violation and providing a reasonable time period for satisfactory correction. The offender shall permanently cease all violations within the time period stated in such notice.

Subd. 2. Continued violations. Any person who shall continue a violation beyond the time period for correction shall be guilty of a misdemeanor. Each day in which any such violation occurs shall be deemed a separate offense.

Subd. 3. Liability. Any person violating any of this part's provisions shall be liable to the City for any expense, loss, or damage incurred by the City due to the violation.

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Part 2. Water System

302.01 GENERAL WATER REGULATIONS

Subd. 1. Discontinuance of service. The City may discontinue service to any water consumer without notice for necessary repairs or upon notice as provided in 301.06, Subd. 7 (Procedure for service shutoff), for

nonpayment of charges or violations of rules and regulations affecting utility service, or to remedy leaks as described in 302.01, Subd. 4 (Leak repair).

Subd. 2. Supply from one service. No more than one (1) dwelling or building that is not a mobile home or manufactured home shall be supplied from one (1) service connection except by special permission of the Council.

When two (2) or more parties are supplied from one (1) pipe connected to a service main, each building or part of building separately supplied shall have a separate stop box and a separate meter. Where the unit to be served is constructed pursuant to a "single family attached" provision, service may be from a single line without Council permission provided other requirements of Chapter 7, part 3 are met.

Subd. 3. Turning on water, tapping mains. No person except an authorized City employee shall turn on any water supply at the stop box or tap any distributing main or pipe of the water supply system or insert a stop cock or other appurtenance.

Subd. 4. Leak repair. The consumer/owner shall be responsible for maintaining the service pipe from the main into the building served. If the consumer/owner fails to repair any leak in such service pipe within twenty-four (24) hours' notice by the City, the City may discontinue service. Water service shall not be restored until twenty-five (\$25.00) Dollars has been paid to the City. When the water waste is great or damage is likely to result from the leak, the City shall discontinue water service immediately, if repair is not begun immediately after such notice is given.

Subd. 5. Use of fire hydrant. No person other than an authorized City employee shall operate a fire hydrant or interfere in any way with the City water system without first obtaining authority to do so from the Public Works Superintendent.

Subd. 6. Private water supply. No waterpipe of the City water supply system shall be connected with any pump, well, or tank that is connected with any other source of water supply. When any such connection is found, the Public Works Superintendent shall notify the owner and request the connection be severed. If the connection is not severed immediately, the City shall discontinue the water service. Before any connection to the City system is permitted, the department shall ascertain that no cross connection will exist when the new connection is made.

Subd. 7. Restricted hours. When the Council determines that a water supply shortage threatens the City, it may, by resolution, limit the times, and hours during which City water may be used for sprinkling, irrigation, car washing, air conditioning, or other specified uses. After publication of the resolution or personal notification, no person shall use or permit water to be used in violation of the resolution and any customer who does shall be charged Twenty-five Dollars (\$25.00) for each day of violation and the charge

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shall be added to the customer's next water bill. If the emergency requires immediate compliance with the resolution, the Council may deliver a copy of the resolution to each customer's premises. Any customer who has received such notice and thereafter uses or permits water to be used in violation of the resolution shall be subject to the charge provided above. Continued violation shall be cause for discontinuance of water service.

302.02 PLUMBING REGULATIONS

Subd. 1. Service pipes. Every service pipe shall be laid with sufficient bend such that there is at least one (1) foot of extra length and in such manner as to prevent rupture by settlement. The service pipe shall be placed at least seven (7) feet below the surface and arranged to prevent rupture by freezing, or as authorized by the Council. A shut-off or other stop cock with waste valve of the size and strength required shall be placed close to the inside wall of the building and be well protected from freezing. Copper tubing shall be used for all services of two (2) inches or less. Joints on copper tubing shall be as few as possible and not more than one (1) joint shall be used for a service up to seventy (70) feet in length. Each joint shall be left uncovered until inspected by the City. Every service over two (2) inches shall be cast iron. Connections with the mains for domestic supply shall be at least 3/4 of an inch.

Subd. 2. Water meter installation. Every water meter shall be installed in accordance with the following provisions:

- (a) The service pipe from the water main to the meter shall be brought through the floor in a vertical position where the pipe enters the building. The stop and waste valve shall be twelve (12) inches above the floor.
- (b) The bottom of the meter shall be six (6) to twelve (12) inches above the finished floor line.
- (c) The meter shall be not more than twelve (12) inches horizontally from the inside line of the basement wall unless a different position is approved by the utility department.
- (d) A suitable bracket shall be provided to support the meter in a proper vertical position and prevent noise from vibration.
- (e) Each meter installation shall have a stop and waste valve on the street side of the meter. In no case shall more than twelve (12) inches of pipe be exposed between the point of entrance through the basement floor and the stop and waste valve. A stop and waste valve shall also be installed on the house side of the meter.
- (f) Meter setting devices for 5/8-inch, 3/4-inch, and one (1)-inch meters shall be a copper pipe or tubing from the terminus of the service pipe up to and including the stop and waste valve on the building side.

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Subd. 3. Location of stop boxes. Curb stop boxes shall be installed generally where desired by property owners, but the boxes shall be placed as near as possible to the curb, if on a street or within one (1) foot of the alley line if the main is located in the alley. They shall be installed at an approximate depth of seven (7) feet below the established grade, or as otherwise approved, and shall be left in an accurate vertical position when back filling is completed.

302.03 WATER RATES

Subd. 1. Base charge. Each water user pay a base charge of \$7.50 per month during which water service is furnished.

Subd. 2, Commodity Charge. Each water user shall pay a commodity charge of \$1.10 per 1,000 gallons of water use for each quarter year during which water service is furnished.

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Part 3. Sewer Regulations

303.01 DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of the terms used in this ordinance shall be as follows:

Biochemical oxygen demand (BOD) - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius, expressed in milligrams per liter.

Building drain - That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

Building sewer - The extension from the building drain to the public sewer, also called "house connections."

Combined sewer - A sewer intended to receive both waste water and storm or surface water.

Director - The executive director of the Dover-Eyota, St. Charles Area Sanitary District.

District - The Dover-Eyota, St. Charles Area Sanitary District.

Domestic or sanitary waste - The waste primarily produced by residential uses as distinct from industrial waste.

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

Floatable oil - Oil, fat, or grease in a physical state that will separate by gravity from waste water by treatment in an approved pretreatment facility. Waste water shall be considered free of floatable fat if it is properly pretreated and the waste water does not interfere with the collection system.

Garbage - Animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

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 waste water treatment plant.

Industrial users - (a) Any nongovernmental, nonresidential user of a publicly owned treatment works which discharges more than the equivalent of 25,000 gallons per day of domestic or sanitary wastes and which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one (1) of the following divisions:

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Division A. Agriculture, Forestry and Fishing;

Division B. Mining;

Division C. Manufacturing;

Division D. Transportation, Communications, Electric, Gas and Sanitary Sewers;

Division E. Services;

For the purposes of this definition, domestic or sanitary waste shall be considered to have the following characteristics:

BOD/5	200 mg/l
Suspended Solids	250 mg/l

(b) Any nongovernmental user of a publicly owned treatment works which discharges waste water 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.

Industrial wastes - Waste water discharged by industries.

May - Used to indicate permissive acts (compare with shall).

Natural outlet - Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

Person - Any individual, firm, company, association, society, corporation, or group.

pH - The reciprocal of the logarithm of the hydrogen-ion concentration. The hydrogen-ion concentration is the weight of hydrogen-ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7} .

Properly shredded garbage - Wastes from preparing, cooking, and dispensing food that have been shredded to such 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 centimeters) in any dimension.

Public sewer - Common sewer controlled by a governmental agency or public utility.

Residential/Commercial users - Users who discharge primarily domestic or sanitary wastes as distinct from industrial users.

Sanitary sewer - Sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of ground, storm, and surface waters, that are not admitted intentionally.

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Sewage - Spent water of a community. The preferred term is "waste water."

Sewer - Pipe or conduit that carries waste water or drainage water.

Shall - Used to indicate mandatory acts (compare with may).

Slug - Any discharge of water or waste water which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5)

times the average twenty-four (24) hour concentration, or flows during normal operation and shall adversely affect the collection system and/or performance of the waste water treatment works.

Storm drain - Drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source; sometimes called "storm sewer."

Superintendent - Superintendent of waste water facilities, waste water treatment works, water pollution control of the City, or an authorized deputy, agent, or representative, including agents of the District.

Suspended solids - Total suspended matter that either floats on the surface of or is suspended in water, waste water, or other liquids, and that is removable by laboratory filtering as prescribed in Standards Methods for the Examination of Water and Waste Water and referred to as nonfilterable residue.

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 benefit by discharge to the sanitary sewers and waste water treatment facilities provided.

Waste water - Spent water of a community. 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 groundwater, surface water and storm water that may be present.

Waste water facilities - Structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

Waste water treatment works - An arrangement of devices and structures for treating waste water, industrial wastes, and sludge. Sometimes called waste treatment plant or waste water treatment plant or water pollution control plant.

Watercourse - Natural or artificial channel for the passage of water either continuously or intermittently.

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303.02 USE OF PUBLIC SEWER REQUIRED

Subd. 1. Unsanitary manner prohibited. No person shall 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 jurisdiction of said City, any human or animal excrement, garbage or objectionable waste.

Subd. 2. Discharge prohibited. No waste water or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Code, shall be discharged into any natural outlet within the City or in any area under the jurisdiction of said City.

Subd. 3. Disposal prohibited. Except as hereinafter provided, no privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of waste water shall be constructed or maintained.

Subd. 4. Toilet facilities required. Providing treatment capacity is available, the owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which a public sanitary or combined sewer of the City is now located or may in the future be located, are required to install suitable toilet facilities at the owners' expense. These toilet facilities must connect directly with the proper public sewer in accordance with this Code, within ninety (90) days after official notice to do so, provided the public sewer is within one hundred (100) feet of the property line and the improvement to be served is reasonably close to the property line where tracts larger than a normal municipal lot are to be served.

303.03 PRIVATE WASTE WATER DISPOSAL

Subd. 1. Public sewer not available. Where a public sanitary or combined sewer as described in 303.02, subd. 4 (Use of Public Sewer Required), is not available, the building sewer shall be connected to a private waste water disposal system complying with this chapter.

Subd. 2. Permit required. Before beginning construction of a private waste water disposal system, the owner shall first obtain a written permit signed by the superintendent. The permit application shall be made on a form furnished by the City, which the applicant shall supplement with any plans, specifications, and other information as deemed necessary by the superintendent. A permit and inspection fee of Ten Dollars (\$10.00) shall be paid to the City when the application is filed.

Subd. 3. Inspection. A permit for a private waste water disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent or superintendent's representative. The superintendent or the representative shall be allowed to inspect the work at any stage of construction, and the permit applicant shall notify the superintendent when the work is ready for final inspection before any underground portions are covered. The inspection shall be made within forty-eight (48) hours' notice to the superintendent that the work is ready for final inspection.

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Subd. 4. System requirements. The type, capacities, location, and layout of a private waste water disposal system shall comply with all recommendations of the State Health Department. No permit shall be issued for any private waste water disposal system employing subsurface soil absorption facilities where the lot area is less than twenty thousand (20,000) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

Subd. 5. Public sewer available. Within sixty (60) days of a public sewer becoming available to a property served by a private waste water disposal system, as described in 303.02, subd. 4 (Use of Public Sewer Required), a direct connection shall be made to the public sewer in compliance with this Code, and any septic

tanks, cesspools, and similar private waste water disposal facilities shall be cleaned of sludge and filled with suitable material.

Subd. 6. Operation and maintenance. The owner shall operate and maintain the private waste water disposal facilities in a sanitary manner at all times, at no expense to the City.

Subd. 7. Additional requirements. No statement contained in this Code shall be construed to interfere with any additional requirements that may be imposed by the State Health Department or Pollution Control Agency.

303.04 BUILDING SEWERS AND CONNECTIONS

Subd. 1. Permit 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 superintendent.

Subd. 2. Classes. There shall be two (2) classes of building sewer permits:

- (1) for residential and commercial service;
- (2) for service to establishments producing industrial wastes.

In either case, the owner or the owner's agent shall make application on a form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information deemed necessary by the superintendent. A permit and inspection fee of Fifteen Dollars (\$15.00) for a residential or commercial building sewer permit and Twenty-five Dollars (\$25.00) for an industrial wastes sewer permit shall be paid to the City when the application is filed.

Subd. 3. Costs. All costs and expenses incidental to installing and connecting the building sewer shall be paid by the owner. The owner shall indemnify or hold harmless the City against any liability directly or indirectly resulting from installing the building sewer.

Subd. 4. Separate, independent sewer required. A separate and independent building sewer shall be provided for every building, except where one (1) 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, courtyard,

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or driveway. In this situation, the front building and sewer may be extended to the rear building and the two (2) considered as one (1) building sewer; however, the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.

Subd. 5. Old sewers. Old building sewers may be used in connection with new buildings only when they are found to meet all requirements of this Code on examination and test by the superintendent or a representative.

Subd. 6. Other requirements. The size, slope, alignment, building sewer construction materials, and the methods to be used in excavating, placing of pipe, jointing, testing, and backfilling the trench, shall all

conform to the State Building Code (MN Stat. 16B.59-16B.73), City Water System provisions, and other applicable City Code provisions. In addition to these Code provisions, the materials and procedures set forth in appropriate specifications of the American Society of Testing Material (ASTM) and Water Pollution Control Federation (WPCF) Manual of Practice No. 9 shall apply.

Subd. 7. Sewer level. When 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 to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

Subd. 8. Down spouts, drains, and other runoff. No person shall directly connect roof Down spouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or indirectly connect to a public sanitary sewer unless such connection is approved by the superintendent for polluted surface drainage.

Subd. 9. Connection regulations. The connection of the building sewer to the public sewer shall conform to the Building Code, Water System ordinances, and other applicable City rules and regulations, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent or a representative before installation.

Subd. 10. Inspection. The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent or a representative.

Subd. 11. Excavation. All excavations for building sewer installation shall be adequately guarded with barricades and lights 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.

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303.05 USE OF PUBLIC SEWERS

Subd. 1. Unpolluted water discharge prohibited. No person shall discharge or cause to be discharged any unpolluted waters such as storm water, ground water, roof runoff, subsurface drainage, or cooling water to any sanitary sewer, except storm water runoff from limited areas, which storm water may be polluted and could be discharged to the sanitary sewer by permission of the superintendent.

Subd. 2. Permitted discharge of unpolluted drainage. Storm water and all other unpolluted drainage shall be discharged to sewers specifically designated as combined sewers or storm sewers or to a natural outlet

approved by the superintendent and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the superintendent to a storm sewer, combined sewer, or natural outlet. Discharges to a storm sewer, combined sewer, or natural outlet may require a National Pollutant Discharge Elimination system permit.

Subd. 3. Additional prohibited discharges. No person shall discharge or cause to be discharged to public sewers any of the following:

- (a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- (b) Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injury or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the waste water treatment plant.
- (c) Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the wastewater works.
- (d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the waste water facilities such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, and similar containers, either whole or ground by garbage grinders.

Subd. 4. Other permitted discharges. Discharge into the municipal system of substances described in this subdivision shall be limited to concentration or quantities which will not harm the sewers or the waste water treatment process or equipment; will not adversely effect the receiving stream; will not endanger lives, limb or public property; or will not constitute a nuisance. The superintendent may impose restrictions more stringent than those in this Code, if the superintendent deems the more stringent restrictions necessary to meet the above objectives. The superintendent shall consider the quantity of subject waste in reaction to flows and velocities in the sewers, sewer construction materials, the waste water treatment plant, and other pertinent factors. Variations from the restrictions listed in this subsection must have the superintendent's prior approval. Restrictions on substances discharged into the sanitary sewer are as follows:

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- (a) Wastewater temperature shall be less than or equal to 150 degrees Fahrenheit (65 degrees Celsius).
- (b) Wastewater shall not contain more than twenty-five (25) milligrams per liter of petroleum oil, nonbiodegradable cutting oils, or products of mineral oil origin.
- (c) Waste water from industrial plants and commercial establishments shall not contain floatable oils, fat or grease.

- (d) Any garbage not properly shredded (see 303.01), Definitions, for definition of properly shredded garbage). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the food preparation in kitchens for consumption on the premises or catering service.
- (e) When water or waste containing iron, chromium, copper, zinc, similar objectionable or toxic substances are received in the composite wastewater at the wastewater treatment works, it shall not exceed the limits established by the superintendent for such materials.
- (f) Water or waste containing odor-producing substances shall not exceed the limits established by the superintendent.
- (g) The half-life or concentration radioactive wastes or isotopes shall not exceed limits established by the superintendent in compliance with applicable state or federal regulations.
- (h) Slug shall not be allowed. (see 303.01, Definitions, for definition of slug)
- (i) Water or waste containing substances not amenable to treatment or reduction by the wastewater treatment processes employed shall not be allowed.
- (j) Water or waste which, by interaction with other water or waste in the public sewer system, releases obnoxious gases, forms suspended solids which interfere with the collection system, or creates a condition deleterious to structures and treatment processes shall not be allowed.
- (k) Waste which will cause the District to violate its National Pollutant Discharge Elimination System (NPDES) permit shall not be allowed.

Subd. 5. City/District action. If water or waste:

- (a) does not comply with 303.05, Subd. 4;
- (b) is discharged or proposed to be discharged into the public sewers; and
- (c) is deemed by the superintendent to:

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- (1) possibly have a deleterious effect upon the waste water facilities, processes, equipment, or receiving waters; or
- (2) create a hazard to life; or
- (3) constitute a public nuisance, the City/District do any of the following:
 - (a) Reject the wastes.
 - (b) Require pretreatment to any acceptable condition for discharge to the public sewers.
 - (c) Control the quantities and rates of discharge.
 - (d) Require payment to cover any added cost of handling the wastes not covered by existing taxes or sewer charges.

Subd. 6. Approval required. If the City/District permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City and the District.

Subd. 7. Interceptors. Grease, oil, and sand interceptors shall be provided when the superintendent deems them necessary for the proper handling of liquid wastes containing either floatable grease in excessive amounts, as specified in 303.05, subd. 4 (c), or any flammable wastes, sand, or other harmful ingredients. Such interceptors shall not be required for dwelling units. All interceptors' type and capacity shall be approved by the superintendent and shall be readily and easily accessible for cleaning and inspection. The owner shall be responsible for the proper removal and disposal of the captured material and shall maintain records, which may be reviewed by the superintendent, of the dates, and means of disposal. Any collected materials not removed or hauled by the owner's personnel must be removed and hauled by licensed waste disposal firms.

Subd. 8. Pretreatment and flow-equalizing. Where pretreatment or flow-equalizing facilities are provided or required for water or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at the owner's expense.

Subd. 9. Required meters. When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure with such necessary meters and other appurtenances in the building sewer to facilitate observing, sampling, and measuring the wastes. Such structure shall be accessible and safely located and shall be constructed in accordance with plans approved by the superintendent and the executive director of the District. The structure shall be installed and maintained by the owner at the owner's expense and shall be safe and accessible at all times.

Subd. 10. Examination methods. All measurements, tests, and analysis water and waste characteristics to which reference is made in this Code shall be as stated in the latest edition of "Standard Methods for the Examination of Water and Waste water," published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the superintendent and the executive director of the District. Reference is made to 40 CFR 136, "Guidelines for Establishing Test Procedures for Analysis of Pollutants" dated October 16, 1973.

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Subd. 11. Special agreements. No statement contained in this part shall be construed as preventing a 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 transport.

Subd. 12. Federal law. Reference is made to the Federal Register, Volume 38, number 215, Part III, Section 128 and Federal Guidelines titled "Pretreatment of Pollutants Introduced into Publicly Owned Treatment Works" as published by the U.S. Environmental Protection Agency, October, 1973.

303.06 DISORDERLY CONDUCT

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

303.07 POWERS AND AUTHORITY OF INVENTORS

Subd. 1. Inspection authorized. The superintendent and other duly authorized City/District employees bearing proper credentials and identification shall be permitted to enter all properties to inspect, observe, measure, sample, and test in relation to community system discharge.

Subd. 2. Information requests. The superintendent or an authorized employee may request and obtain information from an industrial waste permit holder concerning the holder's processes directly bearing on the type or source of discharge to the waste water collection system. The permit holder may withhold confidential information upon establishing that the information in question might result in an advantage to competitors if made public.

Subd. 3. Private property. While performing the necessary work on private properties the superintendent or authorized City/District employees shall observe all safety rules established by the company. The company shall be held harmless for injury or death to the City/District employees and the City/District shall indemnify the company against loss or damage to its property by City/District 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 such may be caused by negligence or failure of the company to maintain safe conditions as required in 303.05, subd. 9 (Use of Public Sewers-Required Meters).

Subd. 4. Easements. The superintendent and authorized City/District employees bearing proper credentials and identification shall be permitted to enter all private properties through which the City/District holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the waste water facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

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303.08 SEWER RATES

Subd. 1. Residential sewer use shall be established annually by the amount of water use incurred.

Subd. 2. The rates for Residential, Commercial and Industrial property are as follows:

- (a) \$7.50 base rate per user per month, for the first meter in each residential household.
- (b) \$2.50 District charge per 1000 gallons
- (c) \$0.76 City charge per 1000 gallons

Subd. 3. Industrial. The rates for industrial users are as follows:

- (a) \$7.50 base rate per user per month.
- (b) \$2.30 usage charge per 1000 gallons per month.
- (c) \$403.87 District Debt Service Charge per month.
- (d) In addition, industries that discharge a high strength waste may be subject to a high strength surcharge. A high strength waste is defined as a waste having either a BOD/5 concentration greater than 300 mg/l, or a suspended solids concentration greater than 300 mg/l, or both BOD/5 and suspended solids concentration greater than 300 mg/l.

The following formula may be used to compute the high strength surcharge:

$$S = (\text{BOD} - \text{NDS}) \times \$0.15/\text{lb BOD} + (\text{TSS} - \text{NDS}) \times \$0.18/\text{lb TSS}$$

Where:

- S = Surcharge in dollars
- BOD = lbs./day BOD X operational days
- TSS = lbs./day TSS X operational days
- NDS = Normal domestic strength

Negative values will not be credited against the surcharge.

In addition to rates stated above, industries subject to industrial cost recovery are required to pay industrial cost recovery fees based on the following rate structure:

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- (a) Waste Water Treatment Plant:
 - (1) \$0.095 per 1,000 gallons
 - (2) \$0.029 per pound of BOD/5
 - (3) \$0.022 per pound of suspended solids.
- (b) Interceptor Sewer:
 - \$0.038 per 1,000 gallons

Some industries may not be required to pay industrial cost recovery fees for the interceptor sewer due to their individual locations. Only those industries that are directly connected to or ultimately discharge to the interceptor sewer will be required to pay industrial cost recovery for the interceptor.

(c) As a minimum, industrial cost recovery fees will be computed based solely on flow. The minimum industrial cost recovery rate, if applicable, is \$0.212 per 1,000 gallons plus the rate stated in Section 2.d, if applicable.

Subd. 3. Use of revenue. Revenues collected shall be used for Sanitary District administration, debt service, operation and maintenance plus replacement and cost of the City sewer collection system as provided in the Agreement between the City and the District dated December 8, 1981.

303.09 PENALTIES

Subd. 1. Notice. Any person violating any provisions of this part, except 303.06, (Disorderly Conduct), shall be served by the City/District with written notice stating the nature of the violation and providing a reasonable time period for satisfactory correction of the violation. The offender shall permanently cease all violations within the stated time.

Subd. 2. Fine and sentence. Any person who continues a violation beyond the time period provided in the written notice, shall be charged with a misdemeanor and on conviction shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00) or sentenced up to ninety (90) days for each violation, or both. Each day in which a violation occurs shall be deemed a separate offense.

Subd. 3. Liability. Any person violating this part shall be liable to the City/District for any expense, loss, or damage incurred by City/District due to the violation.

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Part 4. Electrical Service Policy

304.01 SCOPE

Purpose. This policy is provided by the City for present and potential customers, industry associates, and employees to govern the supplying and utilization of electric service on a uniform basis among like customers.

If this part conflicts with any special regulations applying to a particular class, type, or area of service, as stated in a contract, service agreement, rate schedule, or regulatory rule, then the special regulation will apply.

No City agent, representative, or employee shall have the power or authority to amend, modify, alter, or waive the provisions contained herein, but the City shall have the right to amend these standards and regulations, or to make such additional standards or regulations as it may deem necessary from time to time.

304.02 DEFINITIONS

The following definition applies to this part:

Apartment unit - One (1) of two (2) or more complete and individual living units contained in a single structure.

Commercial service customer - A business enterprise or institution taking service through a single meter and occupying for its exclusive use any unit or units of space as an entire building, entire floor, suite of rooms, or a single room.

A rooming house or dormitory with ten (10) or more rooms used as individual sleeping quarters.

A nursing or retirement home which consists of separate living quarters included in a common structure with central kitchen, dining, and other common use facilities and services.

Customer - Any person, firm, association, institution, corporation, or any agency of the federal, state, or local government, being supplied with electric service by the City.

Residential customer - For both urban and rural areas, is house, apartment, flat, trailer, or other living quarters, including facilities for meal preparation and sleeping, that is occupied by a person or persons constituting a distinct household, and that uses energy for general illumination, heating, or operating household appliances. Residential use may be extended to include the use of electric energy in private buildings which are adjacent to, or connected with, the residential building, and used exclusively by the occupants of the residence being served, but not when such adjacent or connected building is being used as a residence by another family unit or being used for commercial purposes. Garage space, not in excess of that

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usually permitted by City Zoning Ordinances for single family zones, may receive residential service, even though such garage space may at times be rented to others. Any rooming house or dormitory with less than ten (10) rooms used as individual sleeping quarters may be classified as a residential customer.

Single business establishments - A business enterprise conducting a single and distinct activity (commercial or industrial) which is conducted under single ownership and located on a single parcel of land. A business enterprise occupying more than one (1) parcel of land all of which are contiguous. A group of business enterprises all of which are both owned and operated for profit by the same individual (or single legal entity) and are located on contiguous parcels of land.

304.03 CLASSES OF SERVICE AND RATES AVAILABLE TO CUSTOMERS

Subd. 1. Classification. Customers shall be classified according to how they use electric service. Such classification shall conform to the availability provisions contained in the City's rate schedules. The available customer service and rate schedule classifications shall be as follows:

- Residential
- Commercial Single-Phase
- Commercial Three (3)-Phase
- Large Power
- Large Industrial
- Peak Alert
- Interruptible Heating

Standard retail electric rate schedules are based on exclusive use of the City's service. None of the City's rate schedules are available for emergency, standby, or supplementary service except as may be provided by appropriate contract and rate sheet riders.

Subd. 2. Service resale prohibited. Under no conditions will service be available for resale by the customer. Service will only be offered to the ultimate consumer, except as otherwise permitted herein where such consumer is the occupant of a rental area where service is furnished as an undefined part of the fixed rental fee.

Subd. 3. Residential service. Electric service for residential customers will be provided on the standard residential rate schedules at a secondary voltage according to 304.15, provided that any motor in excess of five (5) horsepower shall not be served on a residential service rate unless such installation has received prior approval of the City.

Each apartment unit will be metered separately. The applicable standard residential rate shall apply for each unit.

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The residential service rate will apply in the general use areas of the apartment complex such as lighting in halls, laundry facilities, and garages which are available for the direct benefit and general use of the tenants and for the care and operations of the apartment complex.

Sub. 4. Commercial service. In multiple occupancy commercial buildings, each tenant will be metered and billed individually by the City. All service for general building use will also be metered and billed separately. Service may be secured by an owner or single lessee of a building for use of tenants as an undefined part of the fixed rental and for general building operation through a single meter.

Service will be billed at the applicable commercial service rate.

Commercial service shall be divided into single-phase and three (3)-phase service. Rates for each are shown on the rate schedule in 304.15.

Subd. 5. Large power service. A large power customer is defined to include those customers (generally commercial, industrial, or institutional) who receive service under the City's Large Power Schedule. No energy used either wholly or in part for residential purposes shall be sold under this rate classification, except as provided in the following:

(a) Section 304.03, subd. 3 (For apartment complexes.)

(b) Where the owner/operator of a business enterprise occupies a single residential unit in a common building with such commercial enterprise. On all new construction after January 1, 1985, the residential unit must be wired in such a manner as to readily permit separate metering of the residential unit in the event the owner/operator-resident relationship changes from that permitted above. In such event wiring modifications for separate metering shall be at customer's expense.

(c) Service may be rendered to large power customers at secondary or primary voltage depending upon the capacity and voltage required and the voltage and capacity available, and under the conditions stated in the applicable rate schedules. Metering will be at secondary voltage except that primary voltage metering may be furnished when, at the City's option, service conditions warrant multiple primary points of service or more than one (1) secondary voltage. The City reserves the right to supply secondary voltage when conditions do not warrant rendering service at primary voltage. A customer may be required to own the transformers necessary to supply the customer's load, and take service at primary voltage if the customer's load is a highly fluctuating load on either a short-term (less than a year) basis or annual basis or when the customer's load is spread out over a large area such that service from one (1) delivery point cannot be distributed at secondary voltage, thus making it necessary for the customer to take and distribute the service at primary voltage to various distribution load centers.

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Subd. 6. Customer's choice of rates. If two (2) or more rate schedules for the same class of service are or become available according to the availability provisions of the rate schedule, the customer shall have a choice of rates, however, not more than one (1) rate charge will be made within any twelve (12) month period for any customer.

Subd. 7. Assisting customers in rate selection. While the City will endeavor to assist the customer in choosing the most advantageous rate schedule, either for initial or subsequent service, it does not guarantee that the customer will be served under the most favorable rate at all times. The City will not refund the difference in charges between the rate for which service was actually billed and another rate which is or may subsequently become available.

Subd. 8. Rates and provisions of service subject to change. The rates, terms, and conditions of all service rendered by the City, including those covered by written agreements, shall be subject to change. Any changes in

rate schedule shall apply to all customers served on such schedule. For those customers served under written agreement, the revised rate schedule shall become effective for the remainder of the contract term.

Subd. 9. Eligibility for single meter service. For clarification in rate applications of "Commercial Service" and "Large Power" service where a question exists on qualification for single meter service, this subdivision shall determine when all service may be measured through a single meter.

A single business establishment will be entitled to a single metered service in the same manner as any single business establishment if each of the following qualifications are met:

- (a) The customer must extend or install all interconnecting electric facilities from a single common delivery point to serve every building or outdoor load center requiring electric service.
- (b) All buildings or outdoor load centers are actually a part of the customer's business enterprise.
- (c) If all buildings are located on property that is actually contiguous except for intervening streets or alleys, the customer must receive permission from controlling governmental authorities to extend and construct electric facilities over, under, and/or across said public streets or alleys.
- (d) Each separate building, or any part or parts of a common building structure, used by separate business enterprises which, pursuant to this section, are collectively served from a single metered installation as a single business establishment shall be wired to serve all electrical loads within each building space occupied by a separate business enterprise by a single branch feeder circuit that can readily be converted to a separately metered service in the event a separate business enterprise should subsequently be sold, leased, or rented for operation by a different person (or legal entity). In such event, all wiring modifications required for separately metered service shall be made by either the existing or prospective

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customer at his or her expense and, in no event, will such expense be the City's responsibility. Resale of energy or inclusion of electric energy as part of the rental charge will not be permitted in the event of a subsequent management change in the business enterprise due to sale or rental of any portion of the premises previously so served from a single metered service as part of a single business establishment.

Subd. 10. Temporary service. The City will provide temporary service in accordance with applicable codes to be used for construction purposes for a maximum of one (1) year upon application for a permit.

This service will only be provided on existing distribution facilities when available or on a pole located not more than fifty (50) feet from its existing distribution facilities. The consumer will pay the 3estimated cost of the extension less salvage of any temporary extension in excess of fifty (50) feet in advance of installation.

The City reserves the right to require any customer applying for temporary service to make a security deposit, in addition to paying the service connection charge, in an amount equal to the estimated bill or bills for service during the temporary service period to guarantee payment of service bills.

304.04 SERVICE CHARACTERISTICS AND CONNECTIONS AVAILABLE

Subd. 1. Service characteristics. The character of electric service available to each customer shall be at the City's option and shall be dependent upon the following:

- (a) the service available at the proposed location:
- (b) the size of the load; and
- (c) the operation characteristics of the customer's equipment.

The City's standard electric service is alternating current with a nominal frequency of 60 HZ. Direct current service is not available. Only one (1) service voltage will be supplied for a single metered connection, except when an additional voltage is supplied on Large Power rate schedules, special or unusual service requirements exist, and service at one (1) voltage is not practical in the City's opinion.

Subd. 2. Secondary service connections. The service classes are stated in 304.15, (Billing for services - Electrical rates and summary of service available).

Subd. 3. Special requirements and limitations. Any single-phase utilization device having a rated capacity in excess of two (2) Kilovolt-amperes shall not be operated at less than two hundred eight (208) volts without specific approval of the City.

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Three (3)-phase service may be provided in any instance where, in the City's judgment, the customer's total connected load is of a size that three (3)-phase service is warranted. Where three (3)-phase service is supplied, any single-phase load shall be balanced on all three (3) phases as closely as possible.

Individual motors larger than five (5) horsepower will not be served from single-phase circuits except with the advance approval of the City.

All motors installed by customers after January 1, 1986, should have the appropriate associated capacitors installed. These capacitors will be disconnected and connected to the electric service with a motor.

Subd. 4. Primary connections available. Service at primary voltage will be available for large power loads at voltages designated by the City as the service voltage available in the area for the size of load to be served.

Subd. 5. Overhead service. Generally, except as otherwise provided in the following sections on underground services, and unless an area is specifically designated by the City as a "Designated Underground Area," the normal method of customer service will be by overhead service conductors from the City's overhead distribution system.

Subd. 6. Underground service. The City will install underground electric distribution services or systems under the following conditions provided such service is not readily available from adequate existing City-owned overhead facilities.

(a) Optional underground extensions. In all service areas not designated Underground Commercial Service Areas pursuant to 304.04, subd. 6 (b) (Required underground extensions), and where a single or three (3)-phase primary extension and separate transformers are required to serve a new large power classification customer, the City will furnish, install, own, and maintain a fifteen (15) kV underground primary extension as a customer option to an overhead primary service extension, provided the customer agrees to dig and backfill the entire trench and to furnish all conduits (including riser on City-owned pole), ducts, and similar materials, in accordance with City specifications. In addition, the customer will be required to grant to, or secure for the City, a suitable utility easement, at no cost to the City, for the entire length of the underground primary extension, including the easement for property not owned by such customer. The customer will also be required to provide facilities for transformer location as noted in 304.04, subd. 6(b) (Required underground extensions). The customer is responsible for trenching the total original distance required to serve the customer, including all necessary crossings of streets, other roadways, and parking lots, on either public or private property. When any improved surfaces are disturbed, the customer shall return the surfaces to a condition at least as good as they were before being disturbed. The surfaces shall also comply with all applicable City Code provisions. The customer is responsible for defects

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or adverse surface conditions resulting from improper backfilling and/or resurfacing of the original trench. The City will assume maintenance responsibility for the underground primary extension when it is properly completed.

(b) Required underground extensions. In any portion of the City's electric service area with existing or potential commercial or industrial customers, the City shall have the option to designate such area as an Underground Commercial Service Area at any time a service request is received, as part of its planning for future service requirements. The standard conditions of electric service in such area will be as follows:

(1) For customers requiring separate transformer installations, as determined by the City upon consideration of voltage, capacity, space limitation, or other requirements, the customer is required to provide at the customer's expense one (1) of the following:

1) Suitable facilities for an outdoor pad mounted transformer installation (including a concrete pad, switches, and conduits);

-or-

2) A suitable transformer vault for oil filled transformers;

-or-

3) Equivalent arrangement necessitated by special conditions when approved by the City.

4) All conduit or duct into and/or within the customer's vault or building as required for the City-owned primary service cable in conformance with City specifications.

5) All secondary cable and cable terminals beyond the transformer terminals. The customer is also required to own and maintain these items.

(2) The City will provide the underground primary service cable which will connect to or terminate on the primary disconnecting device associated with the transformers installed in the space provided.

(3) For customers not requiring separate transformer installations, the City will provide a secondary terminal at an accessible location on or adjacent to the customer's property.

1) The customer will provide underground secondary service cable with terminals which will terminate on the City's secondary terminals. Such cable must be compatible in all respects with the City's distribution system.

2) The City will make all final connections to its secondary terminals.

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3) The City's meters may be installed, at its option, either at the secondary terminals or at the customer's building pursuant to the provisions for metering described in 304.05, subd. 6 (General provisions - Facilities provided by City).

4) Pole mounted transformer installations will be used in such area only at the City's option.

304.05 GENERAL PROVISIONS

Subd. 1. General characteristics. The City shall establish the point of supply and routing for all underground primary service extensions. The City must agree with the point of termination for all underground primary service extensions. The length of the City's underground primary service conductors shall be as short as practical and consistent with City's system expansion plan. Only one (1) set of primary service conductors with a single point of delivery will be installed for any single metered connection. The portion of the City's underground

primary service cable located on the customer's premises shall be reasonably accessible for normal maintenance, testing, repair, or replacement. If there are any additions or revisions to buildings on the premises, the customer shall be responsible for keeping the cable accessible. Such underground primary service extensions owned by the City are not confined to the exclusive use of the original customer and, at the City's option, may be used to serve other customers.

Subd. 2. Ownership of transformers. Customers shall have the option of owning the transformers (and integral parts) when service is supplied pursuant to 304.04, subd. 6 (b) (1) (Service characteristics and connections available - Required underground extensions), provided the City will generally own one (1) transformer or bank of transformers and such transformer(s) will be those served by the City's primary service.

(a) When the City feels the customer's service requirements cannot be served practically through a single transformer, more than one (1) City-owned transformer may be installed for any single metered connection.

(b) When such separate installations are not at the City's designated single point of delivery for each separate meter installation, the customer shall provide all intervening primary electrical facilities beyond the point of delivery.

(c) All other equipment past the point of termination of the City's primary service cable, except metering, will be furnished by the customer or will pay the City for the equipment at cost plus 10%.

Subd. 3. Primary voltage set by City. When the customer owns, operates and maintains the transformer substation, the customer must accept power delivery at the primary voltage established by the City for the area in which customer's load exists. This primary voltage is subject to change during the term of any Agreement as part of City's continuing program of improving service throughout its system.

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Subd. 4. City approval required. When the customer owns, installs, and maintains primary service equipment, such equipment shall be subject to City approval as to type, arrangement, and installation method. Ordinarily, compliance with the National Electric Code will satisfy all installation requirements, but the customer is advised to secure City approval before purchasing and installing equipment to assure service delivery.

Subd. 5. Primary voltage less than 15,000 volts. If the delivered primary voltage is fifteen thousand (15,000) volts or less, the customer will purchase cable insulated for fifteen thousand (15,000) volts between conductors with a suitable neutral conductor. The customer will purchase all equipment, including transformers, motors, switchgear, and cable. Upon request, the City engineer will advise the customer on the present and future voltage rating for any equipment that might be served directly from the primary voltage under such agreement.

Subd. 6. Facilities provided by City. The City shall provide facilities adequate to supply and meter electric energy as part of a normal installation. If a customer desires special characteristics or facilities in excess of those provided for standard service, such facilities will be provided by the customer or, at the City's option, furnished to the customer for an Excess Facilities Charge.

304.06 UNDERGROUND SERVICE TO NEW COMMERCIAL AREAS

Subd. 1. Distribution system to be used. For new commercial areas (such as shopping centers) where normal adjacent public streets or alleys are not available for locating overhead distribution facilities and where a group of customers are to be served, service will be provided normally from an underground primary distribution system and pad-mounted transformers. The primary conductors and transformers will be installed, owned, and maintained by the City. All trenching, conduits, and/or ducts as required by the City for primary circuits will be furnished and installed by the developer, who shall also provide appropriate easements for the City-owned circuits therein. The developer shall also furnish all transformer pads. For transformer installations serving more than one (1) customer, the City will provide a single secondary feeder from the transformer to a single point of distribution adjacent to or within the building as a common connection for individual customer service entrance conductors.

Subd. 2. Secondary transformer. Customers who require service from a separate transformer located adjacent to the customer's building because of size or location will be required to provide, own, and maintain all service cable beyond the secondary transformer terminals. Secondary feeders will be for installation in customer-owned conduit or duct.

Subd. 3. Businesses are individual customers. All single business enterprises within the development will be served individually as customers.

304.07 UNDERGROUND SERVICE IN NEW RESIDENTIAL SUBDIVISIONS

The City will provide underground distribution facilities to the owner-developer of a new residential area at the City's option, in accordance with these service standards and under the following conditions:

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- (a) The owner-developer will be made aware of the provisions of this section.
- (b) The owner-developer and the City will enter into an agreement to specify the deposit required from the developer and the refund available to each customer permanently connected for regular service within the development.
- (c) Normally, underground system installations shall not be available for developments with less than ten (10) lots available for residential construction.
- (d) If an underground system is made available to a development with less than ten (10) lots available for residential construction, at the City's discretion the developer shall deposit with the City fifty percent (50%) of the City's estimated cost of providing such system exclusive of transformers, meter installations, and facilities used solely for street lighting purposes before construction starts.

- (e) The customer's deposit shall be refunded in increments quarterly pursuant to the service agreement.
- (f) The developer shall provide all trenching for installing primary and secondary (including street lighting) conductors. The trenching may be used jointly with other utility service wires permitted by jurisdictional codes.
- (g) The developer shall install, or arrange for the subsequent homeowner to install an underground service from the City's secondary service pedestal or transformer terminals to the residences to be served.
- (h) The service cable shall be owned by the property owner, who shall be responsible for its operation and maintenance.
- (i) The developer shall provide perpetual easements as required by the City.
- (j) The developer shall provide a fixed pole for street lighting according to City specifications. The City will provide a standard street light fixture. If a more expensive light fixture is requested by the customer, the customer shall pay the additional cost.

304.08 SERVICE TO MOBILE HOME PARKS

Subd. 1. Service available. The City will furnish, own, install, and maintain distribution facilities for service to duly licensed mobile home parks under the provisions of these service standards and the availability provisions of the applicable rate schedules, subject to the special conditions stated in this section.

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The City will install, own, operate and maintain an underground electric distribution system for permanent nonseasonal parks pursuant to 304.08, subd. 2 (General conditions) and the following additional conditions:

- (1) The owner or developer shall provide the trenching for all City-owned underground circuits. The trench may be used jointly with other underground utility service wires permitted by jurisdictional codes.
- (2) The owner or developer shall install, own, and maintain the underground conductors from the City's secondary pedestal or transformer terminals to the various points of service utilization.

Subd. 2. General conditions. The following general conditions apply to all mobile home park service whether overhead or underground:

(a) Service to each mobile home shall be provided on the appropriate rate schedule for residential service and measured through a separate meter for each mobile home except as provided in subd. 2 (b) (General provisions) below.

(b) Service to buildings designated for administrative use or for general use by the park occupants, all of which are incidental to the general operation of the park, may be served through a single meter on the appropriate general service rate. These buildings may include the park operator's residence, general use laundry facilities, and office.

(c) Service to transient (temporary) trailer sites may be billed in one (1) of the following ways when service is to the greater of five (5) sites or twenty percent (20%) of the total park sites:

- (1) included with the single general service rate; or
- (2) at the customer's option, at separate residential rates and billed to the park owner/operator.

Service to these sites will be assumed temporary when service to any single trailer is for less than a single billing period, and such service is charged to the occupant as part of the rent.

(d) The property owner shall provide the City with all necessary easements.

(e) The customer will provide a standard single or duplex combination pedestal and meter socket device for connecting permanent customer service facilities to each mobile home site. If combination meter socket, overcurrent protection, and plug-in devices are desired by the park owners, these devices may be installed at the owner's expense. The City will not share in the investment or future maintenance responsibility of such units.

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(f) The owner/operator will install, own, and maintain all service conductors from the customer's meter to the mobile home or other points of utilization.

(g) Area or roadway lighting may be provided by the City at the customer's option with either City ownership of poles and luminaries under the City's standard security light service or with City-owned luminaries on the customer's street light poles under the City's standard rates and provisions for security light service. Either service is available under appropriate contract.

304.09 EXTENSIONS AND CONNECTIONS

Subd. 1. Permanent nonseasonal customers. The City will make overhead line extensions of reasonable length to serve any classification of permanent, nonseasonal customer that is located within the corporate limits of municipality served by the City without charge when:

- (a) the extension does not exceed five hundred (500) feet per customer;

(b) the investment is less than or equal to three and a half (3.5) times estimated annual revenue;

(c) If one (1) of the above situations does not exist, an extension charge pursuant to 304.09, subd. 6, will be made.

Subd. 2. Unincorporated areas. Service to unincorporated areas is not normally provided. The policy for any extension is the same as for incorporated areas.

Subd. 3. Large loads and capacities. Customer connections from transmission line extensions and/or connections which require service capacities of at least three hundred (300) KVA will require individual consideration.

Subd. 4. Temporary service. Extensions and connections for temporary service at any location shall be made in pursuant to 304.03, subd. 10 (Classes of service and rates available to customers - Temporary service). These provisions shall also apply for line extension when the need for reasonably permanent service has not been recommended.

Subd. 5. Underground extensions. Underground extensions may be made in lieu of overhead extensions, at the customer's request, provided the underground extension cost is not greater than the overhead extension costs; if the underground extension cost is greater than the overhead cost, the customer may agree in writing to pay the City the difference between the two (2) costs.

Subd. 6. Determination of extension costs. When estimating the applicant's required extension charge, the City shall calculate such costs using the nearest routing over which right of way is available. The cost shall include all materials and supplies, including expense, labor, and those engineering and

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administration overhead expenses normally applied by the City to this type of construction. For the purpose of this section, the cost of required meters and transformers shall not be included in the line extension costs.

Subd. 7. Customer's guarantee to take service. Prior to the City making any line extension under these service standards, the customer or property owner may be required to execute a service application for at least one (1) year's service.

Subd. 8. Extensions remain property of City. Any electric line extension made in accordance with these service standards shall remain at all times the property of the City, regardless of whether the extension is subject to customer extension charges.

304.10 RIGHT OF WAY TO CUSTOMER'S PREMISES

The customer shall grant the City, without compensation, right of way over and on the customer's premises for the erection and maintenance of the necessary poles, wires, underground cables, and other appurtenances; and if necessary, space on or in the building or premises for installing transformers, meters, and other necessary

equipment; and permission for the City's authorized agents to enter the customer's premises at all reasonable hours to inspect, maintain, test, repair, and remove the installed equipment, to read meters, and for other purposes necessary to supply electric service to any customer.

304.11 MANNER OF SUPPLYING SERVICE

Subd. 1. City liability. The City supplies electric energy upon the express condition that it becomes the customer's property after it passes the delivery point, and the City shall not in any event be liable for loss or damage to any person or property resulting directly or indirectly from the use, misuse, or presence of said electric energy on the customer's premises, or elsewhere after it passes the delivery point to the customer.

Subd. 2. The City will supply. Electric service only under and pursuant to these service standards and any modifications or additions made from time to time, and the applicable rate schedules in effect. Conditions of service not covered in the rate schedules or these service standards will require a special service agreement between the City and the customer.

Subd. 3. Service interruptions. The City shall not be held liable for service interruptions or changes in service characteristics due to accidents; necessary repairs and adjustments; burnout's; fire, flood, actions of the elements; strikes, riots, war; service limitation, curtailment, or discontinuance resulting from shortages or inadequate supply; compliance with any government order or regulation; or to any cause beyond the City's control other than the City's willful neglect. The City shall use reasonable diligence to maintain continuous service and, in event of interruption or change in service characteristics, to restore normal service as quickly as possible.

Subd. 4. Disconnection for repairs. The City reserves the right to discontinue service for the purpose of making repairs, betterment's, or extensions on any part of its lines, machinery, plant, or system, without notice to customers. The City will strive to restrict service disconnection to times when it will cause the least

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inconvenience to the customers, and if possible, will notify the customers in advance of such disconnection. The City will not be held responsible or liable for any injury or damage suffered directly or indirectly by the customer, or any agent or employee of the customer, because notification was not given to the customer of the service disconnection in order to make repairs, betterment's, or extensions.

Subd. 5. Construction delays. The City's obligation to deliver energy to the customer is subject to securing and retaining all necessary rights, privileges, franchises, and permits, and to the City's ability to obtain or supply the necessary materials and equipment to enable it to make the service connection to the customer. If the City is obstructed or delayed by the reason of strikes, floods, fires, or any other reason beyond its control, in constructing or extending its facilities for supplying current to the customer, the City shall not be liable to the customer for any damage or losses resulting therefrom. The City will make every reasonable effort to remove and overcome the causes of delay and complete the construction or extension at the earliest practical time.

Subd. 6. Landlord's consent. If the prospective customer is not the owner of the premises or of the property between the prospective customer's premises and the City's lines, the prospective customer shall obtain from the property owner the necessary consent for the City to install and maintain on such premises and on or about such intervening property, all poles, wires, or other electrical equipment as necessary or convenient for

supplying electricity to the customer. The customer shall also obtain the necessary permit or permits to allow the City's employees to cross and access the premises for the purpose of inspecting, repairing, adjusting, or removing the City's service wires, meters, appliances or other equipment.

Subd. 7. Discontinuation of service. Service may be refused or discontinued for any of the reasons listed below. Unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued. A disconnection charge pursuant to 301.05, subd. 4 (Disconnect/Reconnect fee) will be made when service is discontinued for any reason stated in this subdivision. Service may be refused or discontinued:

- (a) Without notice when the utility determines a hazardous condition exists.
- (b) Without notice when a customer uses equipment in such a manner as to adversely affect the utility's equipment or the utility's service to others.
- (c) Without notice when the equipment furnished and owned by the utility has been the object of tampering.
- (d) Without notice when there is unauthorized use.
- (e) For violation of and/or noncompliance with the City's policies and standards on file at City Hall.
- (f) For customer's failure to fulfill his or her contractual obligations for service and/or facilities.
- (g) For customer's failure to permit the utility reasonable access to its equipment.

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- (h) For nonpayment of bill pursuant to 301.06, subd. 7 (Account, Billing, and Collecting - Procedure for service shutoff).
- (i) For customer's failure to provide the utility with a deposit pursuant to 301.06, Subd. 3 (Account, Billing & Collecting - Meter Deposits).
- (j) For customer's failure to furnish service equipment, permits, certificates, and/or rights-of-way necessary to serve the customer and specified by the utility as a condition to obtaining service, or for withdrawal or termination of such equipment or permission.

Subd. 8. Insufficient reason for discontinuation of service. The following shall not constitute sufficient cause for service refusal to a present or prospective customer:

- (a) Delinquency in service payment by a previous occupant of the premises to be served.
- (b) Failure to pay for a different type or class of public utility service.

(c) Failure to pay the bill of another customer as guarantor thereof.

(d) Failure to pay a back bill issued in accordance with 304.14, subd. 9 (Billing for service - Failure to meter to register).

(e) Failure to pay adjusted bills based on the undercharges set forth in 304.14, subd. 9 (Billing for service - Adjustment of bills).

304.12 MANNER OF USING ELECTRIC SERVICE

Subd. 1. Limitations on service. Electric service utilized by the customer is subject to all applicable limitations set forth in a Service Application or Contract in the applicable Rate Schedule and the provisions of these Service Standards, and must be used to not unnecessarily disturb or harm the City's system. Standard retail electric rate schedules are based on exclusive use of the City's service and are not available for emergency, standby, or supplementary service except as provided by appropriate rate contract and/or rate sheet rider.

Subd. 2. Resale exclusion. Electric service is furnished for customer use only, and resale of such electricity by the customer to other persons will not be permitted.

Subd. 3. Permission to enter customer's premises. The customer shall grant permission for authorized City agents to enter the customer's premises at all reasonable hours to inspect, maintain, repair, or remove the City's equipment, or to read meters, or for any other purpose relating to service.

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Subd. 4. Notice required to discontinue service.

(a) If the customer is receiving service under the terms of a signed agreement, the customer will be responsible for fulfilling the cancellation notice requirements of such agreement.

(b) If a customer is not under the terms of a signed agreement and desires to discontinue service because of removal from the premises served, notice of the desired discontinuance shall be given to the City not less than three (3) days prior to the date when service is to be continued. The City will hold the outgoing party responsible for all electric power and energy supplied on such premises until such notice is received by the City and the City has made the final meter reading, provided such reading is made within three (3) business days after the date upon which the City was notified to discontinue the service.

(c) Service Agreements are not transferable by the customer. New occupants of the premises must apply to the city before service is rendered.

Subd. 5. Increase in customer's service requirements. The customer service facilities provided by the City have a recognized capacity limit for rendering adequate and proper service. Therefore, the customer is required to

notify the City prior to installing additional or increased capacity equipment that will materially increase electric service requirements, so that the City has adequate opportunity to advise the customer of the availability of such additional service and to make proper facilities revisions to handle the increased load, if needed.

Subd. 6. Service connections.

(a) All service installations made by overhead wires from the City's service pole to the delivery point on the customer's building (where the City's service wires connect to the customer's entrance conductors) service will be installed by the City.

When installation of one (1) or more additional poles on the customer's private property or additional service brackets on buildings for supporting service wires between the City's service pole and the customer's service outlet is necessary because of obstructions, such as other buildings or trees, for proper code clearances, or when customer desires to have the service entrance at some point not conforming with provisions in subsection (b) below, such additional equipment will be installed, owned, and maintained by the City. The customer shall pay for the actual labor and material cost of the installation.

Where a service connection cannot be made or the service wires clearances cannot be adequately maintained without interference by trees or other obstructions, the customer is responsible for providing adequate clearance.

(b) Point of attachment. The attachment point of overhead service wires to the customer's building shall be located at a point on the building most convenient for connection to the City's service pole with due regard for the desire to avoid crossing adjacent property.

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This service entrance and point of delivery usually will be at, or close to, the point on customer's building nearest to the City's service pole.

Either before or during the construction of the customer's building, the City will advise the customer upon request, without charge, regarding the proper location of the supporting brackets for the service wires and the customer's weatherproof service head for service connections.

In case the customer's weatherproof service head is not properly positioned, the City may refuse to install its service wires until the head is properly positioned. The City shall determine proper positioning.

(c) Height of attachment. The attachment point of the City's overhead wires on a building must be sufficient height to give ground clearance as required by the National Electric Safety Code or by local or other regulatory bodies having control over the same, but in no event shall such point be less than ten (10) feet from the ground or from any platform or projection from which the wires might be reached. The City recommends a height of fifteen (15) feet to twenty-five (25) feet, when building height permits. If a building is not sufficiently high for connecting the service wires with the proper clearance as required above, the owner shall furnish and maintain an adequate supporting fixture to which the service wires may be attached.

(d) Service entrances. All service conductors from the City's overhead service wires into a building are to be installed by a customer at customer's expense, and shall be carried in conduit or other approved wiring raceway or shall be service entrance cable with approved weatherproof service head, and shall terminate six (6) inches or more above the service drop attachments to prevent moisture from entering. Customer-owned service entrance conductors shall extend not less than thirty (30) inches outside the service head to permit proper attachment to service drop wires.

(e) Service conductors. Service wires installed by the City and service entrance wires or cable installed by the customer shall conform in size to meet the requirements of national, state, and local electrical wiring codes.

(f) Underground Service entrances. If the customer requires or desires an underground entrance it must be installed and maintained at customers own expense, and will connect to City's secondary distribution system as follows:

(1) The connection shall be at an underground service pedestal (or terminals of pad mounted transformers) to be installed by the City or to the overhead secondary conductors on the City's pole;

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(2) The customer shall consult with the City regarding where the customer's service will be connected to the City's system and the manner of installing customer facilities, if any, on the City's pole;

(3) If, at the City's option, installing a secondary pedestal is not feasible and it is necessary for the customer to install a secondary riser on the City's distribution pole, the City will reimburse the customer the estimated expense of the new overhead service (or replacement if the equipment is deteriorated or its capacity is inadequate) that is avoided by the customer's underground service.

(4) For primary entrances, see 304.05, subd. 4 (General provisions - City approval required).

(g) Moving or relocating of service wires or meters. If the City at a customer's request, is required to temporarily remove or relocate its service wires or metering equipment, the customer may be required to pay the City for all the expense incurred by the City for such changes in its equipment.

Subd. 7. Customer wiring. Applicants for electric service must equip their premises with and maintain all necessary wiring, including all service wires except City-owned primary service cables where available, from and

including the weatherproof service head to the meter cabinet and to the service switch, and the service entrance switch and cut-out-box, or the equivalent thereof, at their own cost and expense.

The customer shall install and maintain the wiring and other electrical equipment on his or her premises in the condition required by statute, this Code, or the National Electric Code, and shall have City approval, as necessary to insure proper connection and protection of the City's property, and not interfere with service to other customers. City inspection and approval shall be made solely for the purpose of insuring proper protection for the City's property and insuring service continuity to this customer and others, and shall not be construed to impose any duty or liability on the City to the customer or any other person. When a government authority requires inspection and approval of customer's wiring, the City shall not be required to make connection and render service until such inspection has been made and approval has been given by the duly designated inspector.

Subd. 8. Service to motors. The customer is responsible for obtaining from the City information regarding capacity, voltage, and other service characteristics available at the proposed location before proceeding with purchasing and installing motors. Reduced voltage starters or the equivalent may be required if across-the-line starting causes or will cause objectionable voltage fluctuation to other customers.

All motor installations shall comply with the provisions of the National Electric Code as a minimum standard for proper protection and installation.

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Subd. 9. Customer's responsibility for City property. The customer shall be held responsible for all damage to or loss of City property, located upon the customer's premises, unless the damage or loss is occasioned by causes beyond the customer's control, by the City's negligence, or by any act or omission on the part of the City or its authorized representatives.

Subd. 10. Customer equipment affecting service to others. Because of their disturbances to the service taken by other customer's, hoists, elevators, welding machines, x-ray machines, and other equipment that intermittently uses electricity, or with a load that fluctuates rapidly shall be installed and used so they will not adversely affect voltage regulation or impair the City's service to other customers.

When such equipment creates fluctuating voltage, power factor conditions, or any other disturbance detrimental to service to other customers or to the City's use of its equipment, the customer will be required to install and maintain at the customer's expense suitable equipment to eliminate the detrimental effect.

In addition to requiring the customer to install corrective equipment as stated above, the City reserves the right to require the customer to take electric service for the intermittent or fluctuating load through separate transformer equipment, service, and meter. Service taken through the additional meter will be billed separately, at the applicable rate, including the proper minimum monthly bill provided that the minimum bill shall be not less than Two Dollars (\$2.00) per KVA of transformer capacity required to serve the equipment with service satisfactory to the customer.

The City does not waive its right to require customers to install corrective equipment by requiring any customer to take service for equipment through a separate transformer installation and meter.

Arc welders with a rated maximum operating input current not in excess of twenty (20) amperes may be used by residential customers or general service customers on the respective residential or general service rate, if such use complies with other requirements of this subdivision. Larger arc welders will be given service under the applicable power rate, except that welders with a rated maximum operating input not in excess of seven and seven-tenths (7.7) KVA (one hundred sixty (160) amperes secondary) may be served on the residential rate.

304.13 METERING OF CUSTOMER'S SERVICE

Subd. 1. Equipment ownership. The City will supply, own, and maintain all meters and metering equipment necessary to measure the electric power and energy used by customers, unless otherwise agreed for some special service.

Subd. 2. Delivery points. The City's standard rate schedules provide that all service taken under any rate schedule shall be delivered to only one (1) delivery point, through one (1) service connection and one (1) meter or metering installation. If a customer requires service to two (2) or more delivery points, then a separate meter will be installed at the additional delivery points, and each metering point shall be considered a separate service, requiring a separate application, or agreement and energy used at each delivery point will be billed separately at the applicable rate schedule.

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Subd. 3. Additional meters. If a customer desires an additional meter or wiring installed for the customer's convenience, the cost shall be charged to the customer and shall be paid at the time of installation. The City will not permit additional meters (either City or customer owned) to be installed by any customer for the purpose of sub-metering the electricity use by some other person, firm or customer.

Subd. 4. Metering installations and types.

(a) Metering sequence. A meter-switch-fuse sequence is an installation where the metering equipment is connected on the supply side of the customer's main disconnect supplying the load to be metered. The meter-switch-fuse sequence arrangement shall be followed on all secondary metering installations except where, at the City's option or to meet requirements of the National Electrical Code, this type of installation is not practical because of existing conditions.

(b) Meter location. Meters shall be installed so that the top of the meter shall be between five (5) feet, six (6) inches and six (6) feet above the floor or ground. Meters shall be located in a clean, dry place, free from vibration, steam, other vapors, or abnormal dust; shall not be located above any stored supplies, pieces of household or commercial equipment, where they will be subjected to abnormal temperatures, or in a location which is hazardous for City representatives to read or test such meters; and shall be readily accessible at all reasonable hours.

(c) Outdoor self-contained metering. Outdoor metering installations are required for all new building construction or remodeling work when service entrance wires are changed, where

service is supplied from overhead service drops for one customer's use, except in business areas, or where the single-phase load exceeds two hundred (200) amperes.

The customer shall provide the service entrance conductors from the customer's weatherproof service head to the customer's service switch cabinet.

The metering equipment is to be installed outside the building in the service conduit or service entrance cable.

The City will supply the meter enclosure or socket meter base, but this enclosure or base will be installed at the customer's expense and at a City-approved location. If the customer does not want the entrance conductor cable on the outside of the building, then the customer shall install the entrance conductor cable on the inside of the building and provide proper facilities for connections to the outside of the building for the City's meter to be installed in the service entrance conductors.

The City will supply and install the meter, and own, maintain and replace the meter and meter enclosure or socket meter base when necessary.

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(d) Indoor self-contained metering. The service entrance conduit or cable to be installed by the customer shall be brought into the main service panel in a continuous conduit or cable, without any provision for disconnection or connection to any other conduit. The length of the service entrance wire to the customer's main service panel shall be as short as possible.

The customer shall provide space for the City to install the meter or meters adjacent to the entrance disconnect device. The City shall not permit switches to be installed on the supply side of the meter where covers cannot be sealed, thereby preventing access to the wiring.

If the City decides present indoor metering is unsatisfactory, the City reserves the right to install outdoor metering at its own cost and expense.

(e) Instrument transformer metering installation. All services requiring three hundred (300) volts or more and/or all services for a capacity over two hundred (200) amperes will be metered with instrument transformers. The City will install, own, and maintain all metering equipment, devices, wiring, and accessories except, at the request of the City, the customer shall provide sealable meter cabinets of sufficient size to enclose the instrument transformers with proper clearances when the instrument transformer metering is installed indoors. Furthermore, the customer must contact the City for proper location of the metering equipment. In all cases, the enclosure for the instrument transformers should be installed in the conduit run on the supply side of the customer's main entrance switch or disconnect switch and fuses, otherwise provisions of subsection (d) shall apply.

(f) Metering multiple occupancy buildings. The City will supply, own and maintain gang-type metering sockets in standard groupings as adopted by the City for multiple occupancy buildings where ganged type meter installations are desired. Meter sockets owned by the City will not be the combination type that includes line or load switches or facilities for installing these switches and/or overcurrent devices. Combination equipment may be installed in lieu of City-owned meter sockets, provided the customer owns, installs, and maintains such facilities. The City will not share in the ownership of such equipment and will not reimburse others for sockets not supplied by the City. The customer will be required to furnish, install, own, and maintain all conduits, troughs, wiring, and similar equipment needed to mount and connect ganged socket assemblies.

Subd. 5. Accuracy of meters and meter testing. All electric watt-hour meters placed in service shall be certified to be accurate within the following tolerances when under the following test load conditions:

<u>% of Test Current</u>	<u>Power Factor</u>	<u>Tolerances</u>
100	1.0	± 1.0%
10	1.0	± 1.0%
100	.5	± 2.0%

Meters and associated devices will receive in-service performance tests in accordance with the City's meter testing schedule.

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Post-installation. Inspections are made to determine proper operation and wiring connections and must be made within sixty (60) days after installation by a qualified person other than the original installer, if possible. The following equipment is subject to post-installation inspections.

- (a) Meters associated with instrument transformers, excluding single-phase current transformer metering installations or phase shifting transformers together with all such associated equipment;
- (b) Kilo-var-hour meters;
- (c) Demand meters.

304.14 BILLING FOR SERVICE

Subd. 1. Billing dates and bills payable. Electric meters are normally read once each month on approximately the same date (with necessary variation for weekends and holidays), but the City reserves the right to read meters at other times. Bills for service shall indicate the date on which the meter was read, the meter reading at the beginning and at the end of the billing period, the gross amount charged, and the net amount to be paid if payment is made by the date stated on the bill.

Bills for electric service are due and payable on or before the date shown on the bill. Payment may be to an authorized agent of the City at City Hall. The amount called Amount Due Now is a discounted charge available to customers with no delinquent bills.

If payment is made by mail and properly addressed to the City, the United States postmark indicates the date on which the payment is considered accepted.

Subd. 2. Meters not read on normal reading dates. The City will make a reasonable effort to read meters on corresponding days of each meter-reading period, with proper allowance for weekends and holidays. Customer bills may be prorated on a daily basis in the following situations:

- When the meter-reading period is less than eighty percent (80%) of or substantially longer than the normal meter-reading period as a result of the date of initial connection, the date of permanent disconnection, or a meter-reading date change for the City's convenience.

- When the meter-reading period for a large commercial or large industrial customer is less than eighty percent (80%) of the normal reading.

The City will normally attempt to secure meter readings for each billing period, and will normally leave a meter-reading form for the customer when access to meters cannot be obtained.

If no form is left or the form is not returned in time for billing, the City will estimate the number of Kilowatt-hours used.

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In case of emergency, such as storms or accidents the City may render bills on estimated use without reading the meters or supplying forms to the customers for meter reading.

Subd. 3. Estimated bills. Only in unusual cases will more than three (3) consecutive estimated bills be rendered to customers without the customer's prior approval. If an estimated bill or bills appear to be abnormal when a subsequent reading is obtained, the bill for the entire period shall be recomputed on the basis that the energy used during such period was used uniformly each month during the period, and the customer shall be given credit for the payment of any estimated bills; if there is reasonable evidence that the whole use occurred during only one (1) billing period, the bill shall be recomputed.

Subd. 4. Budget payment. Any residential customer of the City may elect the City's budget payment plan as the payment method for residential electric service.

The customer may start or discontinue the plan at any time during the normal budget year of January through December.

An estimated budget amount will be paid each month by the customer. In December, any excess or deficient payments from the current budget year will be applied to the next budget year unless a refund is requested or payment is made by the customer.

The estimated budget amount may be revised if the City feels such revisions are necessary; the customer will be advised of any revision.

The budget payments will be subject to normal due dates unless the due date is changed for cause upon the customer's written request. The City may terminate all or part of any customer's budget payment plan for cause, including the customer's failure to comply with the plan.

Subd. 5. Failure to receive bills. The City will mail bills to the customer's address shown on the application, agreement, or contract for service, but the City reserves the right to adopt other methods of delivering bills.

Failure to receive a bill does not exempt a customer from these rules, provided the City has mailed or delivered the bill to the customer's last known address.

Failure to render any bill on the normal date will not relieve the customer of the obligation to pay the bill under these provisions.

The customer may notify the City in writing of a temporary absence from the City and make arrangements in advance for delaying utility bill payment up to two (2) weeks.

Subd. 6. Disconnect for nonpayment of service bills. If a bill is not paid by the due date, a notice may be sent to the customer and service may be disconnected pursuant to 301.06, subs. 7 and 8 (Account, billing and collecting - Delinquent accounts and Procedure for service shutoff).

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Subd. 7. Grounds on customer's premises. If an accidental ground is found on the customer's equipment and removed, the City will estimate the customer's normal consumption for each regular billing period during which the ground was known to have existed by comparing previous consumption's. The City will rebill the customer for the estimated normal consumption during each billing period at the standard rate applicable to the particular installation and for the lost energy. The lost energy due to the ground is assumed to be the difference between the total measured consumption for any period and the estimated normal consumption for that period.

The customer will be billed for lost energy at the City's cost of energy, including any adjustment charges from the City's power supplier.

No adjustments will be made for a period greater than the six (6) months preceding detection of the ground, regardless of evidence that the ground existed for a longer time. No adjustment will be made unless the City has sufficient proof that a ground has existed and the extra energy was not used by the customer.

Subd. 8. Failure of meter to register. If a meter does not register or registers incorrectly the electric energy furnished by the City during any period, the energy used for billing purposes shall be estimated, using the average of the amounts registered over the similar preceding or subsequent periods, or over corresponding periods in previous years, or by estimate using the best available means.

Subd. 9. Adjustment of bills. If a meter creeps or a metering installation has an average error of more than two percent (2%), or a demand metering error of more than three and a half percent (3.5%), a billing adjustment for the period of inaccuracy shall be made in the case of over-registration and may be made in the case of under-registration.

For watt-hour meters, the average accuracy shall be the arithmetic average of the percent registration at light load and at heavy load, giving the heavy load registration a weight of four (4) and the light load registration a weight of one (1).

If the date when the registration error began can be determined, this date shall be the starting point for determining the adjustment, except that adjustments due to slow meters shall be limited to the preceding six (6) month period.

If the date when the registration error began cannot be determined, the error shall be assumed to have existed for a period equal to one-half (2) of the time elapsed since the meter was installed or one-half (2) of the time elapsed since the last test, except as otherwise provided below regarding registration error due to creep.

Generally bills shall be recalculated on the basis of actual monthly consumption. If service has been measured by self-contained single-phase meters or three (3) wire network meters and involves no billing other than for kilowatt-hours, bills may be recalculated based on the average monthly consumption determined from the most recent thirty-six (36) months consumption data.

3.4.24

The registration error due to creep shall be calculated by timing the rate of creeping and assuming that this creeping affected the registration of the meter for twenty-five percent (25%) of the time since the meter was installed or since the last previous test, whichever is later.

When the average error cannot be determined by test because part or all of the metering equipment has failed check metering installations registration, the quantity of energy consumed based on available data may be estimated. The customer must be advised of the failure and of the basis for the estimate. The same periods of error shall be used as defined above.

Subd. 10. Refunds. If the recalculated bills indicate that more than One Dollar (\$1.00) is due an existing customer or Two Dollars (\$2.00) is due a person no longer a customer, the difference between the amount paid and the recalculated amount shall be refunded in full; otherwise, no refund shall be made.

Refunds shall be made to no more than the two (2) most recent consumers who received service through the meter found to be in error.

If someone who is no longer a customer is found to owe an additional amount or is due a refund, a notice of the amount due shall be mailed to the previous customer at his or her last known address, and the City shall refund any amount due the consumer within three (3) months of demand by the previous consumer.

When a customer has been overcharged as a result of incorrect meter reading, incorrect application of the rate schedule, incorrect meter connection or other similar reasons, the overcharge may be credited to the customer's account or refunded to the customer at the City's option for a period of up to two (2) years.

When a customer has been undercharged as a result of incorrect meter reading, incorrect application of the rate schedule, incorrect meter connection, or other similar reasons, the amount of the undercharge may be billed to the customer for a period of up to two (2) years.

Subd. 11. Procedure for collection of undercharge. When a customer's bill is to be adjusted for an undercharge, the customer shall be notified of the proposed change ten (10) days before the change is to be effective. The notice shall be in writing and sent by certified mail to the customer's present billing address.

The Customer shall be given an opportunity to review the proposed change at a hearing before the Council within forty (40) days of when the notice is mailed.

If the customer fails to request a hearing or to notify the City of a dispute over the proposed change, the customer shall be deemed to have accepted the proposed changes and shall be liable for the increased charges.

3.4.25

304.15 ELECTRICAL RATES AND SUMMARY OF SERVICE AVAILABLE

Subd. 1. Residential

A. **Availability**

Available for single-phase residential service requiring a maximum 400 amp service entrance except for electric heat. All subject to the established rules and regulations of the City.

B. **Character of Service**

Single-phase, 60 hertz, at 120/240 volts or other secondary voltage approved by the City.

C. **Rate**

(1) Facility Charge

\$4.25 per month.

(2) Energy Charge

First 500 kWh	\$0.071 per kWh
Over 500 kWh	\$0.063 per kWh

(3) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

(4) Late Payment Charge

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

Subd. 2. Interruptible Heating

A. Availability

Available to all residential customers for separately metered and controlled space heating and water heating loads. Electric service must also be provided for lighting and other purposes under the residential rate. Customers agree to use this service under the terms and conditions set forth by the City. All subject to the established rules and regulations of the City and execution of an Electric Service Agreement.

3.4.26

B. Character of Service

Single-phase, 60 hertz, at 120/240 volts or other secondary voltage approved by the City.

C. Rate

(1) Facility Charge

\$6.00 per month.

(2) Energy Charge

All kWh \$0.086 per kWh

(3) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

(4) Late Payment Charge

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

D. Conditions of Service

- (1) The City reserves the right to inspect all electric heat installations and associated metering.
- (2) Services qualifying for interruptible service must have available fully automated back-up heat throughout the residence or thermal storage.
- (3) The customer's electric heat installation must be a permanent electric resistance and/or heat pump.
- (4) The electric heat must be separately metered. The City will furnish the meter. The customer will have installed at their expense any wiring and equipment necessary to permit the metering and interruption of electric heat.
- (5) All electrical equipment beyond the metering point shall be considered to be the customer's system and shall be furnished and maintained by the customer. The one exception shall be the meter, which shall be the responsibility of the City.

3.4.27

Subd. 3. Water Heater Credit

A. Availability

Available for customers with qualifying water heaters. All subject to the established rule and regulations of the City.

B. Character of Service

Single-phase, 60 hertz, at 120/240 volts or other secondary voltage approved by the City.

C. Credit Per Month

- (1) \$3.00 credit per qualifying water heater per month.

D. Conditions

- (1) Minimum tank size is 40 gallons and is the only source of heating water in the home or other building on the premises. More than one building can qualify.
- (2) Customer agrees to permit the City to control the water heater to control peak demands.

Subd. 4. Commercial - Single Phase

A. Availability

Available for single-phase commercial and industrial service for all uses up to a required service entrance capacity of 400 amps. All subject to the established

rules and regulations of the City.

B. Character of Service

Single-phase, 60 hertz, at 120/240 volts or other secondary voltage approved by the City.

C. Rate

(1) Facility Charge

\$6.00 per month.

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(2) Energy Charge

First 500 kWh	\$0.086 per kWh
Over 500 kWh	\$0.065 per kWh

(3) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

(4) Late Payment Charge

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

Subd. 5. Commercial - Three Phase

A. Availability

Available for three-phase commercial and industrial service for all uses up to required service entrance capacities of 300 amps at 240 volts and 150 amps at 480 volts. All subject to the established rules and regulations of the City.

B. Character of Service

Three-phase, 60 hertz, at 120/240 volts or other secondary voltage approved by the City.

C. Rate

(1) Facility Charge

\$14.00 per month

(2) Energy Charge

First 500 kWh	\$0.081 per kWh
Over 500 kWh	\$0.060 per kWh

(3) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

3.4.29

(4) Late Payment Charge

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

Subd. 6. Large Power

A. Availability

Available for single-phase service requiring greater than 50 kW and three-phase service requiring greater than 100 kW and less than 200 kW. All subject to the established rules and regulations of the City and execution of an Electric Service Agreement between the City and the Customer.

B. Character of Service

Single and Three-phase, 60 hertz, at available voltages approved by the City.

C. Rate

(1) Facility Charge

\$17.50 per month.

(2) Demand Charge

\$7.00 per kW per month of maximum demand.

(3) Reactive Demand Charge (at the option of the City)

\$0.25 per kVAR of maximum kVAR per month

(4) Energy Charge

\$0.0395 per kWh

(5) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

(6) Late Payment Charge

3.4.30

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

D. Maximum Demand Charge

The Maximum Billing Demand Charge shall be the maximum kilowatt demand established by the consumer for any period of fifteen minutes during the month for which the bill is rendered.

E. Reactive Demand

The reactive billing demand for the month will be the maximum amount of lagging kVAR established by the Customer for any period of 15 minutes during the month for which the bill is rendered.

F. Primary Metering Discount

Where electric power and energy purchased by the Customer is delivered and metered by the seller at 7.2/12.47 kV, a discount of two percent (2.0%) will be deducted from the Demand and Energy charges before computing Minnesota Sales Tax. In addition, if the Customer elects to own all facilities after the meter, the Demand Charges will be decreased twelve cents (\$0.12) per kilowatt per month.

Subd. 7. Large Industrial

A. Availability

Available for three-phase service for all uses requiring service in excess of 200 kW. All subject to the established rules and regulations of the City and execution of an Electric Service Agreement between the City and the Customer.

B. Character of Service

Three-phase, 60 hertz, at available voltages approved by the City.

C. Rate

(1) Facility Charge

\$75.00 per month.

(2) Demand Charge

\$7.00 per kW per month of maximum demand.

3.4.31

(3) Reactive Demand Charge (at the option of the City)

\$0.25 per kVAR of maximum kVAR per month

(4) Energy Charge

\$0.0395 per kWh

(5) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

(6) Late Payment Charge

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

D. Maximum Demand Charge

The Maximum Billing Demand Charge shall be the maximum kilowatt demand established by the consumer for any period of fifteen minutes during the month for which the bill is rendered.

E. Reactive Demand

The reactive billing demand for the month will be the maximum amount of lagging kVAR established by the Customer for any period of 15 minutes during the month for which the bill is rendered.

F. Primary Metering Discount

Where electric power and energy purchased by the Customer is delivered and metered by the seller at 7.2/12.47 kV, a discount of two percent (2.0%) will be deducted from the Demand and Energy charges before computing Minnesota Sales Tax. In addition, if the Customer elects to own all facilities after the meter, the Demand Charges will be decreased twelve cents (\$0.12) per kilowatt per month.

Subd. 8. Peak Alert

A. Availability

Available for three-phase service for all uses requiring more than 300 kVA of electric power. All subject to the established rules and regulations of the City and execution **3.4.32** of an Electric Service Agreement between the City and the Customer.

B. Character of Service

Three-phase, 60 hertz, at available voltages approved by the City.

C. Rate

(1) Facility Charge

\$75.00 per month.

(2) Demand Charge

(a) An Annual Demand Charge (see paragraph D) of \$33.61 for Peak Period Billing Demand (See paragraph E.)

(b) \$5.33 per kW per month of maximum demand.

(3) Reactive Demand Charge (at the option of the City)

\$0.25 per kVAR of maximum kVAR per month

(4) Energy Charge

\$0.0395 per kWh

(5) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

(6) Late Payment Charge

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

D. **Annual Demand Charge**

The Annual Demand Charge shall be an obligation of the Customer when the Peak Demand occurs; however, at the option of the City may be billed on a budget basis.

3.4.33

E. **Peak Period Billing Demand**

The Peak Period Billing Demand for the year shall be the average of the one hour peak demands of the consumer that are coincident with the City's wholesale billing demand readings during the prior rate year. The Customer's peak period billing demand will be changed in the beginning of each rate year based on the prior rate year demand readings. The Customer will be alerted to potential peak periods at least one-half hour in advance of the potential peak period. The City shall not be liable for any loss or damage resulting from Customer load reductions or transfers to on-site generating equipment.

F. **Maximum Demand Charge**

The Maximum Billing Demand Charge shall be the maximum kilowatt demand established by the Customer for any period of fifteen minutes during the month for which the bill is rendered.

G. **Reactive Demand**

The reactive billing demand for the month will be the maximum amount of lagging kVAR established by the Customer for any period of 15 minutes during the month for which the bill is rendered.

H. **Primary Metering Discount**

Where electric power and energy purchased by the Customer is delivered and metered by the seller at 7.2/12.47 kV, a discount of two percent (2.0%) will be deducted from the Demand and Energy charges before computing Minnesota Sales Tax. In addition, if the Customer elects to own all facilities after the meter, the Demand Charges will be decreased twelve cents (\$0.12) per kilowatt per month.

Subd. 9. Street and Security Lighting

A. Availability

Available for lighting service for all uses requiring electric power. All subject to the established rules and regulations of the City.

B. Character of Service

Single-phase, 60 hertz, at 120/240 volts or other secondary voltage approved by the City.

3.4.34

C. Rate

(1) The following rates are in effect for street and security lighting:

Unmetered lights: \$6.95/light/mo.

(2) Taxes

Any currently effective Minnesota general sales taxes will be added to each monthly bill for electric service, if applicable.

(3) Late Payment Charge

Ten percent of any amount not paid within fifteen (15) days after date of postmark.

3.4.35

Part 5. Street, Park, Public Property and Improvements

305.01 STREET EXCAVATIONS

No person, except an authorized City employee or a contractor performing work under a contract with the City, shall make any excavation in a street, alley, sidewalk, or public ground without a permit from the City Administrator. The fee for the permit shall be Fifteen Dollars (\$15.00) for each location covered by the permit.

305.02 APPLICATION AND REGULATIONS

The City Administrator shall prepare the necessary application forms and permits required under 305.01. The City Administrator shall also prepare rules and regulations with respect to excavations as necessary to protect the public from injury, prevent damage to public or private property, and minimize interference with the public use of streets, alleys, sidewalks, and public grounds. Any person making an excavation covered by this section shall comply with such rules and regulations.

305.03 BOND AND INSURANCE REQUIRED

Subd. 1. Bond. Any permit holder, except a public utility corporation, shall file with the City Administrator a corporate surety bond or other security acceptable to the City in the amount of 1.1 times the estimated improvement cost or Five Hundred Dollars (\$500.00), whichever is more, on condition the permitted will do the following:

- (a) Perform excavation-related work in accordance with the applicable Code provisions;
- (b) Indemnify the City and hold it harmless from all damage caused in the execution of such work;
and
- (c) Pay all costs and damages suffered by the City because the permit holder failed to observe the applicable Code provisions or because the work was negligently executed.

The bond's form and legality shall be approved by the City Attorney.

Subd. 2. Liability insurance. Before beginning the construction work authorized by the permit, a contractor, if involved, shall secure and maintain an insurance policy against property damages or injury or death

to persons. The policy shall indemnify and hold harmless the City and its personnel against any claim, damages, or cause of action arising out of the work and from any expenses of defending the same. The property damage coverage shall be in the amount of at least Fifty Thousand Dollars (\$50,000.00) and the public liability damage for injury or death to persons shall be in the amount of at least Three Hundred Thousand (\$300,000.00) per claimant and Six Hundred Thousand Dollars (\$600,000.00) for any number of claims per occurrence. Proof of such insurance shall be filed with the City prior to construction work and such policy shall provide that the City be notified immediately of any insurance modification or termination.

3.5.01

If the insurance coverage is inadequate in amount, the contractor shall indemnify and hold harmless the City and its personnel in like manner.

305.04 GENERAL REGULATIONS FOR EXCAVATIONS

Subd. 1. Street openings. Street openings shall be made in a manner that will cause the least inconvenience to the public.

- (a) Provision shall be made for water passage along the gutters; at least one-half (2) of the traveled portion of the street shall be left open and in good condition for the safe passage of vehicles.
- (b) Open excavations shall be guarded with substantial barriers, marked with red flags, and marked with red lights or flashing devices at night.
- (c) Pipes or mains exposed to freezing temperatures shall be protected to prevent freezing. Any person responsible for exposing a City main or pipe so that it might be damaged by freezing shall be liable to the City for all damages caused by such freezing and all damages sustained by others by such freezing for which the City may be liable.

Subd. 2. Refilling excavations. Every street excavation shall be refilled as soon as possible after the work is completed and paving, sidewalks, and appurtenances shall be replaced in at least as good condition as before the excavation to the Public Works Superintendent's satisfaction. All debris shall be removed immediately.

Any person who fails to comply with these requirements within twenty-four (24) hours after notice from the City shall be liable to the City for the full cost incurred by the City to correct the defect and restore the street, sidewalk, alley, or public ground to its proper condition. The cost shall be an obligation of the surety on the permitted's bond.

305.05 USE OF PUBLIC UTILITY PROPERTY OR RIGHTS OF WAY

Subd. 1. Prohibited acts. No person or corporation shall erect or set any telephone, telegraph, electric light, or power pole, or pole of any sort for the support of wires in any public street, road, or alley, or in any public ground in the City unless authorized to do so by ordinance or resolution duly passed and adopted by the Council. Nor shall any person or corporation, unless authorized, string, place, or fasten upon any pole, tree, building, or otherwise, any telephone, telegraph, electric light or power wire in or upon any such public street, road, alley, or public ground, or place or fasten any cross-arm, bracket, or other wire support in or upon the same.

3.5.02

Subd. 2. Penalty. Any person who shall violate or aid in the violation of any of the provisions of this section shall be guilty of a misdemeanor.

305.06 MAP OF SUBSURFACE INSTALLATIONS

The City engineer or other appropriate official shall maintain a map showing the location of all utility and other installations made beneath the surface of any public street, grounds, or right of way. The information on the map shall be sufficiently complete and accurate to permit anyone excavating a public place having an underground installation to avoid damage to the existing underground installation. The map shall also permit anyone to properly locate the new underground facilities which shall be recorded on the map as soon as practicable after the excavation permit is issued or a contract for installing the City underground installations is complete.

305.07 ASSESSABLE CURRENT SERVICES; OBLIGATION OF PROPERTY OWNERS AND OCCUPANTS

Subd. 1. Current service defined. The term "current service" as used in this section means one (1) 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; public health or safety hazard removal or elimination from private property, excluding any hazardous building as defined in Minn. Stat. 463.15 or hazardous excavation as defined in Minn. Stat. 463.25; 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.

Subd. 2. Snow, ice, dirt and rubbish. The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep such walk safe for pedestrians.

No such owner or occupant shall allow snow, ice, dirt, or rubbish to remain on the walk longer than twelve (12) hours after its deposit thereon.

A street maintenance employee or other designated official shall remove from all public sidewalks all snow, ice, dirt and rubbish as soon as possible beginning twelve (12) hours after any such matter has been deposited thereon or after the snow has ceased to fall. The official shall keep a record of the removal cost for each separate lot and parcel and shall deliver such information to the City Administrator.

Subd. 3. Weed elimination.

(a) Weeds as a nuisance. Any weeds, whether noxious as defined by law or not, growing upon any lot or parcel of land outside the traveled portion of any street or alley in the City to a height greater than eighteen (18) inches or which have gone or are about to go to seed are a nuisance on such property and on land outside the traveled portion of the street or alley abutting on such property.

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(b) Notice. On or before June 1 of each year and at such other times as ordered by Council resolution, the City Administrator shall publish once in the official newspaper a notice directing owners and occupants of property within the City to destroy all weeds declared by 305.07, Subd. 3 (a) to be a nuisance and state that

- (1) if the weeds are not destroyed in ten (10) days of notice publication, the weeds will be destroyed by the weed inspector;
- (2) the owner will be charged for this destruction;
- (3) if the charge is not paid, a special assessment shall be made against the property concerned.

(c) Removal by City. If the owner or occupant of any property in the City fails to comply with the notice within ten (10) days after its publication, the weed inspector shall cut and remove such weeds. The inspector shall keep a record showing the cost of such work attributable to each separate lot and parcel and shall deliver such information to the City Administrator.

Subd. 4. Public health and safety hazards. When the City removes or eliminates public health or safety hazards from private property under the City Code, the administrative officer responsible for doing the work shall keep a record of the cost of such removal or elimination for each parcel of property affected and annually deliver such information to the City Administrator. This section does not apply to hazardous buildings as defined by Minn. Stat. 463.15 or hazardous excavations as defined by Minn. Stat. 463.25.

Subd. 5. Installation and repair of water service lines. If the City installs or repairs water service lines serving private property under Chapter III of this Code, the Public Works Superintendent shall keep a record of the total cost of the installation or repair against the property and deliver annually such information to the City Administrator by August 15 for each parcel of property on which the cost has not been paid.

Subd. 6. Repair of sidewalks and alleys.

(a) 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 Council and on file in the City Administrator's office.

(b) Inspections; notice. The street maintenance employee or other designated official shall make such 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 the employee finds that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the employee shall serve notice, by registered or certified mail or by personal service, upon the property's record owner or upon the property's occupant, if the owner does not reside within the City or cannot be found therein. The notice shall order the owner to have the sidewalk or alley repaired and made safe within sixty (60) days and state that

3.5.04

- (1) if the owner fails to do so, the street maintenance employee or other designated official will do so on behalf of the City;
- (2) the owner will be charged for the repair;
- (3) if the charge is not paid, a special assessment will be made against the property concerned.

(c) Repair by City. If the sidewalk or alley is not repaired within sixty (60) days after receipt of the notice, the street maintenance employee or other designated official shall report this fact to the Council. The Council shall order by resolution the street maintenance employee or other designated official to repair the sidewalk or alley and make it safe or order the work done by contract in accordance with law. The street maintenance employee or other designated official shall keep a record of the total repair costs attributable to each lot or parcel of property and report such information to the City Administrator.

Subd. 7. 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 such service, said service to be a minimum of Twenty-five Dollars (\$25.00). As soon as the service has been completed and the cost determined, the Clerk Administrator or other designated official shall prepare a bill, mail it to the owner, and the amount shall be due immediately and payable at the Clerk Administrator's office.

Subd. 8. Assessment. On or before September 1 of each year, the Clerk Administrator shall list the total unpaid charges for each type of current service against each separate lot or parcel under this ordinance.

Upon written notice the Council may then spread the charges against property benefited as a special assessment under Minn. Stat. 429.101 for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10) years, as the Council may determine in each case.

Failure to give said notice shall not effect the above assessment if the owner has actual notice of the amount due.

305.08 WINTER PARKING

Subd. 1. This Ordinance shall be numbered section 510.10 of the St. Charles City Code.

Subd. 2. Definitions:

Owner - The title holder of a vehicle; or a conditional vendee or lessee if the vehicle is subject to a conditional sales agreement or lease; or a mortgagor if the mortgagor of the vehicle is entitled to possession of the vehicle.

Parking - The standing of an occupied or unoccupied vehicle on a street, road or highway for a purpose other than loading or unloading or obeying traffic regulations.

3.5.05

Roadway - That part of a street, road, or highway improved, designed, or ordinarily used for vehicular travel.

Vehicle - Every device in, upon, or by which any person or property may be transported upon a highway, except devices moved by human power.

Subd. 3. Parking limited. No person shall park a vehicle on any City street between the hours of 2:00a.m. and 6:00a.m. for the period starting November 1 and running through April 1 without prior exemption granted by the City Council of the City of St. Charles.

Subd. 4. Removal and impoundment. Any vehicle parked in violation of the above may be immediately removed and impounded by a police department. Prior to removal of a motor vehicle, the police department shall attempt to contact the registered owner of said vehicle at the address listed on the registration and provide the vehicle's owner a reasonable opportunity to remove said vehicle.

The owner of an impounded vehicle may reclaim the vehicle upon presenting proof of identification and ownership. The owner has shown proof of insurance and current registration of the vehicle and all costs of towing and storage have been paid to the tow operator.

Subd. 5. Violation of this ordinance shall constitute a petty misdemeanor with a fine of \$25.00 for each violation.

Subd. 6. The removal of a vehicle in violation of this ordinance does not preclude citation and prosecution for violation of this ordinance.

305.09 THE TRANSMISSION OF TELECOMMUNICATIONS OR RELATED SERVICES WITHIN THE PUBLIC RIGHT-OF-WAY

Subd. 1. Definitions. The terms defined in this Section have the following meanings given to them:

Company. A natural or corporate person, business association, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks or is required to construct, install, operate, repair, maintain, remove, or relocate facilities in the City.

Superintendent. The Superintendent of public works or designated representative.

Facilities. Telecommunications equipment of any kind, including but not limited to audio, video, paging, facsimile or similar service, not governed by Minnesota Statutes, chapter 238, including all trunks, lines, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, and any

necessary appurtenances owned, leased or operated by a company on, over, in, under, across or along public ground.

Public Right-of-Way. Highways, roads, streets, alleys, public ways, utility easements and public grounds in the City.

3.5.06

Subd. 2. Permit Required. A company may not construct, install, repair, remove or relocate facilities, or any part thereof, in, on, over, under or along public ground without first obtaining a permit from the City.

Subd. 3. Application. Application for a permit is made to the Superintendent.

Subd. 4. Issuance of permit. If the Superintendent determines that the applicant has satisfied the requirements of this ordinance, the Supervisor may issue a permit to the company. An applicant may contest a permit denial or the conditions of approval by written notice to the City Administrator requesting a City Council review within fourteen (14) days of the Superintendents action. The Council shall hear any contest of the Superintendents actions under this ordinance within forty-five (45) days of the City Administrators receipt of the contest notice. Nothing in this ordinance precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to the issuance of a permit set forth herein.

Subd. 5. Permit fee. The application must be accompanied by the permit fee set by Council resolution.

Subd. 6. Security for completion of work. Prior to commencement of work, the company must deposit with the City security in the form of certified check, letter of credit or construction bond, in a sufficient amount as determined by the superintendent for the completion of the work. The securities will be held until the work is completed plus a period of six months thereafter to guarantee that restoration work has been satisfactorily completed. Upon application of the company, providing such information as the Superintendent may require, if two or more work projects are to be constructed during a calendar year, the Superintendent may accept, in lieu of separate security for each project, a single security for multiple projects in such form and amount as determined, in the discretion of the Superintendent, to be sufficient to assure completion of all projects which may be in progress at any one time during that calendar year and to guarantee security will then be returned to the company with interest if required by law and then interest at the applicable statutory rate.

Subd. 7. Inspection of work. When the work is completed, the company must request an inspection by the Superintendent. The superintendent will determine if the work has been satisfactorily completed and provide the company with a written report of the inspection and approval.

Subd. 8. Restoration. Upon completion of the work, the company must restore the general area of the work, including paving and its foundations, to the same condition that existed prior to commencement of the work and must exercise reasonable care to maintain the same condition for two years thereafter. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, the City may put it in the same condition at the expense of the company. The Company must, upon demand, pay to the City the direct and indirect cost of the work done for or performed by the City, including but not limited to the City's administrative costs. To recover its costs, the City will first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the City.

3.5.07

Subd. 9. Company initiated relocation. The company must give the City written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the City, such approval not to be unreasonably withheld.

Subd. 10. City required relocation. The company must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities whenever the City requires such relocation.

Subd. 11. Relocation where public ground vacated. The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the City. If the vacation proceedings are initiated by the company, the company must pay the relocation costs. If the vacation proceedings are initiated by the City or other persons, the company must pay the relocation costs unless otherwise agreed to by the City, company or other persons.

Subd. 12. Notice. If the company is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than 30 days after receiving written notice from the City of the default, the City may terminate the rights of the company under the permit. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to that address.

Subd. 13. City action on default. If the company is in default in the performance of the work authorized by the permit, the City may, after the above notice to the company and failure of the company to cure the default, take such action as may be reasonably necessary to abate the condition caused by the default. The company must reimburse the City for the City's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under Subdivision 6 will be applied by the City first toward payment for such reimbursement.

Subd. 14. Indemnification. The company will indemnify, keep and hold the City, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, removal, relocation or operation of the facilities affecting public ground, unless such injury or damage is the result of the negligence of the City, its elected officials, employees, officers, or agents. The City will notify the company of claims or actions and provide a reasonable opportunity for the company to accept and undertake the defense.

Subd. 15. Claim defense. If a claim or action is brought against the City under circumstances where indemnification applies, the company, at its sole expense, shall defend the City if written notice of the claim or action is given to the company within a period wherein the company is not prejudiced in the defense of such claim or action by lack of such notice. If the company undertakes the defense, the company shall have complete control of such claim or action, but it may not settle without the consent of the City, which shall

3.5.08

not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. In defending any action on behalf of the City, the company is entitled to assert every defense or immunity that the City could assert in its own behalf.

Subd. 16. Use of public ground. Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established by the superintendent including but not limited to (i) the right of inspection by the City at reasonable times and places; (ii) the obligation to relocate the facilities pursuant to Subdivisions 9 and 10; and (iii) compliance with all applicable obligations imposed by the Minnesota Public Utilities Commission and other state and the federal law, including prompt compliance with the requirements of the Gopher State One-Call program, Minnesota Statutes Chapter 216D.

Subd. 17. Location. The facilities must be placed in a location agreed to by the City. The company shall give the City forty-five (45) days advanced written notice of the company's proposed location of facilities within the public ground. No later than 45 days after the City's receipt of the company's written notice the City will notify the company in writing of the City's acceptance or rejection of the proposed location. If the City rejects the company's proposed location, the City shall propose alternative locations. The City does not waive or forfeit its right to reject the location of facilities by failure to respond within the 45 days.

Subd. 18. Emergency Work. A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event, may the company undertake such an activity which will result in the closing of a street or alley without prior notification to the City.

Subd. 19. Street improvements, paving or resurface. The City will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the City will start the work; and, (iv) if more than one street is involved, the sequence in which the work is to proceed.

Subd. 20. Company protection of facilities. The company must take reasonable measures to prevent the facilities from causing damage to persons or property. The company must take reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The company must take specific protective measures when the City performs work near the facilities.

Subd. 21. Prior service connections. In cases where the City is undertaking the paving or resurfacing of streets and the facilities are located under such street, the company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five year period following the paving or resurfacing.

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Subd. 22. Effective date and applicability to existing facilities. Companies with facilities, in, on, over, under or along public ground on the effective date of this ordinance must take prompt action to comply with this ordinance and the permits authorized by this ordinance. A company, however, is not required to reapply for a permit obtained from the City prior to the effective date of this ordinance. A company is not required to pay the difference between the permit fee of a previously obtained permit and the equivalent newly obtained permit under this ordinance. All other provisions of this ordinance apply to existing facilities.

Subd. 23. Acceptance of requirements. By receiving a permit pursuant to this ordinance, the company accepts and agrees to comply with all of the requirements of this ordinance.

Subd. 24. Public ground other than right-of-way. Nothing in this ordinance is intended to grant to the company authority beyond that given by Minnesota Statutes Section 222.37 for use of the public right-of-ways for construction and operation of facilities. If the City allows the company to use its non-right-of-way public ground, the terms of this ordinance apply to the extent they are consistent with the contract, statutory and common law rights the City owns in such property.

Subd. 25. Regulations, permit schedules. The Superintendent is authorized and directed to prepare suitable regulations and schedules for the administration of permits issued under this ordinance.

Subd. 26. Severability. If any provisions of this ordinance is contrary to law and therefore unenforceable, such provision will be severed and will not affect the other provisions of this ordinance.

305.10 THE AUTHORITY TO IMPOSE A FRANCHISE FEE ON UTILITY FRANCHISES

Subd. 1. Definitions.

Franchise - means authorization given by the City to a person to operate a utility within the City of St. Charles.

Public Ways - means streets, avenues, alleys, parkways, walkways, and other public rights of way within the City.

Utilities - means an electric distribution system, a gas distribution system, a sanitary sewer collection system, a water distribution system, a storm sewer collection system, a cable communication system, and a waste collection system.

Subd. 2. Franchise required. It shall be unlawful for any person to construct, operate or maintain a utility in the City of St. Charles unless the utility is owned and operated by the City or the person has first obtained and currently holds a valid Franchise Agreement established with the City.

Subd. 3. Administration and Use of Public Right-of-Way. The City may impose a franchise fee for the administration of the franchise agreement and for the franchisee's use of the public right-of-way.

3.5.10

Subd. 4. Franchise Fee.

- (a) The Franchisee shall pay to the City an amount equal to three percent (3%) of its annual gross revenues.
- (b) 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 the Franchisee's fiscal quarters together with a brief report showing the basis for the computation.
- (c) All amounts paid shall be subject to audit and recomputation by the City.
- (d) The City reserves the right to charge the Franchisee a monthly franchise fee, which shall not exceed five percent (5%) of its annual gross revenues. The City may impose this franchise fee by providing written notice thereof to the Franchisee at least ninety (90) days before commencement of the fee.

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CHAPTER 4. MUNICIPAL REGULATION AND LICENSING

Part 1. Licenses and Permits

401.01 GENERAL

Subd. 1. General rule. Except as otherwise provided in this Code, all licenses and permits granted by the City shall be governed by this chapter.

Subd. 2. Acts prohibited. No person shall conduct any activity or use any property for which a license or permit is required by law or this Code without a valid license or permit for such activity or use.

Subd. 3. Application. Every license application shall be made to the City Administrator on a form provided for such. The application shall be accompanied by the prescribed fee. If, after investigation, the City Administrator is satisfied that all requirements of law and this Code have been met, the City Administrator shall present the application to the Council for action or, if the license or permit does not require Council approval, the City Administrator shall issue the license or permit.

Subd. 4. Bond. If a bond is required for a license or permit, the bond shall be a corporate surety bond executed on a form approved by the City Attorney and shall be filed with the City Administrator before the license or permit is issued.

The bond shall be conditioned on the following:

- (1) the license or permit is in compliance with the Code provisions and laws pertaining to the licensed or permitted activity.
- (2) the license or permit holder indemnifies the City and holds it harmless from all loss or damage by reason of inadequate work performed by the license or permit holder or by reason of accident caused by the license or permit holder's negligence, agents, or employees.

Subd. 5. Insurance. When a license or permit holder is required to have in force an insurance policy, the policy's substance and form shall be approved by the City Attorney. The policy shall not permit cancellation without fifteen (15) days prior notice to the City, and the coverage shall be for the term of the license or permit. Satisfactory evidence of insurance coverage shall be filed with the City Administrator before the license or permit is issued. Each license or permit shall terminate upon termination of the required insurance coverage.

Subd. 6. Prorated fees. License fees shall not be prorated unless otherwise specified by this Code or by law.

4.1.01

Subd. 7. Refunds. License fees shall not be refunded in whole or in part unless otherwise specified by this Code or by law.

Subd. 8. Duration of license. Unless otherwise specified, a license shall be valid for a calendar year, expire on December 31, or shall be valid for the part of the year for which it is issued, whichever is less.

Subd. 9. Transfers. No license issued under this Code may be transferred to any other person. If a license relates to specific premises, the license shall not be changed to another location without approval of the Council or other licensing authority.

401.02 INSPECTION OF LICENSED PREMISES

Subd. 1. Authorized personnel. Any City official or employee having a duty to perform with reference to a license under this Code and any police officer may inspect and examine any licensee, the licensee's business, or premises to enforce compliance with applicable provisions of this Code. Subject to the provisions of 401.02, the official or employee may, at any reasonable time, enter licensed premises or premises for which a license is required in order to enforce compliance with this Code.

Subd. 2. Search warrants. If the licensee objects to the inspection of the premises, the City official or employee charged with the duty of enforcing this Code shall procure a valid search warrant before conducting the inspection.

401.03 DUTIES OF LICENSEE

Subd. 1. Inspection. License and permit holders shall permit at reasonable times inspections of the holder's business and examination of the holder's books and records by authorized officers or employees.

Subd. 2. Compliance with law. License and permit holders shall comply with laws, ordinances, and regulations, applicable to the licensed or permit-related business, activity, or property.

Subd. 3. Display of license. License and permit holders shall display the license or other insignia given as evidence of the license in a conspicuous place on the premises, vehicle, or device to which the license relates. If the license cannot be posted in such a manner, the license shall be carried on the license holder's person when the license holder is participating in the licensed activity.

Subd. 4. Unlawful disposition. The license holder shall not lend or give to any other person the license or license insignia.

4.1.02

401.04 SUSPENSION OR REVOCATION

The Council may suspend for a period not exceeding sixty (60) days or revoke any license or permit for violation of any law, ordinance, or regulation, applicable to the licensed or permitted activity or property.

Except where mandatory revocation is provided by law without notice and hearing, and except where suspension may be made without a hearing, the licensee or permit holder shall be given at least ten (10) days

notice of a hearing regarding revocation or suspension. The notice shall state the time and place of the hearing and the nature of the charges against the licensee.

4.1.03

Part 2. Tobacco and Tobacco Products

402.01 PURPOSE.

Because the City recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies, which the City hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who

reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. 144.391.

402.02 DEFINITIONS AND INTERPRETATION.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Subd. 1. Tobacco or Tobacco Products. "Tobacco" or "Tobacco products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots, and other smoking tobacco; snuff flowers; cavendish, shorts, plug and twist tobaccos; dipping tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

Subd. 2. Tobacco Related Devices. "Tobacco related devices" shall mean any tobacco products as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

Subd. 3. Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

4.2.01

Subd. 4. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.

Subd. 5. Individually packaged. "Individually packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other

packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Subd. 6. Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 7. Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 8. Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not limited to, grocery stores, convenience stores, and restaurants.

Subd. 9. Moveable Place of Business. "Moveable Place of Business" shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Subd. 10. Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 11. Compliance Checks. "Compliance Checks" shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this ordinance. Compliance Checks shall involve the use of minors as authorized by this ordinance. Compliance Checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance Checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, and tobacco related devices.

4.2.02

402.03 LICENSE.

No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the City.

Subd. 1. Application. An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City

deems necessary. Upon receipt of a completed application, the City Administrator shall forward the application to the Council for action at its next regularly scheduled council meeting. If the Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. Action. The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Administrator shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with the notice of the applicant's right to appeal the Council's decision.

Subd. 3. Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

Subd. 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subd. 5. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council.

Subd. 6. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but not more than ninety days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

4.2.03

402.04 FEES.

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance is \$25.00.

402.05 BASIS FOR DENIAL LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

- A. The applicant is under the age of 18 years.
- B. The applicant has been convicted within the past five years of any violations of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
- C. The applicant has had a license to sell tobacco, tobacco related devices revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

402.06 PROHIBITED SALES.

It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- C. By means of self-service sale of individually packaged tobacco or tobacco products whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the individually packaged tobacco, tobacco product, or tobacco related device and whereby there is not a physical exchange of the individually packaged tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee, and the customer.

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- D. By means of loosies as defined in Section 402.02 of this ordinance.
- E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine, and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- F. By any other means, to any other person, or in any other manner or form prohibited by Federal, State or local law, or ordinance provision, or other regulation.

402.07 VENDING MACHINES.

It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

402.08 SELF-SERVICE SALES OF INDIVIDUALLY PACKAGED TOBACCO.

It shall be unlawful for a license under this ordinance to allow the sale of individually packaged tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the individually packaged tobacco, tobacco product, or the tobacco products, and tobacco related device between the licensee or his or her clerk and the customer. All individually packaged tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling individually packaged tobacco, tobacco products, or tobacco related devices at the time this ordinance is adopted shall comply with this Section within ninety days.

402.09 RESPONSIBILITY.

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

402.10 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the City Police or other authorized City Official during regular business hours. From time to time, but at least one per year, the City shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age

4.2.05

of fifteen (15) years but not less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal Law.

402.11 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1. Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.

Subd. 2. Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related devices. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 3. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco products, or tobacco related devices.

Subd. 4. Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5. Use of False Information. It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification whether the identification is that of another person or one of which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

402.12 VIOLATIONS.

Subd. 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

4.2.06

Subd. 2. Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. Published notice will not be required for any hearing involving a minor.

Subd. 3. Hearing Officer. The City Administrator shall designate the hearing officer.

Subd. 4. Decision. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under Section 403.13 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district

court for the City in which the alleged violation occurred.

Subd. 6. Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

402.13 PENALTIES.

Subd. 1. Licenses and Employees. Any licensee, and any employee of a licensee, found to have violated this ordinance shall be charged an administrative fine of \$75.00 for a first violation of this ordinance, \$200.00 for a second offense at the same licensed premises within a twenty-four month period; and \$250.00 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

Subd. 2. Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fee of \$50.00.

Subd. 3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, or tobacco related devices, may be required to perform twenty hours of community service and the parents or guardians of the minor may be required to pay a fine in an amount not to exceed \$50.00.

Subd. 4. Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance.

4.2.07

402.14 EXCEPTIONS AND DEFENSES.

Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be a affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

402.15 SEVERABILITY AND SAVINGS CLAUSE.

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

4.2.08
Part 3. Dogs

403.01 DEFINITIONS

The following definitions apply to this part, unless the context indicates otherwise:

At large - Off the owner's premises and not under the control of the owner or some person of suitable age and discretion, either by leash, cord, or chain of not more than ten (10) feet in length, or otherwise. A dog under the control solely by means of command or signal shall not be considered under control for the purpose of this part. A dog properly confined within a motor vehicle or properly confined within an enclosure, house, or any other building, or retained within such enclosure, house, or other building by leash, shall not be considered "at large" for the purpose of this part.

Dog - Both male and female dogs.

Owner - Any person or persons, firm, association, or corporation, owning, keeping, harboring, or maintaining a dog within the City or permitting a dog to run at large within the City limits.

403.02 LICENSE REQUIRED

On or before August 31st each year, the City shall cause every dog that is at least one hundred eighty (180) days old and is owned, kept, harbored, or permitted to run, to be licensed.

The City Administrator shall issue licenses for such dogs. License applications shall be made on forms provided by the Clerk Administrator and shall require the following:

- (a) the name and address of the owner;
- (b) the name, breed, age, color, and sex of the dog; and
- (c) other information as the City Administrator considers necessary.

The annual license fee for each dog shall be established by Council Resolution. No reduction in the fee shall be made because part of the license year has expired and no refunds, in part or in whole, shall be made for any purpose.

With each license issued, the City Administrator shall also issue a metal tag bearing the number of such dog. The owner shall promptly cause such dog to wear this tag on a collar around its neck during the term of the license.

403.03 RECORDS KEPT

The Clerk Administrator shall prepare correct lists of all dogs licensed in accordance with 403.02 (License Required), setting forth the owner's name and address and the name, number and description of each dog licensed.

4.3.01

403.04 RUNNING AT LARGE

For the purpose of this part, every dog running at large shall be deemed at large with the permission and the sufferance of its owner. If any of these dog provisions are violated, the owner shall not be permitted the defense that the offending dog escaped or is otherwise at large without the permission or sufferance of its owner. No owner of any dog, licensed or unlicensed, shall permit or suffer such dog to run at large in the City.

403.05 IMPOUNDMENT

Dogs running at large or impounded under this part may be taken by the Poundmaster as designated below, impounded in an animal shelter, and confined in a humane manner. Impounded dogs shall be kept for not less than five (5) regular business days unless reclaimed by their owner as provided in 403.08 (Redemption). The Poundmaster may be any City police officer or person designated to assist the police officer. The Poundmaster shall be paid by the City the amount of Ten Dollars (\$10.00) per dog impounded.

403.06 OBLIGATION TO PREVENT NUISANCES

The owner or custodian of any animal, whether permanently or temporarily in the City, shall be obligated to and responsible for preventing such animal from committing any act which is a nuisance. A nuisance is any habitual or frequent barking or crying at night; frequenting school grounds, parks, or public beaches; chasing vehicles; molesting or annoying any person not on the owner's or custodian's property; leaving fecal waste on public or private property; molesting, defiling, or destroying any property, public or private.

If any owner or custodian does not prevent his or her animals from committing an act of nuisance, the owner or custodian shall be subject to the penalty provided in this part.

403.07 NOTICE OF IMPOUNDMENT

Within one (1) day of taking and impounding any dog, the Poundmaster shall post an impoundment notice in three (3) or more conspicuous places in the City.

If the owner of an impounded dog is known, written notice of impounding, shall be given to the owner, in lieu of posted notice, either by mail or personal service. The date of sale or destruction of the dog shall be the sixth (6th) day after the notice was posted or given unless that date falls on a Sunday or holiday, in which case the sale or destruction shall be the following day.

403.08 REDEMPTION

Any dog may be reclaimed from the animal shelter by its owner within the time specified in the notice by paying the City Administrator the license fee (if not paid for the current year) and the cost of boarding and administration. Notwithstanding this section, the owner shall remain subject to all other penalties contained in this Code.

4.3.02

403.09 PROCEEDINGS FOR DESTRUCTION OF CERTAIN DOGS

Subd. 1. Basis of summons. The Winona County District Court shall issue a summons to a dog owner commanding the owner to appear before the Court to show cause why the dog should not be seized by a police officer, or otherwise disposed of as authorized by this Code upon receiving a complaint that any of the following conditions exist:

- (a) A dog at any time has destroyed property or habitually trespassed, damaging property of persons other than the owner;
- (b) A dog at any time has attacked or bitten a person off the owner's or custodian's premises;
- (c) A dog is vicious or shows vicious habits or molests pedestrians or interferes with vehicles on public streets or highways.
- (d) A dog is a public nuisance as defined in 403.06 (Obligation to Prevent Nuisances);

(e) A dog is running at large in violation of this Code.

Such summons shall be returnable not less than two (2) nor more than six (6) days from the summons date and shall be served at least two (2) days before the required appearance.

Subd. 2. Order. Upon such hearing and finding the complaint facts true, the Court may order the dog destroyed, order the owner or custodian to remove the dog from the City, or order the owner or custodian to keep the dog confined to a designated place. If the owner or custodian violates such order, a police officer may impound the dog. The provisions of this part are in addition to and supplement other provisions of this chapter.

Subd. 3. Costs. Costs of the proceeding specified by this ordinance shall be assessed against the owner or custodian, if the facts in the complaint are found to be true; otherwise, costs shall be assessed against the complainant.

403.10 SUMMARY DESTRUCTION OF CERTAIN DOGS

When an officer has reasonable cause to believe that a particular dog presents a clear and immediate danger to City residents because it is infected with rabies (hydrophobia) or has a clearly demonstrated vicious nature, the officer may summarily destroy the dog after making reasonable attempts to impound the animal.

403.11 DANGEROUS DOGS

When the owner of a vicious, dangerous, or destructive dog has forfeited bond or bail or had pleaded or been found guilty in permitting such dog to run at large contrary to this Code, the Court may order

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destruction of such dog or may order such dog confined in a specific manner on its owner's premises and fine or imprison the owner. If such dog is found running at large thereafter, the Poundmaster shall summarily destroy the dog upon apprehension.

403.12 KENNELS

No person, firm, or corporation, shall maintain in the City a facility for boarding or breeding as a business without securing a license from the Council. The license fee shall be by Council Resolution.

403.13 INTERFERENCE WITH POUNDMASTER

No unauthorized person shall take or attempt to take from the Poundmaster or other authorized City representative any dog taken or apprehended in compliance with this Code, or interfere in any manner with or hinder such representative in the discharge of duties under these ordinances.

403.14 OFFENSES INVOLVING TAGS

No one shall counterfeit the metal tags described in 403.02 or take a tag from any dog, or place a tag so taken upon another dog.

403.15 RABIES VACCINATION

Every dog over the age of one hundred eight (180) days which is kept, harbored, or maintained in the City shall be vaccinated at least every two (2) years against rabies. Vaccination shall be performed only by a doctor qualified to practice veterinary medicine in the state in which such dog or cat is vaccinated. A veterinarian who vaccinates such dog or cat shall prepare and deliver to the owner a Certificate of Vaccination in duplicate, setting forth the name and address of the owner, information sufficient to identify the dog or cat vaccinated, and the type of vaccine used. In addition, the veterinarian shall issue to the owner a distinctive metal tag to be shown to the City Administrator, which sets forth the year of vaccination. The owner shall forthwith cause the dog to wear this tag on a collar until the next vaccination. No dog shall be licensed by the City Administrator which has not been vaccinated against rabies as provided in this Code during the two (2) year period immediately preceding the date application for license is made.

403.16 DOGS WHICH HAVE BITTEN

When a dog has bitten a person or there is good reason to believe that such dog has bitten a person, such fact shall be reported within twenty-four (24) hours to the City Health Officer and thereafter the owner of such dog or cat shall comply with the City Health Officer's instruction concerning such dog.

403.17 PENALTIES

Any person who shall violate any of the terms and provisions of this ordinance shall be guilty of a misdemeanor.

4.3.04 Part 4. Cats

404.01 DEFINITIONS

The following definitions shall apply in the interpretation of this ordinance, and the following words and terms wherever they occur in this chapter are defined as follows:

Owner - Any person, group of persons or corporation owning, keeping, or harboring a cat or cats. The harborer of a cat is any person who has custody of any cat or permits the same to be kept or to stay on or about his premises.

Police Officers or Police - The police officers of the City of St. Charles and/or any firm, agency or company hired by the City of St. Charles to assist the police in the performance of their duties with regard to enforcement of this ordinance.

Pound - The vet clinic of the City of St. Charles.

404.02 LICENSING

Subd. 1. No owner of a cat shall own, keep, or harbor any cat within the City limits unless such cat is licensed as herein provided. Application for such license shall be made at the City Clerk's office and shall state the name and address of the owner and the name, breed, color, age and sex of the cat. The license fee shall be paid at the time of making the application. The license fee shall be as provided by Resolution.

Subd. 2. No license shall be required for newborn cats up to the age of six (6) months.

Subd. 3. All cat licenses shall be issued for two years beginning with the 1st day of January of each even numbered year. Application for licenses may be made thirty (30) days prior to the start of the licensing period and thereafter during the licensing period. Any owner who secures a cat after the start of the license period shall be allowed thirty (30) days after acquiring such cat to secure a license.

Subd. 4. Any owner upon first becoming a resident of the City of St. Charles shall be allowed thirty (30) days from such time to obtain a cat license. Any cat which may be impounded for lack of a license within the thirty (30) day period provided for in this section may be reclaimed by the owner without paying the impoundment fee, but such owner shall be responsible for paying the cost of keeping such cat during its impoundment. Any cat owner having a valid cat license from another municipality may, within thirty (30) days after becoming a City of St. Charles resident, secure a City of St. Charles cat license for which the owner shall pay a fee of \$2.00 upon surrender of the license from the previous licensing municipality.

Subd. 5. In the event that the license tag issued for a cat shall be lost or stolen, the owner shall, upon payment of \$1.00, obtain a duplicate tag by surrendering the receipt issued for the lost or stolen tag.

4.4.01

Subd. 6. If there is a change of ownership of the cat during the year, the new owner may have a current license changed to his name upon the payment of a transfer fee of \$1.00, or may secure a new license.

Subd. 7. The design of the license tag issued under this ordinance shall be changed each license period.

Subd. 8. No license shall be granted for a cat which has not been vaccinated against rabies during the twenty-four (24) month period immediately preceding the application. Each applicant for a cat license shall present a certificate of vaccination from a doctor qualified to practice veterinary medicine in the state in which the cat is vaccinated.

404.03 LICENSE TAG.

Subd. 1. Each applicant for a license shall, upon complying with the provisions of this ordinance, be issued a tag stamped with a number and the years for which the license is issued.

Subd. 2. Every owner is required to keep a valid tag securely fastened to the cat in a way that will not endanger the cat's life or health. The tag shall be worn by the cat at all times.

Subd. 3. No person shall make, sell, purchase, or shall place or allow to be placed on his cat any tag of the same form, shape or intended to be like the official tag, or shall attempt in any way to counterfeit the design adopted for such official cat tag.

Subd. 4. Except as otherwise provided in this ordinance, cat tags shall not be transferable. No refund shall be made on any cat license fee to anyone who ceases to be a resident of the City, or to anyone whose cat dies before the expiration of the license.

404.04 ABANDONMENT AND STRAY CATS

It shall be a violation of this ordinance for any person to abandon any cat or permit any cat to become a stray. For the purposes of this ordinance, an abandoned cat is one which is let unattended off the premises of its owner for a period of 72 hours or more. For the purposes of this ordinance, a stray cat is one having no known owner or custodian or known place of care and shelter.

404.05 CONFINEMENT OF CERTAIN CATS.

Subd. 1. The owner of a cat shall confine within a building or secure enclosure every fierce, dangerous or vicious cat and not permit such cat out of such enclosure unless such cat is in the direct control of a competent person.

Subd. 2. Every female cat in heat shall be confined in such a manner that such female cat cannot come in contact with another cat except for planned breeding.

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404.06 KEEPING OF NUISANCE CATS PROHIBITED.

The owner or custodian of any cat shall prevent the cat from committing in the City any act which constitutes a nuisance. It is a nuisance for any cat to habitually or frequently howl, cry, or loudly mew at night, to frequent school grounds, or parks, to molest or annoy any person away from the property of its owner or custodian, or to damage, defile, or destroy public or private property, plantings, or structures. Failure of the owner of a cat to prevent the cat from committing such a nuisance is a violation of this ordinance.

404.07 POUND.

The City Council of St. Charles may designate as the animal shelter of the City a suitable kennel or other animal facility, either within or without the City limits.

404.08 POLICE ASSISTANTS.

The City Council may designate such persons as it may deem necessary to aid and assist the police in the performance of their duties with regard to enforcement of this ordinance. All police, or police officers, as defined in this ordinance, shall be deemed to have, in addition to the power to impound cats, all police powers, necessary to enforce this ordinance and to cite owners of cats for violations of this ordinance.

404.09 IMPOUNDING CATS.

Subd. 1. The police, as defined in this ordinance, may take up and impound any cat found not to be kept, confined or licensed in the manner required by this ordinance.

Subd. 2. Any owner shall produce for the inspection of the police his cat's tag and/or a receipt indicating payment of the license fee when requested by such official.

Subd. 3. No person shall interfere with, hinder or molest the police or any of their assistants in the performance of their duties hereunder.

Subd. 4. Any cat impounded under this ordinance shall be confined in the City animal shelter in a humane manner for a period of not less than five (5) regular business days of the impounding agency, as defined by state law, if not claimed prior thereto by its owner. Thereafter said cat shall become the property of the City and may be disposed of in a humane manner or may be sold to or placed in the custody of some other suitable person. If a cat is destroyed pursuant to this ordinance, the license of such cat shall expire.

Subd. 5. Immediately upon the impounding of a cat wearing a current license tag, the police shall make every reasonable effort to notify the owner of such impoundment and of the conditions whereby the owner may regain custody of the cat. Any verbal notices shall immediately be confirmed in writing by the police.

4.4.03

404.10 CATS WHICH CANNOT BE IMPOUNDED

If a cat subject to impoundment pursuant to this ordinance is diseased, vicious, dangerous, rabid or exposed to rabies, and such cat cannot be impounded after reasonable effort, or cannot be impounded without serious risk to the persons attempting to impound, such cat may be immediately killed.

404.11 REDEMPTION OF IMPOUNDED CATS.

Any cat impounded hereunder not being held for suspected disease may be reclaimed by the owner within five (5) regular business days of the impounding agency, as defined by state law, upon payment by the owner to the City of an impounding fee of \$25.00, plus an additional sum equal to the cost to the City of keeping such cat in the City animal shelter. If the cat so reclaimed requires a license under the provisions of this ordinance, the license shall be obtained before the cat is released.

404.12 CRUELTY TO CATS.

The police may take possession of any cat which is being kept in a cruel or inhumane manner, or when it is necessary to impound such cat as herein provided by this ordinance.

404.13 BITE CASES.

It shall be the duty of every physician or any other person to report to the police the names and addresses of persons treated for bites inflicted by animals within the City of St. Charles, together with such other information as will be helpful in rabies control.

404.14 PROTECTION FOR CATS.

It shall be unlawful for anyone to place upon the ground, or in any other manner, any poison, bait, ground glass or any other device or thing intended to harm a cat.

404.15 PENALTIES.

Any person who shall violate any of the terms and provisions of this ordinance shall be guilty of a misdemeanor.

404.16 VALIDITY.

The invalidity of any part of this ordinance as declared by a court of competent jurisdiction shall not effect the validity of the remainder thereof.

4.4.04

Part 5. Cable TV

405.01 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 St. Charles, a municipal corporation, in the State of Minnesota, acting by and through its City Council.

"City Council" means the St. Charles, 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 (1990) and 47 U.S.C. 522 (6) (1989).

"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.

"Class IV Cable Communications Channel" means a signaling path provided by a Cable Communications Systems to transmit signals of any type from a Subscriber terminal to another point in the 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 DD Cable Holdings, Inc., its agents, employees, lawful successors, transferees or assignees.

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"Gross Revenues" means all revenue received directly by the Grantee from its operations within the City. Gross Revenues does not include advertising receipts. Gross Revenues shall not include franchise fees or any taxes on services furnished by Grantee imposed directly on any subscriber or user by any municipality, state or other governmental unit, including copyright fees and bad debt.

"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 the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

405.02 GRANT OF AUTHORITY AND GENERAL PROVISIONS

Subd. 1. 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.

Subd. 2. 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.

4.5.02

Subd. 3. Grant of Nonexclusive Authority.

A. 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.

B. 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.

C. 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 terms and conditions no more favorable or less burdensome than those contained within this franchise.

D. 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

DD Cable Holdings, Inc.
dab Midwest Cablevision
514 South Main Street
Westby, WI. 54667
Attention: Bob Pace

With copies to: DD Cable Holdings, Inc.
235 Montgomery Street, Suite 435
San Francisco, California 94104
Attention: David G. Rozzelle

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

Subd. 10. Drops to Public Buildings. Grantee shall provide Installation of one (1) cable Drop, one (1) cable outlet, and monthly Cablevision Service, excluding premium, pay-per-view and ala carte channels, 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:

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City Hall	Public Library
Community Center	Senior Center
Fire Hall	Two Public Schools

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.

405.03 CONSTRUCTION STANDARDS

Subd. 1. Construction Timetable. Grantee shall complete construction of the System to as to make Cable Television Service available for residential Subscribers by December 31, 1994. This may be extended with the consent of the City. Such consent shall not be unreasonably withheld.

Subd. 2. Construction Standards. If the System, or subsequent rebuilds or extensions, proposed for the Franchise area consist of fewer than one hundred (100) plant miles of cable:

- A. Within ninety (90) days of the granting of the Franchise, the Grantee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;
- B. 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

C. 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.

Subd. 3. Construction Codes and Permits.

A. 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.

B. 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.

4.5.05

Subd. 4. Repair of Streets and Property. Any and all Streets or public property or private property, which are distributed 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.

Subd. 5. Conditions on Street Use.

A. 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.

B. All System transmission and distribution structure, 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.

C. 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.

D. 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.

E. 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.

F. 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.

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G. 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.

Subd. 6. Undergrounding of Cable.

A. 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.

B. In any areas 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.

C. 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.

Subd. 7. 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.

Subd. 8. Safety Requirements.

A. 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.

B. 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.

C. 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.

Subd. 9. Emergency Use of Facilities.

A. 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.

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B. 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.

Subd. 10. Emergency Alert System. Grantee shall provide and continue to maintain an emergency alert system capable of overriding the audio portion of all cable channels in case of emergency. Such system shall be capable of being activated by touch tone phone from a remote location only by those officials designated by City. Any and all testing of the emergency alert system shall be conducted only with the express written consent of both City and Grantee which consent shall not be unreasonably withheld.

405.04 DESIGN PROVISIONS

Subd. 1. Minimum Channel Capacity. Grantee shall provide a 450 MHz System which is capable of delivering sixty (60) programmable and activated channels. Twenty-four (24) channels on the System shall be initially programmed and activated. Upon completion of the system upgrade, Grantee shall program and activate three (3) additional satellite-delivered channels. Grantee shall also program and activate two (2) additional channels by December 1, 1996 and one (1) additional channel by December 1, 1997. Grantee shall consider Subscriber input received regarding channel additions but shall not be bound by it. WCCO-TV, KTCA-TV, and single channel premium services shall not be considered "additional channels" for purposes of this section. All programming decisions remain the sole discretion of Grantee provided that Grantee notifies the City thirty (30) days prior to any channel additions or deletions. Grantee shall consider Subscriber input received regarding programming decisions but shall not be bound by it.

Subd. 2. Special Services. Grantee hereby agrees to provide the following special services on Basic Service throughout the life of this franchise: (i) Community Access channel as described in Section 404.06, Subd. 1 and (ii) Time/Weather channel which is accessible by designated city officials to communicate announcements and community information.

Subd. 3. 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.

Subd. 4. 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.

Subd. 5. 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).

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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.

Subd. 6. 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.

Subd. 7. Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.

Subd. 8. Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

405.05 SERVICES PROVISIONS

Subd. 1. Regulation of Services Rates. The City may regulate rates for the provision of cable service or any other communication service provided over the System to the extent not prohibited by 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. To the extent applicable and required, the City shall comply with the rules relating to cable rate regulation promulgated by the Federal Communications Commission at 47 C.F.R. Part 76.900, Subpart N, or such other applicable laws, rules, or regulations, with respect to the regulation of the rates charged by Grantee.

Subd. 2. 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.

Subd. 3. Subscriber Inquiry and Complaint Procedures.

A. 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 (7) days-a-week basis.

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B. 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.

C. Subscriber requests for repairs when an audio or video outage occurs on one or more channels, shall be performed, to the extent possible, within twenty-four (24) hours of the request. If grantee fails to begin working to correct an outage within twenty-four (24) hours after receiving notice of such problem from a Subscriber, Grantee shall credit one-thirtieth (1/30th) of the monthly charge to the Subscriber for each continuous twenty-four (24) hour period after the first twenty-four (24) hours during which a Subscriber is without service. No credit shall be issued if the service problem is due to acts of God or Subscriber damage or negligence. Grantee shall not issue credits if it interrupts cable service with the express permission of the City or for System testing.

Subd. 4. Subscriber Contracts. Grantee shall submit any Subscriber contract utilized to the City. If no written contract exists, Grantee shall file with the City Administrator 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.

Subd. 5. Refund Policy. In the event a Subscriber established 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.

405.06 PUBLIC ACCESS PROVISIONS

Subd. 1. 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 access channel. The specially designated access channel may be used by local education authorities and local government on a first-come, first served, nondiscriminatory basis. City shall operate, administer,

promote and manage access to the channel established pursuant to this section. Grantee shall have no responsibility for the access channel except as expressly stated in this Section.

Subd. 2. 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.

Subd. 3. Access Fund. Grantee shall make available to City Five Thousand Dollars (\$5,000) for the sole purpose of purchasing equipment for access use. Said funds shall be made available to City upon request. Grantee shall have no obligation to purchase or provide access equipment, or to maintain or replace any access equipment. In this regard, pursuant to Section 405.07, Subd. 1, Grantee has agreed to collect and pay the City a Franchise Fee of up to three percent (3%) of its Gross Revenues in order to provide the City and Cable Commission with additional access funds with which it may purchase and maintain equipment and facilities, as needed. This provision shall also apply to any preexisting access equipment.

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405.07 OPERATION AND ADMINISTRATION PROVISIONS

Subd. 1. Franchise Fee.

A. Grantee shall pay to the City an annual amount equal to three percent (3%) of its annual revenues derived from its annual Gross Revenues as defined in Section 405.01.

B. 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.

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

D. The City reserves the right to charge the Grantee a monthly franchise fee, which shall not exceed five percent (5%) of its annual Gross Revenues. The City may impose this franchise fee by providing written notice thereof to the Grantee at least ninety (90) days before commencement of the fee.

Subd. 2. Access to Records. The City shall have the right to inspect, upon reasonable notice, at any time during 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").

Subd. 3. 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.

405.08 GENERAL FINANCIAL AND INSURANCE PROVISIONS

Subd. 1. Indemnification of the City.

A. 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.

B. 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.

C. 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

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connected with grading, regrading, 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.

D. In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:

1. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
3. 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 or proceeding subject to paragraph two (2) above.

Subd. 2. Insurance.

A. As a part of the indemnification provided in Section 405.08, Subd. 1, 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, Five Hundred Thousand Dollars (\$500,000) for property damage to any one person and Two Million Dollars (\$2,000,000) for property damage resulting from any one act or occurrence.

- B. 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 payment 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.

405.09 SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

Subd. 1. City's Right to Revoke.

- A. In addition to all other rights which the City has pursuant to law or equity, the City

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reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by 405.09, Subd. 2 herein, it is determined that:

1. Grantee has violated any material provision of this Franchise; or
 2. Grantee has attempted to evade any of the material provisions of the Franchise; or
 3. Grantee has practiced fraud or deceit upon the City or Subscriber.
- B. City may revoke this Franchise without the hearing required by Section 405.09, Subd. 2 (B) herein if Grantee is adjudged a bankrupt.

Subd. 2. Procedures for Revocation.

- A. The City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee forty-five (45) days subsequent to 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.
- B. 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 forty- five (45) day notice provided in paragraph (A) above. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- C. 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.
- D. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

E. Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

Subd. 3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) 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.

Subd. 4. Removal After Termination of Forfeiture.

A. In the event of termination or forfeiture of the Franchise, the City shall have the right to

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require Grantee to remove all or any portion of the System from all Streets and public property within the City.

B. 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 (1989).

Subd. 5. Sale or Transfer of Franchise.

A. 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.

B. 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.

C. If a public hearing is deemed necessary pursuant to (B) 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.

- D. 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 with particularity its reason(s) for denying approval. The City shall not unreasonably withhold its approval.
- E. 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.

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- F. 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 Section. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- G. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise.
- H. In the event of any proposed sale or assignment pursuant to paragraph (A) of this Section 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:

1. 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
2. It approves the assignment or sale of the Franchise as provided within this Section.

405.10 PROTECTION OF INDIVIDUAL RIGHTS

Subd. 1. 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.

Subd. 2. Subscriber Privacy.

- A. No signals including signals of a Class IV Channel 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. Such permission shall be required for each type of classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

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- B. 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.

- C. 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 to the provision set forth in paragraph (B) of this Section.

405.11 UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

Subd. 1. 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.

Subd. 2. 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.

Subd. 3. 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.

405.12 MISCELLANEOUS PROVISIONS

Subd. 1. Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.

Subd. 2. 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(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

Subd. 3. 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

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Section 405.12, Subd. 7 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.

Subd. 4. Compliance with Federal, State and Local Laws.

- A. 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.
- B. 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.

Subd. 5. Nonenforcement 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.

Subd. 6. Administration of Franchise. The City Administrator 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.

Subd. 7. 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:

- A. 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

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one review session during any five (5) year period.

- B. 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.
- C. 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.

Subd. 8. 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 section 405.12, Subd. 7, 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.

Subd. 9. 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.

Subd. 10. Grantee Acknowledgment 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.

405.13 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

Subd. 1. Publication; Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be thirty (30) days after its publication in the official

newspaper of the City, contingent upon its adoption by City and its acceptance by Grantee in accordance with the provisions of 405.13, Subd. 2.

Subd. 2. Acceptance.

A. 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.

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B. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

C. Grantee shall accept this Franchise in the following manner:

1. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
2. 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.
3. With its acceptance, Grantee shall also deliver and performance bond and insurance certificates required herein that have not previously been delivered.

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Part 6. Sale and Consumption of Intoxicating Liquor and Nonintoxicating Malt Liquor

406.01 DEFINITIONS

Definitions. Unless the context clearly indicates otherwise, the following definitions apply:

Club - An incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which:

- (a) has more than fifty (50) members;
- (b) has owned or rented a building or space in a building for more than one (1) year that is suitable and adequate for the accommodation of its members;
- (c) is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverage to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.

Hotel - An establishment where food and lodging are regularly furnished to quests and which has:

- (a) a resident proprietor or manager;
- (b) a dining room serving the general public at tables and having facilities for seating at least thirty (30) guests at one (1) time; and
- (c) a minimum of ten (10) guest rooms.

Intoxicating liquor - Ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent (3.2%) of alcohol by weight.

Nonintoxicating malt liquor - Malt liquor containing not less than one-half (2) of one percent (1%) alcohol by volume nor more than 3.2 percent (3.2%) alcohol by weight.

Nonintoxicating wine - Wine containing not less than one-half (2) of one percent (1%) alcohol by volume.

Off-Sale - The sale of alcoholic beverages in original packages for consumption off the licensed premises only.

On-Sale - The sale of alcoholic beverages for consumption on the licensed premises only.

Package - A sealed or corked container of alcoholic beverages.

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Restaurant - An establishment, other than a hotel, under the control of a single proprietor or manager, where meals are served regularly at tables to the general public and having seating capacity for a minimum of one hundred (100) guests.

Sale - All barter and all manner of furnishing intoxicating liquor; includes dispensing intoxicating liquors or nonintoxicating malt liquor at a public gathering for which an admission fee has been charged, whether or not a fee is charged for the beverage dispensed.

Wholesaler - A person who sells alcoholic beverages to government instrumentality's or holders of alcoholic beverage licenses issued under Minn. Stat. Chapter 340A, from a stock maintained in a warehouse in the state.

406.02 LICENSES REQUIRED

Subd. 1. Prohibited acts. No person shall directly or indirectly, upon any pretense or by any device, manufacture, import, sell, exchange, barter, dispose of, or keep for sale any intoxicating liquors or nonintoxicating malt liquors at any time or place within the City without first having obtained a license to do so. This provision shall not apply to wholesalers possessing a valid license issued by the Commissioner.

Subd. 2. Licenses shall be of ten (10) types.

- (a) On-sale intoxicating liquor - may be issued to hotels; restaurants; clubs or congressionally chartered veterans organizations provided that the organization has been in existence for at least three (3) years and liquor sales will only be to members and bona fide guests; and exclusive liquor stores.
- (b) On-sale nonintoxicating malt liquor.
- (c) On-sale wine - may be issued with the approval of the Commissioner to a restaurant having facilities for seating at least twenty-five (25) guests at one time. A wine license permits the sale of wine of up to fourteen percent (14%) alcohol by volume for consumption with the sale of food.
- (d) Temporary on-sale nonintoxicating malt liquor - may be issued to a club or charitable, religious, or nonprofit organization, to be effective for up to and including one (1) week; the temporary license may authorize the sale of nonintoxicating malt liquor in any school or school buildings.

(e) Off-sale intoxicating liquor - may be issued with approval of the Commissioner to an exclusive liquor store or a drugstore.

(f) Off-sale nonintoxicating malt liquor - may be issued with approval of the Commissioner to an exclusive liquor store or a drugstore.

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(g) Combination on-sale and off-sale - may be issued in lieu of issuing on-sale and off-sale licenses separately to the same licensee.

(h) Temporary on-sale intoxicating liquor licenses - may be issued to a club or charitable, religious, or other non-profit organization in existence for at least three years in connection with a social event within the municipality sponsored by the licensee. The license may authorize the on-sale of intoxicating liquor for not more than three consecutive days and may authorize on-sales on premises other than premises the licensee owns or permanently occupies.

(i) Sunday on-sale license - may be issued to restaurant, club, or hotel with a seating capacity for at least thirty (30) persons and which holds an on-sale intoxicating liquor license which will sell the intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 12:00 noon and 12:00 midnight on Sundays. The City may after one (1) public hearing by ordinance permit a restaurant, hotel or club to sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 10:00 a.m. and 12:00 midnight on Sundays, provided that the licensee is in conformance with the Minnesota Clean Air Act. The City may issue a Sunday intoxicating liquor license only if authorized to do so by the voters of the municipality voting on the question at a general or special election pursuant to Minn. Stat. 340A.504.

(j) Temporary on-sale nonintoxicating wine-may be issued to a club or charitable, religious, or nonprofit organization, to be effective for up to and including one (1) week.

406.03 APPLICATIONS AND LICENSE REQUIREMENTS

Subd. 1. Forms of application.

(a) Any person desiring the following licenses:

- (1) On-sale intoxicating liquor with or without special Sunday license;
- (2) On-sale nonintoxicating malt liquor, wine;
- (3) Off-sale intoxicating liquor;
- (4) Off-sale nonintoxicating malt liquor;
- (5) On-off sale nonintoxicating malt liquor;

shall make a verified application in writing to the City Administrator.

(b) Such application shall require the following information:

- (1) Type of license desired;
- (2) Applicant's name, age, place of residence, and citizenship;

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- (3) Whether the person has been convicted of a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution, of intoxicating or nonintoxicating malt liquors;
- (4) Whether the person has had an intoxicating liquor or nonintoxicating liquor license revoked within five (5) years of the license application; or whether the person at the time of the violation owns any interest, whether as a holder of more than five percent (5%) of the capital stock of a corporation licensee, as a partner or otherwise, in the premises or in the business conducted thereon; or whether the applicant is a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested;
- (5) The location of the premises upon which the applicant proposes to sell liquor, an exact description of the particular place within the building structure where such sales are proposed; the nature of the business with which the license shall operate, and the length of time the applicant has occupied the premises;
- (6) Preliminary plans and sketches of new structures or facilities within which licensed premises are to be located (for on-sale or off-sale license applicants only);
- (7) Whether the applicant has ever been engaged in a similar business, and if so, the location of such business and the dates when so engaged;
- (8) Names and addresses of two (2) persons capable of giving first-hand information concerning the applicant's moral character and general business reputation;
- (9) Whether the applicant is the owner of the business with which the proposed license will operate and, if so, the length of time the applicant has owned the business. If the applicant is not the owner, or other beneficial owners exist, the name of the owner or any beneficial owner must be listed.

Subd. 2. Temporary on-sale nonintoxicating malt liquor. A temporary on-sale nonintoxicating liquor license application shall require the following information:

- (a) Name of the organization;
- (b) Date of the local chapter's formation or incorporation;
- (c) Any state or national affiliation;
- (d) Location of the premises upon which the license is to operate;
- (e) Dates for which the license is to be effective.

Subd. 3. Temporary On-Sale Intoxicating Liquor. A temporary on-sale intoxicating liquor license application shall require the following information:

- (a) Name of the organization;
- (b) Date of the local chapter's formation or incorporation;
- (c) Any state or national affiliation;

- (d) Location of the premises upon which the license is to operate;
- (e) Dates for which the license is to be effective.

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Subd. 4. Liability insurance.

(a) Prior to the issuance of a liquor license, the applicant shall file with the City Administrator a liability insurance policy in the amount of Fifty Thousand Dollars (\$50,000.00) coverage because of bodily injury to any one (1) person in any one (1) occurrence, One Hundred Thousand Dollars (\$100,000.00) coverage because of bodily injury to more than one (1) person in any one (1) occurrence, Ten Thousand Dollars (\$10,000.00) because of injury to or destruction of property of others in any one occurrence, Fifty Thousand Dollars (\$50,000.00) for loss of means of support of any one (1) person in any one (1) occurrence, and One Hundred Thousand Dollars (\$100,000.00) for loss of means of support of two (2) or more persons in any one (1) occurrence.

(b) Subd. 5 (a) does not apply to licensees who by affidavit establish that:

- (1) They are on-sale nonintoxicating malt liquor licensees with sales of less than Ten Thousand Dollars (\$10,000.00) of nonintoxicating malt liquor for the preceding year;
- (2) they are off-sale nonintoxicating malt liquor licensees with sales of less than Twenty Thousand Dollars (\$20,000.00) of nonintoxicating malt liquor for the preceding year;
- (3) they are holders of on-sale wine licenses with sales of less than Ten Thousand Dollars (\$10,000.00) for wine for the preceding year; or
- (4) they are holders of temporary wine licenses issued under law.

Subd. 5. Approval of security. The security offered under Subd. 4 above shall be approved by the Council and by the Commissioner. Liability insurance policies shall be approved as to form by the City Attorney. Any licensed business operating without the required security effective on file with the City, may have its license revoked.

Subd. 6. License fees. Annual license fees consist of an initial application fee and a specific license fee.

(a) Initial application fee. Any person applying for an on-sale license to sell intoxicating liquor on initial application for an on-sale license or an application for transferring an existing license shall pay a non-refundable investigation fee. In addition, the City may investigate an on-sale license holder prior to license renewal when the City deems it in the public interest. The fee shall be One Hundred Dollars (\$100.00) if the investigation is conducted within the state, or the actual cost not to exceed Ten Thousand Dollars (\$10,000.00) if investigation is required outside the state. If an applicant is not issued a license in the year in which the application is made, the application may be resubmitted each year for two (2) successive years by payment of an additional investigation fee of Fifty Dollars (\$50.00) for each that the application is resubmitted.

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(b) Specific license fees. Fees for specific licenses are as follows:

<u>Type of License</u>	<u>Fee</u>
On-sale intoxicating liquor	
Issued to any person except a club	\$1,400.00
Issued to a club with less than	
200 members	\$ 200.00
Issued to a club with more than	
200 members	\$ 250.00
On-sale nonintoxicating liquor	\$ 100.00
On-sale temporary intoxicating liquor	\$ 25.00/day
On-sale nonintoxicating wine	\$ 20.00
On-sale wine	\$ 100.00
Temporary on-sale nonintoxicating liquor.....	\$ 10.00
Off-sale intoxicating liquor	\$ 100.00
Off-sale nonintoxicating liquor	\$ 50.00
Combination on-sale and off-sale	Sum of appropriate specific license fees
Sunday on-sale license	\$ 200.00

(c) Transfers. No license may be issued, transferred, or renewed if the results of the investigation show, to the satisfaction of the governing body that issuance, transfer, or renewal would not be in the public interest.

(d) Payment. Each application for a license shall be accompanied by a receipt from the City Treasurer for payment of one-half (2) of the license fee and One Hundred Dollars (\$100.00) to be applied toward the investigation fee. If the license is granted, the remaining one-half (2) of the fee shall be paid on July 1st following its issuance. All fees shall be paid into the general fund. If license is not granted, the Treasurer shall refund that portion of the license fee paid and retain the investigation fee.

(e) Pro-rata fee. Each license except a temporary license shall be issued for a period of one (1) year unless the application is made during the license year (January 1 through December 31). If application is made during the license year, a license may be issued for the remainder of the year for a pro-rata fee with any unexpired fraction of a month being counted as one (1) month. Every license shall expire on December 31.

(f) Refunds. No refund of any fee shall be made except as authorized by statute.

406.04 GRANTING OF LICENSES

Subd. 1. Investigation and issuance. Each applicant shall be referred to the chief law enforcement officer of the City for investigation. Each person who has or will have any beneficial interest in the license

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shall be so investigated. The law enforcement officer shall make necessary inquiry and list all violations of federal and state law or municipal code. For license renewals, the investigation shall include verified complaints regarding the premises to which the license applies while the premises were under the applicant's ownership. The Council may refer the application to the fire chief for investigation of the premises to be licensed as the fire chief or the Council deems necessary. The chief law enforcement officer and the fire chief shall report their findings and comments to the Council which may then conduct additional investigation as it deems necessary. Upon receiving these reports and completion of such additional investigations, if any, the Council shall grant or refuse the application in its discretion.

Subd. 2. Qualifications of licensee.

(a) A license shall not be issued to any of the following:

- (1) a person who is not a United States citizen;
- (2) a person who is under twenty-one (21) years of age;
- (3) a person who within five (5) years of the license application has been convicted of a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution of intoxicating or nonintoxicating malt liquors;
- (4) a person who has had an intoxicating liquor or nonintoxicating liquor license revoked within five (5) years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent (5%) of the capital stock of a corporation licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested; or
- (5) a person not of good moral character and repute.

(b) No license shall be granted to any licensed manufacturer, brewer, or wholesaler of intoxicating liquor, nor to anyone interested in the ownership of any such place, nor to a person operating a licensed place owned by a manufacturer or wholesaler unless the manufacturer or wholesaler has owned the property continuously since November 1, 1933.

(c) No license shall be granted to any person who has a delinquent financial obligation to the City.

(d) No license shall be granted to any person otherwise made ineligible by state law.

Subd. 3. Building requirements. No sales shall be permitted except in that part of the premises described in the license. The structure within which liquor is to be sold shall be in compliance with applicable building and safety codes at all times.

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Subd. 4. Places ineligible for license.

- (a) General prohibition. No license shall be issued for any place or any business ineligible for such a license under Minn. Stat. 340A.412.
- (b) No license shall be issued for any premises owned by a person to whom a license may not be granted under this Code.
- (c) No license shall be issued for premises located within the areas restricted against commercial use by the City zoning ordinances or other proceedings or legal processes regularly had for that purpose, except licenses may be issued to restaurants in areas which were restricted against commercial uses after the establishment of the restaurant. No license shall be issued contrary to the provisions of the City charter or ordinances or any special or general state laws restricting areas within which intoxicating liquor may be sold.

Subd. 5. Conditions for license. Every license is subject to the conditions in the following subdivisions and all other provisions of this Code and any other applicable ordinance, state law, or regulation.

Subd. 6. Transfer of license.

- (a) Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without prior Council approval. Any of the following will be deemed a transfer of ownership for purposes of this subsection.
 - (1) Transfer of any or all of the stock of a corporate licensee;
 - (2) Change of business premises' physical location;
 - (3) Addition of a beneficial owner in any way, including but not limited to the creation of a partnership or corporation when the license is issued to a sole proprietor, or the addition of new partners in the case of an existing partnership licensee.
- (b) Any such transfer without the prior approval of the Council shall be grounds for license revocation.
- (c) Each corporate license shall report to the City Administrator any proposed change of legal ownership or beneficial ownership. The report shall be in writing and shall list all stockholders, their residential addresses, the number of shares held by each, and whether the shares are held individually or for the benefit of others. The report shall include all powers of attorney for proxies granted.
- (d) The Council or any other officer designated by the Council may at any reasonable hour examine the stock, transfer records, minute books, and other business records of a corporate licensee to determine the interest of any and all persons in the corporate licensee,

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the ownership and voting of shares of stock of the corporation, and whether any change of legal ownership or beneficial interest in certain shares of stock has directly or indirectly resulted in multiple ownership or in a change of control of the licensee.

406.05 NUMBER OF LICENSES ISSUED

Not more than four (4) on-sale intoxicating liquor licenses shall be issued.

406.06 LIMITATION ON LICENSES ISSUED

No more than one (1) retailer's license shall be directly or indirectly issued under this chapter to any one (1) person or for any one (1) place in the City, nor shall any retailer's on-sale or off-sale license be directly or indirectly issued for any place which has been granted a license of another class. It is a misdemeanor for any person, partnership or corporation to knowingly have or possess a direct or indirect interest in more than one (1) license issued under this chapter and, upon conviction thereof, the Council may immediately revoke all licenses in which such personal, partnership, or corporation has an interest. For this chapter, the term "interest" has the following meaning:

- (a) includes any pecuniary interest in the ownership, operation, management, or profits of a retail liquor establishment, and a person who receives money from time to time directly or indirectly from a licensee, in the absence of consideration and excluding gifts or donations, has a pecuniary interest in the retail license; and
- (b) does not include loans; rental agreement; open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures, supplies to the establishment; an interest in a corporation owning or operating a hotel but having at least one hundred fifty (150) or more rental units holding a liquor license in conjunction therewith; or ten percent (10%) or less interest in any other corporation holding a license.
- (c) in determining whether an "interest" exists, the transaction must have been bona fide and the reasonable value of the goods and things received as consideration for a payment by the licensee and all other facts reasonably tending to prove or disprove the existence of a purposeful scheme or arrangement to evade the restrictions of this subdivision must be considered.

406.07 HOURS

Subd. 1. Nonintoxicating malt liquor. No sale of nonintoxicating malt liquor may be made between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 12:00 noon on Sunday.

Subd. 2. Intoxicating liquor; on-sale. No sale of intoxicating liquor for consumption on the licensed premises may be made:

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- (a) between 1:00 a.m. and 8:00 a.m. on the days of Tuesday through Saturday;
- (b) between 12:00 midnight and 8:00 a.m. on Mondays;
- (c) after 1:00 a.m. on Sundays, except as provided by subdivision 3;
- (d) between 8:00 p.m. on December 24 and 8:00 a.m. on December 25, except as provided by subdivision 3.

Subd. 3. Intoxicating liquor; Sunday sales; on-sale. A restaurant, club or hotel with a seating capacity for at least thirty (30) persons and which holds an on-sale intoxicating liquor may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 12:00 noon and 12:00 midnight on Sundays.

Subd. 4. Intoxicating liquor; off-sale. No sale of intoxicating liquor may be made by an off-sale licensee:

- (a) on Sundays;
- (b) before 8:00 a.m. on Monday through Saturday;
- (c) after 10:00 p.m. on Monday through Saturday;
- (d) on Thanksgiving Day;
- (e) on Christmas Day, December 25;
- (f) after 8:00 p.m. on Christmas Eve, December 24.

Subd. 5. Intoxicating Liquor; On-Sale. No person licensed to sell liquor shall permit any person to consume intoxicating liquor on the licensed premises later than one-half (2) hour after which Minnesota State Statutes allow for the sale of intoxicating liquor. No such licensee shall permit any consumer or person whomsoever except employees of the licensee, to remain on the licensed premises later than one-half (2) hour after which Minnesota State Statutes allow for the sale of intoxicating liquor.

406.08 PERSONS UNDER 21; ILLEGAL ACTS

Subd. 1. Consumption. It is unlawful for any:

- (a) retail intoxicating liquor or nonintoxicating liquor licensee or bottle club permit holder under Minn. Stat. 340A.414, to permit any person under the age of twenty-one (21) years to consume alcoholic beverages on the licensed premises; or
- (b) person under the age of twenty-one (21) years to consume any alcoholic beverages unless in the household of the person's parent or guardian and with the consent of the parent or guardian.

Subd. 2. Purchasing. It is unlawful for any person:

- (a) to sell, barter, furnish, or give alcoholic beverages to a person under twenty-one (21) years of age, except that a parent or guardian of a person under the age of twenty-one (21) years

may give or furnish alcoholic beverages to that person solely for consumption in the household of the parent or guardian;

(b) under the age of twenty-one (21) years to purchase or attempt to purchase any alcoholic beverage; or

(c) to induce a person under the age of twenty-one (21) years to purchase or procure any alcoholic beverage.

Subd. 3. Possession. It is unlawful for a person under the age of twenty-one (21) years to possess any alcoholic beverage with the intent to consume it at a place other than the household of the person's parent or guardian. Possession at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of the parent or guardian.

Subd. 4. Entering licensed premises. It is unlawful for a person under the age of twenty-one (21) years to enter an establishment licensed for the sale of alcoholic beverages for the purpose of purchasing or having served or delivered any alcoholic beverage. Notwithstanding Minn. Stat. 340A.509, a person eighteen (18), nineteen (19), or twenty (20) years old may not be prohibited from entering an establishment licensed under this chapter to:

(a) perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by Minn. Stat. 340A.412, subd. 10;

(b) consume meals; and

(c) attend social functions that are held in a portion of the establishment where liquor is not sold.

Subd. 5. Misrepresentation of age. It is unlawful for a person under the age of twenty-one (21) years to misrepresent his or her age for the purpose of purchasing alcoholic beverages.

Subd. 6. Proof of age. Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid drivers license or Minnesota identification card, or in the case of a foreign national by a valid passport.

406.09 EMPLOYMENT OF MINORS

No person under eighteen (18) years of age may be employed in a place where intoxicating liquor is sold for consumption on the premises, except persons under eighteen (18) years of age may be employed as musicians or in bussing or washing dishes in a restaurant or hotel that is licensed to sell intoxicating liquor and may be employed as waiters or waitresses at a restaurant, hotel, or motel where only wine is sold, provided that the person under the age of eighteen (18) may not serve or sell any wine.

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406.10 LICENSE RESTRICTIONS; GENERAL

Subd. 1. False application. Any person who makes a false statement in a license application shall be denied a license if one (1) has not yet been issued or shall have the license revoked if one (1) has been issued.

Subd. 2. License posting. A retail license to sell alcoholic beverages must be posted in a conspicuous place in the premises for which it is used.

Subd. 3. Gambling prohibited.

- (a) No retail establishment licensed to sell alcoholic beverages may keep, possess, or operate, or permit the keeping, possession, or operation on the licensed premises of dice or any gambling device as defined in Minn. Stat. 349.30, or permit gambling therein except as provided in this subdivision.
- (b) Gambling equipment may be kept or operated and raffles conducted on licensed premises and adjoining rooms when the use of the gambling equipment is authorized under Minn. Stat. 349.
- (c) Dice games may be conducted on the premises and adjoining rooms of a retail establishment licensed to sell alcoholic beverages if the following requirements are satisfied:
 - (1) The games consist of board games played with dice or commonly known dice games such as "shake-a-day", "3-2-1", "who buys", "last change", "liar's poker", "6-5-4", "horse" and "aces";
 - (2) wages or prizes for the games are limited to food or beverage; and
 - (3) the retail establishment does not organize or participate financially in the games.

Subd. 4. Racial discrimination; clubs. No retail license to sell alcoholic beverages may be issued or renewed by the City to a club which discriminates against members or applicants for membership or guests of members on the basis of race.

Subd. 5. License limited to space specified. A retail license to sell any alcoholic beverage is only effective for the compact and contiguous space specified in the approved license application.

Subd. 6. Booths restricted. No booths shall be allowed, or used on any on-sale premises, greater than forty-two (42) inches in height.

Subd. 7. General Welfare Standards. The City of St. Charles does hereby ordain that it is in the best interest of the public health, safety and general welfare of the people of the City of St. Charles that certain types of activities, as set forth in this ordinance are prohibited upon the premises of licensed liquor, wine, and beer establishments so as to best protect and assist the owners and operators and employees of these

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premises, as well as patrons and the public in general. Further, that the City does ordain that the standards in this ordinance reflect the prevailing community standards in the City of St. Charles. This ordinance is intended to

prevent harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council also desires to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct such as prostitution, sexual assault, and disorderly conduct.

Subd. 8. Certain Acts Prohibited. It shall be unlawful for any licenses to permit to allow any person or persons from being upon the licensed premises when such person does not have his or her buttocks, anus, breast, and genitals covered with a non-transparent material.

406.11 DRINKING IN PUBLIC

The following provisions shall apply unless a place is licensed under this chapter or unless specific Council authorization is given:

- (a) no person shall consume any intoxicating liquor in any public place;
- (b) no person shall consume any non-intoxicating malt liquor in any public place in the area bounded on the south by the north edge of 15th Street, on the north by the south edge of 4th Street, on the east by the west edge of Church Avenue, and on the west by the east edge of St. Charles Avenue.

406.12 LICENSE REVOCATION OR SUSPENSION

Subd. 1. Criminal and civil penalties. The Council shall either suspend for up to sixty (60) days or revoke the license or permit, or impose a civil fine not to exceed Two Thousand Dollars (\$2,000.00) for each violation on a finding that the license or permit holder has failed to comply with an applicable statute, regulation, or ordinance relating to alcoholic beverages. No suspension or revocation takes effect until the license or permit holder has been afforded an opportunity for a hearing under Minn. Stat. Chapter 14.

Subd. 2. Council discretion. Any license granted hereunder may be revoked by the Council if continuing the business under the license is injurious to the public health, safety, welfare, or morals of the community in the discretion of the Council.

Subd. 3. Specified opening date. Each license applicant shall specify the number of days within which the establishment will open for business after the license is issued. If the establishment does not open for business within sixty (60) days of the specified date, the license shall be revoked automatically unless the licensee has been granted an extension prior to the sixty (60) day deadline by Council resolution.

Subd. 4. Renewals. The Council shall review all renewal applications. If grounds for revocation exist, the Council shall immediately call a public hearing to review the grounds.

Subd. 5. Notice. Notice of any public hearing on a proposed revocation or suspension of any license under this Code shall be given by certified mail to the licensee at least ten (10) days before the hearing and

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shall state the specific reasons for the proposed revocation or suspension. Notice shall be published once in the official City newspaper at least ten (10) days before the hearing.

406.13 INTOXICATED PERSONS

No person may sell, give, furnish, or in any way procure for another alcoholic beverages for use by an obviously intoxicated person.

406.14 INTOXICATING LIQUOR PROHIBITED

No nonintoxicating malt liquor licensee who is not also licensed to sell intoxicating liquor shall sell or permit the consumption or display of intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of such a licensee shall be prima facie evidence of possession of intoxicating liquors for the purpose of sale and serving the liquid for the purpose of sale. Serving any liquid for mixing with intoxicating liquors shall be prima facie evidence that consumption or display of intoxicating liquor is permitted contrary to this ordinance.

Any peace officer shall have the unqualified right to enter, inspect, and search the premises of a licensee during business hours without a search warrant and seizure warrant and may seize all intoxicating liquors found on the licensed premises.

406.15 DELIVERIES

No delivery of intoxicating liquor or nonintoxicating malt liquor by the use of public streets or alleys shall be made by any licensee or any public conveyance between the hours of twelve (12:00) midnight and eight (8:00) a.m., Monday through Saturday, and no delivery shall be made at any time on Sunday.

406.16 POSSESSION AND CONSUMPTION PROHIBITED IN CERTAIN AREAS

Subd. 1. Exceptions. A temporary on-sale intoxicating malt liquor license shall clearly indicate permission to sell within the prohibited area when the Council so authorizes. The temporary license may limit the sale of nonintoxicating malt liquor to an area within the prohibited area which is less than the total prohibited area. Possession outside the licensed area but within the generally prohibited area shall constitute a violation of this Code.

When permission to sell within the prohibited area is granted, the licensee shall clearly display at the point of sale a description of the area within the prohibited area where consumption and possession is permitted. Failure to display this description constitutes a violation of this Code by the licensee.

Subd. 2. Abridgement of public rights. Nothing in this Code shall be construed in such a manner as to abridge the rights of private parties to consume alcoholic beverages on their own premises or on private property with the property owner's permission.

4.6.14

406.17 PENALTIES

In addition to specific penalties listed above, violation of this part shall constitute a misdemeanor.

4.6.17

Part 7. Public Dances

407.01 DEFINITIONS

Dance Hall - Any room, place, or space open to public patronage in which dancing, wherein the public may participate, is carried on and to which admission may be had by the public by payment, directly or indirectly, of an admission fee or price for dancing.

Public Dance - Any dance wherein the public may participate by payment, directly or indirectly, of an admission fee or price for dancing, or a fee for a membership in a club, and shall include any manner of holding a dance which may be participated in by the public through the payment of money, directly or indirectly.

407.02 PROPRIETORS MUST OBTAIN PERMITS

A person shall not give, hold, or conduct a public dance within the City unless the owner or proprietor of the public dancing place, or the person giving the same or in charge thereof, shall first procure a permit from the City Administrator to hold, give, and conduct such public dance pursuant to Minn. Stat. 624.47 (Issuance of Permit).

407.03 PERMIT APPLICATIONS

Every application for a permit to conduct a public dance shall be made to the City Administrator on a form supplied by the City and containing such information as the City Administrator may require pursuant to Minn. Stat. 624.45 (Permit to be posted). It shall be unlawful to make any false statement in an application.

407.04 PERMIT FEES

Subd. 1. Payment required. Each permit application shall be accompanied by a receipt from the Treasurer for full payment of the required license fee. All fees shall be paid into the City's General fund. Upon rejection of any permit application, the Treasurer shall refund the fee paid.

Subd. 2. Fees. The annual fee for a permit is Four Hundred Dollars (\$400.00). The fee for a temporary permit is Five Dollars (\$5.00) per day.

407.05 HOURS

Dance halls or public dancing places shall not be open between the hours of 1:00 a.m. and 8:00 a.m. of any day. No person other than an employee of the licensee or the licensee shall remain on the dance hall premises during closed hours.

4.7.01

407.06 CERTAIN PERSONS PROHIBITED

No person under the age of eighteen (18) years shall be permitted to attend any dance hall or public dancing place unless accompanied by a parent or legal guardian. It shall be the responsibility of the dance hall

proprietor to check the age of all persons entering the premises. Any questions as to proper identification shall be referred to the police officer attending the dance or concert.

407.07 EXCEPTIONS

Dances or musical concerts sponsored or conducted under the supervision of a government authority shall be exempt from the provisions and requirements of this part.

4.7.02

Part 8. Peoples Natural Gas

408.01 GRANT TO PEOPLES NATURAL GAS

Subd. 1. Grant of authority. Peoples Natural Gas Company, a Division of Inter North, Inc., its lessees, successors, and assigns, hereinafter called grantee, is granted a nonexclusive authority for a period of twenty-five

(25) years, to erect, maintain, and operate a gas distribution system and any and all necessary mains, pipes, services, and other appurtenances and equipment appertaining in, upon, over, across and along the streets, alleys, bridges, and public places in the City, hereinafter called grantor, for the transmission, distribution, and sale of natural and/or mixed gas for lighting, heating, industrial and all other uses and purposes in the City, and for the purpose of transmitting, transporting, and conveying such gas into, through, or beyond the immediate limits of the City to other cities, towns, and customers.

Subd. 2. Construction work. When the grantee, in the construction or maintenance of its system or in the installation of any extension thereto, cuts into or takes up any pavement or makes any excavation in any street, avenue, alley or public places, within the corporate limits of the City, it shall do so without unreasonably interfering with the public's use of such thoroughfares. The grantee shall use safeguards necessary to prevent injury to persons or property during such construction work. Upon the work's completion, all pavement shall be replaced in as good condition as before it was taken up. All excavations shall be refilled and all obstructions shall be removed at the grantee's expense and to the grantor's satisfaction. If the grantee fails to comply with this section after having been given reasonable notice, the grantor may do the work necessary to properly do the work necessary to properly repair said thoroughfare and the grantee shall reimburse the grantor for the cost.

Subd. 3. Interference with City improvements prohibited. The grantee shall not in any manner interfere with or injure any improvement which the City now has or may hereafter have upon any of its streets, alley, highways, or public places in erecting and maintaining the gas distribution system, and in entering and using said streets, highways, avenues, alleys, and public places in said City and in laying and installing its mains, services, piping, and related appurtenances and equipment.

Subd. 4. Service expansion. Grantee agrees, for and in behalf of itself, its lessees, successors, and assigns, for and during the term and period of this grant, that it will maintain in this City an adequate, modern, standard, and efficient gas system and equipment and will operate the same in a modern and adequate fashion. Grantee will make such enlargements and extensions of its distribution system as the business of the grantee and the growth of the City justify, in accordance with its Rules and Regulations relating to customer connections and main and service line extensions currently in effect and on file from time to time with the Minnesota Public Service Commission or other competent authority having jurisdiction in the premises. No obligation shall extend to or be binding upon the grantee to construct or extend its mains or furnish natural gas or gas service within the City if the grantee is, for any reason, unable to obtain delivery of natural gas at or near the corporate limits of said City or an adequate supply thereof to warrant the construction or extension of its mains for furnishing natural gas or gas service. When the amount of natural gas available to grantee at or near the City limits of said City is insufficient to meet the additional firm requirements of connected or new consumers, the grantee shall have the right to prescribe reasonable rules and regulations for allocating the

4.8.01

available supply of natural gas for such additional firm requirements to residential, commercial, and industrial consumers in that order of priority.

Subd. 5. City rights. The grantee agrees, for and in behalf of itself, its lessees, successors, and assigns, that all authority and rights in this part, shall at all times be subject to all rights, power and authority now or hereafter possessed by said City, to regulate the manner in which grantee shall use the streets, alleys, bridges, and public places of the City and concerning the manner in which grantee shall use and enjoy the franchise herein granted.

Subd. 6. Required pressure and supply. The grantee shall maintain an adequate pressure and adequate supply of clean, standard gas of not less than that prescribed in its Rules and Regulations and on file with the Minnesota Public Service Commission or other competent authority having jurisdiction in the premises. If the pressure and supply becomes less than the limit set forth in the Rules and Regulations, the rate then in effect shall be automatically and correspondingly reduced during any period in which the lower pressure and supply is furnished.

Subd. 7. Claims. The grantee shall hold the grantor harmless from any and all claims and actions, litigation, or damage, arising out of this part or the construction, erection, installation, maintenance, or operation of its properties operated by authority of this part within the corporate limits of the City or the negligence of its employees in the operation thereof, including the court costs and reasonable attorney fees in making defense against such claims. A copy of any process served upon the grantor shall be served by the grantor upon the grantee. The grantee shall have the right to defend in the name of the grantor and to employ counsel for such purposes.

Subd. 8. Default by grantee. If the grantee is in default in the performance of any terms or conditions of this part and continues in default for more than thirty (30) days after receiving notice from the City of such default, the City may terminate all rights granted under this Code to the grantee. The notice of default shall specify the provisions in the performance of which the grantee is in default. Said notice shall be in writing and served in the manner provided by the laws of the State of Minnesota for the service of original notices in civil actions.

Subd. 9. Effective period. The right and authority granted shall be nonexclusive and shall be and continue for a period of twenty-five (25) years from and after March 11, 1986, (the effective date of this ordinance).

4.8.02

Part 9. Hawkers, Peddlers, and Transient Merchants

409.01 DEFINITIONS

Hawker - One (1) who has no fixed place of dealing and travels around from place to place, carries with him or her the wares he or she offers for sale, not merely samples thereof; sells the wares at the time they are

offered, not merely entering into an executory contract for future sales but delivering them then and there; and makes sales to consumers and not dealers.

Peddler - Same as "Hawker".

Transient merchant - Any person, individual, copartnership and corporation, both as principal and agent, who engage in, do, or transact any temporary and transient business in this state, either in one (1) locality, or in traveling from place to place in this state, selling goods, wares, and merchandise; and who, for the purpose of carrying on such business, hire, lease, occupy, or use a building, structure, vacant lot, or railroad car for the exhibition and sale of such goods, wares, and merchandise; does not include a seller or exhibitor in a firearms collector show involving two (2) or more sellers or exhibitors.

409.02 REGISTRATION REQUIRED

No hawker, peddler, or transient merchant shall sell or offer for sale any merchandise or attempt to do any business in the City without registering with the City Administrator.

4.9.01

Part 10. Garbage and Rubbish

410.01 DEFINITIONS

(1) "Garbage" as used herein shall include only organic refuse resulting from the preparation of food and decayed and spoiled food from any source.

(2) "Rubbish" as used herein shall include all inorganic refuse matter, such as non-recyclable packaging, ashes, and sweepings.

(3) "Compost" as used herein shall include plant materials, such as grass, leaves, straw and non-woody plant materials stored on a person's property for the purpose of recycling organic materials as a soil conditioner.

(4) "Yard Waste" as used herein shall include leaves, grass clippings, organic garden waste, or similar non-woody plant materials.

(5) "Residence" as used herein shall include any single building of one to two dwelling units.

(6) "Multiple Dwelling" as used herein shall include any building used for residential purposes consisting of three or more residential units.

(7) "Commercial Establishment" as used herein shall include any premises where a commercial or industrial enterprise of any kind is carried on, including restaurants and clubs, daycare facilities, churches, and schools where food is served.

(8) "Hauler" as used herein shall include a collector or transporter of garbage, rubbish, recyclable materials, or yard waste.

(9) "Mobile Home Park" as used herein shall include any park, trailer court, trailer camp, court, camp site, lot, parcel, a tract of land designed, maintained or intended for the purpose of supplying a location or accommodation for any mobile home.

(10) "Recyclable Materials" as used herein shall include, but not limited to, tin and aluminum cans, newspapers, corrugated cardboard and glass.

410.02 FAILURE TO DISPOSE OF GARBAGE AND RUBBISH.

It shall be unlawful for any person, firm, or corporation to fail to dispose of garbage and rubbish which may accumulate upon property owned or occupied by him or them in a sanitary manner. Failure or refusal to make provision for and secure such disposal at his or their expense shall be subject to the penalties imposed in 410.12.

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410.03 GARBAGE CONTAINERS.

Every residence, mobile home park, multiple dwelling and commercial establishment shall provide himself with one or more fly tight waterproof containers sufficient to receive all garbage in a sanitary manner which may accumulate between the times of collection. Each non-disposable container shall be provided with a tight fitting cover and shall be maintained, cleaned and kept in a state of repair which will prevent leakage. All garbage shall be drained of surplus water and wrapped in a manner sufficient to prevent leakage before it is placed in said containers.

410.04 STORAGE OF GARBAGE, RUBBISH, YARD WASTE AND RECYCLABLE MATERIALS.

Subd. 1. Except on scheduled collection days, garbage, rubbish, yard waste and recyclable materials shall be stored behind the front of the building line for the width of the property. Garbage, rubbish, yard waste and recyclable materials may be placed at curbside or on the boulevard for collection by a licensed hauler during the twelve hour period prior to the day of collection. Any garbage cans or other containers or materials left over from collection shall be removed from the curbside or boulevard within twelve hours after said collection.

Subd. 2. Dumpsters for garbage, rubbish, yard waste and recyclable materials used in conjunction with multiple dwellings, mobile home parks and commercial establishments shall be stored within an enclosure with the location and design providing a uniform appearance with the principle structure having been approved by the City.

410.05 COMPOSTING.

Any person, firm, or corporation may provide for the handling of certain yard wastes as defined by 410.01, (4) of this Chapter by means of composting. Composting shall be accomplished above ground in a controlled area allowing for the decomposition of the material through an aerobic process providing adequate oxygen and moisture. At no time shall composting create a health hazard or a nuisance to adjoining properties.

410.06 YARD WASTE.

Except for purposes of composting under Section 410.05 of this Code, it shall be unlawful for any person, firm or corporation to dispose of yard waste on private or public lands located in the City of St. Charles except at the designated City Compost site. All yard waste must be disposed of in the manner prescribed by law. Yard waste for purposes of this Section consists of all grass clippings, leaves, twigs, tree branches and other woody and non-woody plant materials.

410.07 GENERAL LICENSING REQUIREMENTS.

Subd. 1. It is unlawful for any person to haul garbage, rubbish, recyclables, or yard waste without the appropriate license issued by the City under this Code, unless the person is hauling from his or her own residence or commercial establishment for disposal at another location with the written approval of that property owner.

4.10.02

Subd. 2. Each license shall be applied for, issued and renewed, and may be suspended or revoked, as provided by this Chapter, and each licensee shall comply with all applicable requirements of this Chapter.

Subd. 3. Haulers collecting yard waste, recyclables and non-recyclables or any combination thereof from residential areas, commercial establishments, multiple dwellings and/or mobile home parks must be licensed.

Subd. 4. Collection of garbage and rubbish will be provided on a weekly basis.

Subd. 5. Collection service priced on the basis of volume shall be provided. All billings shall be itemized so as to show what individual charges are being levied.

Subd. 6. Licensed haulers shall provide their customers on or about the first day of each year a list of legal holidays and other dates that the hauler will not be in operation.

Subd. 7. Licensed haulers shall provide a prorated discount to their customers requesting a temporary discontinuation of their weekly pickup.

Subd. 8. Licenses may be suspended or revoked by the Council, after the licensee has been given a reasonable notice and an opportunity to be heard, for the violation of any provisions of this Chapter, or for the violation of any conditions or restrictions in the motion granting the license, or any motion passed by the Council, or upon failure of the licensee to comply with any conditions, order or direction issued by the City.

Subd. 9. Construction waste may be disposed of by the builder, contractor or person responsible therefore without a license or in a vehicle normally used for that purpose provided however, that such vehicle shall be enclosed or covered in such a manner as to prevent the scattering of debris.

Subd. 10. Licensed haulers may not enter any contract, agreement or obligation with any customer that exceeds the duration of the license period.

410.08 COMMERCIAL LICENSING REQUIREMENTS.

Subd. 1. Any person, firm or corporation desiring a license to collect garbage from commercial establishments shall make application for the same to the City Administrator upon a form prescribed by the City. The applicant shall set forth the following:

- (a) The name and address of the applicant.
- (b) A list of the equipment which the applicant proposes to use in such collection.
- (c) The place or places to which the garbage, rubbish, yard waste and/or recyclable materials is to be hauled.

4.10.03

- (d) The manner in which said garbage, rubbish, yard waste and/or recyclable materials is to be disposed of.

Subd. 2. Before a commercial license is issued, the applicant shall file with the City Administrator evidence that the applicant has in effect public liability insurance for the hauler's business and for all vehicles in at least the sum of \$500,000 for injury of one person, \$1,000,000 for the injury of two or more persons in the same accident, and \$100,000 for property damages.

Subd. 3. When the application is submitted, the applicant shall file with the City Administrator a schedule of proposed rates to be charged during the licensed period. Every licensee shall provide 30 days prior written notification to the City and the licensee's customers of any change in rates to be implemented during the licensed period.

Subd. 4. Before a commercial license is issued, the applicant shall pay to the City a license fee to be established by resolution of the City Council, which shall accompany the application.

Subd. 5. No commercial license issued shall be for a longer period than one year and all licenses shall expire on December 31 of each year.

410.09 RESIDENTIAL LICENSING REQUIREMENTS.

Subd. 1. Any person, firm or corporation desiring a license to collect garbage from the residential sector shall make application for the same to the City Administrator upon a bid form prescribed by the City. The City shall select a single hauler to collect garbage from the residential sector based upon the following information:

- (a) The name and address of the applicant.
- (b) The list of equipment which the applicant proposes to use in such collection.
- (c) The place or places to which the garbage and rubbish is to be hauled.
- (d) The manner in which the garbage and rubbish is to be disposed of.
- (e) A schedule of proposed rates to be charged during the licensed period.

Subd. 3. The schedule of proposed rates to be charged during the licensed period shall remain in effect throughout the entire licensed period. Any proposed rate change must be approved by the City Council and shall not in any case exceed a 5% increase per year.

Subd. 4. Before a residential license is issued, the applicant shall pay to the City a license fee to be established by resolution of the City Council, which shall accompany the application.

Subd. 5. No residential license issued shall be for a period longer than five years.

4.10.04

410.10 REQUIREMENTS AND RESTRICTIONS.

All licensees shall comply with all of the following requirements and restrictions:

- (a) No hauler shall operate in St. Charles after 4:30 p.m. or before 7:30 a.m. of any day, and no hauler shall operate in a residential district on Saturday, Sunday or legal holidays.

- (b) All haulers operating on a route in a residential district shall operate vehicles on City streets within the weight allowed by Minnesota State Statute.
- (c) Licensees shall have covered water-tight, packer-type vehicles, or in the case of recycling, appropriate container vehicles, in good condition and which prevent loss in transit of liquid or solid cargo. All vehicles shall be kept clean and as free from offensive odors as possible, and shall not be allowed to stand in any street longer than reasonably necessary to collect garbage, rubbish, recyclable materials, or yard waste.
- (d) Persons may haul garbage, rubbish, recyclable materials or yard waste from their own residence, multiple dwelling or commercial establishment if hauled in containers which are water-tight on all sides and the bottom and have tight-fitting covers on top, and if hauled in vehicles with leak-proof bodies which do not permit the loss of cargo.
- (e) Each vehicle for which a hauler's license is issued shall exhibit such license in a prominent position on the vehicle.
- (f) The City Council will have final authority in the designation of the hauler's route and days of operation within a residential district.
- (g) Licensees shall provide walk-up service for the elderly and disabled, if requested.
- (h) Licensees shall supply a toll free number for customer complaints, service and billing questions.
- (i) Licensees shall provide the City with all information pertaining to the hauling of garbage and rubbish in St. Charles.
- (j) Licensees must have all applicable licenses as required by the State of Minnesota and Winona County.
- (k) Licensees shall not operate on any alleys within the residential district without first obtaining approval from the City Council.

4.10.05

410.11 CITY COLLECTION.

There is hereby established a City Waste Management System.

Subd. 1. No household garbage or refuse shall be collected or disposed of by any household or owner of any two-unit apartment except through the City Waste Management System. No commercial or industrial garbage or refuse shall be disposed of except by the owner thereof or by a duly licensed garbage or refuse collector. The existence of indoor or outdoor incinerators or burning receptacles shall not relieve any household from disposing of household garbage or refuse through the City Waste Management System.

Subd. 2. The Council shall make and establish by resolution such administrative regulations and rules as may be necessary and proper to regulate, enforce and carry out the provisions of this chapter.

Subd. 3. The Council shall make and establish by resolution a system of service charges for the removal and disposal of household garbage and refuse under the City Waste Management System. It shall fix and declare the maximum charges, including any special charges; and shall classify said removal and disposal according to the type of service required and given.

Subd. 4. All such service charges for the Waste Management System for each household shall be entered, shown and placed on the City utility bill and be indicated thereon as City garbage service charge. All service charges shall be due and payable at the City Hall. In case such service charges are not paid by the 10th day of the month, after the same become due, the City shall add 10% to the amount of such service charge bill.

Subd. 5. All such service charges for residential household refuse service shall be charged directly to the owner or occupant of the real estate to which service is provided.

Subd. 6. In case of failure to pay this service charge after the expiration of 10 days after the due date, written notice shall be given by mail to the owner of the real estate for which refuse service is provided. After the expiration of 30 days from the date of said written notice, said service charges shall be certified to the County Auditor on October 1st of each year, with interest thereon at the rate of 6% per annum from the date of expiration of said thirty days notice, to be included with the taxes against the real estate involved and to be collected. The Council shall levy annually an assessment equal to such unpaid service charges on October 1st of each year against the lot or parcel of land involved. Such assessments shall be so certified to the Council Auditor and shall be collected and remitted to the City of St. Charles in the same manner as special assessments.

Subd. 7. All income from the operation of the residential refuse collection system shall be kept and maintained in a special City fund hereby designated as the Waste Management Fund. All expenses of the operation of the City Waste Management System shall be paid from this fund.

Subd. 8. The garbage rate shall be established annually or as needed, by City Resolution.

4.10.06

410.12 PENALTY.

Any person, firm or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor.

4.10.07

CHAPTER 5: TRAFFIC, MOTOR VEHICLES AND NON-MOTORIZED VEHICLES

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Chapter 5. Traffic, Motor Vehicles and Non-Motorized Vehicles

501.01 VEHICLE REGULATION

Subd. 1. Highway traffic regulation chapter incorporated by reference. The regulatory provisions of Minn. Stat. Chapter 169, are adopted as a traffic ordinance regulating the use of highways, streets, and alleys within the City and are incorporated in and made a part of this Code as if set out here in full.

Subd. 2. Penalty. Any violation of the statutes adopted by reference in subd. 1 is a violation of this Code when it occurs within the City. Any person violating any provision of this Code shall be guilty of such an offense and shall be punished by the penalty prescribed by statute except where a different penalty is prescribed in this Code.

501.02 DEFINITIONS

Terms used in this chapter and defined in Minn. Stat. 84.81 and 169.01 shall have the meanings given to them by that section.

501.03 PARKING

Subd. 1. Time limit parking zones. The Council may, by resolution, designate certain areas where the right to park is limited during hours specified. The Public Works Superintendent shall mark by appropriate signs each zone so designated. During the hours specified on the sign, no person shall park a vehicle in any limited parking zone for a period longer than is specified.

Subd. 2. No parking, stopping, or standing zones. The Council may designate certain streets or portions of streets as no parking or no stopping or standing zones and may limit the hours in which the restrictions apply by resolution. The Public Works Superintendent shall mark by appropriate signs each zone so designated. Except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control device, no person shall stop or park a vehicle in an established no stopping or standing zone when stopping or standing is prohibited. No vehicle shall be parked in a no parking zone during hours when parking is prohibited except that a vehicle may be parked temporarily in such zone for the purpose of forming a funeral procession, and a truck may be parked temporarily between the hours of 8 a.m. and 6 p.m. of any business day for the purpose of loading or unloading where access to the premises is not otherwise available.

Subd. 3. Parking of certain vehicles in residential areas. No truck, tractor, semi-tractor, mobile home, or other vehicles exceeding twenty (20) feet in length shall be allowed to park, stand, or remain unattended in residential zones within the City from the hours of 10:00 p.m. to 7:00 a.m. A residential area is that area so defined in Chapter 7 (Zoning).

5.1.01

No vehicle shall in any case be parked upon any street in any one (1) place for a continuous period longer than forty-eight (48) hours, unless a different period is specified for particular locations by the Council.

Subd. 4. Impoundment. Any police officer may remove a vehicle from a street to a garage or other place of safety when the vehicle is left unattended or constitutes an obstruction to traffic, or hinders snow removal, street improvement, or maintenance operations. Such vehicle shall not be released until towing and storage fees are paid in addition to any fine imposed for violation of this chapter.

Subd. 5. Prima facie violation. The presence of any motor vehicle standing or parking on any street in violation of this chapter is prima facie evidence that the registered owner of the vehicle committed or authorized the commission of the violation.

501.04 REMOVING KEYS

No person shall leave a motor vehicle, except a truck which is engaged in loading or unloading, unattended on any street, used car lot, or unattended parking lot without first stopping the engine, locking the ignition, and removing all ignition keys from the vehicle. If a police officer finds any motor vehicle standing in violation of this provision, the officer shall remove the keys from the vehicle and deliver them to police headquarters.

501.05 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 throwing of sand or gravel by the tires is prima facie evidence of a violation of this section.

501.06 POLICE DUTIES

The police department shall enforce the provisions of this chapter and the state traffic laws. Police officers are authorized to direct all traffic within the City, either in person or by means of visible or audible signal, in conformity with this chapter and the state traffic laws. During a fire or other emergency or to expedite traffic or safeguard pedestrians, officers may direct traffic as conditions require, notwithstanding the provisions of this chapter and the state traffic laws. Fire department officials may direct or assist the police in directing traffic at the scene of a fire or in the immediate vicinity.

501.07 TRAFFIC FLOW AND DIRECTION

The Council by resolution and upon recommendation of the Public Safety Commission may designate any street or portion of a street as a through highway or a one (1) way roadway where necessary to preserve a free flow of traffic or prevent accidents. The Public Works Superintendent shall post appropriate

5.1.02

signs at the entrance to such streets including stop, yield, one way, or other traffic control signs or devices. No trunk highway shall be so designated unless consent of the Commissioner of Transportation is first secured.

501.08 SNOWMOBILES

Subd. 1. Operation prohibited. Snowmobiles shall not be operated within the City limits unless such operation complies with Minn. Stat. 84.81 to 84.90 inclusive and all other state laws and regulations pertaining to snowmobiles, which are hereby adopted by reference.

Subd. 2. Snowmobile routes. Snowmobiles shall not be operated upon the City streets or alleys except upon streets or alleys specifically designated as "Snowmobile Routes" by Council resolution. No snowmobile shall be operated upon any other street except for the purpose of moving the vehicle between an owner's residence and the nearest official snowmobile route.

Subd. 3. Specific regulations. All snowmobiles operated upon a City street or alley shall observe the following regulations:

- (a) Speed shall not be in excess of ten (10) miles per hour.
- (b) Snowmobile operators shall reduce the vehicle's speed at all intersections and yield the right of way to any approaching motor vehicle.
- (c) Snowmobiles shall keep to the right and travel single file.
- (d) Snowmobiles shall not be allowed to stand and idle within two hundred (200) feet of the nearest residence, except for time necessary to warm up the vehicle.
- (e) Snowmobiles shall not be driven upon private property without the owner's consent or upon City sidewalks or boulevards.
- (f) Snowmobiles shall not be operated by any person under the age of fourteen (14) years except upon private property.

501.09 BICYCLES

Subd. 1. Statute adopted. Minn. Stat. 169.222 (Operation of bicycles) is adopted as part of this Code.

Subd. 2. Additional regulations. The following regulations also apply to bicycle operations:

- (a) Excessive speed prohibited. No person shall ride any bicycle upon or along any sidewalk or street at a speed, which is excessive, or in a manner which endangers the safety of pedestrians using the same street or sidewalk.
- (b) Seat required. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
- (c) Attachment to vehicle prohibited. No person riding upon any bicycle shall attach it or himself or herself to any vehicle upon a roadway.

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- (d) Riders abreast. Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or roadways set aside for the exclusive use of bicycles.
- (e) Bicycle paths. When a usable path for bicycles has been provided adjacent to a roadway, bicycles shall use such path and shall not use the roadway.
- (f) Riding on sidewalks. No person shall ride a bicycle upon a sidewalk within the business district. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right of way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.
- (g) Carrying packages. No person operating a bicycle shall carry any package, bundle, or article, which prevents the driver from keeping at least one (1) hand upon the handle or from properly operating the bicycle brakes.
- (h) Equipment. Every bicycle when in use at nighttime shall be equipped with a red reflector on the rear of a type approved by the Department of Public Safety which is visible from all

distances from fifty (50) to six hundred (600) feet to the rear when directly in front of lawful lower beams of headlamps on a motor vehicle.

Subd. 3. Penalty. Any person violating the provisions of this section shall be guilty of a petty misdemeanor.

501.10 SNOW REMOVAL

Section 1. This Ordinance shall be numbered section 501.10 of the St. Charles City Code.

Section 2. Definitions:

- (1) Owner – The titleholder of a vehicle; or a conditional vendee or lessee if the vehicle is subject to a conditional sales agreement or lease.
- (2) Parking – The standing of an occupied or unoccupied vehicle on a street, road or highway for a purpose other than loading or unloading or obeying traffic regulations.
- (3) Roadway – That part of a street, road, or highway improved, designed or ordinarily used for vehicular travel.
- (4) Vehicle – Every device in, upon, or by which any person or property may be transported upon a highway, except devices moved solely by human or animal power.

Section 3. No person shall park a vehicle in such a manner as to obstruct the removal of snow from streets and alleys during snow removal operation.

Section 4. Snow Removal Operations – When there is snowfall, no one shall park any motor vehicle on the streets, alleys, boulevards, or public grounds (except for municipal parking lots) within the corporate limits of the City until snowfall has ceased and the street has been plowed curb to curb, except as provided in subd. (b).

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- (a) Any motor vehicle in violation of the above may be immediately removed and impounded by the police department. Prior to removal of a motor vehicle, the police department shall attempt to contact the registered owner of said vehicle at the address listed on the registration and provide the vehicle's owner a reasonable opportunity to remove said vehicle.
- (b) Parking shall be permitted on Whitewater Avenue during snow removal operations between 6th Street and 15th Street between the hours of 6:00 a.m. and 6:00 p.m.

Section 5. Impoundment – Vehicles removed and impounded by the police department pursuant to Section 4(a), shall be surrendered to the duly identified owner only after the following criteria have been met:

1. The owner has shown proof of identification and ownership;
2. The owner has shown proof of insurance and current registration of the vehicle;
3. All costs of towing and storage have been paid to the tow operator.

Section 6. Violations of this ordinance shall constitute a petty misdemeanor with a fine of \$25.00 for each violation.

Section 7. The removal of a vehicle in violation of this ordinance does not preclude citation and prosecution for violation of this ordinance.

501.11 SPECIAL VEHICLE USE

Subd. 1. Use authorized. Pursuant to the authority granted by Minnesota Statutes, use of motorized golf carts or four (4) wheel all-terrain vehicles are permitted within the City under the conditions set forth below. Only persons who have a valid permit issued by the City shall operate such a special vehicle within the City.

Subd. 2. General permit requirements.

- (a) Each person desiring a permit for the operation of a special vehicle must submit an application to the Chief of Police with an application fee of Five Dollars (\$5.00).
 - (b) Each applicant shall show evidence of insurance, which meets the requirements of Minn. Stat. 65B.48, Subd. 5.
 - (c) The St. Charles Police Department shall inspect each vehicle receiving a permit to ensure that each vehicle has a rear view mirror, a slow-moving vehicle sign attached to the rear of the vehicle, and that it is in generally good working condition.
 - (d) Vehicles may only be operated during daylight hours.
 - (e) The Chief of Police will establish a designated roadway for each permit holder.
 - (f) Each permit must be renewed annually.
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- (g) A permit may be revoked at any time if it is shown that the permit holder cannot safely operate the motorized cart or all-terrain vehicle on the designated roadway or if the permit holder has had a driver's license revoked or suspended and is currently under revocation or suspension.

Subd. 3. General Permit Requirements for the Handicapped.

- (a) The general permit requirements as specified in Subd. 2 must be met.
- (b) Each application shall be accompanied by a doctor's certificate dated not more than thirty (30) days prior to the application date certifying that the individual is capable of safely operating a motorized golf cart or four (4) wheel all-terrain vehicle. This requirement shall be deemed satisfied if the applicant has been issued a motor vehicle permit for a handicapped person.

Subd. 4. Unlawful Acts. No motorized golf cart shall be driven, operated or controlled on the roadways or shoulders of roadways under the jurisdiction of the City of St. Charles:

- (a) Between sunset and sunrise;
- (b) In inclement weather, when visibility is impaired by weather, smoke, fog or other conditions, or at any time when there is insufficient light clearly to see a person or vehicle on a roadway at a distance of five hundred (500) feet;
- (c) Without prominent display of a slow moving vehicle emblem provided in Minnesota Statutes, Section 169.522, on the rear of such vehicle.
- (d) Without a mirror so located as to reflect to the driver, operator or controller, a view of the roadway for a distance of at least two hundred (200) feet to the rear of such vehicle;
- (e) Contrary to any traffic law of the City of St. Charles or the State of Minnesota, except when those provisions cannot reasonably be applied to motorized golf carts;
- (f) On any roadway within the City of St. Charles which has not been designated as a golf cart route.

Subd. 5. City liability. Nothing in this section shall be construed as an assumption of liability by the City for any injuries to persons or property which may result from the operation of a motorized golf cart or four (4) wheel all-terrain vehicle by a permit holder, or from the City's failure to revoke a permit.

Subd. 6. Penalty. Any person violating the provisions of this Ordinance shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars (\$100.00).

501.12 VEHICULAR NOISE PROHIBITED

Subd. 1. General prohibition. No person shall make or cause to be made any distinctly and loudly audible
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noise through the use of a vehicle that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restriction of the following subdivisions.

Subd. 2. Dynamic engine brakes. No dynamic engine brakes shall be used within the limits of the City.

Subd. 3. Exhaust. No person shall discharge exhaust or permit the discharge of exhaust from any engine without passing through a muffler and complies with all applicable state laws and regulations.

Subd. 4. Stationary engine noise. No person shall allow a stationary engine to run continuously for a period of time that is objectionable as outlined in Subd. 1 unless some essential or emergency purpose requires its continuous operation. This would include truck engines and auxiliary engines.

Subd. 5. Penalty. Any person violating the provisions of this Ordinance shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred dollars (\$100.00).

501.13 TRUNK RESTRICTIONS

Subd. 1. General weight restrictions. The Council by resolution may designate streets on which travel by commercial vehicles in excess of nine thousand (9,000) pounds gross weight is prohibited. The City Administrator or Police Chief shall cause appropriate signs to be posted on such streets. No person shall operate a commercial vehicle on these posted streets in violation of the restrictions stated.

Subd. 2. Seasonal weight restrictions. The Council by resolution may prohibit the operation of vehicles upon any street or impose weight restrictions on vehicles to be operated on any street whenever the street, by reason of deterioration, rain, snow, or other conditions, will be seriously damaged or destroyed unless the use of vehicles on the street is prohibited or the permissible weights limited. The City Administrator or Police Chief shall cause to be posted signs plainly indicating the prohibition or restriction at each end of that portion of the street affected. No person shall operate a vehicle on a posted street in violation of the prohibition or restriction.

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CHAPTER 6. PUBLIC PROTECTION AND PROHIBITED CONDUCT

Part 1. Public Nuisances

601.01 DEFINITION

Public nuisance - the result of an act or failure to perform a legal duty intentionally in any of the following ways:

- (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; or
- (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 this Code to be a public nuisance and for which no sentence is specifically provided.

601.02 PUBLIC NUISANCES PROHIBITED

No person shall maintain a public nuisance.

601.03 HEALTH

Subd. 1. Specific nuisances. The following are 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 or animals not buried or destroyed twenty-four (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;

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- (h) The growth of all grass, weeds and other rank growths of vegetation upon public or private property exceeding a height of eight (8) inches;
- (i) All noxious weeds and other rank growths of vegetation upon public or private property;
- (j) Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities;
- (k) All public exposure of persons having a contagious disease;
- (l) Any trade or employment which injures the inhabitants, or is dangerous to the public health, or injures neighboring property, or from which noisome odors arise and which is operating without written permission of the City Board of Health pursuant to Minn. Stat. 145.17;
- (m) Domestic animals allowed to remain at large in violation of Chapter 4, Part 3 of this Code.

Subd. 2. Burning refuse. Pursuant to the Minnesota Pollution Control Agency directive on Air Quality Standards effective July 7, 1969, no person, business or other legal entity shall dispose of refuse by open burning or cause, suffer, allow, or permit the burning of refuse. Minnesota Rules 7005.0700 - 7005.0820 (Open Burning Restrictions and Permitting Requirements) are hereby adopted by reference and incorporated herein.

- (a) No person shall conduct, cause or permit the conduct of a salvage operation by open burning.

- (b) No person shall cause or permit the open burning of leaves or related refuse.

601.04 MORALS AND DECENCY

The following are public nuisances affecting morals and decency:

- (a) Betting, bookmaking and all apparatus used in such occupation;
- (b) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdyhouses;
- (c) All places where intoxicating liquor is manufactured or dispensed in violation of law or where, in violation of law, persons 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 such a place.

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601.05 PEACE AND SAFETY

Subd. 1. Specific nuisances. The following are public nuisances affecting peace and safety:

- (a) All snow and ice not removed from public sidewalks twenty-four (24) hours after the snow or the precipitation causing the condition has ceased to fall;
- (b) All trees, hedges, billboards, or other obstructions, which prevent persons from having a clear view of all traffic approaching an intersection.
- (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) All unnecessary noises and annoying vibrations;
- (e) Obstructions and excavations affecting the ordinary use by the public of streets, alleys, sidewalks, or public grounds except under such conditions as are permitted by this Code or other applicable law;
- (f) Radio aerials or television antennas erected or maintained in a dangerous manner;
- (g) Any use of property abutting a public street or sidewalk or any use of public street or sidewalk which causes large crowds of people to gather and obstruct traffic and the free use of the streets and sidewalks;

- (h) All hanging signs, awnings, and other similar structures over streets and sidewalks, or situated so as to endanger public safety, or not constructed and maintained as provided by this Code;
- (i) Allowing rain water, ice, or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;
- (j) Any barbed wire fence less than six (6) feet above the ground or within three (3) feet of a public sidewalk or way;
- (k) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;
- (l) Waste water cast upon or permitted to flow upon streets or other public property;
- (m) The parking or storage of any unlicensed, unregistered or inoperable vehicle, boat or snowmobile, furniture, miscellaneous equipment, household furnishing or appliances, or parts of components thereof, or discarded or disused machinery, or other material, on any property, public or private, in a manner conducive to the

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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 such accumulation.

- (n) Any well, hole, or similar excavation which is left uncovered or in such other condition as to constitute a hazard to any child coming on to the premises;
- (o) Obstructing the free flow of water in a natural waterway or a public street drain, gutter, or ditch;
- (p) Placing or throwing on any street, sidewalk, or other public property any glass, tacks, nails, bottles, or other substances which may injure any person or animal or damage any pneumatic tire when passing over such substance;
- (q) Depositing garbage or refuse on a public right of way or any public or private property;
- (r) All unauthorized motor vehicles are prohibited on any grass area or trail within all City Parks.
- (s) Horses are prohibited in all City Parks except where designated.
- (t) All other conditions or things which are likely to cause injury to the person or property of anyone;
- (u) Blowing, sweeping, raking or shoveling leaves, grass, dirt or snow onto the public street.

Subd. 2. Firearms, fireworks, and related devices. No person except a police officer in the performance of duty shall discharge any firearms, fireworks, or missile projecting devices of any kind or form within the City corporate limits except as follows:

- (a) The City may arrange for and conduct animal control programs within the City even if the program provides for the use of firearms.
- (b) The Council may permit the supervised discharging of firearms, fireworks, or missile projecting devices for sporting events, target shoots, or carnival events.
- (c) No person except a police officer in the performance of duty shall discharge any gun, pistol, or firearm of any description within the City or carry any such weapon within the City unless it is dismantled or broken apart or carried in a case in such a manner that it cannot be discharged. This subdivision does not prevent carrying a handgun within the City under a permit subject to the restrictions imposed by law.

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Subd. 3. Parents and guardians. No parent or guardian of any person under the age of eighteen (18) years shall knowingly permit such person to violate any provision of this section.

601.06 ABATEMENT

Subd. 1. Notice. When the officer charged with enforcement determines that a public nuisance is being maintained or exists on premises in the City, the officer shall notify in writing the owner or occupant of the premises of such fact and shall order the nuisance terminated and abated. The notice shall be served in person or by certified mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding thirty (30) days, within which the nuisance is to be abated.

Subd. 2. Council action. If compliance with the notice is not forthcoming within the time specified, the enforcing officer shall promptly report that fact to the Council. The Council may provide for the City to abate the nuisance after giving the owner or occupant notice of the possible Council action and an opportunity to be heard on the matter. The notice shall be given in the manner described in subd. 1 of this section and shall state the date on which the Council will consider the matter. If notice is served in person or by certified mail or registered mail, the notice shall be given at least ten (10) days before the Council considers the matter. If notice is posted, the notice shall be posted at least thirty (30) days before the Council considers the matter.

601.07 RECOVERY OF COSTS

Subd. 1. Personal liability. The owner of premises on which the City has abated a nuisance shall be personally liable to the City for the cost of the abatement, including administrative costs. When the abatement is complete and the cost is determined, the City Administrator or other official designated by the Council shall prepare a bill and mail it to the owner. The amount shall be due immediately and payable at the office of the City Administrator.

Subd. 2. Assessment. If the public nuisance is a 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-infested trees, any unpaid charges for the cost of eliminating the nuisance may be collected by the City as a special assessment pursuant to 305.07, subd. 7-8 (Assessable Current Services; Obligation of Property Owners and Occupants).

601.08 ABANDONED OR DISABLED OR UNLICENCED VEHICLES

Subd. 1. Legislative Intent. The unsheltered storage of old, unused, stripped or junked automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, equipment, junk or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured is hereby declared to be a nuisance and dangerous to the public health and safety. The unsheltered storage of these property items throughout the City tend to impede traffic in the streets, interfere with the enjoyment of and reduce the value of private property, invite plundering, create fire hazards and other safety

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and health hazards to children as well as adults, interfere with the comfort and well-being of the public, and create, extend and aggravate urban blight. As such, the City Council determines that, in order to protect the public health, safety and welfare, such conditions must be regulated, abated or prohibited.

Subd. 2. Nuisance on Private Property. The unsheltered storage of old, unused, stripped or junked automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, equipment, junk or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured is hereby declared to be a nuisance.

(b) Nothing in this section shall restrict the activities of duly established junk or salvage yards. This section does not apply to vehicles or property in an enclosed building, on the premises of a business enterprise operated in a lawful manner when necessary to the operation of such business enterprise, or in a storage or depository maintained in a lawful location and manner by the City.

(c) For purposes of this section, "junk" shall mean worn out or discarded material of little or no value including, but not limited to, household appliances or parts thereof, tools, discarded building materials, tin cans, broken glass, broken furniture, mattresses, box springs, boxes, crates, cardboard, tires or any other unsightly debris the accumulation of which has an adverse effect upon neighborhood or City property value, health, safety or general welfare.

Subd. 3. Abandoned Motor Vehicles. No person shall place, park, permit to remain, store or leave upon an open space area of any premises located anywhere in the City any motor vehicle unless it conforms with all of the following requirements:

- (1) The vehicle must have affixed to it a valid current motor vehicle license;
- (2) The vehicle must not lack essential parts that would render it inoperable; and

(3) The vehicle must not be in a rusted, wrecked, partially dismantled or junked condition;

(4) The vehicle must be parked on a surface consisting of crushed rock, cement or blacktop.

(b) If a motor vehicle fails to meet any of the above requirements, the owner or possessor of the motor vehicle, shall be responsible to remove the motor vehicle to a duly licensed junk yard or other authorized place of deposit or storage within 10 working days of a demand by the City. In the event the owner or possessor of the motor vehicle cannot be located, then it shall be the responsibility of the owner of the premises to remove the motor vehicle to a duly licensed junk yard or other authorized place of deposit or storage within 10 working days of a demand by the City.

(c) For purposes of this section, "Motor vehicle" means every vehicle which is self-propelled.

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Subd. 4. Violations a Public Health or Safety Hazard. A person who creates, maintains, or allows to continue a condition on property which poses a risk to the health or safety of the public in violation of Section 2 or 3 of this Code shall be deemed to have created in the City a public health or safety hazard which is declared to be a nuisance subject to abatement by the City as provided in Section 5.

Subd. 5. Abatement. Subdivision 1. In all cases of nuisances described in Section 4, the City Administrator, or his designee, shall cause a written notice to be served upon the person or entity that maintains, operates or permits a nuisance. The notice shall be substantially as follows:

NOTICE TO ABATE NUISANCE

The City of St. Charles to _____.

You are hereby notified that the nuisance maintained, operated or permitted to exist by you located at _____ and consisting of _____ must be abated by the (removal) (destruction) (discontinuance) of the same and that if you do not comply with this notice, you are directed to appear before the undersigned at the St. Charles City Hall on _____, 20 ____, at _____ o'clock am/pm to show cause why the same should not be abated. If you fail to appear, the undersigned will take the necessary steps to abate such nuisance. The costs of abatement incurred by the City shall be assessed against you, and a lien may be imposed on the property to secure such payment.

Dated this ___ day of _____, 20 ____.

(Title of Signer)

A copy of the foregoing notice was served on _____
on the ___ day of _____ 20 ___, by
_____ (describe manner or service).

(Name of Server)

(b) If such person or entity cannot be found, then a copy of the notice may be served by delivery to any member of the family or upon an officer or agent of the entity over eighteen years of age and found on the premises described in the notice or at the residence of the person named therein, and if service cannot be had in such manner, then by posting a copy in some conspicuous place on the premises or entity at the last known address.

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(c) At the same time and place specified in the notice, the City Administrator, or his designee, shall hear the matter. The person or entity so complained of shall have the right to appear in person or by counsel. At the conclusion of the hearing, the City Administrator, or his designee, may vacate the notice or may declare such condition to be a nuisance and order it abated summarily.

(d) In all cases where the City Administrator, or his designee, shall have determined, after hearing or notice of hearing and default, that any nuisance shall be abated, he shall issue an order requiring the abatement of the nuisance within a time named in the order, and shall serve the order of abatement upon the person or entity who maintains, operates or permits the nuisance. In the event the nuisance is not abated by the party within the time provided in the order, the City Administrator, or his designee, shall cause the nuisance to be abated.

(e) Any person aggrieved by an order of abatement may appeal the order to the City Council. An appeal shall be taken within ten days from the date of the order of abatement by filing with the City Administrator a notice of appeal, which shall specify the grounds of appeal. The matter shall be placed on the City Council's next regularly scheduled meeting for a public hearing. An appeal stays all proceedings in furtherance of the action appealed from.

(f) The City Council may reverse or affirm, in whole or in part, or may modify, the order of abatement and may issue any order, requirement, decision or determination as is consistent with City Ordinances.

(g) Any person or entity who fails to remove and abate any nuisance after proper notice, the opportunity to be heard, and final order shall be liable to the City for all expenses incurred in the removal and abatement of the nuisance. The City shall have the right to recover all such costs and a lien may be imposed upon the property to secure payment of such costs. The procedure for establishing such lien shall be in accordance with Minn. Stat. 429.101.

601.09 DRY BULK AGRICULTURAL COMMODITY FACILITIES

Subd. 1. General Definitions. The definitions in Minnesota Rules parts 7005.0100 and 7011.1000 are adopted by reference and apply to the terms used in this ordinance unless the terms are defined in this ordinance.

Subd. 2. Specific Definitions.

A. Facility. "Facility" means a dry bulk agricultural commodity facility.

B. Owner or operator. "Owner or operator" means a person who owns, leases, operates, controls or supervises a dry bulk agricultural commodity facility.

C. RACT. "RACT" means reasonably available control technology.

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Subd. 3. Owner or Operator Duties. The owner or operator of a facility shall:

A. Clean up commodities spilled on the driveway and other facility property as required to minimize fugitive emissions to a level consistent with RACT.

B. Clean up fugitive emissions including corn chaff, bees wings, and other similar material emitted and commodities spilled in the City, on public or private property unless permission to enter private property for such purpose is denied by the property owner or the property owner's legal representative.

Subd. 4. Grain Dryer Specifications. A grain dryer must meet the following design specifications:

A. The perforation of a column dryer screen must not exceed 3/32 inches in diameter; and

B. The emissions from a rack dryer must pass through a screen enclosure which must not exceed 3/32 inches in diameter before discharge to the atmosphere.

Subd. 5. Public Nuisance. Any violation of this ordinance shall be deemed a public nuisance.

Subd. 6. Penalty. A violation of this ordinance shall be a misdemeanor offense, punishable by a fine or imprisonment not to exceed the maximum fine or imprisonment or both provided for by Minnesota state law, plus, in either case, the cost of prosecution.

Subd. 7. Separate Violations. Unless otherwise provided, each act of violation and every day on which a violation occurs or continues constitutes a separate offense.

Subd. 8. Additional Remedies. In addition to other remedies, the City Council may institute appropriate actions or proceedings to prevent, restrain, correct or abate violations or threatened violations of this ordinance. Such actions may include the cleanup of fugitive emissions by the City on behalf of the owner or operator, in which case the City will bill the owner or operator for the costs that the City incurred during the cleanup.

Subd. 9. Compliance Required. It shall be the duty of all architects, contractors, subcontractors, builders, and other persons having charge of any facility, before beginning or undertaking any such work, to see that such work does not conflict with and is not in violation of the terms of this ordinance; and any such person authorizing or directing the performance of any such work in conflict with the terms of this ordinance shall be deemed guilty of a violation hereof in the same manner and to the same extent as the owner or operator of the premises or the person or persons for whom such buildings are erected, repaired, altered, changed, or remodeled in violation hereof.

Subd. 10. Administration. The provisions of this ordinance shall be initially administered by the City Council. The City Council may by resolution, appoint an administrator and one or more inspectors. The administrator shall:

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- A. Enforce and administer this ordinance;
- B. Receive and forward to the City Council copies of all applications for building permits relating to regulated facilities and maintain records thereof;
- C. Receive and maintain records of all inspection reports relating to regulated facilities.
- D. Administer all inspections of facilities and maintain records.
- E. Provide advice and information about this ordinance to the public; and
- F. Undertake such additional duties as may be required by the City Council to administer and enforce this ordinance.

601.10 NOISES PROHIBITED

Subd. 1. 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, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restrictions of the following subdivisions.

Subd. 2. Horns, audible signaling devices, etc. No person shall sound any audible signaling device on any vehicle except as a warning of danger, as required by Minn. Stat. 169.68.

Subd. 3. Exhaust. No person shall discharge the exhaust or permit the discharge of the exhaust of any steam engine, stationary internal combustion engine, motor boat, motor vehicle, or snowmobile except through a muffler or other device that effectively prevents loud or explosive noise therefrom and complies with all applicable state laws and regulations.

Subd. 4. Defective vehicles or loads. No person shall use any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling or other noise.

Subd. 5. Loading, unloading, unpacking. No person shall create loud or excessive noise in loading, unloading or unpacking any vehicle.

Subd. 6. Radios, phonographs, paging systems, etc. No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine, or other device for the production or reproduction of sound in a distinct and loudly audible manner as to unreasonably disturb the peace, quiet and comfort of any person nearby. Operation of any such set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. 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, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of a violation of this section.

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Subd. 7. Participation in noisy parties or gatherings. No person shall participate in any party or other gathering of people giving rise to noise, unreasonably disturbing the peace, quiet or repose of another person. When a police officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped.

Subd. 8. Loudspeakers, amplifiers for advertising, etc. No person shall operate or permit the use or operation of any loudspeaker, sound amplifier, or other device for the production or reproduction of sound on a street or other public place for the purpose of commercial advertising or attracting the attention of the public to any commercial establishment or vehicle.

Subd. 9. Animals. No person shall keep any animal that unreasonably disturbs the comfort or repose of persons in the vicinity by its frequent or continued noise. For purposes of this section, "disturbs the comfort or repose of persons in the vicinity by its frequent or continued noise" means any one of the following:

- A. The animal noise occurs at a time between 10:00 p.m. and 7:00 a.m. and can be heard from a location outside the building and premises where the animal is being kept, and the animal has made such noises intermittently for more than three (3) minutes with one minute or less lapse of time between each animal noise during the three minute period; or
- B. The animal noise can be heard from a one block distance where the animal is being kept, and the animal has made such noises intermittently for more than three (3) minutes with one minute or less lapse of time between each animal noise during the three minute period; or
- C. The animal noise can be heard from a location outside the building and premises where the animal is being kept, and the animal has made such noises intermittently for a period of at least five (5) minutes with one minute or less lapse of time between each animal noise during the five minute period.

Subd. 10. Schools, churches, nursing home, medical center, etc. No person shall create any

excessive noise on a street, alley, or public grounds adjacent to any school, institution of learning, church, nursing home or medical center when the noise unreasonably interferes with the working of the institution or disturbs or unduly annoys its occupants or residents and when conspicuous signs indicate the presence of sch institution.

601.11 HOURLY RESTRICTION ON CERTAIN OPERATIONS

Subd. 1. Recreational vehicles. No person shall, between the hours of 10:00 p.m. and 7:00 a.m., drive or operate any minibike, snowmobile or other recreational vehicle not licensed for travel on public highways.

Subd. 2. Domestic power equipment. No person shall operate a power lawn mower, power

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hedge clipper, chain saw, mulcher, garden tiller, edger, drill or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. snow removal equipment is exempt from this provision.

Subd. 3. Refuse hauling. No person shall collect or remove garbage or refuse in any residential district except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

Subd. 4. Construction activities. No person shall engage in or permit construction activities involving the use of any kind of electric, diesel or gas-powered machine or other power equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

601.12 ENFORCEMENT

Subd. 1. Enforcement duties. The police department shall enforce the provisions of this ordinance.

Subd. 2. Civil remedies. This ordinance may be enforced by injunction, action for abatement or other appropriate civil remedy.

Subd. 3. Noise impact statements. The council may require any person applying for a change in zoning classification or a permit or license for any structure, operation, process, installation or alteration, or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the council. It shall evaluate each such statement and take its evaluation into account in approving or disapproving the license permit applied for or the zoning change requested.

Subd. 4. Criminal penalties. Any violation of this ordinance involving the operation of a motor vehicle is a petty misdemeanor and, upon conviction, the violator shall be punished by a fine not to exceed \$100. Every person who violates any other provision of this ordinance is guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than \$700 or imprisonment for a term not to exceed 90 days, or both. In all cases, the City shall be entitled to collect the costs of prosecution to the extent outlined by law, Rules of

Criminal Procedure, and the Rules of Court. Each act of violation and each day a violation occurs or continues constitutes a separate offense.

6.1.12 Part 2. Shade Tree Diseases

602.01 PURPOSE

This part is enacted to promote public safety, comfort, and general welfare, to conserve and protect property and property values, and to authorize and regulate the planting, maintenance, and protection of shade and ornament trees along the City's streets, roads, and alleys.

602.02 OFFICE OF CITY FORESTER

There is hereby created the office of City Forester. The City Forester shall be appointed by the Park Board with the advice and consent of the Council. The Park Board shall annually include in their budget governing parks and parkways their estimate of the amount of money required by the office of City Forester for the succeeding year.

It shall be the duty of the City Forester to enforce the provisions of this part and the Forester shall have specific charge and shall exercise immediate supervision and control of planting, maintaining, protecting, and removing all trees located on public streets, roads, and alleys.

602.03 DEFINITIONS

Bush or shrub - A low spreading woody plant with several permanent stems.

City Forester - shall mean the City Forester or an authorized representative.

Person - Person includes any person, firm, association, organization, partnership, business trust, corporation, company, city employee, or city department head other than the office of City Forester.

Right of Way - Right of Way shall include all streets, roads, alleys, and the public property adjacent to said street, road, or alley.

Tree - A woody perennial plant with one (1) main stem or trunk having a diameter of at least two (2) inches one (1) foot above the ground and which is capable of attaining a height in excess of ten (10) feet above the ground.

602.04 PLANTING IN PUBLIC RIGHT OF WAY

Subd. 1. Permit required. No person shall plant any tree in any public right of way without having first secured a permit therefor from the City Forester. Each permit shall be valid for a period of not more than sixty (60) days.

Subd. 2. Planting specifications. Unless otherwise authorized in writing by the City Forester, any tree so planted shall be of a kind approved by the City Forester, shall be planted not less than forty-five (45) feet from any

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other tree in said public street, road, or alley, shall be planted in a location approved by the City Forester, shall have a ration of two-thirds ($2/3$) clear stem to one-third ($1/3$) crown, which ratio shall be maintained until such time as a clear stem is eight (8) feet higher than the surrounding ground level.

Subd. 3. Trees prohibited. No person shall plant any of the following kinds of trees in any public right of way: nut bearing, conifers, cottonwood, box elder, willow, poplar, black locust, catalpa, birch, and all trees of the fast growing and nondurable varieties.

602.05 TREES AFFECTING THE PUBLIC RIGHT OF WAY

Subd. 1. Trimming and removal required. The owner or occupant of any private property shall keep all trees standing on said private property so trimmed that no bough or branch thereof shall hang lower than eight (8) feet above the surface of a public sidewalk or twelve (12) feet above the surface of the portion of the street or alley traveled by vehicles. The owner or occupant of any private property shall remove or cause to be removed any dead tree or dead or broken bough or branch on a tree standing on said private property and overhanging any public right of way.

Subd. 2. City Forester's authority. The City Forester is authorized and directed to summarily remove any tree or bough or branch of a tree standing on any private property and overhanging any public right of way, when in his or her judgment, the presence of such tree, bough, or branch constitutes an imminent danger to persons on private or public property.

Subd. 3. Prohibited acts. No person shall perform any of the following acts:

- (a) Maliciously injure any trees growing on any public right of way.
- (b) Allow any wire or other foreign object to touch any tree growing on any public right of way, without first having secured a permit therefor from the City Forester. No permit shall be granted except for good cause.
- (c) Impede the free passage of water and air to any tree growing on any public right of way.

(d) Remove or cause to be removed any tree from any public right of way without having first secured a permit therefor from the City Forester. Each permit shall be valid for a period of not more than sixty (60) days.

Subd. 4. Permissible acts. The owner or occupant of any private premises abutting on any public right of way may maintain and protect any tree standing on said public right of way, providing that in doing so the owner or occupant complies with the provisions of this part.

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602.06 CARE OF RIGHT OF WAY

The owner or occupant of any private premises abutting on any public right of way shall plant, maintain, and care for grass in the earthen border lying between the private premises and the vehicular-traveled portion of the public street or alley.

602.07 TREE DISEASES POLICY

The Council determines that the health of the elm and oak trees within the municipal limits is threatened by fatal diseases known as dutch elm and oak wilt diseases, and other trees may be threatened by other epidemic diseases of shade trees. It further determines that the loss of elm, oak, and other trees growing upon public and private property would substantially depreciate the value of property within the City and impair the safety, good order, general welfare, and convenience of the public. It is the intention of the Council to control and prevent the spread of those diseases, and the following provisions are enacted for that purpose.

602.08 DUTCH ELM DISEASE PROGRAM

The Council intends to conduct a program of plant pest control pursuant to the authority granted by Minn. Stat. 18.022, as amended. This program is directed specifically at the control and elimination of Dutch elm disease fungus or elm bark beetles and is undertaken at the recommendation of the Commissioner of Agriculture. The City Forester shall act as a coordinator between the Commissioner of Agriculture and the Council for this program. In addition to the specific control and elimination of Dutch elm disease fungus and elm bark beetles, this program is also directed at the control and elimination of other fatal tree diseases such as oak wilt.

602.09 DISEASED TREES DECLARED PUBLIC NUISANCE

Subd. 1. Nuisance trees. The following are public nuisances within the City:

(a) Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus *ceratocystis ulmi* (buisman) Moreau or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hylurgopinus Rufipes* (Mars).

(b) Any dead elm tree or part thereof, including logs, branches, stumps, firewood, or other

elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle insecticide.

(c) Any tree or part thereof including logs, branches, stumps, firewood or other oak material which exhibits the symptoms of oak wilt including but not limited to unusual or premature changes in leaf coloration, disease fungus, or fungus bulges in bark.

Subd. 2. Abatement. No person shall permit any public nuisance diseased tree to remain on any premises owned or controlled by that person within the City. Such nuisances may be abated pursuant to 601.05 (Abatement).

6.2.03

602.10 INSPECTION AND INVESTIGATION

Subd. 1. Annual inspection. The City Forester shall inspect all premises and places within the City as often as practical to determine whether any trees are public nuisances or whether a potential hazard to the livelihood of trees in the City exists. The Forester shall investigate all reported incidents of infestation by dutch elm fungus or elm bark beetles or oak wilt.

Subd. 2. Entering private property. The City Forester or a duly authorized agent may enter upon private premises at any reasonable time to carry out the assigned duties.

Subd. 3. Disease diagnosis. Upon finding conditions indicating dutch elm infestation or oak wilt, the City Forester shall immediately send appropriate specimens or samples to the Commissioner of Agriculture for analysis, or take other diagnostic steps recommended by the Commissioner. Except as provided in 602.09 (Diseased Trees Declared Public Nuisance), no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

602.11 ABATEMENT OF DISEASED TREE NUISANCES

In abating diseased tree nuisances, the City Forester shall cause the infected tree or wood to be sprayed, removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of dutch elm disease fungus, elm bark beetles, or oak wilt. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

602.12 PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD

Subd. 1. Choice of actions. Whenever the City Forester finds with reasonable certainty a diseased tree or wood that is a public nuisance, the City Forester shall proceed as follows:

(a) If the danger of infesting other trees is not imminent because of dormancy, the City Forester shall make a written report of the finding to the Council which shall proceed by abating the nuisance as a public improvement under Minn. Stat. Chapter 429, or

(b) Abate the nuisance as provided in subd. 3 of this section.

Subd. 2. Imminent danger. If the City Forester finds that danger of infestation of other trees is imminent, the City Forester shall notify the abutting property owner by certified mail that the nuisance will be abated within a specified time, not less than five (5) days from the date of mailing of such notice. The City Forester shall immediately report such action to the Council and, after the expiration of the time limited by the notice, the City Forester may abate the nuisance.

6.2.04

Subd. 3. Abatement order and notice. Upon receipt of the City Forester's report required by subd. 1 (a) of this section, the Council shall order the nuisance abated by resolution. 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 and published once, no less than one (1) week 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, the Council shall hear property owners with reference to the scope and desirability of the proposed project. The Council shall adopt a resolution confirming the original resolution with modifications it considers desirable and provide for the work by day labor or by contract.

Subd. 4. Costs and assessments. The City Forester shall keep a record of the costs of abatements done under this section and shall report monthly to the City Administrator all work for which assessments are to be made stating and certifying the description of the land, lots, parcels involved, and the amount chargeable to each.

On or before September 1 of each year, the City Administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this Code. The Council may then spread the charges of any portion thereof against the property involved as a special assessment under Minn. Stat. 429.101 and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

602.13 SPRAYING ELM TREES

Subd. 1. Spraying authorized. Whenever the City Forester determines that any elm tree or elm wood within the City is infected with dutch elm fungus, he or she may spray all nearby high value elm trees with an effective elm bark beetle destroying concentrate. Whenever the City Forester determines that any tree is infected with oak wilt, he or she may spray all nearby high value oak trees with an effective fungus destroying concentrate.

Subd. 2. Supervision. Spraying activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commissioner and the Commissioner's agents whenever possible.

Subd. 3. Notice. The notice provisions of 602.12 apply to spraying operations conducted under this section.

602.14 TRANSPORTING ELM OR OAK PROHIBITED

Subd. 1. Transportation prohibited. No person shall transport within the City any bark bearing elm wood, diseased oak wood, or potentially diseased oak wood without having obtained a permit from the City Forester. The City Forester shall grant such permits only when the purposes of this Code will be served thereby.

6.2.05

Subd. 2. Stockpiling permitted. Bark bearing elm wood may be stockpiled within the City limits of the City from September 15 through April 1 of any given year. Any such wood not utilized by April 1 of any year must then be removed and disposed of as provided by this Code.

Subd. 3. Conflicting and inconsistent parts. Provisions of this part that conflict or are inconsistent with any other parts of this Code supersede the other parts except where a provision from another part is more restrictive. Then the more restrictive provision shall apply and control.

602.15 REGULATIONS ADOPTED BY REFERENCE

Sections 1.0109 through 1.0111 of three (3) Minnesota Code of Agency Rules Department of Agriculture, Shade Tree Program (1978 Edition) together with amendments, are hereby adopted by reference, except as hereinafter provided. A copy of these agency rules is on file in the office of the City Administrator.

6.2.06

Part 3. Pigeons

603.01 CONTROL OF PIGEON POPULATION

A serious overpopulation of pigeons exists in the City and adversely affects the health and welfare of the people and causes property damage. Therefore, the City Administrator is authorized to conduct controlled pigeon shoots in accordance with this part and other provisions of the City Code and state and federal laws and regulations.

603.02 PIGEON SHOOT

In organizing and conducting a pigeon shoot, the City Administrator shall be guided by the following rules.

No shooting shall take place on private property without the written consent of the owner of the property.

Only adult members of recognized sporting organizations who are certified by such organizations as being qualified gun handlers shall be permitted to participate unless otherwise authorized by the City Administrator. Authorized participants shall wear armbands issued by the City; the armbands shall be returned to the Police Department on the same day issued. Each participant shall be assigned a specific area and given instructions.

Only shotguns and not larger than No. 7 2 birdshot shall be used, except as otherwise authorized. Firearms using blank ammunition may be used to flush the pigeons from non-shoot areas. All firing shall be directed away from structures and at an elevation of no less than forty-five (45) degrees except as otherwise specifically approved.

Participants shall provide guns, shells and burlap sacks for collecting fallen birds. Each participant shall police his or her area immediately after a shoot, collecting and delivering birds to designated points and removing spent shell casings. Trained dogs may be used for retrieving during and after a shoot.

6.3.01
Part 4. Curfew

604.01 LOITERING OF PERSONS LESS THAN EIGHTEEN YEARS OLD PROHIBITED

Subd. 1. Definitions.

"Curfew hours" means 10:00 p.m. on the day prior to any day in which the St. Charles Public Schools are in session until 6:00 a.m. of the following day, and 11:00 p.m. to 6:00 a.m. on any other day.

"Emergency" means an unforeseen combination of circumstances or the resulting of a state that calls for immediate action. The term includes, but is not limited to; a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

"Guardian" means a person who, under court order, is the guardian of the person of a minor, or a public or private agency with whom has been a minor placed by a court.

"Minor" means any person under 18 years of age.

"Parent" means a person who is a natural parent, adoptive parent, or step-parent of another person, or at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Subd. 2. Loitering Prohibited.

No person less than eighteen (18) years old shall be in, or upon the public streets, alleys, parks, playgrounds, or other public grounds, public places, and public buildings, places of amusement and entertainment, or vacant lots during curfew hours; unless such person is accompanied by a parent, guardian, or other adult person having the care or custody of the person. Each violation of this part shall constitute a separate offense.

604.02 RESPONSIBILITY OF PARENTS

No parent, guardian, or other adult person having the care or custody of a person less than eighteen (18) years old shall permit such person to violate the provisions of this part.

604.03 RESPONSIBILITY OF PERSONS OTHER THAN PARENTS

Subd. 1. Certain operators liable. No person, firm, or corporation operating in charge of any

place of amusement, entertainment or refreshment shall permit any person less than eighteen (18) years old to enter or remain in such a place during curfew hours. This section shall not apply when such person is accompanied by his or her parent, guardian, or other adult person having the care or custody of such person.

6.4.01

Subd. 2. Parent or guardian. Any parent, guardian, or other adult person who violates this part after being notified by the Police Department of his or her child's violation of this part has committed a petty misdemeanor.

Subd. 3. Business establishments. Any person, firm, or corporation operating or in charge of any place of amusement, entertainment, or refreshment who violates this part has committed a petty misdemeanor.

Subd. 4. Aggravated violation of Code. Any person, firm, corporation, parent, guardian or other person having care or custody of a person less than eighteen (18) years old who violates this part more than three (3) times within a one (1) year period or has permitted a violation of this part under circumstances that substantially endanger the health, well-being, and safety of a person less than eighteen (18) years old or the person or property of any individual or any public property shall be deemed to have committed a misdemeanor.

604.04 EXCEPTIONS

It is a defense to prosecution under Section 604.01 Subd. 2 if the minor was:

Subd. 1. Employment. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

Subd. 2. Emergency. Involved in an emergency.

Subd. 3. Public Function/School Social Events. Either (i) attending an official school, religious or other recreational activity supervised by adults and/or sponsored by the City of St. Charles, the St. Charles Public Schools, the Winona County Fair board, a civic organization, or another similar entity that takes responsibility for the minor, or (ii) within forty five minutes after the termination of an official school, religious, or other recreational activity supervised by adults and/or sponsored by City of St. Charles, the St Charles Public Schools, the Winona County Fair board, a civic organization, or another similar entity that takes responsibility for the minor going to or returning home from such activity.

Subd. 4. Parental Errand. On an errand at the direction of the minor's parent or guardian, without any detour or stop.

6.4.02
Part 5. Refuse

605.01 DEFINITIONS

For the purpose of this chapter, the following words and phrases have the meanings given them in this section.

Garbage - organic waste resulting from the preparation of food and decayed and spoiled food from any source.

Refuse - includes garbage and rubbish.

Rubbish - inorganic solid waste including but not limited to tin cans, glass, paper, ashes, sweepings, brush, or leaves, etc.

605.02 GENERAL REGULATIONS

Subd. 1. Unauthorized accumulation. Any unauthorized accumulation of refuse on any premises is a nuisance and prohibited.

Subd. 2. Refuse in streets and other places. No person shall place any refuse in any street, alley, or public place or upon any private property except in proper containers for collection. No person shall throw or deposit refuse in any stream or other body of water.

Subd. 3. Scattering of refuse. No person shall deposit anywhere within the City any refuse in such manner that it may be carried or deposited by the elements upon any public or private premises within the City.

Subd. 4. Burying of refuse; composting. No person shall bury any refuse in the City except in an approved sanitary landfill, but leaves, grass clippings, and easily biodegradable, nonpoisonous garbage may be composted on the premises where such refuse has been accumulated. Refuse may be composted only in a rodent-proof structure and in an otherwise sanitary manner and after the Council or Health Officer gives its approval to such composting and it finds that the composting will be done in accordance with these standards.

Subd. 5. Scavenging. Unauthorized collection of recyclable materials set out for collection is prohibited.

605.03 DISPOSAL REQUIRED

Every person shall dispose in a sanitary manner refuse that may accumulate upon property owned or occupied by such person. Garbage shall be collected, or otherwise lawfully disposed of, at least once each week.

6.5.01

605.04 CONTAINERS

Subd. 1. General requirement. Every householder, occupant, or owner of any residence and any restaurant, industrial establishment, or commercial establishment shall provide on the premises one (1) or more containers conforming to the requirements of subd. 2 of this section to receive and contain all refuse which may accumulate between collections. All normal accumulations of refuse shall be deposited in such containers. Leaves, trimmings from shrubs, grass clippings, shavings, and other rubbish of similar volume and weight may be stored in closed containers not meeting the requirements of subd. 2.

Subd. 2. Container requirements. All owners or occupants of dwellings, places of business, or other structures other than manufacturing or industrial processing operations shall provide and keep on the premises containers sufficient for the storage of all refuse accumulated between collections. Each container shall be water-tight; have a tight fitting lid; be impervious to insects, rodents, vermin, nonabsorbent of moisture; and shall not exceed thirty (30) gallons in size except as otherwise provided in this part. Refuse may be placed in approved plastic bags outside of the required containers on collection days only for a period of not more than twenty-four (24) hours.

Subd. 3. Placement. Containers shall be stored at the rear of premises or buildings in such a manner as to be out of view from the street in front of the premises. In no event shall containers be placed next to a street or curb or otherwise located in such a way as to unreasonably interfere with the use of adjoining property. Containers may be placed in the front of the dwelling or structures after 6:00 p.m. the night prior to the regularly scheduled garbage collection where such placement will facilitate collection. Such containers shall be removed from the front of the dwelling or building before 9:00 p.m. of the day of the collection.

Subd. 4. Temporary containers. Containers of cardboard, pasteboard, paper, or other similar material shall not generally be used to contain refuse. Such containers may on collection days be placed alongside approved containers for collection.

Subd. 5. Multiple dwellings and commercial structures. Structures intended for multiple-family use and commercial structures may provide approved refuse containers which exceed the thirty (30) gallon size limit. Such containers must have water-tight lids; be impervious to rodents, vermin and insects; and be constructed of metal, heavy rigid plastic, or other suitable durable material.

Subd. 6. Industrial and manufacturing operations. Industrial and manufacturing operations which result in the production of industrial waste as defined above shall provide suitable containers for the containment and storage of industrial waste. Said containers may be suitably adapted to the nature of the waste being stored, but must be sufficient to conceal the waste from view and be a suitable container to prevent spreading of the waste, and be of such materials as to not produce unsightly, unhealthy, or

hazardous conditions. Such containers may be stored in such an area as will facilitate the manufacturing process; however, such containers may not be placed in such a way as to interfere with public rights of way or create hazardous, unsightly or unhealthy conditions.

Subd. 7. Violation. Violation of this section shall be a petty misdemeanor.

6.5.02

Part 6. Dangerous Animals

606.01 DEFINITIONS

Animal - Cattle, horses, ponies, mules, sheep, goats, swine, ducks, geese, turkeys, chickens and other domesticated birds, reptiles, and animals. The term animal does not include dogs, or domesticated cats (which are regulated in Chapter 4) or other small animals which are regarded as traditional household pets, as defined herein.

Dangerous animal - Any wild animal, reptile, or fowl which is not naturally tame or gentle but is of a wild nature or disposition and which, because of its size, vicious nature, or other characteristics would constitute a danger to human life or property if it is not kept or maintained in a safe manner or in secure quarters. The term dangerous animal also means and includes any domestic mammal, reptile, or fowl which because of its size or vicious propensity or other characteristic, would constitute a danger to human life or property if it is not kept or maintained in a safe manner or in secure quarters. Guard dogs are specifically excluded from this definition.

Keeping and maintaining - the feeding of or sheltering of animals.

Owner - Any person as defined in this section owning, harboring, keeping or having custody of any animal as defined herein.

Person - Any person, firm, corporation, or other legal entity.

Running at large - Permitting any animal to go on or about any property, streets, alleys, public parks, school grounds, or other public places or any private premises except the premises of the owner. An animal, as defined in this section, is not at large when within an adequate and adequately maintained fenced-in enclosure.

606.02 RESTRICTIONS

Residential areas. No person shall keep or maintain any animal other than traditional household pets within the residential area. The residential area is delineated on a map in City Hall and may be redelineated from time to time by the City Council.

606.03 LICENSE REQUIRED

It is unlawful for any person to keep or maintain any dangerous animal without a special permit therefor from the City. No such permit shall be issued for a period exceeding one (1) year and such permit shall specify the conditions under which such animal shall be kept. The Chief of Police or the Chief of Police's designated agent shall issue a special permit for the purpose of keeping or maintaining a dangerous animal if it is found that:

6.6.01

- (a) The animal is at all times kept or maintained in a safe manner and confined securely so that the keeping of such animal will not constitute a danger to human life or property of others.
- (b) Adequate safeguards are made to prevent unauthorized access to such animals by members of the public.
- (c) The health or well being of the animal is not in any way endangered by the manner of keeping or confinement.
- (d) The keeping of such animal does not constitute a nuisance and will not harm the surrounding neighborhood or disturb the peace and quiet of the surrounding neighborhood.
- (e) The keeping of such animal will not create or cause offensive odors or constitute a danger to public health.
- (f) The quarters in which such animal is kept or confined are adequately lighted, ventilated, and are so constructed that they may be kept in a clean and sanitary condition.
- (g) The applicant for such special permit proves his or her ability to respond in damages up to and including the amount of \$100,000.00 for bodily injury to or death of any person or persons or for the damage to property owned by any other persons which may result from the ownership, keeping, or maintenance of such animal. Proof of ability to respond in damages may be given by filing with the Chief of Police of the Chief of Police's designated agent a certificate of insurance stating that the applicant is, at the time of his or her application, and will be during the period of such special permit, insured against liability and able to respond to such damages, or by posting with the City a surety bond, approved by the City Attorney, in the amount of \$100,000.00. Such certificate of insurance or bond shall provide that no cancellation of the insurance or bond will be made unless ten (10) days written notice is first given to the City.

606.04 INVESTIGATION PERMITTED

The Chief of Police or the Chief of Police's designated agent may investigate any applicant for a special permit under this provision or any enforcement of this provision, and are authorized to consult and seek the advice of the Society for the Prevention of Cruelty of Animals, the Humane Society, any representative of the Animal Control Center of the County, if there is one, or any other individual, agency, organization, or society which may be able to provide information and advice concerning the keeping and maintaining of dangerous animals.

6.6.02

606.05 PERMIT FEE

Upon compliance with all subparts of this ordinance, a special permit shall be issued with an annual fee of Fifty Dollars (\$50.00), provided that such permit shall not be issued for the keeping of more than two (2) dangerous animals at any single location.

606.06 EXCEPTIONS

This ordinance shall not apply to the keeping and maintaining of dangerous animals in the following cases:

- (a) The keeping or maintaining of such animal for exhibition to the public by a traveling circus, carnival, or other exhibit or show holding a permit issued by the Commissioner of Natural Resources pursuant to Minn. Stat. 97.611.
- (b) The keeping and maintaining of such dangerous animals in a licensed veterinary hospital for treatment.
- (c) Dangerous or poisonous reptiles may be kept or maintained by a bona fide educational or medical institution for the purpose of instruction or study, provided such reptiles are securely confined and are properly cared for in a manner satisfactory to the Chief of Police or the Chief of Police's designated agent.

606.07 RUNNING AT LARGE, IMPOUNDMENT

No owner or person shall permit an animal or dangerous animal to run at large or uncontrolled anywhere within the City at any time. When necessary, the Chief of Police or the Chief of Police's designated agent shall impound an animal or dangerous animal running at large. A police officer shall be present for any initial impoundment and is authorized to harm such animal or dangerous animal only if necessary for their or the public's safety.

- (a) Impoundment fees shall be Fifteen Dollars (\$15.00) per day minimum, but not to exceed Twenty-five Dollars (\$25.00) per day. This rate shall be reviewed periodically by the City Council and may be increased when deemed necessary. The owner of an animal or dangerous animal shall be responsible for the impoundment fee.
- (b) The owner of an animal or dangerous animal so impounded shall be responsible for any veterinarian bills incurred during impoundment.
- (c) Any animal or dangerous animal deceased during impoundment will be disposed of according to law. Disposal expenses shall be paid by the owner of the deceased animal or dangerous animal.

6.6.03

(d) If after seven (7) days of impoundment the animal or dangerous animal has not been claimed, the animal or dangerous animal will be appraised for sale, and after proper public notification, the animal or dangerous animal will be sold at public auction. Monies received from the sale at public auction shall be retained by the City to cover impoundment costs, costs of sale, and to assist in their continuing program within the City.

(e) Claiming of Impounded Animals or Dangerous Animals.

(1) Any party claiming an impounded animal or dangerous animal must show proof of ownership satisfactory to the City or its designated agent.

(2) All fees due will be paid in cash before release of animal or dangerous animal.

(3) The claiming party must present a valid driver's license of other acceptable form of identification and must sign for the animal or dangerous animal before it will be released.

606.08 STATUTES ADOPTED BY REFERENCE

Minn. Stat. 343.21 to 343.28 relating to the cruelty of animals are adopted by reference and incorporated herein and made a part of this section as though fully set forth.

606.09 VARIANCES

The Planning Commission as specified in the City of St. Charles Zoning Ordinance shall have the power to vary from the requirements of this ordinance, and to attach such conditions to the variance as it deems necessary to assure compliance with the purpose of the ordinance. Any person requesting a variance from the terms of this ordinance shall submit the following exhibits to the Zoning Administrator:

(a) The names and addresses of all property owners within three hundred (300) feet of the property lines shall be provided so that the Zoning Administrator may provide notification of the variance request.

(b) Submission of such documents including site plans, improvement layouts and specifications, and other documents to completely set forth the variance requested including outlines for the operation and use of the property if the variance is granted. Said documents shall include addressing health, safety, and humane requirements of the animals as well as the effect of the proposal upon residents of the City of St. Charles.

606.10 PROCEDURE

Subd. 1. Procedure. Procedure for obtaining a variance from the regulations of this ordinance is as follows:

6.6.04

- (a) The property owner or agent shall file with the Zoning Administrator an application form together with the required exhibits plus a Ten-Dollar (\$10.00) filing fee.
- (b) The Zoning Administrator shall transmit the application directly to the Planning Commission for consideration at its next regularly scheduled meeting.
- (c) The Planning Commission shall, within thirty (30) days of submittal of all required exhibits, recommend approval, denial, or conditional approval.

Subd. 2. Standards. The Planning Commission may vary the regulations of this ordinance if all of the following requirements are met:

- (a) The variance, including any conditions placed thereon, observes the spirit and intent of this ordinance to promote the public health, safety, and welfare of the citizens of the City of St. Charles as well as insuring the humane treatment of the animals.
- (b) Persuasive proof that the variance is compatible with the surrounding uses and property.

606.11 APPEALS

An appeal from a ruling of the Planning Commission may be taken by the property owner or agent within thirty (30) days after the adverse order utilizing the procedure as follows:

- (a) The property owner or agent shall file a notice of appeal with the Zoning Administrator stating the specific grounds upon which the appeal is made.
- (b) The Zoning Administrator shall transmit the appeal to the City Council and the City Council shall schedule a hearing on the appeal and render its decision by resolution. A copy of the resolution shall be mailed to the applicant by the Zoning Administrator.

606.12 VIOLATIONS, PENALTY

Any person or owner in violation of any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00) for any one (1) offense or by imprisonment in the County jail for a period of not more than ninety (90) days or both such fine and imprisonment.

6.6.05
Part 7. Opening Burning

607.01 OPEN BURNING PROHIBITED

- A. Unless written permission is secured in advance from the designated Fire Warden, no person shall cause, suffer, permit or allow open burning as defined herein on real property under his control.
- B. No person shall kindle a fire upon the land of another without written permission of the owner thereof or his agent.
- C. No person shall kindle a fire on any publicly owned or controlled lot or parcel of land, public bridge, street, sidewalk or other public place which has not been set aside by public authorities for such purpose.

607.02 DEFINITION OF OPEN BURNING

Open burning is defined as burning any matter, including, but not limited to, litter, refuse, garbage, leaves, paper or other combustible material outside of an appliance meeting the Minnesota State Building Code and Minnesota Department of Natural Resources regulations for that intended purpose.

607.03 OUTDOOR FIREPLACE OR FIRE

This section does not prohibit the use of an outdoor fireplace or outdoor fire used exclusively for cooking, warmth or a recreational purpose. Outdoor fireplaces, barbecues or fires shall not be used for the burning of litter, refuse, garbage, leaves, paper, etc. The material to be burned shall be contained within an outdoor fireplace, barbecue or non-combustible fire ring and shall be limited to a pile no larger than three feet in diameter by two feet high. Fires within such ring and outside of an outdoor fireplace or barbecue shall be a minimum distance of 100 feet from all structures and not more than 150 feet from a 20 foot wide access for fire apparatus.

607.04 BONFIRES

Bonfires are defined as the open burning of cut trees, vegetation or lumber for recreational purposes. Unless written permission is secured in advance from a City Fire Warden, no person shall cause or allow any bonfires to occur. Authorization of such permission is subject to the following conditions:

- (a) The location of the fire is not less than 100 feet from any structure and adequate protection is made to prevent the fire from spreading to within 100 feet of any structure.
- (b) Bonfires shall be constantly attended by a competent person until such fire is extinguished. This person shall have buckets, shovels, garden hose, or a fire extinguisher available to prevent the spread of the fire.

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- (c) The Fire Chief may prohibit any bonfire when atmospheric conditions or local circumstances make such fires hazardous.
- (d) Bonfires shall be no larger than six (6) feet in diameter.
- (e) Fuel for bonfires shall consist of unfinished wood only. There shall be no burning of upholstered furniture, trash, tires, plastic or any other material that may violate Minnesota Department of Natural Resources regulations.
- (f) Bonfires shall not be started with the use of flammable or combustible liquids.
- (g) The Fire Chief shall be notified in advance of all bonfires.
- (h) All precautions to protect the safety of the participants shall be taken.

607.05 PERMITTED SITUATIONS

The City Fire Warden may allow a permit to be issued to permit open burning to be conducted in the following circumstances:

- (a) The disposal of trees and brush.
- (b) The disposal of diseased shade trees.
- (c) Bona fide instruction and training of firefighting personnel, as permitted by the State Forestry Department.
- (d) Activities in accordance with accepted agricultural practices.
- (e) The elimination of fire or health hazards that cannot be abated by any other means.
- (f) Ground thawing for utility repair and construction.
- (g) The disposal of trees, brush, grass and other vegetative matter in the development of land and right-of-way maintenance.

607.06 FEE.

The Open Burning Permit Fee shall be established by Council Resolution.

Part 8. Recycling

608.01 PURPOSE

The purpose of this ordinance is to safeguard the health, safety and welfare of the citizens of the City of St. Charles by regulating the storage and disposal of waste materials and by reducing the amount of waste generated by mandatory separation of recyclable materials.

608.02 DEFINITIONS

- (a) Source Separation: To divide or separate out from the main body, to make distinguishable from, to isolate, to seclude.
- (b) Person: Any individual, firm, company, association, society, corporation or group.
- (c) Recyclable Materials: Materials such as newsprint, glass containers, tin containers, aluminum containers, polyethylene terephthalate and high density polyethylene plastic, that are separated from solid waste for the purpose of recycling. These materials are considered to be recyclable materials if appropriate markets exist that will accept these recyclable materials.
- (d) Non-Recyclable Materials: Solid waste, refuse, construction debris and materials for which there are no appropriate existing markets that will accept these materials for recycling.
- (e) Recycling: The process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

608.03 SOURCE SEPARATION OF RECYCLABLE MATERIALS

Every person within the City of St. Charles will be required to separate recyclable materials from non-recycled materials and store such materials in a clean and sanitary manner.

608.04 COLLECTION OF RECYCLABLE MATERIALS

The collection of recyclable materials shall be at least once per month by the collector and transporter of recyclable materials designated by the St. Charles City Council.

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608.05 ANTI-SCAVENGING

Ownership of the designated recyclable materials set out for collection shall be vested in the collector and transporter of recyclable materials designated by the City Council. It shall be unlawful and an offense against this section for any person, firm, or corporation other than the owner, lessee, or occupant of a residential dwelling, to pick up said materials for his/her own use.

6.8.02

Part 9. Dangerous Dogs

609.01 DEFINITIONS

Dangerous Dog - "Dangerous dog" means any dog that has:

- (1) without provocation, inflicted substantial bodily harm on a human being on public or private property.
- (2) killed a domestic animal without provocation while off the owner's property; or
- (3) been found to be potentially dangerous, and after the owner has noticed that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.

Potentially dangerous dog - "Potentially dangerous dog" means any dog that:

- (1) when unprovoked, inflicts bites on a human or domestic animal on public or private property;
- (2) when unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
- (3) has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

Proper enclosure - "Proper enclosure" means securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the animal from escaping and providing protection from the elements for the dog. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the dog to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the dog from exiting.

Owner - "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of a dog.

609.02 DANGEROUS DOGS; REGISTRATION

Subd. 1. Requirement. No person may own a dangerous dog in the City unless the dog is registered as provided in this section.

Subd. 2. Registration. The City shall issue a certificate of registration to the owner of a dangerous dog if the owner presents sufficient evidence that:

- (1) a proper enclosure exists for the dangerous dog and a posting on the premises with a clearly visible warning sign, including a warning symbol to inform children that there is a dangerous dog on the property; and
- (2) a surety bond issued by a surety company authorized to conduct business in the State of Minnesota in a form acceptable to the City in the sum of at least \$50,000, payable to any person

6.9.01

injured by the dangerous dog, or a policy of liability insurance issued by and insurance company authorized to conduct business in the State of Minnesota in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the dangerous dog.

Subd. 3. Warning symbol. If the City issues a certificate of registration to the owner of a dangerous dog pursuant to Subd. 2, the City must provide, for posting on the owner's property, a copy of a warning symbol to inform children that there is a dangerous dog on the property. The design of the warning symbol must be uniform and specified by the commissioner of public safety, after consultation with animal control professionals.

Subd. 4. Fee. The City may charge the owner an annual fee, in addition to any regular dog licensing fees, to obtain a certificate of registration for a dangerous dog under this section.

Subd. 5. Law enforcement: exemption. The provisions of this section do not apply to dangerous dogs used by law enforcement officials for police work.

Subd. 6. Exemption. Dogs may not be declared dangerous if the threat, injury or damage was sustained by a person:

- (1) who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the dog;
- (2) who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the dog; or
- (3) who was committing or attempting to commit a crime.

Subd. 7. Tag. A dangerous dog registered under this section must have a standardized, easily identifiable tag identify the dog as dangerous and containing the uniform dangerous dog symbol, affixed to the dog's collar at all times.

609.03 DANGEROUS DOGS; REQUIREMENTS

An owner of a dangerous dog shall keep the dangerous dog, while on the owner's property, in a proper enclosure. If the dog is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash and under the physical restraint of a responsible person. The muzzle must be made in a manner that will prevent the dog from biting any person or animal but that will not cause injury or interfere with its vision or respiration.

609.04 CONFISCATION

Subd. 1. Seizure. (a) The City shall immediately seize any dangerous dog if:

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- (1) after 14 days after the owner has notice that the dog is dangerous, the dog is not validly registered under section 609.02;

- (2) after 14 days the owner has notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety coverage as required under section 609.02, subd. 2;
- (3) the dog is not maintained in the proper enclosure; or
- (4) the dog is outside the proper enclosure and not under physical restraint of a responsible person as required under section 609.03.

Subd. 2. Reclaimed. A dangerous dog seized under subd. 1 may be reclaimed by the owner of the dog upon payment of impounding and boarding fees, and presenting proof to the appropriate animal control authority that the requirements of sections 609.02 and 609.03 will be met. A dog not reclaimed under this subdivision within seven days may be disposed of and the owner is liable to the City for costs incurred in confining and disposing of the dog.

Subd. 3. Subsequent offenses; seizure. If a person has been convicted of a misdemeanor for violating a provision of section 609.03 or 609.04, and the person is charged with a subsequent violation relating to the same dog, the dog must be seized by the City. If the owner is convicted of the crime for which the dog was seized, the court shall order that the dog be destroyed in a proper and humane manner and the owner pay the cost of confining and destroying the animal. If the person is not convicted of the crime for which the dog was seized, the owner may reclaim the dog upon payment to the City of a fee for the care and boarding of the dog. If the dog is not reclaimed by the owner within seven days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of and the owner is liable to the City for the costs incurred in confining, impounding, and disposing of the dog.

609.05 PENALTY

Any person who violates any provision of section 609.03 or 609.04 is guilty of a misdemeanor.

6.9.03

CHAPTER 7: ZONING

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CHAPTER 7. ZONING

Part 1. General

701.01 SCOPE AND INTERPRETATION

Subd. 1. Scope. The use of all land and every building and the erection or structural alteration of any building or portion of a building in the City shall conform with the provisions of this chapter. Any structure or use lawfully existing on, but not conforming with, the appropriate zoning regulations may be continued subject to 703.03 (Nonconforming Uses).

Subd. 2. Interpretation. The provisions of this chapter shall be interpreted as the minimum requirements for promotion of public health, safety, morals, convenience, and general welfare. Where the provisions of this chapter impose greater restrictions than those of any statute, other ordinance, or regulation, this chapter shall apply. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than this chapter, such restrictions shall apply.

701.02 DEFINITIONS

Subd. 1. Rules. For the purpose of this chapter, verbs in the present tense shall include the future tense; words that are singular shall include the plural form, the word "shall" is mandatory and not discretionary.

Subd. 2. Specific definitions. For the purpose of this chapter, certain words are defined as follows:

Accessory building, structure, or use - A subordinate building, structure, or use which is incidental to the main building, structure, or use on the same lot.

Adult uses - Adult uses include adult bookstore, adult motion picture theatres, adult mini-motion picture theatres, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting businesses, or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas which are capable of being seen by members of the public. Activities classified as obscene as defined by Minnesota Statute 5617.241 are not included.

Specified Anatomical Areas:

- A. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the aureole; and
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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Specified Sexual Activities:

- A. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of sexual relationship, or the use of the excretory functions in the following sexually-oriented

acts or conduct, anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellation, necrophilia, pedophilia, piquerism, sapphism, zooerasty.

- B. Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence.
- C. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation.
- D. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast.
- E. Situations involving a person or persons, any of whom are nude, clad in undergarments, or in sexually revealing costumes; and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint of any such persons.
- F. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being.
- G. Human excretion, urination, menstruation, vaginal, or anal irrigation.

Adult Use/Accessory - The offering of goods and/or services which are classified as adult uses on a limited scale and which are incidental to the primary activity and goods and/or services offered by the establishment. Examples of such items include adult magazines, adult movies, adult novelties, and the like.

Adult Use/Principal - The offering of goods and/or services which are classified as adult uses as a primary or sole activity of a business or establishment and include, but are not limited to, the following:

- A. Adult Use Body Painting Studio - An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of specified anatomical areas.
- B. Adult Use Bookstore - A building or portion of a building used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.
- C. Adult Use Cabaret - A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age, or if

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such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas.

- D. Adult Use Companionship Establishment - A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk, or discussion

between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

E. Adult Use Conversation/Rap Parlor: A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk, or discussion, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

F. Adult Use Health/Sport Club - A health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

G. Adult Use Hotel/Motel - Adult hotel/motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

H. Adult Use Massage Parlor/Health Club - A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

I. Adult Use Mini-Motion Picture Theatre - A building or portion of a building with a capacity for less than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

J. Adult Use Modeling Studio - An establishment whose major business is the provision to customers of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display, specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

K. Adult Use Motion Picture Arcade - Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

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L. Adult Use Motion Picture Theatre - A building or portion of a building with a capacity of fifty (50) or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

M. Adult Use Novelty Business - A business which has, as a principal activity, the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

N. **Adult Sauna** - A sauna which excludes minors by reason of age or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

O. **Adult Steam Room/Bathhouse Facility** - A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing; utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Advertising sign - A sign which directs attention to a business, commodity, service, activity, or entertainment not necessarily conducted, sold, or offered upon the premises where such a sign is located.

Agriculture - Any growing of soil crops in the customary manner on open tracts of land; the raising of animals or poultry. The term includes incidental retail selling by the producer of products raised on the premises, providing that customer parking space is furnished off the public right-of-way.

Alley - A public or private right of way less than thirty (30) feet wide which affords secondary means of access to abutting property.

Apartment - A room or suite of rooms designed for, intended for, or used as a residence for an individual or one (1) family.

Apartment building - Three (3) or more dwelling units in one (1) building.

Block - A tract of land bounded by streets or a combination of streets and public parks, cemeteries, railroad rights of way, shorelines, unsubdivided acreage, or boundary lines of the corporate limits of the City.

Boarding house - Any dwelling other than a hotel or a motel where either meals or lodging are provided for compensation for five (5) or more persons pursuant to previous arrangements.

Building - Any structure for the shelter, support, or enclosure of persons, animals, chattels, or property of any kind; when a structure is divided by bearing walls without openings, each portion of such building is a separate building.

7.1.04

Building height - The vertical distance from the acreage of the lowest and the highest point of that portion of the lot covered by the building to the highest point of the roof which shall be the deck line of mansard roofs and the mean height between eaves and ridge for gable, hip, and gambrel roofs.

Building, main - One (1) of at least two (2) buildings on the same lot to which the other buildings are incidental; contrast with accessory building.

Business sign - A sign which directs attention to a business or profession on a commodity, service, or entertainment sold or offered upon the premises where such a sign is located.

Corner lot - A lot situated at the intersection of two (2) or more streets.

Double frontage lot - An interior lot having frontage on two (2) streets.

Dwelling, multiple family - A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, two (2) family - A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

Dwelling unit - One (1) room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on at least a weekly basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Family - A single individual living alone or any number of individuals related by blood, marriage, or adoption to each other, living together on the premises as a single nonprofit housekeeping unit (except for necessary servants) as distinguished from a group occupying a boarding house, lodging house, hotel, club, fraternity, or sorority house.

Flashing sign - Any illuminated sign on which such illumination is not kept stationary or constant in intensity and/or color at all times where such sign is in use.

Floor area - The sum of the gross horizontal areas of the several floors of a building, measured from the exterior walls, including basements and attached accessory buildings.

Front yard - A yard extending between the side yard lines and lying between the road or highway right of way and the nearest line of the building, for the full width of the lot.

Garage, private - An accessory building for storage of self-propelled vehicles and tools and equipment maintained as incidental to a conforming use of the premises.

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Garage, public - Any premises except those defined as a private garage used for storage or care of self-propelled vehicles and/or where any such vehicles are equipped for operation, repair, or kept for remuneration, hire, or sale.

Half story - A story with at least two (2) opposite exterior sides meeting a sloping roof not more than two (2) feet above the floor of such story.

Home occupation - Any use which is customarily conducted entirely within a dwelling and carried on by family members residing therein, is clearly incidental and secondary to the use of the dwelling for dwelling

purposes, and does not change the character of the dwelling. Except as provided in 702.03 (One and two-family Residence District - Single Family), the following shall not be home occupations; clinics, hospitals, hair salons, mortuaries, motor vehicle repair for hire, welding, animal hospitals and the maintenance of animals.

Hotel - Any building or building portion where lodging is offered to transient guests for compensation and in which there are more than five (5) sleeping rooms, with minimal cooking facilities, if any, in individual dwelling units.

Illuminated sign - Any sign which has characters, letters, figures, designs, or outlines illuminated by lights or luminous tubes as a part of the sign.

Interior lot - A lot other than a corner lot.

Junk yard - Land or buildings where waste, discarded, or salvaged materials are bought, sold, exchanged, stored, cleaned, packed, disassembled, or handled, including but not limited to scrap metal, rags, paper, rubber products, glass products, lumber products and products resulting from the wrecking of automobiles or other machinery.

Loading area - Any area where vehicles are parked or maneuvered for loading or unloading.

Lot - One (1) unit of a recorded plat or subdivision with frontage on a public street and on which is located or will be located a building and its accessory buildings and, including as a minimum, such open spaces as are required by this chapter.

Lot area - The land area within the lot lines.

Lot coverage - The total allowable amount of lot area, expressed as a percentage, which may be covered by a principle use and its accessory structures.

Lot depth - The average distance between the front and rear lot line; the greater frontage of a corner lot shall be its depth and the lesser frontage shall be its width.

Lot width - The horizontal straight line distance between the side lot lines at the setback line.

7.1.06

Mobile home or manufactured home - A detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or on flatbed or other trailers, arriving at the site where it is to be occupied as a dwelling complete and ready for the occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like. A travel trailer is not a mobile home.

Nameplate sign - Any sign which states the name and/or address of the business or occupant of the lot where the sign is placed.

Nonconforming use - A use lawfully in existence on September 8, 1970, (the effective date of Ordinance 225, entitled An Ordinance for the Purpose of Promoting Health, Safety, Order, Convenience, Prosperity, and General Welfare by Regulating the Use of Land, the Location, Area Size, Use and Height of Buildings on Lots and the Density of Population in the City of St. Charles, Minnesota, which is the basis for this chapter) and not conforming to this Code except that such a use is not nonconforming if the use would be authorized under a conditional use permit.

Person - Any individual, firm, partnership, corporation, company, association, joint stock association, body politic, including a trustee, receiver, assignee, or similar representative.

Planning commission - The City Planning Commission.

Premises - A lot or plot with the required front, side, and rear yards for a dwelling or other uses as allowed under this chapter.

Principal use - One (1) of at least two (2) uses of a building or lot to which the other uses are incidental; contrast with accessory use.

Rear yard - An open space unoccupied except for accessory buildings on the same lot with a building between the rear lines of the building and the rear lot line of the lot, for the full width of the lot.

Rotating sign - A sign which revolves or rotates on its axis by mechanical means.

Setback - The shortest horizontal distance between the lot line and the foundation walls of a building or the allowable building line as defined by 703.02, subd. 5 (Yard Regulations).

Side yard - An open, unoccupied space on a lot between the building on the lot and the side line of the lot, for the length of the building only.

Sign - A name, identification, display, illustration, or device which is affixed to or represented directly or indirectly upon a building, structure, or land in view of the general public and which directs attention to a product, place, activity, purpose, institution, or business.

7.1.07

Single family attached dwelling - A building designed or used exclusively for residence purposes by one (1) family and attached on only one (1) side to another single family attached dwelling under separate ownership.

Story - That portion of the building included between the surface of any floor and the surface of the next floor above it, or, if there is no floor above it, the space between the floor and the ceiling next above it.

Street line - The right of way line of a street.

Structural alteration - Any change or addition to the supporting members of a building such as bearing walls, columns, beams, or girders.

Subdivision - A described tract of land which is to be or has been divided into more than two (2) lots or parcels, any of which resultant parcels is less than two and one-half (2 2) acres in area and one hundred fifty (150) feet in width, for the purpose of transfer of ownership or building development, or if a new street is involved, any division of a parcel of land. The term includes resubdivision, and, where it is appropriate to the context, relates either to the process of subdivision or to the land subdivided. Parcels existing on September 8, 1970, may be divided once into two (2) lots, but any further division of this original parcel shall fall within the scope of this definition.

Surface area of sign - The entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface, not including any structural elements outside the limits of such sign and not forming an integral part of the display. Only one (1) side of a double-face or V-type sign structure shall be used in computing total surface area.

Use - The purpose for which land or premises or a building is designated, arranged, or intended, or for which it is or may be occupied or maintained.

Variance - A modification of the provisions of this chapter, as applied to a specific piece of property, except that modification in the allowable uses within a district shall not be considered a variance.

Yard - Any space in the same lot with a building open and unobstructed from the ground to the sky, except for fences six (6) feet or less in height, and trees and shrubs.

7.1.08

Part 2. Zoning

702.01 DISTRICTS

Subd. 1. Establishment of districts. For the purpose of zoning, the City is divided into the following districts:

A-1	Agriculture-Conservation
R-1	One and two-family Residence
R-1M	Modular and Mobile Home
R-1-0	High Density Residence; "0" lot line
R-2	Multiple Family Residence

R-3	Mixed Used Residence
C-1	Central Business
C-2	Service-Commercial
I-1	Light Industrial
I-2	General Industry
PUD	Planned Unit Development

Subd. 2. Zoning map. The boundaries of the districts established by this chapter are shown on the Zoning Map. The Zoning Map and all notations, references, and data shown thereon are adopted and made part of this chapter and are on file, and for public inspection, in City Hall and in the Winona County Office of Register of Deeds. The Zoning Administrator and his or her staff shall maintain the Zoning Map, and amendments to the Map shall be recorded on it within thirty (30) days after the amendments are officially published.

Subd. 3. District boundaries. The boundaries between districts are, unless otherwise indicated, either the center lines of streets, alleys, or railroad rights of way, or such lines extended or lines parallel or perpendicular thereto. Numbers shown on the Zoning Map between a street and a district boundary line indicate that the district boundary line is parallel to the street at a distance from the street equal to the number of feet stated unless otherwise indicated.

Subd. 4. Regulations. The general regulations in 703.02 apply to all districts; however, additional specific regulations are in the following sections.

702.02 AGRICULTURE CONSERVATION DISTRICT (A-1)

Subd. 1. Purpose. The A-1 Agriculture Conservation District is designed to allow productive use of undeveloped land within the corporate limits through agricultural uses, and to reserve natural and wooded areas for passive recreational purposes, especially along the path of the Whitewater River. This District intends to preserve and ensure appropriate use of existing open space within the community.

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Subd. 2. Permitted principal uses. The following principal uses shall be permitted within an A-1 District:

- Cemeteries.
- Farmlands and farmsteads where the principal activity is the production of farm crops or garden products through soil cultivation.
- Public fairgrounds.
- Public nature trails, picnic areas, playgrounds, and rest areas.
- Public parks and recreational uses owned or operated by governmental agencies.

Subd. 3. Permitted accessory uses. The following accessory uses shall be permitted within an A-1 District.

- Detached manufactured homes where the primary income of the principal occupant is derived from agricultural activities. Such manufactured home must be accessory to a farmstead which is a designated principal use and shall be serviced by underground utilities and shall be placed on a permanent frost footing.
- Municipal or county structures for storing park and fairgrounds equipment and furnishings.
- Storage barns, garages, and silos.
- Accessory uses customarily incidental to the uses listed in subds. 2 and 4 of this section.

Subd. 4 Conditional uses. The following uses may be permitted subject to a Conditional Use Permit as regulated in 703.04 (Conditional Use Permits):

- The boarding of horses, provided that no more than one (1) horse will be allowed per three (3) acres of land, adequate fencing must be provided in order to protect adjoining properties and to maintain public safety, and adequate facilities must be constructed in order to provide shelter for the horses.
- Commercial recreational facilities.
- Country clubs.
- Detached single family dwelling units. The applicant must show adequate provision has been made for all utilities and services where municipal facilities are not reasonably available before a permit may be issued.
- Public high schools and athletic fields, especially where such institutions are developed in accordance with the school-park concept as set forth in the Comprehensive Plan and private high schools having an equivalent curriculum.
- Any land use listed in this section which proposes to locate within a three hundred (300) foot setback reservation along, and on either side of, the Whitewater River within the boundaries of the A-1 District.
- Uses similar to those listed in subd. 2 of this section which would be in accord with the purpose and intent of the A-1 District.

Subd. 5. Height, yard setbacks, and lot area and coverage requirements. The height, yard setbacks, and lot area and coverage requirements shall be those set forth in 703.01 (Tabulation of District Provisions and Dimensional Requirements).

7.2.02

702.03 ONE AND TWO-FAMILY RESIDENCE AND SINGLE FAMILY ATTACHED DISTRICT (R-1).

Subd. 1. Purpose. The R-1 Residence District is intended for low-density residential development which will provide space and lot standards that effectively relate to the Comprehensive Plan and policies, and which ensure that adequate municipal facilities will be available at reasonable cost.

Subd. 2. Permitted principal uses.

(a) The following uses shall be permitted in the R-1 Residence District:

- Boarding or lodging houses or tourist homes limited to two (2) accessory units offering accommodations for boarding or lodging purposes.

- Churches, parish houses, convents, or children's nurseries, provided that no building shall be located within fifty (50) feet of any abutting residential lot.
- Grain or vegetable farming or gardening on unplatted land assessed as agricultural, but not involving a sales structure.
- Home occupations as defined in 701.02 (Definitions), and offices of professional persons where such use does not exceed one-third (1/3) of the main floor space of a dwelling, is only in the principal dwelling, and does not employ any persons not residing on the premises.
- Industrial manufactured homes subject to all provisions of this section.
- Individual mobile home stands subject to all the provisions of this section.
- Licensed daycare facility serving twelve (12) or fewer persons.
- One (1) and two (2) family dwellings (such as duplexes, double bungalows).
- Parks and recreational areas owned or operated by government agencies.
- Public elementary or high schools, or private schools with an equivalent curriculum provided that no building shall be located within fifty (50) feet of any abutting residential lot.
- Public golf course, public tennis court (excluding clubhouse).
- Single family detached dwellings.

(b) All manufactured home units shall be served by public sewer, water, and utility systems. Manufactured homes shall be placed on continuous, weight-bearing frost footings that extend completely around the perimeter of the structure.

(c) Single family attached dwellings shall be permitted when all of the following conditions are met:

- (1) The minimum distance between each side yard line and the structure must be ten (10) feet.
- (2) Total lot area must be at least seven thousand, five hundred (7500) sq. ft., with a minimum width of seventy-five (75) ft. and a minimum depth of one hundred (100) ft. All other appropriate R-1 District zoning requirements apply.

7.2.03

(3) The applicant records a covenant and deed restriction on all properties, which will abut the common lot line (zero lot line). Said covenants and deed restrictions shall provide the following:

- 1) Access to the abutting property for the adjacent property owner and/or the owner's representative for construction, reconstruction, repair or maintenance of either side of the total property;
- 2) Easements for necessary encroachments for footings, eaves, and provide for mutual perpetual easements in the event of an encroachment by the party wall; and

3) Restrictions to limit changes of color, material, and design of the dwelling, as to be compatible with the attached unit; and

(d) Two (2) off-street parking spaces which may be in tandem.

Subd. 3. Permitted accessory uses. The following shall be permitted accessory uses in the R-1 Residential District:

- Buildings and land uses customarily incidental to the uses permitted by subds. 2 and 4 of this section. Any accessory use shall be located on the same lot as the principal use.
- Maintaining dogs, cats, or other household pets, subject to licensing requirements, health regulations, and other applicable City Code provisions;
- Off-street parking and loading-unloading facilities as regulated by 703.02, subd. 12 (Off-Street Parking and Loading-Unloading Space Requirements).
- Parking one (1) commercial motor vehicle of not more than twenty-six (26) feet in length used by the resident occupant, and parking of passenger cars, but not including the storage of vehicles which are inoperable or for sale or rent.
- Private garages, carports, boathouses, and stables, one (1) of each designation subject to yard and setback requirements of this chapter;
- Private swimming pools when completely enclosed within a chain link or similar fence five (5) feet or more in length;
- Signs as regulated by 703.02, subd. 11, (Sign Requirement).

Subd. 4. Conditional uses. The following uses may be permitted subject to the issuance of a Conditional Use Permit as provided in 703.04 (Conditional Use Permits):

- Boarding or lodging houses and tourist homes offering accommodations for from three (3) to eight (8) persons;
- Cemetery;
- Golf clubhouse, country club, public swimming pool, private swimming pool serving more than one (1) family, provided that no principal structure or use shall be located within fifty (50) feet of any lot in a residential district;

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- Licensed daycare facilities serving thirteen (13) or more persons.
- Mobile home park developments subject to the special conditions and requirements as set forth in 703.02, subd. 13, (Minimum Mobile Home Park Requirements);
- Municipal administration buildings, police and fire stations, museums, art galleries, libraries, post offices, and other municipal service buildings, except those customarily considered industrial in use, providing that no buildings shall be located within fifty (50) feet of any lot in a residential district;
- Retail shops, services, and offices serving neighborhood needs of an essential or convenience nature. Such determination shall be the responsibility of the Council when the application for the Conditional Use Permit is reviewed.
- Water supply buildings, reservoirs, wells, elevated tanks, and similar essential public utility and service structures.

Subd. 5. Design criteria. All dwellings in the R-1 District shall meet the following design criteria:

- (a) A permanent frost footing shall form a complete enclosure under exterior walls.
- (b) The minimum width of the structures shall be twenty (20) feet measured from the face of the exterior walls on the narrowest side.
- (c) All mobile homes installed after September 8, 1970, shall be anchored by means of adequate tiedowns to prevent uplift, sliding, rotation, and overturning. Anchoring systems shall be able to withstand a lateral force of fifteen (15) LB/sq.ft. and an uplift of nine (9) lb./sq.ft;

Subd. 6. Height, yard setbacks, and lot area and coverage requirements. The height, yard setbacks, and lot area and coverage requirements shall be as set forth in 703.01 (District Provisions and Dimensional Requirements).

702.04 MODULAR AND MOBILE HOME RESIDENCE DISTRICT (R-1M)

Subd. 1. Purpose. The R-1M District is intended for medium density residential development utilizing modular and mobile home concepts on those areas where such development fits the Land Use Plan and Policies, and which ensure that adequate municipal facilities will be available.

Subd. 2. Permitted principal use. Within an R-1M District, unless otherwise provided by this Code, no building or land shall be used except for modular and mobile homes established for single family residence when erected on permanent foundations and when meeting applicable current National Fire Protection Association and Uniform Building Codes.

Subd. 3. Permitted accessory uses. The permitted accessory uses in the R-1M Modular and Mobile Home Residence District are those uses permitted in 702.03, subd. 3 (Permitted Accessory Uses).

Subd. 4. Height, yard setbacks, lot area requirements. The height, yard setbacks, and lot area and coverage requirements shall be as set forth in 703.01 (District Provisions and Dimensional Requirements).

7.2.05

702.05 MULTIPLE FAMILY RESIDENCE DISTRICT (R-2)

Subd. 1. Purpose. The R-2 District is intended for apartments, row houses, townhouses, dormitories, and other buildings of three (3) or more dwelling units in those areas where such development fits the Comprehensive Plan, where properly related to other land uses and thoroughfares, and where adequate municipal utilities are available.

Subd. 2. Permitted principal uses. Within an R-2 District, unless otherwise provided by this chapter, no building or land shall be used except for the following:

- Boarding or lodging houses and tourist homes having accommodations for three (3) to eight (8) persons.
- Hospitals, convalescent, and nursing homes, low income housing, or elderly projects.
- Individual mobile home stands subject to all provisions of this section.

- Licensed daycare facility serving sixteen (16) or fewer persons.
- Medical and dental offices and clinics.
- Multiple dwellings, apartment buildings, townhouses, and group or row houses (attached) each consisting of three (3) to twelve (12) dwelling units.
- Private clubs or lodges, except those whose chief activity is a service customarily carried on as a business for profit.
- Religious, educational, charitable, or philanthropic institutions.
- Signs as regulated in 703.02, subd. 11 (Sign Regulations).
- Any use permitted in 702.03, subd. 2 (Permitted Principal Uses in the R-1 Residence District) as regulated therein, except grain or vegetable farming or gardening shall be limited to an accessory use located on the same lot as the principal uses.

Subd. 3. Permitted accessory uses. The following shall be permitted accessory uses in the R-2 Residence District:

Uses as permitted in 702.03, subd. 3 (Permitted Accessory Uses in the R-1 Residence District).

Subd. 4. Design criteria. All dwellings in the R-2 District shall meet the following design criteria:

- (a) A permanent frost footing shall form a complete enclosure under exterior walls.
- (b) The minimum width of the structures shall be twenty (20) feet measured from the face of the exterior wall on the narrowest side.
- (c) All mobile homes installed after September 8, 1970, shall be anchored by means of adequate tiedowns to prevent uplift, sliding, rotation, and overturning. Anchoring systems shall be able to withstand a lateral force of fifteen (15) lb./sq.ft. and an uplift of nine (9) lb./sq.ft.

7.2.06

702.06 MIXED USE RESIDENTIAL (R-3)

Subd. 1. Purpose. The Mixed Use Residential District is designed to accommodate that area surrounding the Central Business District where there exists the possibility of conflicting uses between commercial and residential development. It is the purpose of this District to minimize or eliminate those conflicts.

Subd. 2. Permitted principal uses. The following uses shall be permitted in the R-3 Mixed Use Residential District:

- Single-family detached dwelling.
- One and two family dwellings (such as duplexes and double bungalows).
- Boarding or lodging houses or tourist homes limited to six (6) accessory units offer accommodations for boarding or lodging purposes.
- Churches, parish houses or children's daycare facilities.

- Home occupations as defined in 701.02 (Definitions) and offices of professional persons where such use does not exceed one-third (1/3) of the main floor space of a dwelling, is only in the principal dwelling, and does not employ any persons not residing on the premises.

Subd. 3. Permitted accessory uses. The following shall be permitted accessory uses:

- Buildings and land uses customarily incidental to the uses permitted by Subds. 2 and 4 of this section.
- Off-street parking and loading-unloading facilities as regulated by 703.02, Subd. 12 (Off-Street Parking and Loading-Unloading Space Requirements).
- Private garages and carports subject to yard and setback requirements of this chapter.
- Signs as regulated by 703.02, Subd. 11, (Sign Regulations).

Subd. 4. Conditional uses. The following uses may be permitted subject to the issuance of a Conditional Use Permit as provided in 703.04 (Conditional Use Permits):

- Retail sales
- Personal and professional services.
- Offices.
- Restaurants.
- Multi-Family units (three or more dwelling units).

7.2.07

702.07 PLANNED UNIT DEVELOPMENT (PUD)

Subd. 1. Purpose. The planned unit development (PUD) provisions are intended to encourage the following:

- (a) More efficient use of land and public services;
- (b) Pleasantness or desirability of land by allowing, under certain circumstances, a more flexible means of land development and redevelopment than is otherwise permissible under the lot-by-lot restrictions of each use district. The uniqueness of a PUD may necessitate Council action modifying or waiving certain provisions of the zoning code and subdivision regulations. PUD is for use primarily in two (2) situations:
 - (1) Vacant land: Areas of substantial open land where strict pre-regulation may limit good urban planning, may restrict the full achievement of the Comprehensive Plan, or may not

meet those changes in technology and demand that would be consistent with the best interests of the entire City;

(2) Built-up and aged areas: Areas of the City needing rehabilitation and redevelopment, including areas which may be deficient in public facilities and services, where private investment should be encouraged to contribute to that redevelopment; and in recognition that such necessary redevelopment cannot be expected to take place in strict accordance with those uniform regulations appropriate to more viable and established areas of the City.

Subd. 2. Restrictions.

(a) A tract of land to be developed as a PUD shall be under the control of one (1) of the following:

- (1) a single owner; or
- (2) a group of land owners, acting through a corporation, where each owner agrees in advance to be bound by the conditions and regulations which will be effective within the district and to record such covenants, easements, and other provisions with the County Registrar of Deeds.

(b) Each PUD shall be designated as one (1) of the four (4) following types according to the principle use by area permitted in the existing zoning district or districts in which the land proposed for such unit is located: residential (PUD-R), commercial (PUD-C), industrial (PUD-I), or institutional (PUD-INST).

(c) All PUDs shall be so designated and numbered in sequence on the zoning map.

(d) In open land areas, no residential or industrial PUD shall be less than three (3) acres and no commercial or institutional PUD shall be less than two (2) acres. In areas occupied by

7.2.08

buildings or areas that are vacant or undeveloped but are surrounded to a major extent by land occupied by buildings, no PUD shall be less than thirty-two thousand (32,000) square feet.

(e) A PUD may include a mixture of residential, commercial, industrial, and institutional uses, or any combination. The extent of each use shall be determined by the type of PUD proposed and the procedures in subd. 3 of this section. Uses other than the principal use by area permitted in the existing zoning district or districts in which the proposed PUD land is located shall not result in undue adverse effect on surrounding areas, and shall be consistent with the intent of this section and the concept of the proposed PUD.

Subd. 3. Procedures.

(a) Pre-application: The applicant shall meet with a member of the Planning Department to discuss the procedures and requirements governing approval of PUDs. In some instances, a conference with the City Planning and Zoning Commission may be necessary.

(b) Preliminary plan, submission: The applicant shall submit to the Zoning Administrator an application for a zoning amendment with a fee of One Hundred Ninety Dollars (\$190.00) plus Three Dollars (\$3.00) for each proposed unit. The application shall be accompanied by a preliminary plan showing the following:

- (1) Locations and dimensions of the area;
- (2) Exact sizes and location of existing and proposed buildings;
- (3) Existing and proposed uses of structures and open areas;
- (4) Exterior lighting plan;
- (5) Landscaping plan;
- (6) Grading plan;
- (7) Utility plan;
- (8) Construction schedule or timetable indicating the starting date and completion date;
- (9) Off-street parking, including parking for the handicapped when required (roadways designated for parking shall be designated "no parking");
- (10) Exterior view of buildings;
- (11) Table summarizing the area of land devoted to various uses including floor area, open space, living space, recreation space; type of construction for driveways and walkways;
- (12) Playground equipment, mailboxes, air conditioning, trash receptacles, and similar objects;
- (13) Whether units will be rented or sold and how land will be transferred;
- (14) When a plat will be submitted for approval;
- (15) Protective covenants and homeowners association by-laws;
- (16) Optional features, if any;
- (17) Information relating to topography, accesses, surrounding land uses;

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- (18) Other matters, including documents showing ownership and a preliminary plat, if requested by the Zoning Administrator.
- (19) If the plan will be implemented in increments, a schedule showing the time within which application for approval of various parts will be filed shall also be attached.

(c) Preliminary plan waiver: Portions of the preliminary plan procedures may be waived at the Commission's discretion on the Zoning Administrator's recommendation when the plan, in whole or in part, is simple and does not warrant following all preliminary plan procedures.

(d) Preliminary plan review: Upon receiving the application and preliminary plan, the Zoning Administrator shall distribute the plan to other departments and agencies for review of compliance with applicable standards and regulations. The Zoning Administrator shall recommend to the Commission, approval of the proposal in the form submitted, approval with specifications, or disapproval. The recommendations of the

Zoning Administrator shall include findings of fact regarding, but not limited, to the following:

- (1) The extent to which the plan departs from the zoning and subdivision regulations otherwise applicable to the subject property, including, density, bulk, and use, and the reasons why such departures are or are not deemed to be in the public interest.
- (2) The manner in which the plan does or does not make adequate provisions for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation, and visual enjoyment;
- (3) The nature and extent of open space, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and function of the open space in terms of the densities proposed in the plan;
- (4) The effect, beneficial or adverse, of the PUD upon the neighborhood in which it is proposed to be established.
- (5) If a plan proposes development over a period of years, the terms and conditions proposed must be found to protect and maintain the plan's integrity (this finding shall be made only after consultation with the City Attorney);
- (6) In areas occupied by buildings or areas that are vacant or undeveloped but are surrounded to a major extent by lands occupied by buildings, the suitability of the proposed structures in relation to existing structures which will remain and anticipated future development of the area;
- (7) Conformity with all applicable provisions of this chapter and the Comprehensive Plan.

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- (e) Public hearing - Preliminary Plan: Within thirty (30) days after receiving the Preliminary Plan, the Commission shall hold a public hearing on the application after giving notice as provided in 703.08, subd. 2 (Amending the Zoning Ordinance - Procedure). Following the public hearing, the Commission shall submit its recommendations to the Council. The Commission may recommend disapproval.
- (f) Council action preliminary plan: The Council shall tentatively approve the plan, with or without modifications, or disapprove the plan.
- (g) Final plan submission: Upon tentative approval of the preliminary plan, the applicant shall submit a final plan of that segment to be developed first.
- (h) Final plan - Commission action: The final plan and, if required, final plat shall be submitted with written application for final plan and plat approval, at least ten (10) days before the Commission meeting at which consideration is requested. Approval or disapproval of the final plan and plat will be conveyed to the subdivider in writing ten (10) days after the Planning Commission meeting at which the plan and plat are considered. If

the plan and plat are disapproved, the subdivider shall be notified of the reason for such action and the requirements for Commission approval.

(i) Final plat approval - Council action: After review and approval of the final plan and plat by the Planning Commission, the final plan and plat and the recommendations of the Planning Commission shall be submitted to the Council for approval. At least one (1) public hearing shall be held on the plan and plat after notice of the time and place has been published once in the official newspaper at least ten (10) days before the day of the hearing. At the hearing, all persons interested in the plan and plat shall be heard and the Council may approve or disapprove the plan and plat. If the Council wishes to approve the plan and plat, the Council shall do so by resolution. The resolution shall provide for accepting all streets, alleys, easements or the public ways, and parks, or other open spaces dedicated to public purposes, subject to conditions or restrictions imposed by the Council, and the area of land involved shall be redesignated as a PUD by ordinance. If the plan and plat are disapproved, the basis of the disapproval shall be set forth in the Council proceedings and reported to the persons applying for approval.

(j) Effect of approval: The final approved plan and the conditions and restrictions imposed, if any, shall govern and control the use and development of the land involved, provided that general zoning regulations which applied to the land prior to approval of the plan and which are not inconsistent with the plan shall continue to apply.

No building permit shall be issued for any structure within the district until the Zoning Administrator certifies the structure conforms to the provisions of the final approved plan and other applicable zoning requirements.

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Subd. 4. Criteria and standards.

(a) Preparation of plans: The applicant is encouraged to have the necessary documents and supporting evidence prepared and endorsed by a qualified professional team consisting of the following:

- (1) A planner qualified as a planner-in-charge by the Minnesota State Planning Agency;
- (2) A registered architect;
- (3) A registered land surveyor if the PUD requires the subdivision of land and the installation of public site subdivision of land and the installation of public site improvements, as required by Minn. Stat. 325.03, subd. 3;
- (4) A registered civil engineer, if the PUD requires subdividing land and improvements.

(b) Land use; intensity of development: Dimensional requirements are as stated for the appropriate District in 703.01 (Tabulation of District Provisions and Dimensional Requirements), and as outlined below:

(1) Site Coverage - Permitted maximum site coverage in the planned development zone shall not exceed the maximum permitted site coverage in 703.01; however, site coverage may be calculated on the total land involved in the planned development.

(2) Density - Permitted maximum residential densities in the planned development zone shall not exceed the permitted maximum densities in 703.01; minimum land area requirements for the total number of dwelling units shall be provided as required in 703.01.

(3) Lot Area - The minimum lot area requirements in the planned development zone shall not exceed the minimum lot area requirements in 703.01, except the average net area of all lots within a variable lot size development shall not be less than the minimum lot size for the zone within which the development is located.

(c) Plats: All PUDs shall be platted or replatted as required in the Subdivision Regulations.

(d) Occupancy of PUD: Occupancy and use of buildings and structures in a PUD may be permitted when the buildings and structures have been completed to the satisfaction of the Building Inspector and the access drives and parking areas are sufficiently completed to support emergency vehicles at all times and are kept in a dust-free condition. Final surfacing of streets, roadways, parking areas, and landscaping may be deferred over winter months upon written agreement to and approval of the Zoning Administrator.

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Subd. 5. Administration.

(a) Administrative standards and procedures: The Commission may adopt specific rules and regulations from time to time and place them on public record in the City Administrator's office.

(b) Annual review: The Zoning Administrator shall review each PUD at least once each year and shall make a report through the Commission to the Council on the development status in each PUD. If development is not progressing reasonably well and according to schedule, the owner shall submit a statement to the Zoning Administrator setting forth the reasons for the lack of progress. If the Council finds the development has not occurred according to the established development schedule or does not appear reasonable to the Council, the Council may initiate rezoning to remove the PUD. In any event, the Council need not find the rezoning to a PUD was in error.

(c) Changes: Changes in the final plat involving the location and alignment of structures not exceeding ten (10) feet in any direction and other minor revisions in the shape of structures may be authorized by the Zoning Administrator for good cause, provided the changes are within the maximum allowable floor area limits, are in harmony with the

intent of the concept statement as to uses and densities of use, and the architectural style has been approved in writing by the PUD's homeowners association or other ownership body. All other changes shall be made only after public hearings by the Commission upon public notice at least once in the official newspaper ten (10) days before the day of the hearing, and any changes approved by the Council shall be by resolution as an amendment to the final plan.

702.08 C-1 CENTRAL BUSINESS DISTRICT

Subd. 1. Purpose. The Central Business District is designed to provide a compact shopping area for the location of offices and retail stores necessary for servicing the community and surrounding areas and is closely aligned with the Comprehensive Plan and which maintains a mutually compatible relationship among the various types of uses.

Subd. 2. Permitted principal uses. The following uses shall be permitted:

- Adult use/accessory businesses.
- Amusement and recreation establishments such as indoor theaters, swimming pools, skating rinks, billiard halls, bowling alleys, and similar commercial recreation facilities.
- Antique shops.
- Appliance stores.
- Art and school supply stores
- Art studios, art galleries, art sales and supplies stores.

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- Bakeries, provided the room or rooms containing the preparation and baking process shall not have a gross floor area in excess of two thousand four hundred (2,400) square feet.
- Banks, savings institutions.
- Barber shops.
- Beauty parlors.
- Book and stationery stores.
- Camera and photo stores.
- Candy and ice cream stores.
- Car dealers of new or used cars provided cars in enclosed showrooms only.
- Carpet and rug stores.
- Clinics, for treating persons and animals, excluding training runs, stables, or kennels.
- Clothes pressing and tailoring shops.
- Clothing stores.
- Club and lodge halls.
- Decorating studios.
- Department stores.
- Drug stores.
- Dry cleaning and laundry receiving and pick-up stations, excluding laundering and dry cleaning processing and self-service laundromats.
- Dry goods or notions stores.
- Electrical appliance sales and service.

- Florist shops.
- Food, meat, fish, bakery and delicatessen stores.
- Furniture stores.
- Gift shops.
- Grocery, fruit, or vegetable stores.
- Hardware stores.
- Hobby and toy stores.
- Jewelry stores.
- Libraries.
- Liquor stores or taverns.
- Loan offices and finance companies.
- Locksmith shops.
- Medical and dental clinics and complexes.
- Marine or boat sales and display; trailer sales; farm implement sales, provided sales and displays are in enclosed structures only.
- Mortuary or undertaking establishments.
- Motels and hotels.
- Newsstands and tobacco shops.
- Offices, professional.
- Optical stores.
- Paint and wallpaper stores.

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- Parking lots, ramps, and garages other than those accessory to a principal use for the parking and storage of private passenger vehicles only.
- Pet shops.
- Phonographs, record, and sheet music stores.
- Photography studios.
- Physical culture and health services, reducing salons, and masseurs.
- Public parks, pedestrian malls, and recreation areas and structures.
- Post offices.
- Plumbing sales stores.
- Public safety and utility buildings and structures, community centers.
- Radio and television sales and repair stores.
- Restaurants, excluding drive-in restaurants.
- Schools: music, business, technical and vocational.
- Sewing machine sales and service shops.
- Shoe sales and repair shops.
- Sporting goods stores.
- Souvenir and rock shops.
- Stock and brokerage firms.
- Tourist information center and displays.
- Telephone and telegraph offices, telephone booths.
- Theatre, excluding drive-in theatres.
- Ticket agencies.

- Travel bureaus and transportation ticket offices.
- Variety, gift, notion, and soft good stores.
- Vending machines which are coin or car operated, only when incorporated into a structure.

Subd. 3. Permitted accessory uses. The following shall be permitted accessory uses:

- Accessory uses customarily incidental to the uses listed in subds. 2 and 4 of this section.
- Off-street parking and loading as regulated by 703.02, subd.12.
- Signs as regulated by 703.02, subd. 11.

Subd. 4. Conditional uses. The following uses may be permitted subject to the issuance of a Conditional Use Permit as provided in 703.04:

- Any business activity of the same general character as those listed in subd. 2 of this section.
- Drive-in restaurant, provided sufficient off-street parking is provided; lighting and any resultant glare shall be directed away from residential districts, and the surface of the parking area shall be dust-free and well drained.
-
- Dwelling units where accessory and attached to a principal use as listed in subd. 2 of this section, or second floor dwelling units unsuitable for commercial use.
- New and used car display lots, providing the surface of the parking and display area is dust-free and well drained, and a decorative screen at least six (6) feet in height and of at least ninety percent **7.2.15** (90%) opacity shall be placed on all sides abutting any residential district boundary. Such requirement may be modified only where said screen would interfere with visibility for traffic movement. In all cases, artificial lighting and glare shall be directed away from any public right of way and any Residential District.

Subd. 5. Height, yard setbacks, and lot coverage requirements. The height, yard setbacks, and lot coverage requirements shall be those stated in 703.01 (District Provisions and Dimensional Requirements).

Subd. 6. Additional district regulations.

- (a) Lighting (glare) shall be directed away from public rights of way and residential districts.
- (b) An awning, canopy, or marquee suspended from a building may extend over the public right of way ten (10) feet but not within two (2) feet of the curb line. Such structures shall be not less than eight (8) feet above the sidewalk or ground grade line, and the owner of such structure shall be responsible for the awning's, canopy's, or marquee's structural safety.
- (c) All uses within the C-1 District shall be subject to the Performance Standards as stated in 702.09, subd. 6 (Service Commercial District - Performance standards).

702.09 SERVICE COMMERCIAL DISTRICT (C-2)

Subd. 1. Purpose. The Service Commercial District is intended to provide areas suitable for commercial enterprises which require special traffic access considerations due to their nature of use. This district will guide the development of these uses in a manner which will be beneficial to both the residents and the land use growth pattern of the City by avoiding costly strip development.

Subd. 2. Permitted principle uses. The following shall be permitted:

- Adult use/accessory businesses.
- Armories, convention halls, or exhibition halls.
- Automobile, truck and farm implement dealers, new and used vehicle lots, boat, trailer, and mobile home display lots and structures.
- Bus stations.
- Commercial recreational facilities such as bowling alleys, miniature golf and driving ranges, skating arenas.
- Commercial retail and service establishments, greenhouses, and produce sales.
- Enclosed warehousing and storage structures.
- Lumber yards, laundromats.
- Motels, hotels, and automobile trailer courts (overnight or temporary stay only).
- Municipal service and utility buildings to include water treatment plant, transformer, and relay stations, fire stations, highway department vehicle and equipment garages.
- Railway and rights of way, fire stations, excluding freight yards.

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- Service stations and repair garages for motor vehicle; tire and battery sales.
- Taverns and restaurants, including drive-in facilities.
- Truck and machinery sales and service.
- Wholesaling and distributing operations.
- Any use permitted in 702.08, subd. 2 (Central Business District - Permitted Principal Uses).

Subd. 3. Permitted accessory uses. The following uses shall be permitted accessory uses within a C-2 District:

- Off-street parking and loading as regulated in 703.02, subd. 12, General Regulations.
- Signs as regulated in 703.02, subd. 11 (Sign Regulations).
- Uses as customarily incidental to the uses listed in subds. 2 and 4 of this section. All accessory uses shall be on the same lot as the principal use.

Subd. 4. Conditional uses. The following uses may be permitted subject to issuing a Conditional Use Permit as provided in 703.04:

- Any commercial use of the same general character as those listed in subd. 2 of this section.
- Single and multiple family dwellings as regulated in 702.03, (One- and two-family Residence and Single Family Attached District - R-1).

Subd. 5. Height, yard setback, and lot coverage requirements. The height, yard setbacks, and lot coverage requirements for the C-2 District shall be those stated in 703.01 (District Provisions and Dimensional Requirements).

Subd. 6. Performance standards. To insure compliance with the performance standards set forth below, the Council may require the owner or operator of any permitted use to have made such investigations or tests to show adherence to the performance standards. Such investigation or tests shall be carried out by an independent testing organization selected by the Council. Such investigations or testing shall be ordered by the owner or operator. The cost of the investigations and tests shall be shared equally by the owner or operator and the Council, unless the investigation or tests disclose noncompliance with the performance standards, in which case the owner or operator shall be responsible for the entire cost.

(a) Noise:

At any property line the sound pressure level of noise radiated from a permitted operation shall not exceed the values given in Table 1 below. The sound pressure level shall be measured with a Sound Level Meter and an associated Octave Band Analyzer, both of which are manufactured to specifications published by the American Standard Specifications for an Octave Band Filter Set for the Analysis of Noise and Other Sounds, Z24.10-1953, American Standard Association, Inc., New York, New York. Measurements shall be made using the flat network of the sound level meter.

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TABLE 1

<u>Frequency Band</u> <u>Cycles Per Second</u>	<u>Maximum Permitted</u> <u>Sound Level (Decibels)</u>
20 - 75	72
75 - 150	67
150 - 300	59
300 - 600	52
600 - 1,200	46
1,200 - 2,400	40
2,400 - 4,800	34
Over 4,800	32

(b) Odors:

No noxious odors shall be detectable beyond the limits of the property.

(c) Exterior Lighting:

Any lights used for exterior illumination shall direct light away from adjoining property. Glare, whether direct or reflected, such as from floodlights, spotlights, or high-temperature processing, and as differentiated from general illumination, shall not be visible beyond the limits of the property.

(d) Vibration:

No vibration shall be discernible to the human sense of feeling for an accumulated total of three (3) or more minutes during any hour at any property line.

(e) Smoke:

The Ringelman Smoke Chart, published by the United States Bureau of Mines, shall be used for measuring smoke at the point of emission. Smoke not darker or more opaque than No. 4 on the chart may be emitted, except that smoke darker or more opaque than No. 2 on said chart may not be emitted for period longer than four (4) minutes in any thirty (30) minute period. These provisions, applicable to visible gray smoke, shall also apply to visible smoke of a different color and equivalent apparent opacity.

(f) Dust:

Solid or liquid particles shall not be emitted at any point in concentrations exceeding 0.3 grains per cubic foot of the conveying gas or air. For measurements of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of five hundred (500) degrees Fahrenheit and fifty percent (50%) excess air.

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(g) Fumes or Gases:

Fumes or gases shall not be emitted at any point in concentrations or amounts that are noxious, toxic, or corrosive. The values given in the following tables in the Air Pollution Abatement Manual, Chapter 5, "Physiological Effects", by the Manufacturing Chemists' Association, Inc., Washington, D.C., are guides for determining permissible concentration or amounts:

Table 1 (Industrial Hygiene Standards - Maximum Allowable Concentration for eight (8) hour day, five (5) days per week,

Table III (Odor Thresholds),

Table IV (Exposure to Substances Causing Pain in the Eyes), and

Table 1 (Exposure to Substances Causing Injury to Vegetation).

Detailed plans for the elimination of fumes or gases may be required before a building permit is issued.

(h) Sewer and Water:

The design and construction of water supply facilities and treatment of all sewage and waste shall comply with the City, County, and State health standards and requirements.

Subd. 7. Regulations on screening, landscaping, lighting, storage and outdoor displays.

(a) Screening:

All principal and accessory uses, except business signs, which are situated within fifty (50) feet of a residential district, shall be screened from such district by a wall or fence of not less than ninety percent (90%) opacity and between five (5) and seven (7) feet in height above the level of the residential district property at the district boundary. Walls or fences of lesser heights or planting screens may be permitted by the Council if the type of screen required by this Code is found to interfere with the provisions of adequate amounts of light and air to the properties. Loading docks in the District shall be screened so as not to be visible from any public street right of way within a residential district. All required screening devices shall be designed so that they are architecturally harmonious with the principal structures on the site and they shall be properly maintained so as not to become unsightly hazardous, or less opaque than when originally constructed.

(b) Landscaping:

All exposed ground areas surrounding or within a principal or accessory use, including boulevards, which are not devoted to drives, sidewalks, patios, or other such uses shall be landscaped with grass, shrubs, trees, or other ornamental landscape materials. All landscaped areas shall be used for parking vehicles or for storing or displaying materials, supplies, or merchandise.

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(c) Lighting:

All sources of artificial light shall be so fixed, directed, designed, or sized that the sum total of their illumination will not increase the level of illumination on any nearby residential property by more than 0.1 foot-candle in or within twenty-five (25) feet of a dwelling nor more than 0.5 foot-candle on any other part of the property. Glare, whether direct or reflected, as differentiated from general illumination, shall not be visible from beyond the limits of the immediate site from which it originates.

(d) Storage - Displays:

All materials, supplies, merchandise, or other similar matter not on display for a direct sale, rental, or lease to the ultimate consumer or user shall be stored within a completely enclosed building within the Service-Commercial District, or within the confines of a one hundred percent (100%) opaque wall or fence not less than five (5) feet in height. Merchandise which is offered for sales as described above may be displayed beyond the confines of a building in the Service-Commercial District, but the area occupied by such outdoor display shall not constitute a number of square feet greater than ten percent (10%) of the ground floor area of the principal-use building, unless such merchandise is of a type customarily displayed outdoors such as garden supplies. No storage of any type shall be permitted within the one-half (2) of the required front or side street setback nearest the streets.

Subd. 8. Requirements for vehicular and pedestrian circulation.

(a) Traffic and circulation.

All commercial buildings or structures and their accessory uses shall be accessible to and from nearby public streets and sidewalks by driveways and walkways surfaced with a hard, all-weather, durable, dust-free material and properly drained.

Vehicular traffic generated by a commercial use shall be channeled and controlled in a manner that will avoid congestion on the public streets, traffic hazards, and excessive traffic through residential areas, particularly truck traffic. The adequacy of any proposed traffic circulation system to accomplish these objectives shall be determined by the City Engineer who may require additional measures for traffic control, including but not limited to the following: directional signalization, channelization, standby turn lanes, illumination, and storage area and distribution facilities within the commercial site to prevent back-up of vehicles on public streets.

(b) No area used by motor vehicles other than driveways serving as ingress to and egress from the commercial site shall be located within the public street right of way.

(c) All driveways to or from the public street shall be subject to the following restrictions:

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Driveways Widths: (Measurement Between Roadway Edges)

<u>Type</u>	<u>Maximum Feet</u>	<u>Minimum Feet</u>
One-way	20	12
Two-way	30	24

Minimum Driveway Angle to Street: Thirty (30) degrees when street is one (1)-way or divided, otherwise sixty (60) degrees.

Minimum Distance Between Driveways: Twenty (20) feet, between roadway edges measured along street curb line.

Minimum Distance of Driveway from Street Intersection (measured along street curb line between driveway edge nearest intersection and intersection street curb line):

<u>Type of Street Driveway Enters</u>	<u>Type of Intersection Street</u>	<u>Minimum Distance when Driveway Enters Lane Approaching Intersection</u>	<u>Minimum Distance when Driveway enters Lane Leaving Intersection *</u>
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Minor Street	Minor Street,	15 ft.	15 ft.
	Collector Street, or Minor Arterial, Major Arterial	20 ft.	15 ft.
Collector Street	Minor Street	20 ft.	15 ft.
	Collector, Minor Arterial,	25 ft.	15 ft.
	Major Arterial	30 ft.	20 ft.
Major Arterial	Minor Street	20 ft.	15 ft.
	Collector, Minor Arterial	25 ft.	15 ft.
	Major Arterial	40 ft.	20 ft.

* Note: Minimum distance to be the same as that specified for approaching lane if left turns are permitted into or out of driveways.

Subd. 9. General Regulations. Additional regulations applicable to the C-2 District are set forth in 702.11 (General Industry District - I-2).

7.2.21

702.10 LIGHT INDUSTRY DISTRICT (I-1)

Subd. 1. Purpose. The Light Industry District is intended to establish areas in which light manufacturing and industrial activities may situate. The District will try to provide locations which offer adequate essential utilities to meet the demands of light industry; provide standards and controls which ensure a functional relationship among various types of land uses, and enable this type of activity to remain a good neighbor to adjoining districts.

Subd. 2. Permitted principal uses. The following uses shall be permitted:

- Airports, heliports, cartage, and express facilities, and railroad rights of way.
- Bottling establishments.
- Bus and truck storage and maintenance lots and garages.
- Electric and electronic manufacturing establishments.
- Engraving, printing, publishing, cartographic, and bookbinding establishments.
- Fuel and ice dealers, including bulk sales, storage, and distribution.
- Laundry and dry cleaning processing centers.
- Light manufacturing and processing operations, including saw mills and cutting operations.
- Machine shops - limited operations only.
- Medical, dental, and optical laboratories.
- Railway rights of way and loading docks, excluding freight and classification yards.
- Storage and warehousing facilities; wholesale business and office establishments.

Subd. 3. Permitted accessory uses. The following uses shall be permitted accessory uses:

- Off-street parking and loading as regulated in 703.02, Subd. 12 (Off-Street Parking and Loading Requirements).
- Signs, as regulated in 703.02, subd. 11 (Sign Regulations).
- Uses customarily incidental to the uses listed in subds.2 and 4 of this section.

Subd. 4. Conditional uses. The following uses may be permitted subject to the issuance of a Conditional Use Permit as provided in 703.04:

- Automobile wrecking and/or junk yards, provided such use is conducted within a building or the premises on which such business is conducted is entirely enclosed within a substantial fence, except for gates, not less than eight (8) feet in height and having an opacity of one hundred percent (100%) or equivalent screening barrier approved by the City Council.
- Extracting, processing, or storing sand, gravel, stone or other raw materials subject to the following provisions:

7.2.22

(1) Bonding: The person securing a temporary excavation permit must present adequate proof of bonding to the City in the form of a performance bond, sufficient in value to cover the expense of completing the development plan or to bring such portion of the completed project to a safe grade and elevation to be healthful and safe to the general public and to provide safe and adequate drainage of the site.

(2) Future use of the lands: The persons who apply for a temporary excavation permit must submit a plan of intent as to the future use of the property being excavated; the development plans showing proposed elevations, drainage, access routes to be used in hauling to and from the site; daily operational hours; and the projected period of excavation.

(3) Safety precautions: If, during the excavation work, the person excavating must create a condition of grade or drainage not in the interest of health or safety, that person must immediately correct the dangerous situation created and fence such area from the general public during the period of danger. All trenching and excavation shall be done in accordance with the safety specifications recommended by the State Department of Labor and Industry and the Manual of Accident Prevention in Construction, Association of General Contractors of America, as now promulgated or revised.

(4) Temporary excavation district: The use of land for the major removal, processing and/or storage of topsoil, sand, or gravel, and other material from the land is not permitted in any zone unless temporary excavation permission has been granted by the Council following

favorable recommendation by the City Planning Commission. Permits shall be issued for a maximum period of one (1) year and shall be subject to review and rehearing at that time.

- Uses similar to those listed in subd. 2 of this section, provided that the nature of operation is in keeping with the character and purpose of an I-1 District.

Subd. 5. Height, yard setback, and lot area and coverage requirements. The height, yard setback, and lot area and coverage requirements shall be those set forth in 703.01 (District Provisions and Dimensional Requirements).

Subd. 6. Performance standards. The performance standards for the I-1 District shall be those stated in 702.08, subd. 6 (Service Commercial District - Performance Standards).

Subd. 7. Regulations on screening, landscaping, lighting, storage and outdoor displays. The regulations for screening, landscaping, lighting, storage, and outdoor displays shall be those stated in 702.08, subd. 7 (Service Commercial District).

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702.11 GENERAL INDUSTRY DISTRICT (I-2)

Subd. 1. Purpose. The General Industry District will try to provide areas suitable for the location of general industrial activities by allowing adequate loading facilities with access to thoroughfares and railways, ensuring necessary expansion space within district boundaries, and providing effective controls for nuisance and pollution. Industrial development will be encouraged in a compact and orderly manner such that a wholesome relationship with other land use areas within the City is established.

Subd. 2. Permitted principal uses. The following uses shall be permitted:

- Adult use/principal businesses.
- Appliance assembly and warehousing.
- Building materials production, paper mills (including storage facilities), lumber companies and yards.
- Bulk gasoline and oil stations and distributing plants.
- Canning factories and creameries, food processing plants including smoking and curing operations, dairy operations, and produce companies.
- Cartage and express facilities.
- Contractors' offices, shops, yards, and storage facilities for plumbing, heating, glazing, painting, paperhanging, roofing, ventilating, air conditioning, lumber, masonry, electrical, and refrigeration industries.
- Cooperatives.
- Freight terminals and classification yards.
- Fuel and ice sales and storage facilities, including bulk- fuel storage and warehouses.

- Garages for storage, repair, and servicing of motor vehicles and farm implements.
- Grain elevators, milling and processing activities, feed companies.
- Highway maintenance shops and yards, public utility maintenance shops and yards.
- Machine shops.
- Monument works, cutting, grinding, and polishing operations.
- Poultry and animal rendering plants, processing, and treatment yards.
- Railroad rights of way, including loading docks, warehouses, and similar uses.
- Sewage disposal plants, including secondary treatment operations.

Subd. 3. Permitted accessory uses. The following shall be permitted accessory uses:

- Off-street parking and loading as regulated in 702.03, subd. 12 (General Regulations).
- Signs as regulated in 703.02, subd. 11 (Sign Regulations).
- Uses customarily incidental to the uses listed in subds. 2 and 4 of this section. All accessory uses shall be on the same lot as the principal use.

Subd. 4. Conditional uses. The following uses may be permitted subject to the issuance of a Conditional Use Permit as provided in 703.04:

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(a) Restaurants and service establishments of an essential or convenience nature, whose principal function is serving the employees within the industrial district, provided the uses so allowed shall be consistent with the purpose and operation of a General Industry District.

(b) Any use listed in subd. 2 of this section, or use of a similar nature or compatible nature, which proposes to locate in any of those areas within the General Industry District that have been designated as an Industrial Park by the Council of and Planning Commission.

Subd. 5. Height, yard setbacks, and lot area and coverage requirements. The height, yard setbacks, and lot area and coverage requirements shall be those set forth in 703.01 (District Provisions and Dimensional Requirements).

Subd. 6. Performance standards. Performance standards shall be required in the General Industry District. The standards shall be those set forth in 702.08, subd. 6 (Service Commercial District Performance Standards), except that measurements for nuisance characteristics shall be taken from the District Boundary Line rather than the property line of any particular use.

Subd. 7. Regulations on screening, landscaping, lighting, storage and outdoor displays. The regulations on screening, landscaping, lighting, storage, and outdoor displays shall be those set forth in 702.08, subd. 7 (Service Commercial District).

702.12 ADULT USES

Subd. 1. Purpose: The purpose of this section is to provide the opportunity for operation and establishment of adult land uses while providing controls that limit negative impacts of adult uses on residential and commercial areas.

Subd. 2. General: Adult use as defined in this ordinance shall be subject to the following general provisions:

1. Activities classified as obscene as defined by Minnesota Statute 617.241 are not permitted and are prohibited.
2. Principal adult uses, shall be prohibited from locating in any building which is also utilized for residential purposes.
3. An adult use, which does not qualify as an accessory use, shall be classified as an adult use/principal.
4. Zoning Controls and District Text Application:

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a. So as to provide specific opportunity for adult uses to exist within the City of St. Charles, an analysis of the existing City ordinance text and map has been conducted. It was determined that the I-2 General Industry District provided the most appropriate zone to accommodate adult uses classified as principal activity. Only amendments to the I-2 text are, therefore, proposed to accommodate adult uses/principal. Principal adult uses are permitted only in the I-2 zoned districts.

Subd. 3. Adult Use/Principal.

1. Adult use/principal activities shall be located at least one thousand (1000) lineal feet, as measured in a straight line from the building upon which the adult use/principal is located to the property line of the following:
 - a. Residentially zoned property.
 - b. Agricultural land located in the neighboring township or in the City that is designated in the comprehensive plan for residential use.
 - c. A licensed day care center.
 - d. A public or private educational facility classified as an elementary, middle, junior high, or senior high school.
 - e. A public library.
 - f. A public park.
 - g. A church.
 - h. Amusement places such as roller rinks, dance halls, and bowling alleys.
 - i. Liquor sales.

2. Adult use/principal activities shall be located at least one thousand (1000) lineal feet apart as measured from one another.
3. Adult use/principal activity is a separate use and no two adult use/principal activities shall be located in the same building or upon the same property and each use shall be subject to the above.
4. Adult use/principal activities shall adhere to the following signing regulations:
 - a. Sign messages shall be generic in nature and shall only identify the type of business, which is being conducted.
 - b. Sign messages shall not contain material classified as advertising.
 - c. Sign messages shall comply with the requirements of size and number for the district in which they are located.
5. Adult use/principal activities shall be prohibited in establishments where liquor is served.
6. Adult use/principal activities shall be prohibited at any place or event where minors are permitted.

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Subd. 4. Adult Use/Accessory

1. Adult use/accessory activities are permitted only in the C-1 or C-2 zoned districts.
2. Adult use/accessory activities shall comprise no more than ten (10) percent of the floor area of the establishment in which it is located or shall comprise an area no greater than 100 sq. ft. of floor area in which it is located, whichever is smaller.
3. Adult/accessory activities shall be restricted and prohibited from access to minors by the 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.
 - b. Magazines. Publications classified or qualifying as adult uses shall be covered with a wrapper or other means to prevent display of any material other than the publication title.
 - c. Other Use. Adult use/accessory activities not specifically cited shall comply with the intent of this section subject to the approval of the Zoning Administrator.
4. Adult use/accessory activities shall be prohibited from both internal and external advertising and signing of adult materials and products.
5. Adult use/accessory activities shall be prohibited in establishments where liquor is served.

6. Adult use/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.

702.13 ZONING MAP

Subd. 1. Zoning Map. A Zoning Map shall be maintained which shall show the boundaries of the districts established by this Chapter.

Subd. 2. Amendments. All approved Amendments shall be added to, and made a permanent part of the Zoning Map.

702.14 HOME OCCUPATION

Subd. 1. Purpose. The purpose of this subdivision is to prevent competition with business districts and to provide a means through the establishment of specific standards and procedures by which home occupations can be conducted in residential neighborhoods without jeopardizing the health, safety and

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general welfare of the surrounding neighborhood. In addition, this subdivision is intended to provide a mechanism enabling the distinction between permitted home occupations and special or customarily "more sensitive" home occupations so that permitted home occupations may be allowed through an administrative process rather than a legislative hearing process.

Subd. 2. Application. Subject to the nonconforming use provision of this Section, all occupants conducted in the home shall comply with the provisions of this subdivision.

Subd. 3. Procedures and Permits.

a. Permitted Home Occupation. Any home occupation as defined in this ordinance shall require a "home occupation permit." Such permits shall be issued subject to the conditions of this subdivision, other applicable City Ordinances and State Law. This permit may be issued by the Zoning Administrator or his agent based upon proof of compliance with the provisions of this subdivision.

b. Special Home Occupation. Any home occupation which does not meet the specific requirements for a permitted home occupation as defined in this subdivision shall require a "special home occupation permit" which shall be applied for, reviewed and disposed of in accordance with the provisions of 703.07 of the St. Charles City Code.

(1) Declaration of Conditions. The City Council may impose such conditions on the granting of a special home occupation permit as may be necessary to carry out the purpose and provisions of this subdivision.

(2) Effect of Permit. A "special home occupation permit" may be issued for a period of one (1) year after which may be reissued for periods of up to three (3) years each. Each application for permit renewal

shall, however, be processed in accordance with the procedural requirements of the initial "special home occupation permit."

- c. Transferability. Permits shall not run with the land and shall not be transferable.
- d. Lapse of Special Home Occupation Permit by Non-Use. Whenever within one (1) year after granting a permit the use as permitted by the permit shall not have been initiated, then such permit shall become null and void unless a petition for extension of time in which to complete the work has been granted by the City Council. Such extension shall be requested in writing and filed with the Zoning Administrator at least thirty (30) days before the expiration of the original permit. There shall be no charge for the filing of such petition. The request for extension shall state fact showing a good faith attempt to initiate the use.

Such petition shall be presented to the City Council for a decision.

- e. Reconsideration. Whenever an application for a permit has been considered and denied by

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the City Council, a similar application for a permit affecting substantially the same property shall not be considered again by the City Council for at least six (6) months from the date of its denial unless a decision to reconsider such matter is made by not less than four-fifths (4/5) vote of the full City Council.

- f. Renewal of Permits. An applicant shall not have a vested right to a permit renewal by reason of having obtained a previous permit. In applying for and accepting a permit, the permit holder agrees that his monetary investment in the home occupation will be fully amortized over the life of the permit and that a permit renewal will not be needed to amortize the investment. Each application for the renewal of a permit will be considered as a new permit without taking into consideration that a previous permit has been granted. The previous granting or renewal of a permit shall not constitute a precedent or basis for the renewal of a permit.

Subd. 4. Requirements - General Provisions. All home occupations shall comply with the following general provisions and according to definition, the applicable requirement provisions.

- a. General Provisions.

- (1) No home occupation shall produce light glare, noise, odor or vibration that will in any way have an objectionable effect upon adjacent or nearby property.
- (2) No equipment shall be used in the home occupation which will create electrical interference to surrounding properties.

- (3) Any home occupation shall be clearly incidental and secondary to the residential use of the premises, should not change the residential character thereof, and shall result in no incompatibility or disturbance to the surrounding residential uses.
- (4) No home occupation shall require internal or external alterations or involve construction features not customarily found in dwellings except where required to comply with local and state fire and police recommendations.
- (5) There shall be no exterior storage of equipment or materials used in the home occupation, except personal automobiles used in the home occupation may be parked on the site.
- (6) The home occupation shall meet all applicable fire and building codes.
- (7) There shall be no exterior display or exterior signs or interior display or interior signs, which are visible from outside the dwelling.
- (8) All home occupations shall comply with the provisions of the City Nuisance Ordinance.

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- (9) No home occupation shall be conducted between the hours of 10:00 p.m. and 7:00 a.m.
- (10) The City Council shall be allowed to establish additional requirements with the intent to safeguard the health and welfare of the surrounding neighborhoods.

b. Requirements - Permitted Home Occupations.

- (1) No person other than those who customarily reside on the premises shall be employed.
- (2) All permitted home occupations shall be conducted entirely within the principal dwelling or existing accessory buildings.
- (3) Permitted home occupations shall not create a parking demand in excess of that which can be accommodated in an existing driveway.
- (4) Examples of permitted home occupations include: art studio, dressmaking, secretarial services, professional offices and teaching with musical, dancing and other instructions, which consist of more than one (1) pupil at a time. None of the above shall service more than one person at a given time.
- (5) The home occupation shall not involve any of the following: repair service or manufacturing which requires equipment other than found in a dwelling; teaching which customarily consists of more than one (1) pupil at a time; over-the-counter sale of merchandise produced off the premises, except for those brand name products that are not marketed and sold in a wholesale or retail outlet.

c. Requirements - Special Home Occupation.

(1) No person other than a resident shall conduct the home occupation, except where the applicant can satisfactorily prove unusual or unique conditions or need for non-residential assistance and that this exception would not compromise the intent of this ordinance.

(2) Examples of special home occupations include: barber and beauty services, photography studio, group lessons, saw sharpening, small appliance and small engine repair and the like.

(3) The home occupations may involve any of the following: stock-in-trade incidental to the performance of the service, repair or manufacturing which requires equipment other than customarily found in a home, the teaching with musical, dancing and other instruction of more than one (1) pupil at a time.

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(4) Special home occupations may be allowed to accommodate their parking demand through utilization of on-street parking. In such cases where on-street parking facilities are necessary, however, the City Council shall maintain the right to establish the maximum number of on-street spaces permitted and increase or decrease that maximum number when and where changing conditions require additional review.

Subd. 5. Non-Conforming Use. Existing home occupations lawfully existing on the date of this ordinance may continue for two (2) years as non-conforming uses, after such time they will be brought into conformity with the provisions of this subdivision. They shall, however, be required to obtain permits for their continued operation. Any existing home occupation that is discontinued for a period of more than thirty (30) days, or is in violation of the ordinance provisions under which it was initially established, shall be brought into conformity with the provisions of this subdivision.

Subd. 6. Inspection. The applicant, upon making application, grants to the City upon issuing any home occupation permit the right to inspect the premises in which the occupation is being conducted to ensure compliance with the provisions of this subdivision or any conditions additionally imposed.

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703.02 GENERAL REGULATIONS

Subd. 1. Scope of regulations.

(a) Except as may otherwise be provided in 703.03 (Nonconforming Uses) all buildings erected, all uses of land or buildings established, all structural alterations or relocation of existing buildings occurring, and all enlargements or additions to existing uses occurring after September 8, 1970, shall be subject to this section.

(b) The Zoning Administrator shall not approve any application for a building permit, certificate of zoning compliance, or other permit or license, and City departments shall not issue any permits or licenses if the permit, certificate, or license authorizes either of the following:

- a use contrary to this chapter;
- the erection, moving, alteration, enlargement, or occupancy of a building contrary to this chapter.

(c) No lot area shall be reduced or diminished such that the yards or other open spaces shall be smaller than those prescribed by this chapter, nor shall the population density be increased in any manner except in conformity with these regulations unless the Council grants a variance.

Subd. 2. Erection of more than one (1) principal structure on a lot. In any district, more than one (1) structure housing a permitted or permissible principal use may be erected on a single lot, provided that this chapter's requirements are met for each structures as though it were on an individual lot.

Subd. 3. Accessory buildings.

(a) In case an accessory building is attached to the main building, it shall be made structurally a part of the main building and shall comply in all respects with this chapter's requirements applicable to the main building. An accessory building, not attached to and made a part of the main building, shall not be closer than five (5) feet to the main building.

(b) A detached accessory building shall not be located in any required front yard. Detached accessory buildings in residential districts shall not exceed one (1) story or sixteen (16) feet in height and shall not occupy more than ten percent (10%) of the lot area. A distance of open space between the principal building and the detached accessory building plus the distance of open space between the detached accessory building and the side yard must be at least ten (10) feet; however, a detached accessory building may not be built nearer than five (5) feet to the principal structure nor nearer than two and one-half (2 2) feet to the side or rear lot line.

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A detached accessory building opening onto an alley shall be set back at least twenty (20) feet from the alley right of way; if the detached accessory building is located off an alley but does not open into the alley, a distance of at least two and one half (2 2) feet shall be maintained between the building and the alley right of way, except that a two (2) stall garage may be used jointly and solely by the families living on two (2) adjacent lots and may be built so as to place one (1) stall on each side or rear lot line, provided that the two (2) stalls are separated by a fire wall.

(c) Accessory buildings on any corner lot in an R-1, R-1-M, R-2 or R-3 District shall be at least six (6) feet from the rear lot line when the rear lot line of the corner lot is the same as the side lot line of an adjoining lot in an R-1, R-1-M, R-2 or R-3 District.

(d) Accessory buildings for single family attached dwellings may be attached to other buildings in the lot's building area and/or in the rear yard providing the applicant records a covenant and deed restriction on all properties which will abut the common lot line (zero lot line). These covenants and deed restriction shall provide the following:

- (1) Access to the abutting property for the adjacent property owner and/or the adjacent property owner's representative for the purpose of constructing, reconstructing, repairing, and maintaining either side on the total property;
- (2) Necessary encroachments for footings and eaves for the building;
- (3) Restrictions to limit changes of color, material, and design of the accessory building to insure it is compatible with the attached building.

Subd. 4. Height regulations.

(a) Where the average slope of a lot is greater than one (1) foot rise or fall in seven (7) feet of horizontal distance from the established street elevation at the property line, one (1) story in addition to the number permitted in the district in which the lot is situated shall be permitted on the downhill side of any building.

(b) Height limitations set forth elsewhere in this chapter may be increased by one hundred percent (100%) when applied to the following: chimneys, cooling towers, elevator bulkheads, fire towers, monuments, water towers, stacks, storage lofts, tanks, ornamental towers and spires, wireless towers, or necessary mechanical appurtenances usually required to be placed above the roof level and not intended for human occupancy.

Subd. 5. Yard regulations. The following requirements qualify and supplement the district regulations appearing elsewhere in this chapter. Measurements shall be taken from the point of the wall of the building nearest to the lot line in question, subject to the following qualifications:

(a) Every part of a required yard or court shall be open from its lowest point to the sky, unobstructed except for the ordinary projections of window wells above the bottom of such

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yard or court and except for the projections of sills, belt courses, cornices, and ornamental features not to exceed eighteen (18) inches.

(b) Open or lattice-enclosed fire escapes, fireproof outside stairways, and balconies opening upon fire towers projecting into a yard not more than two (2) feet or into a court not more than three and one-half (3 2) feet shall be permitted, where so placed to not obstruct light and ventilation.

(c) A yard, court, or other open space provided about any building for the purpose of complying with this chapter shall not be used additionally as a yard, court, or other open space for another building.

(d) The setback requirements shall be observed on each street side of a corner lot, however, the buildable width of a lot shall not be reduced to less than thirty (30) feet.

(e) A total setback requirement of three hundred (300) feet from all schools, churches, hospitals, or any public meeting place having a seating capacity of fifty (50) or more persons is mandatory for all land uses in which there are highly explosive or flammable materials in quantity, such as gas stations, bulk fuel or oil dealers, and similar operations.

(f) Where a lot is to be occupied for permitted uses without buildings or structures on it, the required side yards and front yards shall be provided and maintained between such use and the respective lot lines, provided side and rear yards shall not be required on lots without buildings or structures when used for garden purposes or public playgrounds.

(g) The following shall not be considered obstructions:

(1) In front yards:

One (1) story bay windows projecting three (3) feet or less into the yard;
overhanging eaves and gutters projecting two and one-half (2 2) feet or less into the yard. A landing place or uncovered porch may extend into the required front

yard up to six (6) feet, if the landing place or porch has its floor no higher than the entrance floor of the building. An open railing no higher than three (3) feet may be placed around such place. The required front yard of a corner lot shall not contain any wall, fence, or other structure, tree, shrub, or other growth, which may cause danger to traffic on a street or public road by obscuring the view. On double frontage lots, the required front yard shall be provided on both streets.

(2) In side yards:

Overhanging eaves and gutters projecting into the yard for a distance of two (2) inches per foot of required side yard.

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(3) In rear yards:

Enclosed, attached, or detached off-street parking spaces; open off-street parking spaces; accessory structures, tool rooms, and similar buildings or structures for domestic storage; balconies; breezeways and open porches; one (1) story bay windows projecting two and one-half (2 2) feet or less into the yard; and overhanging eaves and gutters projecting two and one-half (2 2) feet or less into the yard. In determining the depth of rear yard for any building where the rear yard opens into an alley, one-half (2) the width of the alley, but not exceeding ten (10) feet, may be considered as a portion of the rear yard.

Subd. 6. Vision clearance.

(a) Fences, walls, or accessory structures in front yard:

In any residential district, no fence, wall, accessory structure or shrub planting shall be over three (3) feet in height within twenty (20) feet of any corner, so as to interfere with traffic visibility across the corner. No fence, wall, accessory structure or shrub planting shall be over three (3) feet in height within twenty-five (25) feet of the front property line.

(b) Fences, walls, or accessory structures in side and rear yard:

In any residential district, no fence, wall or accessory structure, other than a retaining wall, shall be over six (6) feet in height along the side or rear lot line. The side lot line will be considered that area of a lot which extends along the side line of the lot from the rear property line to a point twenty-five (25) feet from the front property line.

(c) Fences may be used to locate property lines with the required side and rear yards within a residential district.

(d) No fence, wall, shrub planting or accessory structure shall be erected within a public easement.

Subd. 7. Street closures. When any street, alley, or other public way is vacated by official City action, the zoning district adjoining each side of such street, alley, or public way shall be extended automatically to the

center of such vacation, and all area included in the vacation shall then be subject to all appropriate regulations of the extended districts.

Subd. 8. Areas under water. All areas within the corporate limits of the City which are under water and not shown as included within any district shall be subject to all of the regulations of the district which immediately adjoins the water area. If the water area adjoins two (2) or more zones, the boundaries of each zone shall be construed to extend into the water in a straight line until they meet the other district at a half-way point.

Subd. 9. Essential services. Essential services shall be permitted in any district as authorized and regulated by law, because the erection, construction, alteration, and maintenance of essential services are exempt from this chapter.

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Subd. 10. Structures to have access. Every building erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be located on lots such that safe and convenient access for serving, fire protection, and required off-street parking are provided.

Subd. 11. Sign regulations. All signs erected or maintained, except official, public traffic, and street signs, shall conform with the following regulations:

(a) General provisions for all districts:

- (1) Signs shall not be permitted within the public right of way or easements.
- (2) Flashing or rotating signs resembling emergency vehicles shall not be permitted.
- (3) Signs resembling an official marker erected by a governmental agency or displaying the words "stop" or "danger" shall not be permitted.
- (4) Signs shall not be permitted to obstruct any window, door, fire escape, stairway, or opening intended to provide light, air, or access to any building or structure.
- (5) When the Council or Zoning Administrator notifies a sign or property owner that a sign is rotted, unsafe, or unsightly, the owner of sign or owner of property thereunder shall remove or repair the sign.
- (6) The owner, lessee, or manager of any ground sign and the owner of the property on which the sign is located shall keep grass, weeds, and other growth cut, and debris and rubbish removed from the lot on which the sign is located.
- (7) Political signs may be permitted for a period of not more than sixty (60) days before and ten (10) days after an election.

(b) Signs may be erected in an R-1, R-1M, R-2, or R-3 District subject to the following provisions:

- (1) A nameplate sign identifying the owner or occupant of a building or dwelling unit, provided such sign does not exceed two (2) square feet in surface area. Such signs may be illuminated.
- (2) A sign pertaining to the lease or sale of the building or property, provided such sign does not exceed four (4) square feet in surface area. This sign shall not be illuminated.

- (3) A temporary sign identifying an engineer, architect, contractor, or product engaged or used in the construction of a building, provided the sign does not exceed four (4) square feet in surface area and is removed prior to the occupancy of the building. This sign shall not be illuminated.
- (4) One (1) identification sign not to exceed twenty-four (24) square feet in surface area displaying location information for churches, schools, hospitals, nursing homes, clubs, offices, libraries, or similar institutions. This sign may be illuminated.
- (5) Directional signs not exceeding two (2) square feet in surface area displaying directional information for churches, schools, hospitals, nursing homes, clubs,

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libraries, or similar institutions, excluding office or commercial establishments, provided that each institution shall be limited to one (1) such sign per thoroughfare approach. This sign shall not be illuminated.

- (6) Public street identification signs, traffic signs, and directional signs in any parking area where such signs are necessary for the orderly movement of traffic.

(c) Signs may be erected in a C-1 or C-2 District subject to the following provisions:

- (1) The total surface area of all business signs on a lot shall not exceed three (3) square feet per lineal foot of lot frontage area, or seventy-five (75) square feet in area, whichever is greater. Signs may be illuminated.
- (2) Advertising sign structures shall be limited to one (1) for a lot of one hundred (100) foot frontage or less and to only one (1) for each additional one hundred (100) feet of lot frontage.
- (3) Such advertising structure may not contain more than two (2) signs per facing, nor exceed fifty-five (55) feet in total length.
- (4) No advertising signs may be erected within one hundred (100) feet of an adjacent Residential District.
- (5) For corner lots, the frontage used to determine allowable sign area shall be the frontage of the main entrance to the business.
- (6) No sign shall project higher than six (6) feet above the height of the building, or thirty-two (32) feet above the average grade at the building line, whichever is greater.
- (7) Signs painted on a building shall be governed by the square footage limitations specified above. Such signs shall be maintained in good condition and shall be repainted, removed, or painted out when, in the opinion of the Council or Zoning Administrator, they are not so maintained.
- (8) When a sign is illuminated, the source of light shall not be visible from any public right of way, and such light shall be directed away from any Residential District.
- (9) No signs shall project more than six (6) feet perpendicular to a building.

(d) Signs may be erected in an A-1 District subject to the following provisions:

- (1) One (1) identification sign not to exceed twenty-four (24) square feet in surface area displaying directional or identifying information for public and commercial recreational facilities, including but not limited to parks, trails, pools, and community centers. This sign shall not be illuminated.
- (2) Directional signs, not exceeding two (2) square feet in surface area displaying directional information for public facilities, provided that each use shall be limited to one (1) sign per thoroughfare approach. This sign shall not be illuminated.
- (3) Public street identification signs, traffic signs, and directional signs in any parking area where such signs are necessary for the orderly movement of traffic.

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(e) Signs may be erected in an I-1 and I-2 District subject to the following provisions:

- (1) No advertising signs shall be permitted.
- (2) The total surface area of all business signs on a lot shall not exceed three (3) square feet per lineal foot of lot frontage or twenty percent (20%) of the building frontage area or three hundred (300) square feet in area, whichever is greater. Such signs may be illuminated.

Subd. 12. Off-street parking and loading-unloading space requirements.

(a) Parking space requirements:

The required parking and loading spaces shall be provided on the premises of each use. Each parking space shall contain a minimum area of not less than three hundred (300) square feet including access drives, and a width of not less than nine (9) feet, and a depth of not less than twenty (20) feet. The minimum number of required off-street parking spaces for various uses shall be as follows:

- Apartments: One and one-half (1 2) parking spaces for each apartment, except housing for the elderly projects, which shall provide three-tenths (.3) parking space for each dwelling unit.
- Assembly or exhibition hall, armory, auditoriums, theater, sports arena: One (1) parking space for each four-(4) seats, based upon design capacity.
- Automobile service station: Four (4) parking spaces for each service stall plus two (2) parking spaces; these parking spaces are in addition to the gas pump service area.
- Bowling alley: Five (5) parking spaces for each bowling lane.
- Churches: One (1) parking space for each four (4) seats, based on the design capacity of the main seating area.
- Convalescent or nursing home: One (1) parking space for each four (4) beds.
- Drive-in restaurant: Twenty (20) parking spaces or one (1) space for each twenty (20) square feet of floor area, whichever is greater.
- Elementary school - Two (2) parking spaces for each classroom.
- Golf courses and clubhouses, country club, swimming club, tennis club, public swimming pool - Twenty (20) spaces for each five hundred (500) square feet of floor area in the principal structure.
- Golf courses (miniature), archery range, gold driving range ten (10) parking spaces.

- Hospitals - One (1) parking space for each three (3) beds.
- Junior and senior high school - One (1) parking space for each classroom plus one (1) parking space for each ten (10) students, based on design capacity.
- Manufacturing or processing plant - One (1) off-street parking space for each two (2) employees on the major shift or one (1) off-street parking space for each one thousand (1,000) square feet of gross floor area within the building, whichever greater, plus one (1) space for all company motor vehicles which are customarily kept on the premises.

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- Mobile home park - One and one-fourth (1 1/4) parking spaces per mobile home berth.
- Mobile home stand (Single) - One (1) parking space per unit.
- Motel or motor hotel - One (1) parking space for each rental unit or suite.
- Office building - One (1) parking space for each five hundred (500) square feet of floor area.
- One (1) and two (2) family dwelling - One (1) parking space per unit; no garage shall be converted into living space unless other acceptable on-site parking space is provided.
- Professional offices, medical and dental clinics, animal hospital - One (1) parking space for each five hundred (500) square feet of floor area.
- Public administration building, community center, public library, museum, art gallery, post office, and other public service buildings - One (1) parking space for each five hundred (500) square feet of floor area in the principal structure.
- Research, experimental, or testing stations - One (1) parking space for each employee on the major shift or one (1) parking space for each five hundred (500) square feet of gross floor area within the building, whichever is greater.
- Restaurant, café, night club, tavern, bar - One (1) parking space for each one hundred (100) square feet of floor area.
- Retail sales and service establishments - One (1) parking space for each one hundred (100) square feet of floor area.
- Sales (auto, trailer, marine and boat, implement, garden supply, building materials, auto repair) - One (1) parking space for each five hundred (500) square feet of floor area.
- Shopping center - Where several commercial uses are grouped together according to a general development plan, on-site automobile parking shall be provided in a ratio of not less than three (3) square feet of gross parking area for each one (1) square foot of gross floor area; separate on-site space shall be provided for loading and unloading.
- Storage, wholesale, warehouse establishments - One (1) parking space for each two (2) employees on the major shift or one (1) space for each two thousand (2,000) square feet of floor area, whichever is greater, plus one (1) space for each company motor vehicle which is customarily kept on the premises.

(b) Off-street loading design and maintenance:

(1) Location - All required loading or unloading into or out of trucks in excess of 3/4 ton capacity, or railroad cars, shall be conducted at facilities specifically designed for that purpose. These facilities shall be located upon the zoning lot of the principal use requiring them. All berths beyond one (1) shall be separate from

areas used for off-street parking.

(2) Access - Each required off-street loading berth shall be designed as to avoid undue interference with other vehicular or rail access or use of public streets, alleys, or other public transport systems.

(3) Surfacing - All off-street loading facilities, including loading berths and maneuvering areas, shall be surfaced with a hard, all weather, dust-free durable surfacing material and

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shall be well drained and landscaped and shall be maintained in a slightly and well-kept condition.

(4) Landscaping and screening - All berths shall be screened from view from the property street frontage and/or from the zoning district boundary when the adjacent property or property across the street frontage or side street frontage is zoned for residential purposes. Said screening shall be accomplished by a solid wall not less than eight (8) feet in height and shall be so designed as to be architecturally harmonious with the principal structure. Screen planting may be substituted for the prescribed wall; however, such plantings must not be less than two and one-half (2) inches in diameter and of such type as to permit a minimum of ninety (90%) percent opacity during all months of the year.

(5) Design - Fifty percent (50%) of the required number of truck berths shall be fifty (50) feet in length, twelve (12) feet in width and fifteen (15) feet in height. All loading areas shall consist of a maneuvering area in addition to the berth and shall not use any portion of the site containing parking stalls. Maneuvering areas shall be sized to permit the backing of truck tractors and coupled trailers into a berth, without blocking the use of other berths or drive or maneuvering areas.

(6) Required loading areas:

1) Space for loading and unloading goods, supplies, and services shall be provided in addition to required off-street parking spaces and shall be sufficient to meet the requirements of each use.

2) The following uses shall observe required loading and unloading spaces as indicated:

<u>Use</u>	<u>Required Spaces</u>
(A) Motels, hotels, lodging and rooming houses, private clubs and lodges	One (1) for each structure over 20,000 square feet gross floor area
(B) Commercial uses except where otherwise specified	One (1) space for the first 10,000 square feet of gross floor area and one (1) space for each additional 50,000 square feet of gross floor area
(C) Auditorium, stadium, gymnasium, community center, religious institution, area school (private or public)	One (1) for each structure over 100,000 square feet gross floor

(D) Office building and professional offices (other than doctor and dentists); banks	One (1) space for buildings with 30,000 - 100,000 square feet gross floor area and one (1) space for each additional 100,000 square feet gross floor area
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(E) Restaurants and other food-dispensing establishments except drive-in restaurants	One (1) for each structure with 10,000 square feet of gross floor area
(F) Furniture, automobile, boat, appliance sales	One (1) space plus one (1) additional space for each 25,000 square feet of gross floor area
(G) Hospitals, rest homes, nursing homes, and similar institutions	One (1) space plus (1) additional space for each 25,000 square feet of gross floor area
(H) Bowling alleys	One (1) space for each structure over 20,000 square feet of gross floor area
(I) Manufacturing and research, experimental or testing stations	One (1) space for each 50,000 square feet of gross floor area

Subd. 13. Minimum mobile home park requirements.

(a) Minimum density and area requirements:

- (1) Minimum area for a mobile home park shall be five (5) acres and shall not be less than the one-hundred fifty-(150) feet in width.
- (2) A minimum of five hundred (500) square feet per mobile home shall be provided for definable play areas and open space within the mobile home park. Such areas of open space and/or play areas shall not be included within any setback nor shall they include any areas of less than twenty (20) feet in length or width.
- (3) The minimum lot area per unit shall be six thousand five hundred (6,500) square feet, excluding private drives, parking spaces and street rights of way.

(b) Lot coverage and setback requirements:

- (1) Maximum lot coverage for mobile home parks shall be twenty-five percent (25%).

- (2) Minimum distance between units shall be not less than twenty (20) feet, or the sum of the heights of the two (2) units, whichever is greater; the point of measurement is a straight line between the closest points of the units being measured.
- (3) When a mobile home park is adjacent to a single family residential district, the

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minimum setback between the street right of way line or property line the adjacent mobile home park use side shall be thirty (30) feet. This setback area shall act as a buffer zone and shall be landscaped according to a plan submitted at the time of application. Such plan shall show the type of planting material, size, and planting schedule.

- (4) Street access shall not be permitted onto residential streets in mobile home parks.

(c) General internal mobile home park development requirements:

- (1) The minimum front yard setback from the mobile home unit to the street line shall be fifteen (15) feet.
- (2) The mobile home stand shall be at an elevation, distance, and angle relative to the street and driveway such that placement and removal of the mobile home with a car, tow truck, or other customary moving equipment is practical. The mobile home stand shall have a longitudinal grade of less than four percent (4%) and transverse crown or grade to provide adequate surface drainage. The stand shall be compacted and surfaced with a material which will prevent the growth of vegetation while supporting the maximum anticipated loads during all seasons.
- (3) The entire mobile home park shall be landscaped (excluding hard surfaced areas) and one (1) shade tree with a minimum diameter of two (2) inches shall be planted and maintained near each unit pad.
- (4) All utilities supplied by the mobile home park to individual units shall be underground. This includes sanitary sewer, municipal water and electricity. When piped fuel or gas is provided by the mobile home park to each mobile home stand, this service shall also be located underground.

(d) Parking and street requirements:

(1) Parking:

- 1) Off-street parking areas shall be surfaced in accordance with the street surface standards below.
- 2) All required off-street parking space shall be located not further than two hundred (200) feet from the unit or units for which they are designated.
- 3) A minimum of one and one-fourth (1.25) parking spaces must be provided for each mobile home unit. The one-(1) unit space is for occupant use. The remaining spaces equivalent to one-fourth (.25) space per unit must be in group compounds at an appropriate location within the park.

(2) Streets:

1) Streets shall be sufficiently wide to permit ease of access to the mobile home parking stands and the placement and removal of mobile homes without causing damage to or otherwise jeopardizing the safety of any occupants or mobile homes in the park.

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2) Streets shall have a minimum width so as to permit two (2) moving lanes of traffic. Minimum lane width shall be ten (10) feet.

3) Public access to a mobile home park shall be designed to permit a minimum number of ingress and egress points to control traffic movement and to keep undesirable traffic out of the park.

4) Streets shall be graded to their full width to provide proper grades for pavements and sidewalks to have adequate surface drainage to the storm sewer system. The improvements shall extend continuously from existing improved streets to provide access to each lot and to provide connections to existing or future streets at the boundaries of the mobile home park.

5) Streets and parking areas shall be surfaced for all-weather travel with not less than four (4) inches of crushed stone, gravel, or other suitable base material topped with not less than one and one-half (1 1/2) inches of asphalt paving, or four (4) inches Portland cement concrete. The surface shall be limited at the edge by a Portland cement curb not less than four (4) inches high.

(e) Storage:

Enclosed storage lockers, when provided, shall be located either adjacent to the mobile home in a mobile home park or at a place in the park convenient to the unit for which it is provided. Large items such as boats and boat trailers shall not be stored at the mobile home unit site, but shall be provided in a separate screened area of the park.

(f) Registrations:

(1) The operator of the mobile home park must keep a register containing a record of all mobile home owners and occupants within the park. The register shall contain the following information:

- 1) Name and address of each mobile home occupant.
- 2) Name and address of the owner of each mobile home.
- 3) Make, model, year, license, and number of each mobile home.
- 4) State, territory, or county issuing such a license.
- 5) Date of the arrival and departure of each mobile home.
- 6) Number and type of motor vehicles of residents in the park.

(2) The park shall keep the register available for inspection at all times by the City and County law enforcement officers, public health officials, and other public officers whose duty necessitates obtaining such information. The register record for

each occupant and/or mobile home registered shall not be destroyed until three-(3) years following the registrant's departure from the park.

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(g) Maintenance:

The operator of any mobile home park, or a duly authorized attendant or caretaker, shall be in charge at all times to keep the mobile home park, its facilities, and equipment, in a clean, orderly, and sanitary condition. The attendant or caretaker and the operator shall be answerable for any violation of a regulation with which the operator must comply.

703.03 NONCONFORMING USES

Subd. 1. General. A nonconforming use may be continued subject to the following limitations and further regulations the Council may require to fulfill the purposes of this chapter.

- (a) A nonconforming use of land shall not be enlarged or increased in land area, nor shall the nonconforming use be moved to any part of land upon which the use was not conducted prior to September 8, 1970.
- (b) A nonconforming use shall not be changed unless changed to a conforming or more conforming use; the use shall not subsequently be changed to a nonconforming use.
- (c) If any existing nonconforming use of building or land is discontinued for a period of one (1) year, it cannot be resumed.
- (d) A building which less has been damaged by fire, explosion, act of God or a public enemy in the amount of more than fifty percent (50%) of its value shall not be restored except in conformity with this chapter.
- (e) Alterations may be made to a residential building containing nonconforming residential units when alterations will improve the unit's habitability, provided the number of dwelling units in the building is not increased.

Subd. 2. Necessary restoration. Nothing in this chapter shall prevent the strengthening or restoration of a wall or structural member in a building maintained for nonconforming use when such action is pursuant to a building permit.

703.04 CONDITIONAL USE PERMITS

Subd. 1. Permitted uses. Conditional Use Permits may be issued for any of the following:

- (a) Any of the uses or purposes for which such permits are required or permitted by this chapter.

(b) Public utility or public service uses or public building in any district when found to be necessary for the public health, safety, convenience, or welfare.

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(c) To classify as a conforming use any institutional use existing in any district at the time of the establishment of such district.

(d) To permit any of the following uses in a district from which they are excluded by other provisions of this chapter: library; community center; church; hospital; fairgrounds; an institution of an educational, philanthropic, or charitable nature; cemetery, mausoleum, or any other place for the disposal of the human dead.

Subd. 2. Application. Application for a Conditional Use Permit shall be made to the Planning Commission. Any proceedings to classify certain uses as conforming uses as provided in this section may be initiated either by application or by the Council or the Planning Commission. The Planning Commission may hold hearings on the proposal to issue a Conditional Use Permit as it considers necessary; but, at least one (1) public hearing shall be held on any application for a use permit which would establish a use listed in subd. 1, paragraph (d) of this section. The Planning Commission shall report to the Council upon any application for a conditional permit and shall recommend granting a permit unless it finds establishing, maintaining, or conducting the use will be detrimental in either of the following ways:

- (a) to the health, safety, morals, comfort, convenience, or welfare of the persons residing or working in the neighborhood of such use, or
- (b) to the public welfare or to property or improvements in the neighborhood.

The Commission may designate conditions and require guarantees in granting use permits in the manner provided in 703.07 (Adjustments and Variances). Upon receiving the Planning Commissioner's report, the Council may hold a public hearing and shall decide the proposal to grant the use permit. If the Council finds that a detrimental condition described above exists, the Council may grant the use permit and attach to the permit conditions and guarantees as described in 703.07 (Adjustments and Variances).

Subd. 3. Conformance. Any use permitted under the terms of a Conditional Uses Permit shall be established and conducted in conformity with the terms of the permit and all related conditions.

703.05 THE ADMINISTRATIVE OFFICIAL

Subd. 1. Authorization. The Mayor is hereby authorized and directed to enforce the provisions of this chapter. The Mayor, if necessary, may delegate the enforcement of this chapter to any City administrative official and supporting staff, who shall be directly under the Mayor's control and shall be known as the Zoning Administrator.

Subd. 2. Duties. The Zoning Administrator shall perform the following duties:

- (a) Examine all applications pertaining to land use, buildings, or structures, and approve the application when it conforms with this chapter.
- (b) Keep a record of all nonconforming uses.

(c) Periodically inspect buildings, structures, and land uses to determine compliance with this chapter. The Zoning Administrator may require the services of a testing laboratory to

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determine compliance with performance standards. The cost of employing the laboratory shall be paid by the owner if a violation of this chapter is established; otherwise, the City shall pay for the services.

(d) Notify, in writing, any person responsible for violating a provision of this chapter, indicating the nature of the violation and ordering the action necessary to correct it.

(e) Order discontinuing any illegal use of land, buildings, or structures; order removal of illegal buildings, structures, additions, alterations; order discontinuing any illegal work being done; or take action authorized by this chapter to insure compliance with or to prevent violation of this chapter.

(f) Maintain permanent and current records of the Zoning Code as provided in 702.01, subd. 2 (Districts), including all maps, amendments, conditional uses, and variations.

(g) Maintain a current file of all permits, certificates, and copies of notices of violation, discontinuance, or removal, for a length of time necessary to insure continuous compliance with this chapter and, on request, provide information to any person having a proprietary or tenancy interest in any specific property.

(h) Provide technical assistance to the Council and Planning Commission.

703.06 BUILDING AND USE PERMITS

Subd. 1. General. Except as provided in this section, no person, firm, or corporation shall construct, erect, alter, wreck, or move any building or structure or parts thereof within the City without first obtaining a building permit from the City. A building permit is not necessary to alter, repair, or otherwise change the interior of any residential building, provided the proposed alteration, repair, or change will not affect the exterior dimension of the building or change the existing use and occupancy of the building.

Subd. 2. Application. Application for a building permit shall be made to the Zoning Administrator on forms to be furnished by the City. Each permit application to construct or alter a building shall be accompanied by a plan, drawn to scale, showing the dimensions of the lot to be built upon and the size and location of the building and accessory buildings to be erected. Applications shall contain such other information as necessary for the proper enforcement of the City Code.

Subd. 3. Fees. The fee for a building permit is the total of a Valuation Fee plus a Plan Check Fee, plus a State Surcharge. These fees will be established by Council Resolution.

Subd. 4. Issuance. The Zoning Administrator shall issue the building permit only after determining the building plans and the application comply with this chapter.

Subd. 5. Certificate of zoning compliance.

(a) A certificate of zoning compliance shall be obtained before any building erected or structurally altered is occupied or the use of the building is altered.

(b) Application for a certificate of zoning compliance for a new building or for an existing building which has been altered shall be made to the Zoning Administrator as part of the

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building permit application (see subd. 2 of this section).

(c) Every certificate of zoning compliance shall state that the building or proposed use of a building or land complies with all provisions of law and this chapter. A record of all certificates of zoning compliance shall be kept on file in the Zoning Administrator's office, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land affected.

703.07 ADJUSTMENTS AND VARIANCES

Subd. 1. Purpose. The Council shall have the power to grant adjustments in and variances to any of the provisions of this chapter to the following extent and no further:

(a) To vary or modify the strict application of any regulation or provision in this chapter in cases to avoid practical difficulties or unnecessary hardships resulting from strict application.

(b) To permit the extension of a district where the boundary line divides a lot in one (1) ownership at the time this chapter was passed.

Subd. 2. Application. Application for any adjustment under this section shall be made to the Zoning Administrator by a written application for a permit to use the property or premises as set forth in the application. An application for an adjustment, conditional use permit, home occupation permit or variance shall be accompanied by a fee established annually by Council Resolution. Upon receiving an application, the Zoning Administrator shall set a time and place for a public hearing before the Planning Commission. At least ten (10) days before the date of the hearing, a notice of the hearing shall be published once in the official newspaper. In the case of a variance, the owners of the property under consideration and the property owners immediately adjoining the subject property shall be notified by mail. In the case of a conditional use permit or a home occupation permit, the owners of the property under consideration and the property owners within three hundred (300) feet of the subject property shall be notified by mail. The County Auditor's property ownership records shall be sufficient for identifying these property owners.

Subd. 3. Review and decision. The Commission shall recommend granting or denying the application and report the recommendation to the Council within ten (10) days after the hearing. In recommending granting any adjustment or variance under this section, the Commission shall state the conditions upon which the adjustment of variance is recommended and which will secure substantially the objectives of the regulations involved. In recommending denying the application, the Commission shall specify why the variance cannot be adjusted to meet the purposes of this chapter regarding light, air, public health, safety, comfort, convenience or general welfare.

Subd. 4. Issuance. No permit shall be issued under this section unless and until the issuance is ordered by the Council. Upon receiving the Commission's report, the Council, by resolution, shall either accept or reject the report and shall either grant or deny the application. In all cases in which adjustments or

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variances are granted, the Council shall require evidence and guarantees as it deems necessary to insure compliance with the conditions designated.

Subd. 5. Conditions for issuance. The Planning Commission shall not recommend granting any application, and the Council shall not grant any application unless they find the following facts:

- (a) There are special circumstances or conditions affecting the land, building, or use to which the application refers.
- (b) Granting the application is necessary for the preservation and enjoyment of substantial property rights.
- (c) Granting the application will not materially and adversely affect the health or safety of persons residing or working in the neighborhood of the applicant's property, will not be materially detrimental to the public welfare, or will not be injurious to property or improvements in the neighborhood.

At the hearing, the applicant shall present a statement and evidence in such form as the Planning Commission may require to show these facts.

Subd. 6. Form of action taken and record. The Planning Commission and Council shall provide a record of their proceedings, including the minutes of their meetings, their findings, and the action taken on each matter heard by them, including final recommendations, decision and order.

Subd. 7. Appeals from the decision of the Council. Any person or persons, or any board, taxpayer, department, board, or bureau of the City aggrieved by any decision of the Council may seek review by a court of record of such decision, in the manner provided by the Statutes, particularly Minn. Stat. 462.361.

703.08 AMENDING THE ZONING CODE

Subd. 1. Purpose. The Council may on its own motion, on request of the Planning Commission, or on petition or appeal of the affected property owners perform the following acts:

- (a) Transfer land, or a portion thereof, from the district in which it is situated to another district, by amending this Zoning Code.
- (b) Change any Zoning Code provision relating to the use or platting of land in any district or the restrictions upon buildings or structures by amending this Zoning Code.

Subd. 2. Procedures.

- (a) An application for amendment shall be filed with the City Administrator in duplicate, accompanied by a fee established annually by Council Resolution. The City Administrator shall forward one (1) copy to the Planning Commission.

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(b) The Commission shall recommend granting or denying the application to the Council within thirty (30) days.

(c) A public hearing shall be held on the application. Notice of the time and place shall be given not more than thirty (30) days nor less than ten (10) days before the day of the hearing. The notice shall be published at least one in the official City newspaper. The owners of the property under consideration and the property owners within three hundred (300) feet of the subject property shall be notified by mail. The City Assessor's current tax records shall be sufficient for identifying these property owners.

(d) The Council, upon receiving the Planning Commission's report, and without further public hearing, may vote upon the adoption of a proposed amendment or may refer it back to the Commission for further consideration. If the Council refers the proposed amendment back to the Commission and the Commission does not give the Council a modified recommendation within thirty (30) days after the hearing, the Council may take action without awaiting such modification. In considering recommendations, due allowance shall be made for existing conditions, the conservation of property values, the direction of building development to the best advantage of the entire City, and the uses to which the property affected is being devoted at the time; no change shall be recommended unless it is required for the public good. The amendment shall be effective only if three-fourths (3/4) of the Council concurs in its passage.

Subd. 3. Petition or appeal for amendments. An appeal by affected property owners for amending this Zoning Code shall include the following:

- (a) Name, address, and signature of each petitioner;
- (b) Specific description of the property proposed to be rezoned, and the names and addresses of the owners of this property.
- (c) The present and proposed zone classifications of the area.
- (d) The present use of each separately owned tract within the area, and the intended use of any tract of land, if known to the petitioners.
- (e) How the rezoning will fit in with the general zoning pattern of the neighborhood and the zoning plan of the City.
- (f) Three (3) copies of a map showing the property to be rezoned and the present zoning of the surrounding area for at least a distance of five hundred (500) feet, including the street pattern of the area. The map scale shall be one hundred (100) feet to one (1) inch.

703.09 TIME DEADLINE FOR CITY ACTION

Subd. 1. Deadline for Response. Except as otherwise provided in this Ordinance and notwithstanding any other law to the contrary, the City must approve or deny within sixty (60) days a written request relating to Zoning or septic system permits, licenses, or any other governmental approval of an action. Failure of the City to deny a request within sixty (60) days shall be considered approval of the request. If the City denies the request, it must state in writing the reasons for the denial at the time it denies the request.

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Subd. 2. Applications; Extensions.

(a) The time limit in Subd. 1 begins upon the City's receipt of a written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the City. If the City receives a written request that does not contain all required information, the sixty (60) day limit starts over only if the City sends notice within ten business days of receipt of the request stating what information is missing.

(b) If an action relating to zoning or septic systems requires the approval of more than one state agency in the executive branch, the sixty (60) day period in Subd. 1 begins to run for all executive branch agencies on the day a request containing all required information is received by one state agency. The City receiving the request must forward copies to those state agencies whose approval is required.

(c) A City response meets the sixty (60) day time limit if the City can document that the response was sent within sixty (60) days of receipt of the written request.

(d) The time limit in Subd. 1 is extended if a state statute, federal law, or court order requires a process to occur before the City can act on a request, and the time periods prescribed in the state statute, federal law, or court order makes it impossible to act on the request within sixty (60) days. In cases described in this subsection, the deadline is extended to sixty (60) days after completion of the last process required in the applicable statute, law, or order. Final approval of an agency receiving a request is not considered a process for purposes of this subsection.

(e) The time limit in Subd. 1 is extended if an application submitted to the City requires prior approval of a state or federal agency. In cases described in this subsection, the deadline for City action is extended to sixty (60) days after the required prior approval is granted.

(f) The City may extend the timeline under this subdivision before the end of the initial sixty-(60) day period by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed sixty (60) days unless approved by the applicant.

703.10 PENALTIES

Subd. 1. Violations and penalties. Any person, firm, or corporation who violates any of these provisions, fails to comply with any of these provisions, or makes any false statement in any document required to be submitted under these provisions shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

Subd. 2. Enforcement. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land is used in violation of this

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Zoning Code, the Zoning Administrator may institute any proper action or proceedings in the name of the City. The Zoning Administrator shall have the power of a police officer to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about any premises.

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CHAPTER 8. BUILDING AND LAND USE
Part 1. Subdivision Regulations

801.01 INCORPORATION OF REGULATIONS

Subdivision Regulations adopted September 8, 1970, commonly called the St. Charles Subdivision Regulations, are on file with the City Administrator and are incorporated by reference and shall continue in full force and effect not withstanding any other provision of this Code or of the ordinance adopted this Code.

8.1.01

Part 2. Fire Code

802.01 CODE ADOPTED

Minnesota Statutes Chapter 299F, State Fire Marshal, and the associated Minnesota Rules are hereby adopted as the St. Charles Fire Code prescribing regulations governing conditions hazardous to life and property by fire or explosion, subject to modification or amendment by this part. One (1) copy of Minnesota Statutes Chapter 299F is marked official copy and is on file in the City Administrator's office.

802.02 ENFORCEMENT

The Chief of the Fire Department serving the City, or an authorized representative, shall enforce the provisions of this part. The Chief may assign members of the Fire Department to be inspectors as necessary. The Chief may recommend employing technical inspectors, who shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the Fire Department; employment of technical inspectors shall be for an indefinite term with removal only for cause.

802.03 DEFINITIONS

"Authorized person" when used in the State Fire Marshal Statutes shall mean the City Attorney.

802.04 APPEALS

When the Chief disapproves an application or refuses to grant a permit, or when a claim is made that the Code provisions do not apply or that the Code's intent and meaning have been misconstrued or wrongly interpreted, the applicant may appeal from the Chief's decision to an Advisory Board appointed by the Mayor within thirty (30) days of the initial decision.

The Building Inspector, Zoning Administrator, and the Fire Chief shall act as a committee to determine and specify any new materials, processes, or occupancies for which permits shall be required after giving affected persons an opportunity to be heard. The Chief shall post such list in a conspicuous place in his or her office and distribute copies to interested persons.

802.05 PENALTIES

Subd. 1. Violations. A person who does any of the following shall be guilty of a misdemeanor:

- (a) Violates a provision of this Code;
- (b) Violates an order made under this Code;
- (c) Builds in violation of a detailed statement, specifications, or plans submitted and approved under this Code; and from which no appeal is taken;

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- (d) Builds in violation of a certificate or permit issued under this Code and from which no appeal is taken;
- (e) Fails to comply with an Advisory Board or court order.

Each of the above acts is a separate violation and may be punished as such. Unless otherwise specified, each day that a prohibited condition is maintained shall constitute a separate offense.

The imposition of a penalty shall not excuse the violation or permit it to continue; all violators shall be required to correct or remedy the violations or defects within a reasonable time.

Subd. 2. Forced correction. Applying the above penalty shall not be held to prevent forcing correction of prohibited conditions.

8.2.02

Part 3. Flood Plain Management

803.01 AUTHORIZATION, FACTS AND PURPOSE

Subd. 1. Statutory authorization. The State gives municipalities the authority to adopt comprehensive plans to guide future development in Minn. Stat. 462.351 to 462.364, and specifically encourages flood plain management in Minn. Stat. 104 and local water management in Minn. State. 110B.04.

Subd. 2. Findings of Fact. The City flood hazard areas are subject to periodic inundation which potentially results in loss of life, loss of services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. This part is based upon a reasonable method of analyzing flood hazards consistent with the standards established by the Minnesota Department of Natural Resources.

Subd. 3. Purpose. The purpose of this part is to promote the public health, safety, and general welfare and to minimize those losses described in subd. 2 of this section.

803.02 GENERAL PROVISIONS

Subd. 1. Affected lands. This part shall apply to all lands within the jurisdiction of the City shown on the Zoning Map to be within the boundaries of the Flood way and Flood Fringe Districts.

Subd. 2. Establishment of Zoning Map. The City of St. Charles, Winona County Zoning Map together with all attached materials is hereby adopted by reference and declared to be a part of this Code. The attached material shall include the Flood Insurance Study for the City of St. Charles prepared by the Federal Insurance Administration dated October 15, 1981, and the Flood Boundary and Flood way Maps and Flood Insurance Rate Maps, dated April 15, 1982. The Zoning Map is on file in the City Administrator's office.

Subd. 3. Regulatory flood protection elevation. The regulatory flood protection elevation shall be an elevation no lower than one (1) foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachment on the flood plain which result from designation of a flood way.

Subd. 4. Interpretation.

(a) The provisions of this Code shall be held to be minimum requirements and shall be literally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

(b) The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. If interpretation of the zoning district boundaries is needed because, for example, an Official Zoning Map boundary conflicts with actual field conditions, the Board of Adjustment shall make the necessary interpretation based on elevations on the

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regional (100-year) flood profile and other available technical data. Anyone contesting the district boundary location shall be given a reasonable opportunity to present his or her case to the Board and to submit technical evidence.

Subd. 5. Compliance. No structure or land shall be used and no structures shall be located, extended, converted, or structurally altered without full compliance with this Code and other applicable regulations.

Subd. 6. Abrogation and greater restrictions. This part is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. When this part imposes restrictions greater than those in existing easements, covenants, or deeds, this part shall prevail.

Subd. 7. Warning and disclaimer of liability. This part does not imply that areas outside the flood plain districts or land uses permitted within flood plain will be free from flooding or flood damages. This part shall not make the City, or any City officer or employee liable for any flood damages resulting from reliance on this part or any administrative decision lawfully made hereunder.

Subd. 8. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Subd. 9. Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

Accessory Use or Structures - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Basement - means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

Conditional Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that: (1) certain conditions as detailed in the zoning ordinance exist and (2) the structure and/or land use conform to the comprehensive land use plan and are compatible with the existing neighborhood.

Equal Degree of Encroachment - a method of determining the location of flood way boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

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Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

Flood Fringe - that portion of the flood plain outside of the flood way. Flood fringe is synonymous with the term "flood way fringe" used in the Flood Insurance Study for the City.

Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

Flood Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Flood way - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse or regulatory flood plain which may impede, retard or change the directions of the flow of water, either in itself or by catching or collecting debris carried by such water.

Principal Use or Structure - means all uses or structures that are not accessory uses or structures.

Reach - a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

Regulatory Flood Protection Elevation - The Regulatory Protection Elevation shall be an elevation no lower than one foot above elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a flood way.

Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers/vehicles not meeting the exemption criteria specified in Section 803.08, Subd. 3 and other similar items.

Variance - means a modification of a specified permitted development standard required in an official control including this ordinance to allow an alternative development standard not stated as acceptable.

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in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in Chapter 7, Zoning.

803.03 ESTABLISHMENT OF ZONING DISTRICTS

Subd. 1. Flood way District. The Flood way District shall include those areas designated as flood way on the Flood Boundary and Flood way Map adopted in Section 803.02, Subd. 2.

Subd. 2. Flood Fringe District. The Flood Fringe District shall include those areas designated as flood way fringe on the Flood Boundary and Flood way Map adopted in Section 803.02, Subd. 2.

Subd. 3. Compliance. No new structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations without full compliance with the terms of this ordinance and other applicable regulations which apply to uses within the jurisdiction of this ordinance. Within the Flood way and Flood Fringe Districts, all uses not listed as permitted uses or conditional uses in Sections 803.04 and 803.05 shall be prohibited. In addition, a caution is provided here that:

1. New manufactured homes, replacement manufactured homes, and certain travel trailers and travel vehicles are subject to the general provisions of this ordinance and specifically Section 803.08;

2. Modifications, additions, structural alterations or repair after damage to existing non-conforming structures and non-conforming uses of structures or land are regulated by the general provisions of this ordinance and specifically Section 803.10;

3. As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques and must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this ordinance and specifically as stated in Section 803.09 of this ordinance.

803.04 FLOOD WAY DISTRICT (FW)

Subd. 1. Permitted Uses

(a) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

(b) Industrial-commercial loading areas, parking areas and airport landing strips.

(c) Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserve, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

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(d) Residential lawns, gardens, parking areas, and play areas.

Subd. 2. Standards for Flood way Permitted Uses

(a) The use shall have a low flood damage potential.

(b) The use shall be permissible in the underlying zoning district if one exists.

(c) The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

Subd. 3. Conditional Uses

- (a) Structures accessory to the uses listed in 803.04, Subd. 1 and the uses listed in (b) - (h) below.
- (b) Extraction and storage of sand, gravel, and other materials.
- (c) Marina, boat rentals, docks, piers, wharves, and water control structures.
- (d) Railroads, streets, bridges, utility transmission lines, and pipelines.
- (e) Storage yards for equipment, machinery, or materials.
- (f) Placement of fill.
- (g) Travel trailers and travel vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of Section 803.08, Subd. 3.
- (h) Structural works for flood control such as levees, dikes, and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agriculture crops for a frequency flood event equal to or less than the 10-year frequency flood event.

Subd. 4. Standards for Flood way Conditional Uses

- (a) All Uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a Conditional Use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.
- (b) All flood way Conditional uses shall be subject to the procedures and standards contained in Section 803.09, Subd. 4.
- (c) The Conditional Use shall be permissible in the underlying zoning district if one exists.
- (d) Fill
 - (1) Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
 - (2) Dredge spoil sites and sand and gravel operations shall not be allowed in the flood way unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.

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- (3) As an alternative, and consistent with Subsection (2) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the flood way based upon the flood warning time available. The Conditional Use Permit must be title registered with the property in the Office of the County Recorder.

(e) Accessory Structures

- (1) Accessory structures shall not be designed for human habitation.
- (2) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters.
 - (a) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and (b) so far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- (3) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards, as appropriate:
 - (a) The Structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and
 - (b) Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.

(f) Storage of Materials and Equipment

- (1) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (2) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

(g) Structures

- (1) Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 105. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the flood way.

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(h) Levee

- (1) A levee, dike or floodwall constructed in the flood way shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

803.05 FLOOD FRINGE DISTRICT (FF)

Subd. 1. Permitted Uses. Permitted uses shall be those uses of land or structures listed as Permitted Uses in the underlying zoning use district(s). All Permitted Uses shall comply with the standards for Flood Fringe

"Permitted Uses" listed in Section 803.05 Standards for all Flood Fringe "Permitted and Conditional Uses" listed in Section 803.05, Subd. 5.

Subd. 2. Standards for Flood Fringe Permitted Uses.

- (a) All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structures erected thereon.
- (b) As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed in accordance with Section 803.04, Subd. 4 (e) 3.
- (c) The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a Conditional Use, unless said fill is specifically intended to elevate a structure in accordance with Section (a) above.
- (d) The storage of any materials or equipment shall be elevated on fill to the Regulatory Flood Protection Elevation.
- (e) The provisions of Section 803.05, Subd. 5 of this ordinance shall apply.

Subd. 3. Conditional Uses. Any structure that is not elevated on fill or flood proofed in accordance with Subsection (a) and (b) above or any use of land that does not comply with standards in Subsection (c) and (d) above shall only be allowable as a Conditional Use. An application for a Conditional Use shall be subject to the standards and criteria and evaluation procedures specified in Subd. 4 and 5 of this section and Subd. 4 of Section 803.09 of this ordinance.

Subd. 4. Standards for Flood Fringe Conditional Uses.

- (a) Alternative elevation methods other than the use of fill may be utilized to elevate a structures lowest floor above the Regulatory Flood Protection Elevation. These **8.3.07** alternative methods may include the use of stilts, pilings, parallel walls, etc., or above grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structures basement or lowest floor if: 1) the enclosed area is above grade on at least one side of the structure; 2) is designed to internally flood and is constructed with flood resistant materials; and 3) is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

(1) Design and certification - The structures design and as built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding. (2) Specific standards for above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:

(A) The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structures walls to provide for entry of floodwaters to equalize pressures, the bottom of all openings shall be no higher than one-foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(B) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

(b) Basements, as defined by Section 803.02, Subd. 9 of this ordinance, shall be subject to the following:

(1) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.

(2) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with Subsection (c) below.

(c) All areas of non-residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State

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Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 and FP-4 classification shall not be permitted.

(d) When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, and dredge spoil disposal control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify

methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.

(e) Storage of Materials and Equipment;

(1) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

(2) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

(f) The provisions of Subd. 5 below of this ordinance shall also apply.

Subd. 5. Standards for all Flood Fringe Uses

(a) All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation. If a variance to this requirement is granted, the Planning Commission must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

(b) Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two feet or be subject to flood velocities greater than four feet per second upon occurrence of the regional flood.

(c) Manufactured and Industrial Uses - measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain

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accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in item (b) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

(d) Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should

be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

(e) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a flood way or other encroachment limit has not been specified on the Official Zoning Map.

(f) Standards for travel trailers and travel vehicles are contained in Section 803.08, Subd. 3.

(g) All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

803.06 SUBDIVISIONS

Subd. 1. Review Criteria. No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation. For all subdivisions in the flood plain, the Flood way and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

Subd. 2. Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard areas designation will be requested.

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803.07 PUBLIC UTILITIES, RAILROADS, ROADS AND BRIDGES

Subd. 1. Public Utilities. All public utilities and facilities such as gas, electric, sewer, and water supply systems to be located in the flood plain shall be flood-proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.

Subd. 2. Public Transportation Facilities. Railroad tracks, roads and bridges to be located within the flood plain shall comply with Sections 803.04 and 803.05 of this Ordinance. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

Subd. 3. On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designated to minimize or eliminate infiltration of flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

803.08 MANUFACTURED HOMES AND MANUFACTURED HOME PARKS AND PLACEMENT OF TRAVEL TRAILERS AND TRAVEL VEHICLES

Subd. 1. New Manufactured Home Parks. New manufactured home parks and expansions to existing mobile manufactured home parks shall be subject to the provisions placed on subdivisions by Section 803.06 of this Ordinance.

Subd. 2. Placement. The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Section 803.05 of this Ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Section 803.05, Subd. 5 (a), then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Governing Body.

- (a) All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

Subd. 3. Travel Trailers. Travel trailers and travel vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Part (b) below and if they meet the following criteria:

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- (1) Have current licenses required for highway use.
- (2) Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the travel trailer/travel vehicle has no permanent structural type additions attached to it.
- (3) The travel trailer or travel vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

(b) Areas exempted for placement of Travel/Recreational Vehicles.

- (1) Individual lots or parcels of record.
- (2) Existing commercial recreational vehicle parks or campgrounds.
- (3) Existing condominium type associations.

(c) Travel trailers and travel vehicles exempted in Part (a) above lose this exemption when development occurs on the parcel exceeding \$500 dollars for a structural addition such as a garage or storage building. The travel trailer vehicle and all additions and accessory structures will then meet elevation/flood proofing requirements and the use of land restrictions specified in Sections 803.04 and 803.05 of this Ordinance.

(d) New commercial travel trailer or travel vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:

(1) Any new or replacement travel trailer or travel vehicle will be allowed in the Flood way or Flood Fringe Districts provided said trailer or vehicle and its contents are placed on fill above the Regulatory Flood Protection Elevation and proper elevated road access to the side exists in accordance with Section 803.05, Subd. 5 (a) of this Ordinance. Any fill placed in a flood way for the purpose of elevating a travel trailer shall be subject to the requirements of Section 803.04.

(2) All new or replacement travel trailers or travel vehicles not meeting the criteria of (1) above, may, as an alternative, be allowed as a Conditional Use if in accordance with the following provisions and the provisions of Section 803.09, Subd. 4 of the Ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and/or personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement travel trailers and other recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 803.07, Subd. 3 of this Ordinance.

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803.09 ADMINISTRATION

Subd. 1. Zoning Administrator. A Zoning Administrator designated by the Governing Body shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance, the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 803.11 of the Ordinance.

Subd. 2. Permit Requirements.

(a) Permit Required. A permit issued by the Zoning Administrator on conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a

nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

(b) Application for Permit. Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill or storage of materials; and the location of the foregoing in relation to the stream channel.

(c) State and Federal Permits. Prior to granting a permit or processing an application for a Conditional Use Permit or Variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.

(d) Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.

(e) Construction and Use to be as Provided on Application, Plans, Permits, Variances and Certificates of Zoning Compliance. Permits, Conditional Use Permits, or Certificates of Zoning Compliance issued on the basis of approved plans and applications authorized only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 803.11 of this Ordinance.

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(f) Certification. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures shall be certified by a registered professional engineer or registered architect.

(g) Record of First Floor Elevation. The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures and alterations or additions to structures are flood proofed.

Subd. 3. Board of Adjustment.

(a) Rules. The City Planning Commission shall serve as the Board of Adjustment and shall adopt rules for the conduct of business and may exercise all powers conferred on such Boards by State Law.

(b) Administrative Review. The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Ordinance.

(c) Variances. The Board may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in the respective enabling legislation, which justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State Law.

(d) Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for variance, the Board shall fix reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Board shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

(e) Decisions. The Board shall arrive at a decision on such appeal of variance within 30 days. In passing upon an appeal, the Board may, so long as such action is in

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conformity with provisions of this Ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decisions in writing setting forth findings of fact and the reasons for its decisions. In granting a variance the Board may prescribe appropriate conditions and safeguards such as those specified in Section 803.09, Subd. 4 which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, were made a part of the terms under which the Variance is granted, shall be deemed a violation of this Ordinance punishable under Section 803.11. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such notice.

(f) Appeals. Appeals from any decision of the Board may be made, and as specified in this Community's Official Controls and also Minnesota Statutes.

(g) Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that; (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (2) such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

Subd. 4. Conditional Uses. The Planning Commission and Council shall hear and decide applications for Conditional Uses permissible under this Ordinance. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration.

(a) Hearings. Upon filing with the Zoning Administrator an application for a Conditional Use Permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

(b) Decisions. The Planning Commission shall arrive at a decision on a Conditional Use within 30 days. In granting a Conditional Use Permit, the Commission shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 803.09, Subd. 4, (f) below which are in conformity with purposes of this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of this ordinance punishable under Section 803.11. A copy of all decisions granting Conditional Use Permits shall be forwarded by mail to the Commissioner to Natural Resources within ten (10) days of such notice.

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(c) Procedures to be followed by the Planning Commission in passing on Conditional Use Permit Applications within all Flood Plain Districts.

(1) Require the applicant to furnish the following information and additional information as deemed necessary by the Zoning Administrator for determining the suitability of the particular site for the proposed use:

(a) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, floodproofing measures, and the relationship of the above to the location of the stream channel.

(b) Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.

(2) Transmit one copy of the information described in Subsection (1) above to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.

(3) Based upon technical evaluation the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

(d) Factors upon which the decision of the Commission shall be based. In passing upon Conditional Use applications, the Commission shall consider all relevant factors specified in other sections of this ordinance, and:

- (1) the danger to life and property due to increase flood heights or velocities caused by encroachments.
- (2) the danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts, or other hydraulic structures.
- (3) the proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (4) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (5) the importance of the services provided by the proposed facility to the community.
- (6) the requirements of the facility for a waterfront location.

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- (7) the availability of alternative locations not subject to flooding for the proposed use.
- (8) the compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (9) the relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- (10) the safety of access to the property in times of flood for ordinary and emergency vehicles.
- (11) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (12) such other factors which are relevant to the purposes of this ordinance.

(5) Time for Acting on Application. The Commission shall act on an application in the manner described above within 30 days from receiving the application, except that where additional information is required pursuant to subsection (d) above. The Commission shall render a written decision within 7 days from the receipt of such additional information.

(6) Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Ordinance, the Commission shall attach such conditions to the granting of Conditional Use Permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

- (a) Modification of waste treatment and water supply facilities.
- (b) Limitations on period of use, occupancy and operation.
- (c) Imposition of operational controls, sureties and deed restrictions.
- (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees and other protective measures.
- (e) Flood-proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with regulatory Flood Protection Elevation and associated flood factors for the particular area.

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803.10 NONCONFORMING USES

Subd. 1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

- (a) No such use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.
- (b) Any alteration or addition to a nonconforming structure or nonconforming use which would result in increasing flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 through FP-4 Floodproofing Classifications) allowable in the State Building Code, except as further restricted in subsection (c) below.

(c) The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the community's initial flood plain controls must be calculated into today's current cost which will include all costs such as: construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of Section 803.04 or 803.05 of this ordinance for new structures depending upon whether the structure is in the Flood way or Flood Fringe, respectively.

(d) If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of 12 months.

(e) If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 803.04 or 803.05 will apply depending upon whether the use or structure is in the Flood way or Flood Fringe District, respectively.

8.3.18

803.11 PENALTIES FOR VIOLATIONS

Subd. 1. Violation. Violation of the provisions of this Ordinance or failure to comply with of its requirements (including violations of conditions and safeguards established in connection with grants or variances or conditions uses) shall constitute a misdemeanor and shall be punishable as defined by law.

Subd. 2. Lawful Action. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:

(a) In responding to a suspected Ordinance violation, the Zoning Administrator and Local Government may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The community must act in good faith to enforce these official controls and to correct Ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

(b) When an Ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources and Federal Emergency Management Agency Regional Office along with the community's plan of action to correct the violation to the degree possible.

(c) The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction immediately halted until a proper permit or approval is granted by the community. If the construction or development is already completed, then the Zoning Administrator may either (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with official controls, or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30 days.

(d) If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this ordinance.

8.3.19

803.12 AMENDMENTS

The floodplain designation on the official zoning map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use. All amendments to this ordinance, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. The Commissioner of Natural Resources must be given 10 days written notice of all hearings to consider an amendment to this ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.

8.3.20

Part 4. Building Code

804.01 CITY BUILDING CODE

The Minnesota State Building Code, established pursuant to Minn. Stat. 16B.59 through 16B.73 are on file in the office of the City Administrator and are hereby adopted as the City Building Code and incorporated by reference.

A. the Minnesota State Building Code includes the following chapters of Minnesota Rules:

1. 1300 Minnesota Building Code
2. 1301 Building Official Certification
3. 1302 State Building Construction Approvals
4. 1305 Adoption of the 1994 Uniform Building Code including Appendix Chapters:
 - a. 3, Division I, Detention and Correction Facilities
 - b. 12, Division II, Sound Transmission Control
 - c. 29, Minimum Plumbing Fixtures
5. 1307 Elevators and Related Devices
6. 1315 Adoption of the 1993 National Electrical Code

7. 1325 Solar Energy Systems
8. 1330 Fallout Shelters
9. 1335 Floodproofing Regulations
10. 1340 Facilities for the Handicapped
11. 1346 Adoption of the 1991 Uniform Mechanical Code
12. 1350 Manufactured Homes
13. 1360 Prefabricated Buildings
14. 1365 Snow Loads
15. 1370 Storm Shelters
16. 4715 Minnesota Plumbing Code
17. 7670 Minnesota Energy Code

804.02 ORGANIZATION AND ENFORCEMENT

The Building Inspector shall enforce this Code pursuant to Minnesota Rule part 1300.2100 and as modified by Chapter 1305. The Code shall be enforced within the City's incorporated limits.

The Administration Department shall be the City's Building Code Department. The Administrative Authority shall be a State Certified "Building Official" so designated by the Council.

804.03 PERMITS, INSPECTIONS, FEES AND CHARGES

Permits, inspections and fees shall be as provided by Council Resolution.

8.4.01

804.04 PENALTIES

Any violation of this part shall be a misdemeanor.

8.4.02

APPENDIX A. Related Material on File in City Administrator's Office

Air Pollution Abatement Manual

City of St. Charles, Winona County Zoning Map

Declaration of Undue Hardship/Inability to Pay

Equal Employment Policy/Affirmative Action Program

Federal Register, volume 38, no. 215, part III, section 128

Flood Proofing Regulations, section 210.1

Guidelines for Establishing Test Procedures for Analysis of Pollutants - 40CFR136

Manual of Accident Prevention in Construction, Association of General Contractors of America

Minnesota Code of Agency Rules, Department of Agriculture, Section 1.0109-1.0111

Minnesota Regulations Mott 450

Minnesota Rules

Part 7500.0100 et seq.

Part 7510.0200 et seq.

Part 7510.0500 et seq.

Part 7510.6100 et seq.

Part 7510.7100 et seq.

Minn. Stat. Chapter 181 - Employment: Wages, Conditions, Hours, Restrictions

Minn. Stat. Chapter 299F - State Fire Marshall

Notice of Residential Customer Rights and Possible Assistance

Pretreatment of Pollutants Introduced into Publicly Owned Treatment Works - U.S.E.P.A.

St. Charles Fire Code

St. Charles Flood Insurance Study

St. Charles Subdivision Regulations

St. Charles, Winona County Zoning Map

Standard Industrial Classification Manual

Standard Methods for the Examination of Water and Waste Water

Uniform Fire Code

703.01 DISTRICT PROVISIONS AND DIMENSIONAL REQUIREMENTS

<u>Requirements</u>	<u>A-1</u>	<u>R-1</u>	<u>R-1M</u>	(See <u>R-1-0 Note 1)</u>
Height Restrictions	Agricultural structures-none All others 2 2 stories or 35 ft.	2 Stories or 35 ft.	2 stories	2 2 stories or 45 feet
Minimum lot area	22,500 sq. ft.	7,500 sq. ft.	7,000 sq. ft.	5,000 sq. ft.
a. Width	100 feet	75 feet	50 feet	50 feet
b. Depth	125 feet	100 feet	140 feet	100 feet
c. % of allowable lot coverage (principal plus accessory structures)	20%	25%	35%	30%
d. Lot area per dwelling unit (multiple dwellings)	N/A	N/A	N/A	N/A
Yard setbacks (structures only see note 2)				
a. Front (bldg. line to right-of-way line)	35 feet	25 feet	25 feet	25 feet

b. Side	20 feet	10 feet	5 feet	10 feet
c. Rear	35 feet	25 feet	15 feet	25 feet
d. Corner (2 street exposures)	35 feet from each street line	20 feet from each street right-of-way line	25 feet longest dimension 15 ft. other dimension	25 feet from each street right-of-way line

Setback from structures from R-1,R-1M,R-1-0, R-2 District lines

50 feet	N/A	30 feet	N/A
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Performance standards

N/A	N/A	N/A	N/A
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Required screening and landscaping

N/A	N/A	N/A	N/A
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General Regulations (see note 3)

Special Provisions for certain conditional uses	All non-resid. uses shall be at least 30 ft. from abutting residential lot	Modular or Mobile Home must have at least 600 sq.ft. in the principal structure	All non-residential uses must be at least 30 ft. from any abutting residential lot
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<u>R-2</u>	<u>R-3</u>	<u>C-1</u>	<u>C-2</u>	<u>I-1</u>	<u>I-2</u>
4 stories or 45 ft.	2 2 stories or 35 ft.	3 stories or 40 ft.	2 stories or 30 ft.	2 stories or 30 ft.	3 stories or 40 ft.
7,400 sq. ft. 75 feet 100 feet 60%	7,200 sq. ft. 60 feet 120 feet --	as needed N/A N/A 85%	as needed N/A N/A 50%	as needed N/A N/A 50%	22,500sq.ft 100 feet 125 feet 50%
2,000 addl. sq. ft. for each dwelling unit after 1st 2 units (1,000 sq. ft. for elderly housing)	N/A	N/A	N/A	N/A	N/A
25 feet 10 feet 25 feet 25 ft. from	25 feet 10 feet 25 feet 25 ft. from	not required not required 20 feet not required	25 feet 10 feet 10 feet 25 ft. from	30 feet 15 feet 20 feet 15 ft. from	25 feet 20 feet 20 feet 25 ft. from

each St. right-of-way line	each St. right-of-way line		each St. right-of-way line	each St. right-of-way line	each right-of-way line
30 feet	N/A	30 feet	30 feet	50 feet	50 feet
N/A	N/A	See 702.08 Subd. 6	See 702.09 Subd. 6	See 702.10 Subd. 6	See 702.11 Subd. 6
N/A	N/A	N/A	See 702.09, Subd. 7	See 702.10, Subd. 7	See 702.11 Subd. 7
All non-residential uses must be at least 30 ft. from an abutting residential lot	N/A	Lighting, awning canopy, marquee restrictions; see 702.08 Subd. 6	Vehicular & pedestrian certain circulation requirements; see 702.09, Subd. 8	Requirements for conditional uses, see 702.10, Subd. 4	General Regulations only apply

NOTES:

1. PUD provisions are not listed here due to the unique characteristics of a PUD. See 702.07 for more information.
2. Where there exists a pattern of use in an area of less than the minimum setback, the Planning Commission on its own motion may vary the setback requirements for new structures immediately adjacent to or surrounded by the non-conforming structures. This variance shall be allowed only where such variance will not create a substantial detriment to uses or property rights of persons in the immediate area.
3. The provisions in 703.02 (General Regulations apply to all districts.

CITY OF ST. CHARLES - SUBDIVISION ORDINANCE

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SECTION ONE: GENERAL SUBDIVISION PROVISIONS

801.01 TITLE: This Ordinance shall be known as the "Subdivision Ordinance of the City of St. Charles, and will be referred to herein as "this Ordinance".

801.02 PURPOSE: Each new subdivision becomes a permanent unit in the basic physical structure of the community, a unit with which the future community will, of necessity, be forced to comply. Haphazard and a piece-meal planning of the subdivisions, without correlation with a plan, will result in a disconnected patchwork of plats with poor traffic circulation and expensive provision of utilities. In order that new subdivisions will contribute toward an attractive, orderly, stable and wholesome community environment, adequate municipal services and efficient movement of traffic, all subdivisions hereafter platted within the jurisdiction of the city shall comply with the regulations set forth in this section. In their interpretation and application the provisions of this section are minimum requirements adopted for the protection of the public health, safety and general welfare.

801.03 ADMINISTRATION: This Ordinance shall be administered by the Zoning Administrator who is appointed by the City council.

801.04 AMENDMENTS: The provisions of this Ordinance shall be amended by the City following a legally advertised public hearing before the Planning Commission and in accordance with the law, including the rules and regulations of any applicable state or federal agency.

801.05 APPROVALS NECESSARY FOR ACCEPTANCE OF SUBDIVISION PLATS: Before any plat or subdivision shall be recorded or be of any validity, it shall be referred to the City Planning Commission and approved by the City Council as having fulfilled the requirements of this Ordinance.

801.06 FEES: A subdivision application shall be accompanied by a fee established by City resolution to pay for costs associated with the application processing and review. Said fee resolution will be annually reviewed

and updated. Any and all expenses incurred by the City for engineering, planning, legal or other services related to the review and processing of the subdivision application that exceeds the established application fee shall be collected from the applicant.

801.07 CONDITIONS FOR RECORDING: No plat or subdivision shall be entitled to record in the Winona County Recorder's Office or have any validity until the plat thereof has been prepared, approved and acknowledged in the manner prescribed by this ordinance.

801.08 BUILDING PERMITS: No building permits shall be considered for issuance by the City for the construction of any building, structure or improvement to the land or to any lot in a subdivision as defined herein, until all requirements of this ordinance have been fully complied with.

801.09 SEPARABILITY: If any section, subsection, sentence, clause or phase of this Ordinance is for any reason found to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

8.1.01

801.10 PRIVATE AGREEMENT: This Ordinance is not intended to abrogate any easement, covenant, or any other private agreement provided that where the regulations of this Ordinance are more restrictive or impose higher standards or requirements on such easements, covenants, or other private agreements, the requirements of this Ordinance shall govern.

801.11 INTERPRETATION: In interpreting and applying the provisions of this Ordinance, they shall be held to the minimum requirements for the promotion of the public health, safety, comfort, convenience, and general welfare. Where the provisions of this Ordinance impose greater restrictions than those of any other ordinance or regulation, the provision of this Ordinance shall be controlling. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than this Ordinance, the provisions of such statute, other ordinance or regulation shall be controlling.

801.12 REPEAL: Subdivision Ordinance, as Amended, is hereby repealed and replaced by this Ordinance.

801.13 EFFECTIVE DATE: This Ordinance shall take effect immediately after publication.

801.14 RULES: For the purpose of this Ordinance, words used in the present tense shall include the future; words in the singular shall include the plural, and the plural the singular; the word "lot" shall include the word "plat"; and the word "shall" is mandatory and not discretionary.

8.1.02

SECTION TWO: DEFINITIONS

802.01 DEFINITIONS: Except for those words and phrases defined below, the words and phrases used in this Ordinance shall be interpreted to be given the meaning in common usage, so as to give this Ordinance its most reasonable application.

A. A public right-of-way which affords secondary access to abutting property.

Applicant: The owner, their agent, or other person having legal control, ownership and/or interest in the land proposed to be subdivided.

B. That property abutting on one side of a street and lying between the two nearest intersecting or intercepting streets or railroad right-of-way or unsubdivided acreage.

Boulevard: The portion of a street right-of-way not occupied by pavement.

Building: A structure having a roof supported by columns or walls. When separated by division walls without openings, each portion of such building shall be deemed as a separate building.

C. Certificate of Survey: A document prepared by a Registered Engineer or Registered Land Surveyor which precisely describes area, dimensions and location of a parcel or parcels of land.

City: The City of St. Charles

City Attorney: The attorney employed or retained by the City, unless otherwise stated.

City Council: The governing body of the City of St. Charles

City Engineer: The engineer employed or retained by the City unless otherwise stated.

Comprehensive Plan: A Comprehensive Plan prepared and approved by the City including a compilation of policy statements, goals, standards, fiscal guidelines, and maps indicating various functional classes of land use, places, and structures, and for the general development of the City including any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

County: Winona County, Minnesota

Crosswalk: A right-of-way owned by the City or another governmental entity which furnishes access for pedestrians across a street to adjacent streets or properties.

8.2.01

D. Design Standards: The specifications to landowners or subdividers for the preparation of plats, both preliminary and final, indicating among other things, the optimum, minimum or maximum dimensions of such items as rights-of-way, blocks, easements, and lots.

E. Easement: A grant by a property owner for the use of a strip of land and for the purpose of constructing and maintaining drives, utilities, including, but not limited to, wetlands, ponding areas, sanitary sewers, water mains, electric lines, telephone lines, storm sewer or storm drainage-ways and gas lines.

F. Final Plat: A drawing or map of a subdivision, meeting all of the requirements of the City and in such form as required by Winona County for the purpose of recording.

G. No definitions.

H. No definitions.

I. Individual Sewage Disposal System: A septic tank, seepage tile sewage disposal system, or any other sewage treatment device.

J. No definitions.

K. No definitions.

L. Lot: A portion of a subdivision or other parcel of land intended for building development or for transfer of ownership.

Lot, Corner: A lot situated at the intersection of two streets, the interior angle of such intersection not exceeding one hundred 135 degrees.

Lot, Depth: The shortest horizontal distance between the front and rear lines measured from a 90 degree angle from the street right-of-way within the lot boundaries.

Lot, Double Frontage: An interior lot having frontage on two streets.

Lot Width: The shortest horizontal distance between the side property lines measured at right angles to the lot depth measured at the required minimum building setback line.

Lot Improvement: Any building, structure, place, work of art, or other object, or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment. Certain lot improvements shall be property bonded as provided in these regulations.

8.2.02

M. Metes and Bounds Description: A description of real property which is not described by reference to a lot or block shown on a map, but is described by starting at a known point and described the bearings and distances of the lines forming the boundaries of the property or delineating a fractional portion of the section, lot or area by described lines or portions thereof.

Minor Subdivision. A single easily-described division of a platted lot of record where resultant parcels meet the minimum lot area and width requirements of the Zoning District and are approximately comparable in size to existing lots in the general vicinity.

N. Natural Waterway: A natural passageway on the surface of the earth, so situated and having such a topographical natural nature that surface water flows through.

O. Outlot: A lot remnant or parcel of land left over after platting, which is intended as open space or other use, for which no building permit shall be issued.

P. Parcel: An individual lot or tract of land.

Parks and Playgrounds: Public land and open spaces in the City dedicated or reserved for recreation purposes.

Pedestrian Way: A public right-of-way or private easement across a block or within a block to provide access for pedestrians and which may be used for the installation of utility lines.

Person: Any individual or legal entity.

Planning Commission: The St. Charles Planning Commission.

Preliminary Plat: A detailed drawing or map of a proposed subdivision meeting the requirements herein enumerated, submitted to the Planning Commission, and governing body for their consideration in compliance with the Comprehensive Plan, along with the required supporting data.

Protective Covenants: Contracts made between private parties as to the manner in which land may be used, with the view to protecting and preserving the physical and economic integrity of any given area.

Public Improvement: Any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement or other facility for which the City may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established.

8.2.03

Q. Quadraminiums: Single structures, which contain four, subdivided dwelling units, all of which have individually separate entrances from the exterior of the structure.

R. Right-Of-Way: Land acquired by reservation or dedication intended for public use, and intended to be occupied or which is occupied by a street, trail, railroad, utility lines, oil or gas pipeline, water line, sanitary sewer, storm sewer, or other similar uses.

Roadway: The portion of street right-of-way improved for vehicular travel.

S. Setback: The minimum horizontal distance between a building and street, lot line, ordinary high water mark or bluff line. Distances are to be measured from the most outwardly extended portion of the structure at ground level.

Sketch Plan: A drawing showing the proposed subdivision of property. This plan shall be drawn to scale and dimensioned, however, exact accuracy is not a requirement.

Street: A public right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designed as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated.

Streets, Collector: Those streets which carry traffic from local streets to the major system of arterials and highways. Collector streets primarily provide principal access to residential neighborhoods, including to a lesser degree, direct land access.

Streets, Cul-De-Sac: A local street with only one outlet and having an appropriate terminal for the safe and convenient reversal or traffic movement.

Streets, Local: Those streets which are used primarily for access to abutting properties and for local traffic movement.

Streets, Marginal Access (Frontage Road): Those local streets which are parallel and adjacent to thoroughfares and highways; and which provide access to abutting properties and protection from through traffic.

Streets, Thoroughfare, Arterial: Those streets carrying larger volumes of traffic and serving as links between various sub-areas of the community. Thoroughfares or arterial streets are intended to provide for collection and distribution of traffic between highways and collector streets, hence regulation of direct access to property is critical.

Subdivider: Any individual, firm, association, syndicate, copartnership, corporation, trust or other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this Ordinance.

8.2.04

Subdivision: A described tract of land which is to be or has been divided into two or more lots or parcels, any of which resultant parcels is less than two and one-half acres in area, or one hundred fifty (150) feet in width, for the purpose of transfer of ownership or building development, or, if dedication of a public street is involved, any division of a parcel of land. The term includes resubdivision and where it is appropriate to the context, relates either to the process of subdividing or to the land subdivided.

Surveyor: A land surveyor registered under Minnesota State laws.

T. Two Family Dwelling: A dwelling designed exclusively for occupancy by two families living independently of each other.

U. Unit Lots: Lot created from the subdivision of a two family dwelling or a quadraminium having different minimum lot size requirements than the conventional base lot within the zoning district.

V. Variance: A modification, or variation of the provisions of this Ordinance, as applies to a specific piece of property. Modification of the allowable use within a district shall not be considered a variance.

W. No definitions.

X. No definitions.

Y. No definitions.

Z. Zoning Administrator: The person duly appointed by the City council as the individual charged with the responsibility of administering and enforcing this Ordinance.

Zoning Ordinance: The Zoning Ordinance or resolution controlling the use of land as adopted by the City.

8.2.05

SECTION THREE: MINOR SUBDIVISION

803.01 QUALIFICATION: This section shall apply to the following applications:

- A.** Divisions of land where the division is to permit the adding of a parcel of land to an abutting platted lot or the combination of recorded platted lots to form no more than two lots. Newly created lots shall conform to the design and performance standards of the St. Charles Subdivision and Zoning Ordinances.
- B.** The simple division of a single platted lot to create no more than two lots and the newly created property line will not cause the remaining portion of the lot or any structure to be in violation with this Ordinance or the St. Charles Zoning Ordinance.
- C.** In the case of a request to divide a base lot upon which a two family dwelling, townhouse or quadraminium, which is a part of a recorded plat where the division is to permit individual private ownership of a single dwelling unit within such a structure and the newly created property lines will not cause any of the unit lots or the structure to-be in violation of this Ordinance or the St. Charles Zoning Ordinance.

803.02 CONTENT AND DATA REQUIREMENTS: The following information shall be submitted along with the application for lot consolidation or simple subdivision.

- A.** Survey prepared by a registered land surveyor which includes:
 - 1. Original and proposed lot boundaries.
 - 2. Location of existing structures on the site.
 - 3. Existing easement locations.
 - 4. Environmental constraints of the site.
- B.** Title search showing any existing deed restrictions.
- C.** The Zoning Administrator may require additional information as outlined in Section 6 of this Ordinance if deemed necessary.

803.03 DESIGN STANDARDS: The minor subdivision shall conform to all design standards as specified in this Ordinance. Any proposed deviation from said standards shall require the processing of a variance request.

803.04 PROCESSING: Upon receipt of the completed application and required informational submissions, the Zoning Administrator shall set a date for review of the minor subdivision by the Planning Commission.

8.3.01

Before a minor subdivision shall be recorded or be of any validity, it shall be referred by the City Planning Commission for review and recommendation, then forwarded to the City Council for consideration and final approval.

8.3.02

SECTION FOUR: PROCEDURES FOR FILING AND REVIEW

804.01 SKETCH PLAN: In order to insure that all applicants are informed of the procedural requirements and minimum standards of this Ordinance, and the requirements or limitations imposed by other City ordinances or plans, prior to the development of a preliminary plat, all applicants shall present a sketch plan to the Zoning Administrator prior to filing a preliminary plat. Approval of the sketch plan shall not be considered binding, in regard to subsequent plat review. The Zoning Administrator shall have the authority to refer the sketch plan to the Planning commission and/or City Council for review and comment.

The sketch plan submission shall include, but not be limited to, the following:

- A. Formal request for subdivision.
- B. Eight copies of the plat sketch plan at a scale not less than one inch equal 100 feet.
- C. An 8-1/2 C 11 inch reduction of the sketch plan.
- D. Payment of filing fee.
- E. Deposit or escrow security to pay review costs of the City Staff and consultants.

804.02 PRELIMINARY PLAT:

A. Filing. The applicant shall file a request for preliminary plat approval and accompanying fee at least 21 days prior to the next regular Planning Commission meeting at which the request is to be considered. After the City has received the request for a plat approval, it shall inform the applicant within 10 days whether the submittal was complete. If complete, the request will be placed on the Planning Commission agenda. If deemed not complete, the applicant will be informed of needed material or information to be made complete. If no notification of completion is made by the City within 10 days, the request will be placed on the Planning Commission Agenda for consideration.

Such application shall be accompanied by a fee as provided for by City Council Resolution. Such application shall also be accompanied by eight large scale copies and one reduced scale (8-1/2 x 11) copy of a preliminary plat and supportive information in conformity with requirements of this Ordinance. Where appropriate, the City staff will meet with the applicant to discuss the request

and related information. Upon receipt of all the required information, the Zoning Administrator may forward the application and required information to the appropriate City staff/consultants and City commissions for review and technical reports.

8.4.01

1. The applicant shall supply proof of title in a form approved by the City Attorney and the legal description of the property for which the subdivision is requested and as applicable, supply documented authorization from the owner(s) of the property in question to proceed with the requested subdivision.
2. The applicant shall supply a list of property owners located within 300 feet of the subject property and verified by the City of St. Charles.
3. The applicant shall submit any necessary applications for variances from the provisions of this Ordinance, as set out in Section 809.02. The preliminary plat shall be considered as being officially submitted only when all of the information requirements are complied with and the appropriate fees paid.

B. Hearing. Upon receipt of the application and all informational requirements, the Zoning Administrator shall schedule a public hearing for public review of the preliminary plat. The hearing shall be held after adequate time has been allowed for staff and advisory body review of the plat. Within 30 days of receipt of the application, the Planning Commission shall conduct the hearing, and report its findings and make recommendations to the City Council. Notice of the hearing shall consist of a legal property description, description of request and shall be published in the official newspaper at least 10 days prior to the hearing. Written notification of the hearing shall be mailed at least 10 days prior to the hearing. Written notification of the hearing shall be mailed at least ten days prior to all owners of land within 300 feet of the boundary of the property in question. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Ordinance, provided a bona fide attempt has been made to comply with the notice requirements of this Ordinance.

C. Technical Assistance Reports. The Zoning Administrator shall instruct the appropriate staff to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the City Council.

D. Review by Other Commission or Jurisdictions. The Zoning Administrator shall refer copies of the preliminary plat to the Park and Recreation Committee, County, State or other public jurisdictions for their review and comment, where appropriate and when required.

E. Planning Commission Action. The applicant or a designated representative thereof shall appear before the Planning Commission at the public hearing in order to answer questions concerning the proposed request. The Planning Commission shall make a recommendation to the City Council following

the close of the public hearing. If the Planning Commission has not acted upon the preliminary plat within 60 days, the Council may act on the preliminary plat without the Planning Commission's recommendation.

8.4.02

F. City Council Action.

1. Upon completion of the report and recommendation of the Planning Commission, the request shall be placed on the agenda of the City Council. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
2. Upon receiving the report and recommendation of the Planning Commission and City Staff, the City Council shall have the option to set and hold a public hearing if deemed necessary or take action based on Planning Commission recommendation. The City Council shall make a recorded finding of fact and may impose any condition it considers necessary to protect the public health, safety and welfare.
3. The Council shall approve or disapprove the preliminary plat within 60 days following delivery of an application completed in compliance with this Ordinance unless an extension of the review period has been agreed to by the applicant and may impose conditions and restrictions which are deemed appropriate.
4. If the preliminary plat is not approved by the City Council, the reasons for such action shall be recorded in the proceedings of the Council. If the preliminary plat is approved, such approval shall not constitute final acceptance of the layout. Subsequent approval will be required of the engineering proposals and other features and requirements as specified by this Ordinance to be indicated on the final plat. The City Council may require such revisions in the preliminary plat and final plat as it deems necessary for the health, safety, general welfare and convenience of the City.
5. The City Council reserves the right to decline approval of a preliminary plat if due regard is shown for the preservation of all natural features, such as topography, trees, water courses, scenic points, prehistoric and historical spots, and similar community assets which, if preserved, will add attractiveness and stability to the proposed development of the property.
6. Approval of a preliminary plat shall be null and void unless within 100 days after receiving the last required approval of the preliminary plat, there shall be submitted to the Clerk Treasurer a final plat or plats for all or a portion of the approved preliminary plat in accordance with the conditions upon which such approval was granted by the Council. An extension from this requirement may be granted by the City Council upon the reception of a request for extension. Such an extension shall be requested in writing and filed with the City at least 14 days before the voidance of the approved preliminary plat. There shall be no charge for the filing of such a

petition. The request for extension shall state facts showing a good faith attempt was made to meet the final plat submission requirement. Such petition shall be presented to the City Council for a decision.

7. All preliminary plats must be final platted into lots and blocks in accordance to an approved phasing plan, or within three years of preliminary plat approval.

8.4.03

In the event of changes to City, Council, State and Federal development regulations, the City may require a preliminary plat to be amended to incorporate applicable changes.

8. Should the applicant desire to amend a preliminary plat as approved, an amended preliminary plat may be submitted. The City may require the applicant to follow the same procedure as a new preliminary plat. No public hearing will be required for the amendment if the opinion of the City is that the scope of changes do not constitute a new preliminary plat. A filing fee, as established by the City, shall be charged for the amendment processing.

9. Approval of the preliminary plat shall not be considered binding in regard to subsequent final plat contemplation.

804.03 FINAL PLAT:

A. Filing. After the preliminary plat has been approved, the final plat shall be submitted for review as set forth in the subsections which follow. The City may agree to review the preliminary and final plat simultaneously. The final plat shall incorporate all changes, modifications, and revisions required by the City. Otherwise, it shall strictly conform to the approved preliminary plat.

B. Approval of the Planning Commission. Ten copies of the final plat shall be submitted to the Zoning Administrator for distribution to the Planning Commission. City Council and appropriate City staff. The City Staff shall examine the final plat and prepare a recommendation to the Planning Commission. Nature of Planning Commission recommendation for approval, disapproval or any delay in decision of the final plat will be conveyed to the subdivider within 10 days after the meeting of the City Planning Commission at which such plat was considered.

C. Development Agreement. Prior to approval of a final plat, the applicant shall have executed a development agreement with the City, which controls the installation of all required improvements and assures compliance with all conditions of approval. Said agreement will require all improvements and approval conditions to comply with approved engineering standards and applicable regulations.

D. Approval of the City Council. After review of the final plat by the Planning Commission, such final plat, together with the recommendations of the Planning Commission and development agreement, shall be submitted to the City Council for consideration. If accepted, the final plat and development agreement shall be approved by resolution, which resolution shall provide for the acceptance of all agreements for basic improvements, public dedication, and other requirements as indicated by the City Council. If disapproved, the grounds for refusal to approve a plat shall be set

forth in the proceedings of the Council and reported to the person or persons applying for such approval.

8.4.04

E. Special Assessments. When any existing special assessments which have been levied against the property described are to be divided and allocated to the respective lots in the proposed plat, the Zoning Administrator shall:

1. Estimate the clerical cost of preparing a revised assessment role.
2. File the same with the County Auditor.
3. Make such division and allocation.

Upon approval by the Council of all costs associated with the development and filing of the assessment role, the same shall be paid to the Zoning Administrator before the final plat approval.

F. Street Addresses. With submission of the final plat, eight copies of the plat map showing all addresses correctly labeled in conformance with all applicable City Ordinances and policies shall be supplied to the Zoning Administrator for subsequent distribution to the utility companies and local school districts. The developer shall work with the City Clerk in regard to the assignment of addresses.

G. Recording Final Plat. If the final plat and development agreement are approved by the City Council, the subdivider shall record it with the Winona County Recorder within 120 days after said approval or approval of the final plat shall be considered void, unless a request for time extension is submitted in writing and approved by the City Council. The subdivider, shall immediately upon recording, furnish the Zoning Administrator with a print and reproducible tracing for the final plat showing evidence of the recording. No building permits shall be let for construction of any structure on any lot in said plat until the City has received evidence of the plat and development agreement being recorded by Winona County and the provisions of the subdivision's development agreement have been satisfactorily met.

8.4.05

SECTION FIVE: DISQUALIFICATION/DENIAL OF PLATS

805.01 PREMATURE SUBDIVISIONS: Any preliminary or final plat of a proposed subdivision deemed premature for development shall be denied by the City Council.

A. Conditions Establishing Premature Subdivisions. A subdivision may be deemed premature should any of the conditions set forth below exist:

1. Lack of Adequate Drainage: A condition of inadequate drainage shall be deemed to exist if:

- a. Surface or subsurface water retention and runoff is such that it constitutes a danger to the structural security of the proposed structures and/or adjacent properties.
- b. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
- c. The proposed site grading and development will cause harmful and irreparable damage from erosion and siltation on downstream land.

Factors to be considered in making these determinations may include: average rainfall for the area; the relation of the land to floodplains; the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.

2. Lack of Adequate Water Supply. A proposed subdivision shall be deemed to lack an adequate water supply if municipal water is not available to the plat. With the extension of municipal water, all private wells must be capped in accordance with State Statutes.

3. Lack of Adequate Roads or Highways to Serve the Subdivision. A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:

- a. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create, a hazard to public safety and general welfare, or seriously aggravate an already hazardous condition, and when, with due regard to the advice of the City Engineer, Winona County and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use.
- b. The traffic volume generated by the proposed subdivision would create unreasonable street congestion or unsafe conditions on streets existing at the time of the application or proposed for completion within the next two years.

8.5.01

c. The roads fail to meet minimum City standards.

4. **Lack of Adequate Waste Disposal Systems.** A proposed subdivision shall be deemed to lack adequate waste disposal systems if municipal sanitary sewer is not available to the plat or if in subdivisions for which sewer lines are proposed, there is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the St. Charles Comprehensive Plan, as may be amended.

5. **Inconsistency with Comprehensive Plan.** The proposed subdivision is inconsistent with the purposes, objectives, and recommendations of the duly adopted Comprehensive Plan of St. Charles, as may be amended.

6. **Providing Public Improvements.** If public improvements, such as recreational facilities, or other public facilities, reasonably necessitated by the subdivision, which must be provided at public expense, cannot be reasonably provided for within the next two fiscal years.

7. **Minnesota Environmental Quality Board (MEQB) Policies.** The proposed subdivision is inconsistent with the policies of MEQB 25, as may be amended, and could adversely impact critical environmental areas or potentially disrupt or destroy historic areas which are designated or officially recognized by the City Council in violation of Federal and State historical preservation laws.

B. **Burden of Establishing.** The burden shall be upon the applicant to show that the proposed subdivision is not premature.

805.02 DENIAL OF PLAT: The Planning Commission may recommend denial and the City Council may deny the subdivision if it makes any one or more of the following findings:

A. That the proposed subdivision is in conflict with adopted applicable general and specific comprehensive plans of the City.

B. That the physical characteristics of this site, including but not limited to topography, percolation rate, soil conditions, susceptibility to erosion and siltation, susceptibility to flooding, water storage, drainage and retention, are such that the site is not suitable for the type of development, design or use contemplated.

C. That the site is not physically suitable for the proposed density of development.

D. That the design of the subdivision or the proposed improvements are likely to cause environmental damage.

8.5.02

- E.** That the design of the subdivision or the type of improvements are likely to cause public health problems.
- F.** That the design of the subdivision or the type of improvements will conflict with easements of record or with easements established by judgement of a court.
- G.** That the proposed subdivision, its site, or its design adversely affects the flood carrying capacity of the flood way, increases flood stages and velocities, or increases flood hazards within the flood way fringe or within other areas of the City.
- H.** The proposed subdivision is inconsistent with the policies and standards of the State defined Shoreland, Floodplain and Wetland Districts.
- I.** The City Council deems the subdivision to be premature.
- J.** The design of the subdivision does not conform to minimum City standards.

8.5.03

SECTION SIX: PLAT AND DATA REQUIREMENTS

806.01 SKETCH PLAN: Sketch plans shall be prepared at a usable scale and contain, at a minimum, the following information:

- A. Property boundary.
- B. North arrow.
- C. Scale
- D. Street layout on and adjacent to plat.
- E. Designation of land use and current or proposed zoning.
- F. Significant topographical or physical features.
- G. General lot locations and layout.
- H. Preliminary evaluation by the applicant that the subdivision is not classified as premature based upon criteria established in section 805.01 of this Ordinance.

The City will review the sketch plan for adherence to site design considerations such as curb cuts, lot size, block size, encroachment on wetlands or steep slopes, circulation, etc. The City's engineer and planner may review and comment on the sketch plan if deemed necessary by the City's Zoning Administrator. After the review, the City will inform the applicant of its findings and suggest changes or improvements to the Plan prior to submittal of a Preliminary Plat.

806.02 PRELIMINARY PLAT: The applicant shall prepare and submit a preliminary plat, together with a preliminary grading plan, a preliminary utility plan, preliminary landscape plan, and any other necessary supplementary information.

A. **General Information.** The preliminary plat together with the preliminary grading plan and preliminary plan, shall contain the information set forth in the subsections which follow.

1. **General Requirements.**

- a. Proposed name of subdivision; names shall not duplicate or too closely resemble names of existing subdivisions.
- b. Location of boundary lines in relation to a known section, quarter section, or quarter-quarter section lines comprising a legal description of the property.
- c. Names and addresses of all persons having property interest, the developer, designer, and surveyor together with his or her registration number.
- d. Graphic scale or plat, not less than one inch to 100 feet.
- e. North arrow.
- f. Date of preparation.

8.6.01

B. **Preliminary Plat.** The Preliminary Plat shall contain the information set forth in the subsections which follow:

1. **Existing Conditions.**

- a. Boundary line and total acreage of proposed plat, clearly indicated.
- b. Existing zoning classifications for land within and abutting the subdivision.
- c. Location, widths and names of all existing or previously platted streets or other public ways, showing type, width and condition of improvements, if any, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, easements and section and corporate lines within the tract and to a distance of 300 feet beyond the tract.
- d. Boundary lines of adjoining unsubdivided or subdivided land, within 300 feet, identified by name and ownership, including all contiguous land owned and controlled by the subdivider.
- e. The delineation of all wetlands in accordance with criteria established by the Wetlands Conservation Act 1991, the Army Corps of Engineers, and/or Minnesota Department of Natural Resources. Wetland delineations shall be performed by the Army Corps of Engineers, Minnesota Department of Natural Resources, or persons recognized as qualified by such agencies.

2. **Proposed Design Features.**

- a. Layout of proposed streets showing the right-of-way widths, and proposed names of streets in conformance with City and County street identification policies. The name of any street heretofore used in the City or its environs shall not be used unless the proposed street is a logical extension of any already named street, in which event, the same name shall be used.
- b. Locations and widths of proposed alleys and pedestrian ways.
- c. Location, dimension and purpose of all easements.
- d. Layout, numbers, lot areas and preliminary dimensions of lots and blocks, outlots.
- e. Minimum front and side street building setback lines.
- f. When lots are located on curve, the width of the lot at the building setback line.

8.6.02

- g. Areas, other than streets, alleys, pedestrian ways and utility easements, intended to be eradicated or reserved for public use, including the size of such area or areas in acres.

3. **Supplementary Information.** Any or all of the supplementary information requirements set forth in this subsection shall be submitted when deemed necessary by the City staff, consultants, advisory bodies and/or City Council.

a. Proposed protective covenants.

b. Statement of the proposed use of lots stating type of buildings with number of proposed dwelling units or type of business or industry, so as to reveal the effect of the development on traffic, fire hazards, and congestion of population. The City may require the applicant to have formal traffic or other studies performed to the City's satisfaction which shows the effect of the proposed development on traffic, fire hazards, congestion or other matters of public concern.

c. If any zoning changes are contemplated, the proposed zoning plan for the areas, including dimensions, shall be shown. Such proposed zoning plan shall be for information only and shall not vest any rights in the applicant.

d. Where the subdivider owns property adjacent to that which is being proposed for the subdivision, it shall be required that the subdivider submit a sketch plan of the remainder of the property so as to show the possible relationships between the proposed subdivision and the future subdivision. In any event, all subdivisions shall be required to relate well with existing or potential adjacent subdivision.

e. Where structures are to be placed on large or excessively deep lots, which are subject to potential, replat, the preliminary plat shall indicate a logical way in which the lots could possibly be re-subdivided in the future.

f. When the City has agreed to install improvements in a development, the developer may be required to furnish a financial statement satisfactory to the City indicating the developer's ability to develop the plat.

g. An environmental assessment worksheet shall be submitted if the City, Minnesota Environmental Quality Board or other groups or agencies determine that one is required by law.

h. Applications, statements and supporting documentation and plans for rezoning, variances, conditional use permits or planned unit development approvals being sought for the subdivision.

i. Such other information as may be required by the City.

8.6.03

C. **Grading Plan.** The preliminary grading plan shall contain the information set forth in the subsections which follow:

1. **Existing Conditions.**

- a. Location and size of existing sewers, water mains, culverts or other underground utilities and facilities within the tract and to a distance of 100 feet beyond the tract. Such data as grades, invert elevations and locations of catch basins, manholes and hydrants shall also be shown.
- b. Topographic data, including contours at vertical intervals of not more than two feet. Watercourses, wetlands, woodland areas, rock outcrops, power transmission poles and lines, and other significant features shall also be shown.
- c. 100 year flood elevations, the regulatory flood protection, and boundaries of flood way and flood fringe areas, if known taking into consideration the Flood Insurance Study and Flood Insurance Rate Map.
- d. A statement certifying the environmental condition of the site including the presence of any hazardous substance as defined in Minnesota Statutes 115B.02, Subd. 8. Such statement may be required to be based upon an environmental assessment of the site by an engineering firm acceptable to the City.

2. **Proposed Design Features.**

- a. Grading plan with minimum two foot contours which shall include the proposed grading and drainage of the site, including provisions for surface water ponding and drainage. Also to be stipulated are the building pad locations, garage floor, first floor, and basement elevations of all structures.
- b. Layout of the proposed streets showing right-of-way widths, centerline gradients and typical cross sections.
- c. Proposed fill, levees, channel modifications, and other methods to overcome flood or erosion hazard areas in acceptance with the Zoning Ordinance and by use of the 100 year flood profile and other supporting technical data in the Flood Insurance Study.
- d. A plan for soil erosion and sediment control both during construction and after development shall be completed. The plan shall include gradients of waterways, design of erosion control measures, design of sediment control measures, and landscaping of the erosion and sediment control system. Such plans are to be in accordance with the technical standards and specifications of Section 807.07 of this Ordinance and approved by the City Council.

8.6.04

- e. When applicable, a "wetland systems impact plan" shall be submitted which sets forth provision for sediment control, water management, maintenance of landscape features or any other efforts intended to maintain or improve environmental quality within the wetland impact area. The plan shall identify changes to be made in the natural

condition of the earth and shall minimize tree removal, ground cover change, and loss of natural vegetation and grade changes as much as possible.

f. When applicable, wetland mitigation efforts shall be conducted with the Minnesota Department of Natural Resources, Army Corps of Engineers, or other pertinent agencies.

g. Provision for surface water disposal, ponding, drainage, and flood control.

3. **Supplementary Information.** Any or all of the supplementary information requirements set forth in this sub-section shall be submitted when deemed necessary by the City Staff, consultants, advisory bodies and/or City Council.

a. An accurate soil survey of the subdivision prepared by a Registered Soils Engineer to determine soil suitability for development.

D. **Utility Plan.** The preliminary utility plan shall contain the information set forth in the sub-sections which follow:

1. **Existing Conditions:**

a. Location and size of existing sewers, water mains, culverts or other underground facilities within the tract and to a distance of 100 feet beyond the tract. Such data as grades, invert elevations and locations of catch basins, manholes any hydrants shall also be shown.

2. **Proposed Design Features.**

a. Locations and routing of proposed sewer lines and water mains. Identification of gravity, force main and alternative service lines.

b. Water mains shall be provided to serve the subdivision by extension of an existing community system. Service connections shall be stubbed into the property line and all necessary fire hydrants shall also be provided. Extensions of the public water supply system shall be designed so as to provide public water in accordance with the standards of the St. Charles Water Department.

c. Sanitary sewer mains and service connections shall be installed in accordance with the standards of the City with regard to location, size, and service type, subject to final review and approval of the City Council.

8.6.05

3. **Certification Required:** The preliminary plat must be prepared and signed by a Registered Land Surveyor. The grading and utility plans must be prepared and signed by a Registered Civil Engineer.

806.03 FINAL PLAT: The applicant shall submit a final plat together with a final grading plan, utility plan, landscape plan, and any other necessary supplementary information.

A. Final Plat. The final plat, prepared for recording purposes, shall be prepared in accordance with provisions of Minnesota State Statutes and Winona County regulations, and such final plat or accompanying submittals shall contain the following information:

1. Name of the subdivisions, which shall not duplicate or too closely approximate the name of any existing subdivision recorded in the County and shall be subject to City Council approval.
2. Location by section, township, range, County and State, and including descriptive boundaries of the subdivision, based on an accurate traverse, giving angular and linear dimensions.
3. The location of monuments shall be shown and described on the final plat. Locations of such monuments shall be shown in reference to existing official monuments on the nearest established street lines, including true angles and distances to such reference points or monuments.
4. Location of lots, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and decimals of feet, with the length of radii and/or arcs of all curves, and with all other information necessary to reproduce the plat on the ground shall be shown. Dimensions shall be shown from all angle points of curve to lot lines.
5. Lots shall be numbered clearly. Blocks are to be numbered, with numbers shown clearly in the center of the block.
6. The exact locations, widths and names of all streets to be dedicated. All street names shall be approved by the Planning Commission.
7. Location and width of all easements to be dedicated.
8. Name, address and phone number of surveyor making the plat.
9. Scale of plat not less than one inch to 100 feet (the scale to be shown graphically on a bar scale), date and north arrow.

8.6.06

10. A current abstract of title or a registered property certificate or in lieu thereof, at the option of the City Attorney, a commitment for title insurance from a title insurance carrier authorized to conduct business in this state along with any unrecorded documents to be certified by the City Attorney.

11. Deed restrictions and protective covenants which involve a matter of public concern.
12. Statement dedicating all streets, alleys and other public areas not previously dedicated as follows: Streets, alleys and other public areas shown on this plat and not heretofore dedicated to public use are hereby so dedicated.
13. Statement dedicating all easements as follows: Easements for installation and maintenance of utilities and drainage facilities are reserved over, under and along the designated areas marked "drainage and utility easements".

B. Certificate Required.

1. Certification by Registered Land Surveyor in the form required by Section 505.03, Minnesota Statutes, as amended.
2. Execution of all owners of any interest in the land any holders of a mortgage thereon of the certificates required by Section 505.03, Minnesota Statutes, as amended, and which certificate shall include a dedication of the utility easements and other public areas in such form as approved by the City Council.
3. Space for certificates of approval and review to be filled in by the signatures of the Mayor and City Administrator.

C. Development Contracts. Final plat approval shall be contingent upon the applicant's entrance into a development contract with the City. The contract shall be prepared by the City and shall ensure development performance based on approvals. The contract shall address, but not be limited to, the following:

1. Financial securities.
2. Warranties.
3. Development time lines.
4. Remedies for default.

8.6.07

SECTION SEVEN: DESIGN STANDARDS

807.01 CONFORMITY WITH THE COMPREHENSIVE PLANNED ZONING ORDINANCE:

A proposed subdivision shall conform to the Comprehensive Plan, to related policies adopted by the City, and to the official Zoning Ordinance of the City, including lot size, landscaping requirements, and other requirements outline in the zoning ordinance.

807.02 LAND REQUIREMENTS:

- A. Land shall be suited to the purpose for which it is to be subdivided. No plan shall be approved if the site is not suitable for the purposes proposed by reason of potential flooding, topography or adverse soil, rock formation or wetlands.
- B. Land subject to hazards to life, health, or property shall not be subdivided until all such hazards have been eliminated or unless adequate safeguards against such hazards are provided by the subdivision plan.
- C. Proposed subdivisions shall be coordinated with surrounding jurisdictions and/or neighborhoods, so that the City as a whole may develop efficiently and harmoniously.

807.03 BLOCKS:

- A. Block Length. In general, intersecting streets, determining block lengths, shall be provided at such intervals so as to serve cross-traffic adequately and to meet existing streets. Where no existing plats control, the blocks in residential subdivisions should not exceed 1,000 feet, nor be less than 500 feet in length, except where topography or other conditions justify a departure from this standard. In blocks longer than 1,000 feet, pedestrian ways and/or easements through the block may be required near the center of the block.
- B. Block Width. The width of the block shall normally be sufficient to allow two tiers of lots of appropriate depth. Blocks intended for business or industrial use shall be of such width as to be considered most suitable for their respective use, including adequate space for off-street parking and deliveries.

807.04 LOTS:

- A. Area/Width. The minimum lot area and width shall not be less than that established by the City Zoning Ordinance in effect at the time of adoption of the final plat.
- B. Corner Lots. Corner lots for residential use shall have additional width to permit appropriate building setback from both streets as required in the Zoning Ordinance.

8.7.01

- C. Side Lot Lines: Side lines of lots shall be approximately at right angles to street lines or radial to curved street lines.
- D. Building Sites. Each lot shall provide an adequate building site at least 18 inches above the top of the adjacent curb unless approved by the City Engineer upon the basis of plans submitted showing alternative, acceptable surface drainage measures.

E. Frontage. Every lot must have the minimum frontage on a City approved street other than an alley, as required in the City Zoning Ordinance.

F. Access: Each lot shall directly access a public street.

G. Setback Lines. Setback or building lines shall be shown on all lots intended for residential use and shall not be less than the setback required by the City Zoning ordinance, as may be amended.

H. Watercourses: Watercourses shall be contained within abutting lots. Watercourses shall be protected by easement to the anticipated high water level (as determined by the City). Lots with easements protecting watercourses shall have sufficient dimensions and area above the normal water levels (as determined by the City) to equal or exceed the minimums specified in the zoning chapter for the district in which the lots are located.

I. Drainage. Lots shall be graded so as to provide drainage away from building locations, subject to the approval of the City Engineer. A grading plan shall be submitted showing all lot grading and drainage provisions.

J. Features. In the subdividing of any land, due regard shall be shown for all natural features, such as tree growth, watercourses, historic spots or similar conditions which, if preserved, will add attractiveness and stability to the proposed development.

K. Lot Remnants. All remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots or outlots, rather than allowed to remain as unusable parcels.

L. Political Boundaries. No singular plat shall extend over a political boundary or school district line without document notification to affected units of government.

M. Frontage on Two Streets. Double frontage, or lots with frontage on two parallel streets shall not be permitted except: where lots back on major collector streets, county or state highways, or where topographic or other conditions render subdividing otherwise unreasonable. Such double frontage lots shall have an additional depth of at least 20 feet in order to allow space for screen plantings and/or buffering along the back lot line. As part of the subdivision review process, the submission of a buffering and screening plan may be required.

8.7.02

N. Access to Major Collector Streets. In the case where a proposed plat is adjacent to a major collector street, said streets to be defined by the City's Comprehensive Plan, there shall be no direct vehicular access from individual lots to such streets and roads. In the platting of small tracts of land fronting on limited access highways or major collector streets where there is no other alternative, a temporary access may be granted, subject to terms and conditions defined by the City Council and application County or State agencies. As neighboring land becomes subdivided and more preferable access arrangements become possible, such temporary access permits shall

become void. In such cases where direct lot access to collector or arterial streets is allowed special traffic safety measures including, but not limited to, provisions for on-site vehicle turn around shall be required. In cases where a proposed plat is adjacent to a County or State highway, the plat shall be subject to County and/or State approval

O. Outlots. Lot remnants and future subdivision development phases shall be platted as outlots. In such cases where outlots are created or exist, their area shall not be utilized in calculating minimums for buildable lot area requirements. Said outlots are also prohibited from qualifying for building permits.

807.05 STREETS AND ALLEYS:

A. Streets, Contiguous. Except for cul-de-sacs, streets shall connect with streets already dedicated in adjoining or adjacent subdivisions, or provide for future connections to adjoining unsubdivided tracts, or shall be a reasonable projection of streets in the nearest subdivided tracts. The arrangement of arterials and collector streets shall be considered in their relation to the reasonable circulation of traffic, to topographic conditions, to runoff of storm water, to public convenience and safety, and in their appropriate relation to the proposed uses of the area to be served and in compliance with the Comprehensive Plan.

B. Local Streets and Dead End Streets. Local streets should be so planned as to discourage their use by non-local traffic. Dead end streets are prohibited, but cul-de-sacs shall be permitted where topography or other physical conditions justify their use. Cul-de-sacs shall not be longer than 500 feet, including a terminal turn around which shall be provided at the closed end, with a right-of-way radius of not less than 60 feet. A 47 foot street surface radius will be required on all cul-de-sacs.

C. Street Plans for Future Subdivisions. Where the plat to be submitted includes only part of the tract owned or intended for development by the subdivider, a tentative plan of a proposed future street system for the unsubdivided-portion shall be prepared and submitted by the subdivider. When determined necessary by the City, said plan shall extend streets and utilities to the property line of the adjacent tract and/or tracts.

D. Temporary Cul-De-Sac. In those instances where a street is terminated pending future extension in conjunction with future subdivision, a temporary turn around facility shall be provided at the closed end, in conformance with cul-de-sac requirements.

8.7.03

E. Subdivisions Abutting Major Rights-of-Way. Wherever the proposed subdivision contains or is adjacent to the right-of-way of a U.S., State highway or County thoroughfare, provision may be made for a marginal access street approximately parallel and adjacent to the boundary of such right-of-way; provided, that due consideration is given to proper circulation design, or for a street at a distance suitable for the appropriate use of land between such street and right-of-way. Such distance shall be determined with due consideration of the minimum distance required for approach connections to future grade separations, or for lot depths.

F. Trails. Trails shall be established in accordance with the City's Park and Trail System Plan. Overland trail corridors shall be established as outlots not less than 20 feet in width. Trailway surfacing shall not be less than eight feet in width and provisions made for handicap access. Trail construction will be required to comply with the Trail Design Standards established in the MNDOT Bikeway Design Manual, 1982.

G. Service Access, Alleyway. Except within the City's Central Business District, service access and alleys shall be prohibited. Where provided, alleys shall not be less than 20 feet in width. Dead-end alleys shall be avoided wherever possible, but if unavoidable, such dead-end alleys may be approved if adequate turn around facilities are provided at the closed end.

H. Compliance with County and State Transportation Plans. All subdivisions incorporating streets which are identified in the County and State Transportation Plans, as amended, shall comply with the minimum right-of-way, surfaced width and design standards as outlined in said plans.

I. Street Design. Minimum right-of-way widths, paving widths, angle of intersection, curb radius, distances along sides of sight triangles, horizontal alignments, vertical alignments, as well as maximum grades shall be in accordance with the following table:

Table #1
Minimum Street Design Standards

	Arterial	Collector Street	Local Street	Frontage Road or Service Access Street	Alley
Rights-of-Way	80'	66'	60'	40'	20'
Surface Width	As specified by Engineer	36'	32'	24'	10'
Base Specifications	As specified by Municipal Engineer	"	"	"	"
			8.7.04		
Minimum Horizontal Curve Radii	400'	300'	100'	100'	100'
Minimum Tangent Between Curves	200'	100'	50'	50'	50'
Minimum Grade	0.4%	0.4%	0.4%	0.4%	0.4%

Maximum Grade	6%	8%	10%	10%	10%
Pavement Specifications	As specified by Municipal Engineer	"	"	"	"

K. Reverse Curves. Minimum design standards for major collector streets shall comply with Minnesota Department of Transportation State Aid standards.

L. Reserve Strips. Reserve strips controlling access to streets shall be prohibited except under conditions accepted by the City Council.

M. Private Streets. Private streets and reserve strips, except in the case of planned unit developments, shall be prohibited and no public improvements shall be approved for any private street. All streets shall be dedicated for public use. If any person applies to subdivide or replat any land or parcels adjoining an existing private street they shall be required to dedicate the private street for public use and schedule for improvement to public street standards at the time of final plat.

N. Street Intersections. Intersections having more than four corners shall be prohibited. Adequate land for future intersections and interchange construction needs shall be dedicated. Angles formed by the intersection of two streets shall comply with the provisions of Section 807.05 (I) of this Ordinance.

O. Street Intersection Offsets. Street intersection jogs with centerline offsets of less than 125 feet shall be prohibited.

P. Centerline Curvature. The minimum horizontal curvature of streets shall be in accordance with the MNDOT Highway Design Manual for the type of street and design speed. The minimum curvature shall be 250 feet radius.

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Q. Half Streets. Half streets shall be prohibited except where it will be practical to require the dedication of the other half when the adjoining property is subdivided, in which case the dedication of a half street may be permitted. The probable length of time elapsing before dedication of the remainder shall be considered in this decision. No permanent street improvement shall be permitted within a half street right-of-way. All lots having frontage or access solely from a half street are prohibited from being eligible for building permits.

R. Dedication. All proposed streets shown on the plat shall be in conformity to City, County and State plans and standards and be offered for dedication as public streets unless otherwise determined by the City Council.

S. Restriction of Access. Access of local streets onto major collector streets shall be discouraged at intervals of less than 500 feet.

T. Curb and Gutter. Concrete curb and gutter shall be required on all streets. Mountable curb, designated by the Minnesota Highway Department as M.H.D. Design I'D", shall be used on all local and collector streets, unless otherwise directed by the City Council at the time the preliminary plat is approved. The City Council shall designate the type of curb (mountable or other type) for major collector streets at the time the preliminary plat is approved.

U. Pavement.

1. The base course shall consist of latest Minnesota Department of Highways approved material, having a thickness of not less than eight inches. The City Council shall have the right to determine whether this thickness is adequate for the type of street that has been proposed.
2. Pavement shall be required on all streets. If the street is blacktopped, it must be constructed with a minimum of 2-1/2 inch layers of Minnesota Highway Department 2331 Bituminous. If the street is constructed with concrete, the proposed pavement design must first be approved by the City Engineer.
3. Street shoulders shall be constructed which are uniformly and thoroughly compacted by rolling and level with the tops of curbs.

807.06 EASEMENTS:

A. Width and Location. An easement for drainage and utilities at least 10 feet wide shall be provided along front lot lines and centered along shared side and rear lot lines. If necessary for the extension of main water or sewer lines or similar utilities, easements of greater width may be required along lot lines or across lots.

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B. Continuous Utility Easement Locations. Drainage and utility easements shall connect with easements established in adjoining properties. These easements, when approved, shall not thereafter be changed without the approval of the City Council after a public hearing.

C. Guy Wires. Additional easements for pole guys should be provided, where appropriate, at the outside of turns. Where possible, lot lines shall be arranged to bisect the exterior angle so that pole guys fall along side lot lines.

807.07 EROSION AND SEDIMENT CONTROL:

A. The development shall conform to the natural limitations presented by topography and soil so as to create the least potential for soil erosion.

B. Erosion and siltation control measures shall be coordinated with the different stages of construction. Appropriate control measures shall be installed prior to development when necessary to control erosion.

C. Land shall be developed in increments of workable size such that adequate erosion and siltation controls can be provided as construction progresses. The smallest practical area of land shall be exposed at any one period of time.

D. When soil is exposed, the exposure shall be for the shortest feasible period of time, as specified in the development agreement.

E. Where the topsoil is removed, sufficient arable soil shall be set aside for re-spreading over the developed area. Topsoil shall be restored or provided to a depth of three inches and shall be of a quality at least equal to the soil quality prior to development.

F. Natural vegetation shall be protected wherever practical.

G. Based upon the review and recommendations of the City Engineer, it may be necessary to divert runoff water to a sedimentation basin before being allowed to enter the natural drainage system.

807.08 STORM DRAINAGE: All subdivision design shall incorporate adequate provisions for storm water runoff and be subject to review and approval of the City Engineer.

807.09 PROTECTED AREAS: Where land proposed for subdivision is deemed environmentally sensitive by the City, due to the existence of wetlands, drainageways, watercourses, floodable areas or steep slopes, the design of said subdivision shall clearly reflect all necessary measures of protection to insure against adverse environmental impact.

Based upon the necessity to control and maintain certain sensitive areas, the City shall

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determine whether said protection will be accomplished through lot enlargement and redesign or dedication of those sensitive areas in the form of easements or outlots.

In general, measures of protection shall include design solutions which allow for construction and grading involving a minimum of alteration to sensitive areas. Where these areas are to be incorporated into lots within the proposed subdivision, the subdivider shall be required to demonstrate that the proposed design will not require construction on slopes over 18 percent, or result in significant alteration to the natural drainage system such that adverse impacts cannot be contained within the plat boundary.

807.10 PARK DEDICATION.

1. The owners of land being subdivided shall dedicate to the City a reasonable portion of the land for use as public parks, playgrounds, trails or open space. Generally, the reasonable portion should not be less than

10 percent of the total land in the proposed subdivision. The City may determine the location and configuration of any land dedicated, taking into consideration the suitability of the land for its intended purpose and future needs of the community for park, playground, trail, or open space property. This paragraph shall apply to all new development, redevelopment, lot combination/redivisions meant to facilitate development, and expansion of commercial, office, or industrial buildings. It shall not apply to lot combination/redivisions which do not increase the number of single family residential lots, conversion of apartments to condominiums, or internal leasehold improvements.

2. At the City's option, the subdivider shall contribute an amount in cash, in lieu or all or a portion of the land required under subdivision 1, according to the following fee schedule:

single dwellings	\$550 per buildable lot
townhomes, double dwellings, and multiple dwellings with 3 - 9 units per building	\$500 per unit
multiple dwellings with 10 or more units per building	\$500 per unit
office/industrial	\$3,000 per acre
commercial	\$2,400 per acre

3. Prior to the dedication of the required property, the subdivider shall provide the City with an acceptable title opinion or title insurance policy addressed to the city which insures the title and the city's proposed interest in the property. In any dedication of required land, the subdivider must

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transfer good and marketable title to the city, free and clear of any mortgages, liens, encumbrances or assessments, except easements or minor imperfections of title acceptable to the city. If this land is not formally dedicated to the city with the final plat, the subdivider shall record all deeds for conveyance of the property to the city at the same time as the final plat or other appropriate division documents.

4. At the city's option, the following properties shall not be accepted for purposes of the owner's compliance with subdivisions 1 or 2 or this section:
- a. land dedicated or obtained as easements for stormwater retention, drainage, roadway and other utility purposes;
 - b. land which is unusable or of limited use; and
 - c. land that is a protected wetlands/floodplain area.

5. Cash contributions for single-family residential developments must be paid before the city council approves the final plat. Cash contributions for all other types of residential, commercial, office or industrial developments must be paid before the city issues the first building permit for the project.
6. Any cash contribution received pursuant to subdivision 2 of this section shall be placed in a separate city fund and used only for park, playground, trail or open space purposes.
7. The city council, at its discretion, may waive or reduce the requirements of this section when the subdivision includes a city-assisted development of redevelopment area or achieves some other public purpose and the requirements would create a financial hardship for the project.

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SECTION EIGHT: REQUIRED BASIC IMPROVEMENTS

808.01 GENERAL PROVISIONS:

A. All of the required improvements specified in this section shall be constructed in accordance with the State Building Code and all other applicable City, County, and State regulations.

B. Before a final plat is approved by the City Council, the owner and subdivider of the land covered by said plat shall execute and submit to the City Council an agreement which shall be binding on the owner and subdivider, and their heirs, personal representatives and assigns, in a form approved by the City, stating that the owner and subdivider will cause no private construction to be made on such plat or file or cause to be filed any application nor building permit for such construction until all improvements required under this Ordinance have been made or arranged for in the manner following.

C. Prior to the making of such required improvements, the owner or subdivider shall deposit with the Zoning Administrator an amount consistent with that stipulated in Section 808.09 of this Ordinance. The deposit shall be either in cash or letter of credit, with sureties satisfactory to the City, conditioned upon the payment of all expense incurred by the City engineering, planning and legal fees and other expense in connection with the making of such improvements.

D. With the approval of the Council and in lieu of the obligations imposed by Item C above, the owner or subdivider may submit a petition pursuant to Minnesota Statutes, Chapter 429 with respect to the land to be subdivided, requesting the City to install some or all of the improvements. Upon approval by the Council, the City may cause said improvements to be made and special assessments for all costs of said improvements to be levied on the land, except any land which is or shall be dedicated to the public. Subsequent to approval by the Council and before execution by the City of the final plat or other appropriate forms of City approval, the owner or subdivider shall submit to the City a letter of credit, or cash deposit ("security") which guarantees payment of special assessments levied on account of improvements installed pursuant to this Ordinance. The amount of the security shall be in an amount consistent with that stipulated in Section 808.09 of this Ordinance. The security shall be in such form and contain such other provisions and terms as may be required by the City Attorney. The security posted by the owner or subdivider may be monitored annually by the City with a pro rata reduction in the amount thereof based upon the number of lots for which assessments have been paid and on the number of approved land transfers.

E. Whenever public improvements are required to be installed either pursuant to Item C or D above, the owner and subdivider shall execute a development contract embodying the terms and conditions of the approval given by the City Council including, but not limited to, requirements set forth in this Ordinance.

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F. No final plat shall be approved by the City Council, without first receiving a report from the City Engineering certifying that the proposed improvements described herein, together with the agreements and documents required herein, meet the minimum requirements of all applicable ordinances. As-built drawings of all improvements shall be filed with the City.

G. All of the required public improvements to be installed under the provisions of this Ordinance shall be inspected during the course of their construction by the City Engineer.

H. Prior to any street, or other improvement being accepted by the City as hereinafter provided, the subdivider shall post a maintenance bond and/or other security in a form acceptable to the City naming the City as obligee in an amount deemed appropriate by the Council to insure maintenance of said improvements for a period of at least 24 months from the date of acceptance by the City.

I. Durable iron monuments shall be placed at all block and lot corners, all intermediate points on blocks where there is a change in the direction of the block line, at points of curves in streets, at

each angle and curve point on the exterior boundary lines of the plat, and at such other points as may be required by the Planning Commission. All monuments shall be a minimum of 2" in diameter and 15" in length.

808.03 STREET IMPROVEMENTS:

- A. The full width of the right-of-way shall be graded in accordance with the provisions for construction as outlined in Section 7 of this Ordinance, Design Standards.
- B. All streets shall be improved in accordance with the standards with the standards and specifications for street construction as required by the City Council.
- C. All streets to be surfaced shall be of an overall width in accordance with the standards and specifications for construction as approved by the City Council. The portion of the right-of-way outside the area surfaced shall be seeded or sodded by the developer. Streets shall be accepted by the City upon the completion of the first lift of bituminous. Until the completion of the first lift and acceptance by the City, occupancy permits shall be withheld. The second lift of bituminous shall be completed not less than one year following completion of the first lift.
- D. Where required, the concrete curb and gutter shall be constructed in accordance to the standards and specifications for street construction as set forth and approved by the City Council.
- E. Boulevard sodding shall be planted in conformance with the standards and specifications as required by the City Council.
- F. Street signs of the design approved by the City Council shall be installed at each street intersection.

8.8.02

- G. The Planning Commission and/or City Council may require the provision of sidewalks on arterials and collectors and other streets in proximity to public service areas such as parks, schools, shopping facilities or in other appropriate locations of a similar nature. The design of the sidewalks shall be considered in their relation to existing and planned sidewalks, to reasonable circulation of traffic, to topographic conditions, to run-off of storm water and to the proposed uses of the area to be served.
- H. Street lighting fixtures as may be required by the City Council shall be installed.

808.04 SANITARY SEWER AND WATER DISTRIBUTION IMPROVEMENTS: Sanitary sewers and water facilities shall be installed in accordance with standards and specifications as required by the City Council and subject to the approval of the City Engineer.

808.05 STORM DRAINAGE:

- A. The grade and drainage requirements for each plat shall be approved by the City Engineer at the expense of the applicant. Every plat presented for final signature shall be accompanied by a

certificate of the City Engineer that the grade and drainage requirements have been met on the grading plan. In an area not having municipal storm sewer, the applicant shall be responsible, before platting, to provide for a storm water disposal plan, without damage to properties outside the platted area, and said storm water disposal plan shall be submitted to the City Engineer, who shall report to the City Council on the feasibility of the plan presented. No plat shall be approved before an adequate storm water disposal plan is presented and approved by the City Council. The use of dry wells for the purpose of storm water disposal is prohibited.

- B. Storm drainage facilities shall be installed in accordance with the standards and specifications as required by the City Council and subject to the approval of the City Engineer. In providing such facilities, specific attention shall be given to culvert locations, trash guards, rip rap and in-place storm drainage facilities.

808.06 PUBLIC UTILITIES: Telephone, electric, cable TV, and/or gas service lines are to be placed underground in accordance with the provisions of all applicable City Ordinance. All necessary utility easements must be recorded prior to utility installation.

808.07 TRAILS: Trails shall be established in a ordinance with the City's Park and Trail System Plan. Overland trail corridors shall be established as outlots not less than 20 feet in width. Trailway surfacing shall be not less than eight feet in width and make provision for handicap access.

808.08 IMPROVEMENT INSTALLATION: Improvements associated with the subdivision shall be installed in accordance with one of the following methods:

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- A. Private Installation.

1. Prior to the installation of any required improvements by the applicant and prior to approval of the final plat, the applicant shall enter into a development contract in writing with the City requiring the applicant/developer to furnish and construct said improvements at their sole cost and in accordance with approved plans and specifications and usual contract conditions. This shall include provision for inspection of the construction of the public improvements by the City Engineer.
2. The contract shall require the applicant to post a financial security consisting of an escrow deposit, irrevocable letter of credit, certified check, or bond with the City, guaranteeing performance in accordance with the terms of the development contract. The type, conditions, and terms of the financial security must be reviewed by the City Attorney and approved by the City Council. The amount of the security is to be based on the City Engineer's estimate of the total cost of the improvements to be furnished under the contract, including but not limited to: sanitary sewer, water main, on-site storm sewer, streets, grading and erosion control. The project costs must be reviewed by City staff. The security amount shall equal to 125 percent of the project estimate.

3. If evidence is presented that the described improvements have been paid for, the amount of the deposit or bond may be reduced in a sum equal to the estimated cost of the improvements so completed prior to the acceptance of the plat.
4. The schedule for completion of the work described in the final plat and the development agreement shall be determined by the City Council, upon recommendation of the Engineer after consultation with the applicant. It shall be reasonable with relation to the work to be done, the seasons of the year, and proper coordination with construction activities in the plat and subdivision.
5. Improvements shall be constructed only in platted real estate. When determined necessary by the City, utilities and streets shall extend to plat boundaries to provide for future extensions.
6. No applicant/developer shall be permitted to start work on any subdivision improvements without entering into a development contract and posting a City approved financial security.

B. City Installation.

1. Any person desiring to have utility and street improvements installed may request the City to install them, if such request is accompanied by a petition of 100 percent of the land owners and a waiver of assessment appeal. Acceptance of the request shall be discretionary on the part of the City Council, based on benefit to property owners, and subject to the following conditions and as authorized by State law.

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2. If so approved by the City Council, the person requesting the installation of said utility and street improvements shall supply a security consisting of an escrow deposit, irrevocable letter of credit, certified check or bond guaranteeing payment for the installation of the improvements in an amount based on the City Engineer's estimate of the total cost of the improvements to be installed. The type, conditions and term of the financial security must be reviewed by the City Attorney and approved by the City Council. The security amount shall equal five years special assessments held until 50 percent of the special assessments have been paid. At such time, the City may reduce the amount of security required of the developer in amounts equivalent to subsequent assessments for which payment has been made.
3. Improvements shall be constructed only in platted real estate. When determined necessary by the City, utilities and streets shall extend to plat boundaries to provide for future extensions.
4. No applicant/developer shall be permitted to start work on any subdivision improvements without entering into a development contract and posting a City approved financial security.

808.09 DEPOSIT BY SUBDIVIDER: In order to defray part of the costs incurred by the City in review by the City Engineer of the plans, specifications and design of the proposed improvements, and the inspection of

the actual installation and construction of said improvements, the subdivider shall, before proceeding with any construction or installation, present a certified check or money order made payable to the City of St. Charles in an amount determined annually by the City Council.

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SECTION NINE: ADMINISTRATION AND ENFORCEMENT

809.01 NON-PLATTED SUBDIVISIONS:

- A. **Registered Land Surveys.** All registered land surveys in the City shall be presented to the Planning Commission in the form of a preliminary plat in accordance with the standards set forth in this Ordinance for preliminary plats and the Planning commission shall first approve the arrangement, sizes and relationships of proposed tracts in such registered land surveys, and tracts to be used as easements or roads should be so dedicated. unless a recommendation and approval have been obtained from the Planning Commission and City Council respectively, in accordance with their standards set forth in this Section, building permits will be withheld for buildings on tracts which have been so subdivided by registered land surveys and the City may refuse to take over tracts as streets or roads or to improve, repair or maintain any such tracts unless so approved.
- B. **Conveyance by Metes and Bounds.** Except in unique situations as may be allowed by the City Council, no division of one or more parcels in which the land conveyed is described by metes and bounds shall be made or recorded if the parcels described in the conveyance are 2 2 acres or less in area and 150 feet or less in width unless such parcel was a separate parcel of record at the effective

date thereof. Building permits will be withheld for buildings or tracts which have been subdivided and conveyed by this method and the City may refuse to take over tracts as streets or roads or to improve, repair or maintain any such tracts.

809.02 VARIANCES, PLANNING COMMISSION RECOMMENDATIONS, STANDARDS:

A. **Findings.** The Planning Commission may recommend a variance from the minimum standards of this Ordinance (not procedural provisions) when, in its opinion, undue hardship may result from strict compliance. In recommending any variance, the Commission shall prescribe any conditions that it deems necessary to or desirable for the public interest. In making its recommendations, the Planning commission shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A variance shall only be recommended when the Planning Commission finds:

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district:
 - a. Special conditions may include exceptional topographic or water conditions or, in the case of an existing lot or parcel of record, narrowness, shallowness or shape of the property.

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- b. Special conditions and circumstances may not be primarily economic in nature.
2. Literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
3. The special conditions and circumstances do not result from the actions of the applicant.
4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

B. **Procedure.**

1. Appeals or requests for variances, as provided within this Ordinance, shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a fee as provided for by City Council Resolution. This fee shall not be refunded. Such application shall also be accompanied by five copies of detailed written and graphic materials fully explaining the proposed change, development, or use and a list of affected property owners within 300 feet of the subject property obtained from the current tax rolls provided in the City Hall or Winona County offices and have the list verified by the City Administrator.

2. Upon receipt of an application for appeal or variance, the Zoning Administrator shall, when deemed necessary, refer the request to appropriate staff to ensure that informational requirements are complied with. When all informational requirements have been complied with, the request shall be considered officially submitted. Also, when deemed necessary, the Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports and/or provide general assistance in preparing a recommendation on the request to the Planning Commission.

3. A public hearing shall not be required prior to the issuance of a variance by the Planning Commission however, written notice must be mailed by the City Clerk to all landowners within 200 feet of the location of the proposed variance at least 10 days before the Planning Commission considers the application. Said notice shall contain a brief description of the variance sought along with notice of the date, time, and place of the Planning Commission meeting wherein said variance will be considered. Failure of the Clerk to comply with the notice provisions of this paragraph shall not effect the validity of any subsequent proceedings. The Planning Commission may, in its discretion, hold a public hearing on the variance request, however, a public hearing shall be held if a written request therefor is made by at least five citizens of the city of St. Charles or upon order of the City Council. In the event a public hearing is held, notice thereof shall be published once in the official City newspaper at least 10 days prior to said hearing. Written notice shall also be mailed to the applicant prior to the hearing by the City Clerk.

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4. The Planning Commission shall have the power and authority to grant variances to this Ordinance and to attach such conditions to the variance as it deems necessary to assure compliance with the purpose of this Ordinance. Application for a variance from the literal terms of this Ordinance shall be made upon forms provided for that purpose and submitted to the Planning Commission. A fee shall be charged for all variance applications pursuant to a schedule adopted from time to time by resolution of the City Council. Said fee shall accompany the application. The Planning Commission shall consider the request for a variance within 30 days after submission of a completed application. The Planning Commission shall render a decision on said application within 45 days from the date upon which it first considered said application.

5. The City Council, serving as the Board of Adjustment and Appeals, shall, after receiving the written report and recommendation of the Planning Commission and City Staff, make a finding of fact and make a decision on appeals where it is alleged by the appellant that error has occurred in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Ordinance. However, said appeal shall be filed no later than 90 days after the applicant has received a written notice from the Zoning Administrator or said appeal shall be considered void.

809.03 VIOLATIONS AND PENALTY:

A. **Sale of Lots from Unrecorded Plats.** It shall be misdemeanor to sell, trade, or otherwise convey any lot or parcel of land as a part of, or in conformity with any plan, plat or replat of any subdivision or area

located within the jurisdiction of this Ordinance, unless said plan, plat or replat shall have first been recorded in the Office of the Recorder of Winona County.

8.9.03