

# CITY OF MONTROSE, MINNESOTA

## CODE OF ORDINANCES

Codification Date: February 13, 2012

Amended September 2012

May 13, 2013

July 8, 2013

October 14, 2013

February 10, 2014

February 18, 2015

City of Montrose  
311 Buffalo Avenue South  
Montrose, MN 55363  
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## Amended

May 13, 2013:	Chapter 30.07 Billing, Payment and Delinquency, Section E
May 13, 2013:	Chapter 23.01 Planning Commission, Removal of a Commission Member
	Chapter 23.02 Park and Recreation Commission, Removal
July 8, 2013:	Chapter 21.01 City Council Meetings, Regular Meetings
October 14, 2013:	Chapter 32.10 Private Wells and Water Supply systems Prohibited
October 28, 2013:	Chapter 80.01 Intoxicating Liquor, License Required, Sunday 10:00a.m.
February 10, 2014:	Chapter 25.01 Administrative Enforcement, repealed & replaced
February 18, 2015:	Chapter 21.08 Compensation
	Chapter 26 Ethics in Government, repealed & replaced
	Chapter 30.06 Water Rates
	Chapter 21.01 City Council Regular Meetings



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### 10.01. TITLE OF CODE

A) All ordinances of a permanent and general nature of the City, as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections, shall be known and designated as the “Montrose City Code,” for which designation “code of ordinances,” “codified ordinances” or “code” may be substituted. Code title, chapter and section headings do not constitute any part of the law as contained in the code.

B) All references to codes, titles, chapters and sections are to the components of the code unless otherwise specified. Headings and captions used in this code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

### 10.02. RULES OF INTERPRETATION

A) Generally. Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

B) Specific rules of interpretation. The construction of all ordinances of this City shall be by the following rules unless that construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

- 1) Acts by assistants. When a statute, code provisions or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that

requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

- 2) Gender; singular and plural; tenses. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.
- 3) General term. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

#### 10.03. APPLICATION TO FUTURE ORDINANCES.

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

#### 10.04. CAPTIONS.

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

#### 10.05. DEFINITIONS.

A) General rule. Words and phrases shall be taken in their plain, ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

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

- 1) CHAPTER. A division of this Code identified by the heading “Chapter” and a Chapter number. Chapters can be referred to by number or title (such as “Chapter 10” or “Rules of Construction.”)
- 2) CITY. The area within the corporate boundaries of the City as presently established or as amended by ordinance, annexation or other legal actions at a future time. The term CITY when used in this code may also be used to refer to the City Council and its authorized representatives.
- 3) CODE, THIS CODE or THIS CODE OF ORDINANCES. This City code as modified by amendment, revision and adoption of new titles, chapters or sections.
- 4) COUNTY. Wright County, Minnesota.
- 5) MAY. The act referred to is permissive.
- 6) MONTH. A calendar month.

- 7) OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases the words SWEAR and SWORN shall be equivalent to the words AFFIRM and AFFIRMED. All terms shall mean a pledge taken by the person and administered by an individual authorized by state law.
- 8) OFFICER, OFFICE, EMPLOYEE, COMMISSION or DEPARTMENT. An officer, office, employee, commission or department of the City unless the context clearly requires otherwise.
- 9) PERSON. Extends to and includes an individual, person, persons, firm, corporation, copartnership, trustee, lessee or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms PERSON or WHOEVER, as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.
- 10) PRECEDING or FOLLOWING. Next before or next after, respectively.
- 11) SECTION. A subpart of each Chapter identified by number and included in the Table of Contents under each Chapter heading. Sections may be referred to by name or number (such as “Section 10.01” or “Title of Code.”)
- 12) SHALL. The act referred to is mandatory.
- 13) SIGNATURE or SUBSCRIPTION. Includes a mark when the person cannot write.
- 14) STATE. The State of Minnesota.
- 15) TITLE. A division of the Code identified by the heading “Title” and a Title number. Titles may be referred to by name or number (such as “Title 1” or “General Provisions”)
- 16) WRITTEN. Any representation of words, letters or figures, whether by printing or otherwise.
- 17) YEAR. A calendar year unless otherwise expressed.

#### 10.06. SEVERABILITY.

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

#### 10.07. REFERENCE TO OTHER SECTIONS.

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

#### 10.08. REFERENCE TO OFFICES.

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

#### 10.09. ERRORS AND OMISSIONS.

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

#### 10.10. OFFICIAL TIME.

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

#### 10.11. REASONABLE TIME.

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

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

#### 10.12. ORDINANCES REPEALED.

A) This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced.

B) All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

#### 10.13. ORDINANCES UNAFFECTED.

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

#### 10.14. EFFECTIVE DATE OF ORDINANCES.

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

#### 10.15. REPEAL OR MODIFICATION OF ORDINANCE.

A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it when publication is required to give effect to it unless otherwise expressly provided.

B) No suit, proceedings, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

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

#### 10.16. ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

A) If the City Council shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

B) Additions.

- 1) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section.
- 2) In addition to this indication as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

#### 10.17. PRESERVATION OF PENALTIES.

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

#### 10.18. COPIES OF CODE.

A) The official copy of this code shall be kept in the Office of the City Administrator/Clerk-Treasurer for public inspection.

B) The Administrator/Clerk-Treasurer shall provide a copy for sale for a reasonable charge.

#### 10.19. ADOPTION OF STATUTES AND RULES BY REFERENCE.

A) It is the intention of the City Council that, when adopting this code, all future amendments to any state or federal rules and statutes adopted by reference in this code or referenced in this code are hereby adopted by reference or referenced as if they had been in existence at the time this code was adopted unless there is clear intention expressed in the code to the contrary.

#### 10.20. GENERAL PENALTY.

A) In the event of a violation of this code, the City may institute any action or proceedings available, including but not limited to: any civil action available, including but not limited to requesting injunctive relief to prevent, restrain, correct or abate violations; administrative enforcement; and criminal action.

B) Each right or remedy accruing to the City under this code is separate and distinct, and may, in the City's discretion, be exercised independently or simultaneously with any other right or remedy.

C) A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

D) Administrative Fines. Any person, firm or corporation who is found to have violated a provision of this Code may be fined under Chapter 25 of this Code, Administrative Enforcement.

E) Criminal Penalty. Any person, firm or corporation who violates any provision of this Code may be charged with a Misdemeanor in criminal court. The City and prosecuting attorney have the discretion to add the costs of prosecution to the penalty.

F) Costs.

- 1) In addition to the penalties provided herein, the City may recover costs, disbursements, expenses, losses or damages the City incurs through the violation of this code or by enforcing this Code, including but not limited to: court reporter's fees, filing fees, attorney fees, expert witness fees, consultant fees and administrative costs against the person found to have violated this Code, or the orders, rules, regulations, and permits issued hereunder.
- 2) Any costs, disbursements, expenses, losses or damages the City is entitled to collect, including but not limited to: court reporter's fees, filing fees, attorney fees, expert witness fees, consultant fees and administrative costs, may be assessed to property in the City of Montrose or the State of Minnesota under any applicable law.

G) Falsifying Information. Any person who knowingly makes false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Code or who falsifies, tampers with, or

knowingly renders inaccurate any monitoring device or method required under this Code shall, upon conviction, be guilty of a Misdemeanor.

#### 10.21. LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION.

A) Any license issued under this Code, other than animal licenses, may be non-renewed, suspended or revoked by following the provisions of this Section.

B) In addition to the provisions of this section the non-renewal, suspension, or revocation must follow all provisions of the applicable Chapters or Sections of this Code.

C) Generally. Any license issued under this Code may be non-renewed, suspended or revoked at the discretion of the City Council for any reason the City Council deems appropriate including, but not limited to the following:

- 1) Violation of any applicable federal, state, or county law;
- 2) Violation of any provision of this Code;
- 3) Fraud, misrepresentation or incorrect statements on the application form;
- 4) Fraud, misrepresentation or false statements made to the City during the course of the licensed activity;
- 5) Conviction of any offense for which granting of a license could have been denied;
- 6) The licensed business is being conducted in a manner as to maintain a nuisance under this Code or other applicable law; or
- 7) The licensed business is no longer being operated or carried on;
- 8) The loss of the qualifications necessary to receive or maintain the license under this Code.

D) Multiple persons under one license. The non-renewal, suspension or revocation of any license issued to multiple persons shall serve as a non-renewal, suspension or revocation of each authorized person's licenses.

E) Any suspension or revocation of a liquor licenses must follow the procedures contained in Minn. Stat. 340A.415.

F) Any non-renewal, suspension, or revocation of any license, other than a liquor license, under this Code shall follow the following procedures:

- 1) Notice.
  - a) Prior to non-renewal, suspension or revocation of any license, other than a liquor license, under this code, the City shall provide the license holder with written notice. The notice shall include the time and place of the hearing, a statement of the charges or alleged violations, facts supporting

the charges or violations, and the applicant's right to be represented by council.

- b) The Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license.

2) Hearing.

- a) A public hearing shall be held before the City Council on the issue of non-renewal, suspension or revocation. The City Council may, at its sole discretion, delegate the hearing to the Minnesota Office of Administrative Hearings and may then rely on the findings of the Administrative Law Judge in deciding whether to revoke, suspended or not renew a license.
- b) The City must present evidence supporting the charges or violations. The licensee shall have an opportunity to be heard and to refute the charges including the right to present evidence and witnesses and to cross examine any witnesses presented by the City.

3) Findings. Within 30 days the City shall notify the licensee of its decision and of the licensee's right to appeal that decision in court.

G) Emergency. If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a person acting under a license issued under this Code, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in this Section.

H) Appeals. Any person whose license is non-renewed, suspended or revoked under this section shall have the right to appeal that decision in court within 60 days of receipt of the City's findings.

## 10.22. ABATEMENT OF NUISANCES.

A) Abatement.

- 1) Any nuisance as identified in this Code, by State statute or in any other law may be abated through Chapter 25 Administrative Enforcement and/or through criminal procedures with the offense charged as a Misdemeanor.
- 2) The City reserves the right in its sole discretion to use any other method of enforcement including those methods listed in Section 10.20 General Penalty.
- 3) The City reserves the right, if in the sole discretion of the City an emergency exists, to use the following procedures:
  - a) Emergency procedure; summary enforcement. In cases of emergency, where delay in abatement will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with

summary enforcement, the officer shall determine that a public nuisance exists or is being maintained on premises in the City and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the City's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

- 4) Immediate abatement. Nothing in this section shall prevent the City, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.
- B) Recovery of Costs. The City may recover any costs expended in abating a nuisance as outlined in Section 10.20 General Penalty.

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## CHAPTER 20: FORM OF GOVERNMENT

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### 20.01. FORM OF GOVERNMENT.

A) The City shall operate under the Statutory City Optional Plan A type of government, under M.S. § 412.581, as it may be amended from time to time, with the Administrator/Clerk-Treasurer being appointed by the City Council for indefinite terms.

## CHAPTER 21: CITY COUNCIL

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### 21.01. MEETINGS.

#### A) Regular Meetings.

- 1) Regular meetings of the Council shall be held on the second Monday of each calendar month at 7:00 p.m. Any regular meeting falling upon a holiday shall be held on the following business day, at the same time and place. All meetings, including special and adjourned meetings, shall be held in the Community Center unless otherwise directed by the Council.
- 2) If any Council meeting is directed by Council to be held in a location other than the Community Center, the Administrator/Clerk-Treasurer shall post a notice in City Hall and at least 2 other locations at least 72 hours prior to the meeting stating the time, location and purpose of the meeting.

#### B) Special Meetings

- 1) Special meetings may be called by the Mayor or by any two members of the City Council upon at least 72 hours notice to each member of the City Council. Each member shall be notified either by sending them an email or attempting to contact them by phone.
- 2) Any special meeting attended by all Council members shall be a valid meeting for the transaction of any business that may come before the meeting. The Administrator/Clerk-Treasurer shall post notice of a special meeting at least 72 hours before the meeting. The appearance at any special meeting by the Mayor or Council member shall constitute a waiver by that person of any deficiency in the notice.

#### C) At the first regular Council meeting in January of each year the Council shall:

- 1) Designate the depository of the City funds;
- 2) Designate the official newspaper;
- 3) Choose an Acting Mayor from the Council who shall perform the duties of the Mayor during the disability or absence of the Mayor from the City or, in case of

vacancy in the Office of Mayor, until a successor has been appointed and qualifies; and

- 4) Appoint officers and employees and the members of boards, commissions and committees as may be necessary.

D) All Council meetings, including special and adjourned meetings, shall be open to the public, except as may be otherwise provided by law.

E) All Council meetings shall follow the most current version of Roberts Rules of Order.

#### 21.02. STUDENT LIASON.

A) The City Council may appoint a Student liaison to provide input for the City Council. The student will receive notice and be allowed to speak like any other member of the City Council but will not have a vote. The student does not have to meet the age requirement for the City Council.

B) If the City Council decides to appoint a student liaison, the student liaison will serve at the pleasure of the City Council for as long as the City Council chooses. The student liaison may be removed or replaced at any time for any reason.

#### 21.03. MAYOR; DUTIES.

A) The Mayor shall preside at all meetings of the Council. In the absence of the Mayor, the Acting Mayor shall preside.

B) The Presiding Officer shall preserve order, enforce the rules of procedure herein prescribed 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 Robert's Rules of Order Revised.

C) Any member may appeal to the Council from a ruling of the Presiding Officer. If the appeal is seconded, the member may speak once solely on the question involved and the Presiding Officer may explain the ruling, but no other Council member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present, exclusive of the Presiding Officer.

D) Except as otherwise provided by law or this section, the Presiding Officer shall not be deprived of any of the privileges of a Council member by reason of his or her acting as Presiding Officer, including the power to move, second and debate from the chair.

#### 21.04. MINUTES.

A) Minutes of each Council meeting shall be kept by the Administrator/Clerk-Treasurer, or, in his or her absence, by the designate of the Council. Ordinances, resolutions and claims shall be referenced in the minutes.

#### B) Approval

- 1) The minutes of each meeting shall be reduced to typewritten form and shall be signed by the Administrator/Clerk-Treasurer and the Mayor. At the next regular Council meeting, approval of the minutes shall be considered by the Council. The minutes need not be read aloud, but any council member may call for any additions or corrections.
- 2) If there is no objection to a proposed addition or correction, it may be made without a vote of the Council.
- 3) 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.

### 21.05. AGENDA.

#### A) Preparation of Agenda

- 1) An agenda of the business and claims for each regular Council meeting shall be prepared by the Administrator/Clerk-Treasurer for the meeting.
- 2) Any person wishing an item to be placed on the agenda to be considered by the Council must fill out a request for council action form and provide it to the Administrator/Clerk-Treasurer setting forth his or her request, by 12:00 p.m. on the Tuesday prior to the regular Council meeting.

B) By majority vote of the members of the Council in attendance at the regular scheduled meeting, additional business may be added to the agenda for consideration at the meeting in session.

### 21.06. QUORUM AND VOTING.

A) At all Council meetings, a majority of the Council members elected shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time.

#### B) Voting

- 1) The votes of members on any question pending before the Council will be by roll call vote. If the vote is not unanimous the names of those voting against the questions and those abstaining shall be recorded in the minutes.
- 2) If any member, being present, does not vote, the minutes shall note it.

C) A majority vote of all members of the Council shall be necessary for approval of any ordinance. Except as otherwise provided by statute, a majority of those voting shall prevail in all other cases.

### 21.07. ORDINANCES, RESOLUTIONS AND MOTIONS.

A) Every ordinance and resolution shall be presented in writing. An ordinance or resolution shall be read in full only at the request of the Mayor or a member of the Council.

All motions shall be stated in full before they are submitted to a vote by the Presiding Officer. They shall then be recorded by title in the minutes by the Administrator/Clerk-Treasurer.

B) Every ordinance passed by the Council shall be signed by the Mayor and attested by the Administrator/Clerk-Treasurer. Every ordinance shall be incorporated into the text or appendices of the code with the original passed version of the ordinance retained in an ordinance book.

C) Repeal and Amend.

- 1) Every ordinance repealing a section of the City Code shall give the chapter and section number of the code or ordinance to be repealed.
- 2) No ordinance or resolution or section thereof shall be amended by reference to title alone, but an amending ordinance or resolution shall set forth in full each chapter or section to be amended.

#### 21.08. COMPENSATION.

A) The salary of the Mayor and Council Members, as amended by the Council by Ordinance from time to time, shall be as follows:

- 1) The sum of \$125.00 shall be paid to the Mayor for each month.
- 2) The sum of \$100.00 shall be paid to Council Members for each month.
- 3) The sum of \$50.00 per day shall be paid to the Mayor and Council Members for conferences, workshops and training in excess of 4 hours.

B) The Mayor or Council members shall submit written claims to the Administrator/Clerk-Treasurer for compensation for all meetings other than regular Council meetings.

#### 21.09. ADMINISTRATIVE SPENDING.

A) The City Administrator and Public Works Director shall each have the authority to make or let purchases and contracts when the amount thereof does not exceed \$2,000.00.

B) In the event of an emergency the City Administrator and the Public Works Director shall each have the authority to expend any funds they deem necessary. After any such funds have been spent the City Administrator and Public Works Director shall report on the spending to the City Council as soon as possible.

## CHAPTER 22: EMERGENCY MANAGEMENT

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### 22.01. POLICY AND PURPOSE.

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

- 1) To establish a City emergency management organization responsible for City planning and preparation for emergency government operations in time of disasters;
- 2) To provide for the exercise of necessary powers during emergencies and disasters;
- 3) To provide for the rendering of mutual aid between the City and other political subdivisions with respect to the carrying out of emergency preparedness functions;
- 4) To comply with the provisions of the Wright County Emergency Operations Plan, as it may be amended from time to time; and
- 5) To review and accept its emergency plan as the City's basic plan for responses to emergencies, disasters, major incidents, mutual aid and other projects consistent with this chapter and the Wright County Emergency Operations Plan, as it may be amended from time to time.

### 22.02. DEFINITIONS.

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

- 1) COUNTY EMERGENCY MANAGEMENT PREPAREDNESS PLANNING AND REVIEW COMMITTEE. A committee made up of the county's Emergency Management Directors which develops, renews and establishes a

basic emergency plan and identifies and coordinates training for member communities and reviews local plans, exercises, major incidents and disaster responses which are consistent with this chapter.

- 2) **DISASTER.** A situation which creates an immediate and serious impairment to the health and safety of any person or situation which has resulted in or is likely to result in major loss to property, and for which traditional sources of relief and assistance within the affected area are unable to repair or prevent the injury or loss.
- 3) **EMERGENCY.** An unforeseen combination of circumstances which calls for immediate action to respond or to prevent from developing or occurring.
- 4) **EMERGENCY MANAGEMENT.** The preparation for and the carrying out of all emergency functions, to prevent, minimize and repair injury and damage resulting from disasters caused by fire, flood, tornado and other acts of nature, or from sabotage, hostile action or from industrial hazardous material mishaps or other major incidents. These functions include, without limitation, firefighting services, police services, emergency medical services, engineering, warning services, communications, radiological and chemical evacuation, congregate care, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to civil protection, together with all other activities necessary or incidental for carrying out the foregoing functions. **EMERGENCY MANAGEMENT** includes those activities sometimes referred to as **CIVIL DEFENSE** or **EMERGENCY PREPAREDNESS FUNCTIONS**.
- 5) **EMERGENCY MANAGEMENT FORCES.** The total personnel resources engaged in City level emergency management functions in accordance with this chapter or any rule or order thereunder. This includes personnel from City departments, authorized volunteers and private organizations and agencies.
- 6) **EMERGENCY MANAGEMENT MUTUAL AID.** Any disaster or major incident which requires the dispatching of City personnel, equipment or other necessary resources within or without the City limits.
- 7) **EMERGENCY MANAGEMENT ORGANIZATION.** The staff element responsible for coordinating City level planning and preparation for disaster response. The **ORGANIZATION** provides City liaison and coordination with federal, state and local jurisdictions relative to disaster preparedness activities, major incidents, mutual aid and other projects consistent with this chapter and assures implementation of federal, state, county and other program requirements.
- 8) **MAJOR INCIDENT.** Any incident which exhausts local resources.

#### 22.03. EMERGENCY MANAGEMENT ORGANIZATION; ESTABLISHMENT.

A) There is hereby created, with the City government, the Emergency Management Organization which shall be under the supervision and control of the Emergency

Management Director (Director). The Director shall be appointed by the Mayor; the appointment being brought to the City Council at the next regular meeting after the appointment for final approval or denial. The position of Director of Emergency Management shall be reviewed and either re-affirmed or replaced at the first City Council meeting of January on a yearly basis.

B) Replacement and Responsibility.

- 1) The Director of Emergency Management may be replaced at other times on a showing of ineffective leadership or failure to carry out duties, as defined. This procedure would follow the same criteria as the appointment process.
- 2) The Director shall have direct responsibility for the organization, administration and operation of the emergency preparedness organization.

22.04. DIRECTOR; DUTIES AND POWERS.

A) The Director shall represent the City on any regional or state conference for emergency management. The Director may develop additional mutual aid agreements with other political subdivisions of the state for reciprocal emergency management aid and assistance in an emergency too great to be dealt with unassisted and shall present the agreements to the City for its action. The arrangements shall be consistent with the emergency plan.

B) The Director shall make assessments of personnel, businesses and industries, resources and facilities of the City as deemed necessary to determine their adequacy for emergency management and to plan for their most efficient use in time of an emergency, major incident or disaster.

C) The Director shall prepare a comprehensive emergency plan for the emergency preparedness of the City and shall present the plan to the City for its approval. When the Council has approved the plan by resolution, it shall be the duty of all City agencies and all emergency preparedness forces of the City, to perform the duties and functions assigned by the plan as approved. The plan may be modified in like manner from time to time. The Director shall coordinate the basic emergency management activities of the City to the end and they shall be consistent and fully integrated with the basic emergency plan of the County Emergency Management, Preparedness Planning and Review Committee and federal and state governments.

D) In accordance with the emergency plan, the Director shall institute the training programs, public information programs and conduct practice warning alerts and emergency exercises as may be necessary to assure prompt and effective operation of the emergency plan when a disaster, major incident or mutual aid occurs.

E) Other Departments Cooperation.

- 1) The Director, during an emergency, major incident or mutual aid, shall utilize the personnel, services, equipment, supplies and facilities of existing departments and agencies of the City to the maximum extent practicable. The officers and

personnel of all departments and agencies shall be, to the maximum extent practicable, cooperative with and extend the services and facilities to the Emergency Management Organization.

- 2) The head of each department or agency in cooperation with the Director shall be responsible for the planning and programming of the emergency activities as will involve the utilization of the facilities of the department or agency.

F) The Director shall, in cooperation with existing departments and agencies affected, assist in the organizing, recruiting and training of the emergency management personnel that may be required on a volunteer basis to carry out the emergency plans. To the extent that the emergency personnel are recruited to augment a regular department or agency for emergencies, they shall be assigned to the departments or agencies and shall be under the administration and control of the department or agency.

G) The Director shall carry out all orders, rules and regulations issued by the governing authority with reference to emergency management.

H) The Director shall prepare and submit the reports on emergency preparedness activities as may be requested by the governing authority.

## 22.05. LOCAL EMERGENCIES.

### A) Declaration.

- 1) A local emergency, including a disaster, major incident or mutual aid response, may be declared by the Mayor or his or her successor or by the Interim Emergency Council as detailed under this Section. It shall not be continued for a period in excess of three days, except by or with the consent of the government board of the political subdivision.
- 2) Any order or proclamation declaring, continuing or terminating a local emergency shall be given prompt and general publicity and shall be filed promptly by the clerk of the local record keeping agency of the subdivision.

B) A declaration of a local emergency shall invoke necessary portions of the response and recovery aspects of applicable plans including fiscal expenditures which are consistent with this chapter.

C) No other jurisdictional agency or official may declare a local emergency unless expressly authorized by the agreement under which the agency functions.

### D) Interim Emergency Succession.

- 1) Purpose. Due to the existing possibility of disasters, it is found urgent and necessary to insure the continuity of duly elected and lawful leadership of the City to provide for the continuity of the government and the emergency interim succession of key governmental officials by providing a method for temporary emergency appointments to their offices.

- 2) Succession to Local Offices. In the event of a disaster affecting the vicinity of the City, the Director of Emergency Management shall call a meeting of the City government by notifying the Mayor, Council and Administrator to gather at the City Hall. If the Director is unable to call the meeting, any other member of the City government or the City staff may call the meeting. In the event that safety or convenience dictate, an alternative place of meeting may be designated. Those gathered shall proceed as follows:
  - a) By majority vote of those persons present, regardless of number, they shall elect a Chairman to preside and Secretary to keep minutes.
  - b) They shall review and record the specific facts relating to the disaster and injuries to persons or damage to property already done or imminent.
  - c) They may, based on such facts, declare a state of emergency.
  - d) By majority vote of those persons present, regardless of number, they shall fill all positions on an Interim Emergency Council, (including the office of Mayor) of those persons upon whom notice could not be served or who are unable to be present.
  - e) Such interim successors shall serve until such time as the duly elected official is again available and returns to their position, or the state of emergency has passed and a successor is designated and qualifies as required by law, whichever shall occur first.
- 3) Duties of the Interim Emergency Council. The Interim Emergency Council shall exercise the powers and duties of their offices, and appoint other key government officials to serve during the emergency.

## 22.06. EMERGENCY REGULATIONS.

A) Whenever necessary to meet a declared emergency or to prepare for an emergency for which adequate regulations have not been adopted by the Governor or the City Council, the Council may, by resolution, promulgate regulations consistent with the applicable federal or state laws or regulations, respecting the conduct of persons and the use of property during emergencies, the repair, maintenance and safeguarding of essential public services, emergency health, fire and safety regulations, drill or practice periods required for preliminary training and all other matters which are required to protect safety, health and welfare in declared emergencies.

### B) Resolution of Regulations

- 1) Every resolution of emergency regulations shall be in writing, shall be dated, shall refer to the particular emergency to which it pertains, if so limited, and shall be filed in the Office of the City Administrator/Clerk-Treasurer, which shall be kept posted and available for public inspection during business hours.

- 2) Notice of the existence of the regulation and its availability for inspection at the Administrator/Clerk-Treasurer's Office, shall be conspicuously posted at the front of the City Hall or at other places in the affected area, as the Council shall designate in the resolution.

- 3) By like resolution, the Council may modify or rescind any regulation.

C) Rescission or Suspension of Regulations.

- 1) The City Council may rescind any regulation by resolution at any time. If not sooner rescinded, every regulation shall expire at the end of 30 days after its effective date or at the end of the emergency to which it relates, whichever comes first.
- 2) Any resolution, rule or regulation inconsistent with an emergency regulation promulgated by the Council, shall be suspended during the time and to the extent the conflict exists.

D) Director's Powers.

- 1) During a declared emergency, the Director is, notwithstanding any statutory or charter provision on the contrary, empowered through its governing body acting within the corporate limits of the City, to enter into contracts and incur obligations necessary to the disaster by protecting the health and safety of persons and property and providing emergency assistance to the victims of the disaster.
- 2) The Director may exercise powers in the light of the exigencies of the disaster without compliance with the time consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering rental equipment agreements, purchase of supplies and materials, limitations upon tax levies, and the appropriation and expenditure of public funds including, but not limited to publication of resolutions, publication of call for bids, provisions of personnel laws and rules, provisions relating to low bids and requirements for budgets. The Director will however, use those individuals and entities listed in the emergency plan first, if at all possible.

E) Accurate records of all paid staff and volunteers, including manpower, hours and money spent or contracted for, must be kept and forwarded to City Hall by the Director.

22.07. GOVERNMENTAL FUNCTION.

A) All functions thereunder and all other activities relating to emergency management are declared to be governmental functions.

B) The provisions of this section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled under this chapter or under the worker's compensation law, or under any pension law, nor the right of any person to receive any benefits or compensation under any act of Congress.

## 22.08. PARTICIPATION IN LABOR DISPUTES OF POLITICS.

A) The Emergency Management Organization shall not participate in any form of political activity nor shall it be employed directly or indirectly for political purposes, nor shall it be employed in a labor dispute. The Director may express professional opinions on legislative or other legal regulations consistent with the areas found in the Wright County Emergency Operations Plan, as it may be amended from time to time.

## 22.09. DISPATCH AND CITY EQUIPMENT AND SERVICES; MUTUAL AID.

A) The City finds it desirable and necessary to authorize the Director to dispatch City equipment and personnel to local communities who request aid to combat their emergency, disaster or major incident consistent with this chapter.

B) The Director shall evaluate the internal needs of the City and dispatch appropriate available aid. The Director shall immediately recall, order and terminate the use of any dispatched equipment and personnel when the need for their use no longer exists or earlier when it appears in the best interest of the City.

C) The Director shall be fully authorized as an act of the City and all provisions for compensation of personnel, rental of equipment, liability insurance coverage, worker's compensation insurance and all other safeguards and matters pertaining to the City, its equipment and personnel, shall apply in each case as if specifically authorized and directed at the time, whether or not the governing body or authority of the place in which the disaster, major incident, mutual aid or other occurrence exists, has previously requested and provided for assistance and the use of equipment and personnel under a mutual protection agreement or other type protection agreement with the City.

## CHAPTER 23: COMMISSIONS AND DEPARTMENTS

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### 23.01. PLANNING COMMISSION.

#### A) Commission and Members.

- 1) A Planning Commission for the City is hereby continued. The Planning Commission shall consist of members as are appointed by the City Council.
- 2) Terms shall be staggered so that no more than one-half of the members' terms expire at one time. Both the original and successive appointee shall hold their respective offices until their successors are appointed and qualified. Vacancies during the term shall be filled in the same manner as the original appointments are made for the unexpired portion of the term vacated.
- 3) Every appointed member shall, before entering upon the discharge of his or her duties, have taken an oath that he or she will faithfully discharge the duties of his or her office.
- 4) To be eligible to be a member of the Planning Commission a person must be a resident of the City of Montrose and an eligible voter in the State of Minnesota.
- 5) The City Council may appoint a Student liaison to be a member of the Planning Commission. The student will receive notice and be allowed to speak like any other member of the Planning Commission but will not have a vote. The student does not have to meet the age requirement for the Planning Commission. If the City Council decides to appoint a student liaison, the student liaison will serve at the pleasure of the City Council for as long as the City Council chooses. The student liaison may be removed or replaced at any time for any reason.

#### B) Meetings and Officers.

- 1) The Commission shall establish regular meeting dates.
- 2) Special meetings may be called by any two members of the Commission upon at least 72 hours notice to each member of the Commission. Each member shall be notified either by sending them an email or attempting to contact them by phone.
- 3) The Commission shall select the Chairperson, Vice-Chairperson and Secretary from its membership, who shall serve for terms of two years, beginning January 1. Each position shall be approved by the City Council.

#### C) Removal of a commission member

1) The Planning Commission may recommend to the City Council that a Commission member or ex-officio member be removed from the Commission for misconduct or neglect of duties. This includes, but is not limited to, inappropriate conduct at public meetings or conduct not becoming an appointed official of the City of Montrose. The Planning Commission's authority to recommend such removal does not supersede the City Council's authority to remove a Commission member at any time for any reason.

2) The Council may remove any Commission member prior to the end of a term only by a two-thirds vote of the Council.

3) Any letter of reprimand from administration or council must have prior council approval.

D) The Commission shall have the duties as assigned in this section, by statute and any other ordinance code provision of the City.

E) Quorum and Minutes.

1) Meetings shall be held as needed, as called by the Zoning Administrator, or as set by the Council. Fifty-one percent shall constitute a quorum.

2) Minutes of each meeting shall be kept and filed in the office of the Administrator/Clerk-Treasurer.

F) Commission members shall be compensated for each meeting attended. The salary shall be payable on an annual basis and shall be set by resolution from time to time. Commission members shall submit written claims for compensation to the Administrator/Clerk-Treasurer annually following the Commission's last meeting held in December of each year.

G) The Mayor shall appoint a Council member to serve as an ex-officio member to the Commission, privileged to speak on any matter, without a vote, who shall provide a liaison between the Commission and the Council.

## 23.02. PARKS AND RECREATION COMMISSION.

A) There is hereby created the Parks and Recreation Commission.

B) Scope and Purpose.

1) The scope of the activity of the Commission shall consist of advising the Council and other City advisory commissions regarding matters relevant to the parks and recreation functions of the City.

2) The general purpose of the Commission is to monitor and reflect the attitudes and concerns of the citizens of the City relative to the parks system and recreational

programs and to advise the Council of Citizen Attitudes and Policy Matters relevant to the parks and recreation functions in the City.

C) The responsibilities of the Commission shall be to:

- 1) Develop and recommend to the Council, and upon their adoption, monitor the execution of a comprehensive plan and park classification system for the parks and recreation functions in the City and from time to time, make recommendations for any changes it deems necessary;
- 2) Annually report to the Council regarding achievements toward fulfillment of the comprehensive plan and recommended amendments;
- 3) Frequently visit City parks and keep informed of current recreation programs in order to continually review and evaluate the parks system development and recreation programming;
- 4) Develop and recommend methods to stimulate positive public interest in parks and recreation functions;
- 5) Develop and recommend feasible methods of discouraging vandalism and destruction of park facilities;
- 6) Develop, recommend and execute feasible methods of financing recommended park improvements;
- 7) Serve as a forum for the citizens of the City to voice their opinions regarding parks and recreation activities and functions;
- 8) Promote coordination with the school district serving the City, encouraging the interchangeable use of City and school district facilities and programs to the best interest of citizens;
- 9) Encourage dissemination of information to and coordination with City organizations interested in the park and recreation functions such as garden clubs, athletic groups, civic organizations and the like;
- 10) Encourage coordination with the other communities and agencies to the extent appropriate in matters pertinent to the parks and recreation functions;
- 11) Develop and transmit recommended capital improvements annually to the Council for inclusion in the capital improvements program;
- 12) Review and make recommendations so the Council can develop proposals consistent with adopted policies, ordinances, regulations and the comprehensive plan; and
- 13) Review and recommend items to be included in the parks and recreation annual budget.

D) Members of the Commission shall be appointed by the City Council for staggered terms of three years, except that any person, appointed to fill a vacancy occurring prior to the expiration of the term to which his or her predecessor was appointed shall be appointed only for the remainder of the term. Upon expiration of his or her term of office, the member shall continue to serve until his or her successor is appointed.

E) Members of the Commission shall be residents of the City and eligible voters in the state of Minnesota while serving on the Commission and shall represent as broad a range as possible of interests in the parks and recreation functions.

F) The City Council may appoint a Student liaison to be a member of the Commission. The student will receive notice and be allowed to speak like any other member of the Commission but will not have a vote. The student does not have to meet the age requirement for the Commission. If the City Council decides to appoint a student liaison, the student liaison will serve at the pleasure of the City Council for as long as the City Council chooses. The student liaison may be removed or replaced at any time for any reason.

G) The Commission shall select a Chairperson, Vice-Chairperson and Secretary from its membership, who shall serve for terms of one year, beginning January 1 of each year. Each position shall be approved by the City Council.

H) The Chair shall assure fulfillment of the following responsibilities in addition to those otherwise described.

- 1) Preside over meetings of the Commission;
- 2) Appear or appoint a representative to appear as necessary before other City advisory commissions and the Council to present the viewpoint of the Commission on matters pertaining to parks and recreation functions as they relate to business under consideration by the Commissions or Council;
- 3) Review all Council, Planning Commission and other advisory commission minutes and inform the Parks and Recreation Commission of matters therein relevant to the parks and recreation functions; and
- 4) Provide the liaison with other governmental and volunteer units in matters relating to the parks and recreation functions for the purpose of obtaining and providing timely information.

I) Vacancy and Oath.

- 1) The Parks and Recreation Commission may recommend to the City Council that a Commission member or ex-officio member be removed from the Commission for misconduct or neglect of duties. This includes, but is not limited to, inappropriate conduct at public meetings or conduct becoming an appointed official of the City of Montrose. The Park and Recreation Commission's authority to recommend such removal does not supersede the City Council's authority to remove a Commission member at any time for any reason.

2) The Council may remove any Commission member prior to the end of a term only by a two-thirds vote of the Council.

3) Any letter of reprimand from administration or council must have prior council approval.

4) Vacancy in the Commission shall be filled by appointment by the City Council.

5) Each member shall, before entering upon the disposition of his or her duties, take an oath that he or she will faithfully perform the duties of the office.

J) Commissioners shall be compensated for each meeting attended. The salary shall be payable on an annual basis and shall be set by resolution from time to time. Commission members shall submit written claims for compensation to the Administrator/Clerk-Treasurer annually for monthly meetings following the Commission's last meeting held in December of each year.

K) The Commission shall adopt the rules and procedures not inconsistent with these provisions as may be necessary for the proper execution and conduct of business.

L) Meetings.

1) The Commission shall hold regular monthly meetings at the City Hall or another posted location, the meeting time and day to be established by the Commission at its first meeting in January of each year.

2) Official minutes of each meeting shall be kept by the designated member and filed in the Office of the Administrator/Clerk-Treasurer.

M) The Mayor shall appoint a Council member to serve as an ex-officio member to the Commission, privileged to speak on any matter, without a vote, who shall provide a liaison between the Commission and the Council.

### 23.03. FIRE DEPARTMENT.

A) For the proper protection of the lives and property of the City, there is hereby organized a volunteer fire department to be known as the Montrose Fire Department.

B) The Department shall consist of not less than ten firefighters and not more than a number equal to 10% of the area served by the Fire Department.

C) Officers.

1) The officers of the Department shall be the Chief and First and Second Assistant Chief and Training Officer.

- 2) The Chief shall be appointed annually by the City Council at the first meeting held in January. The First and Second Assistant Chiefs and the Training Officer shall be appointed annually by the Chief after the Chief is appointed.

D) Chief's Duties.

- 1) The Chief or, in his or her absence, the Assistant Chief shall have supervision over all the apparatus and other equipment, examine the same as often as necessary and see to it that it is property kept, cared for and placed.
- 2) Training and Authority.
  - a) The Chief shall order drills and practices as often as is advisable and see to it that all members of the Department understand their work.
  - b) He or she shall have full power and absolute control at all fires.
- 3) The Chief shall, in January of each year, make a report to the Council of the calls answered by the Department, within and without the City limits, stating the approximate loss or damage of each, type, location, response time and number of personnel responding.

E) As vacancies occur or as it may be deemed necessary, new members may be appointed by the Council.

F) The Department shall meet at least once a month.

G) All equipment and apparatus acquired by the Department, either by purchase or contribution, shall become and remain the property of the City.

H) The Department is hereby authorized to answer fire calls outside of the City limits and when so doing shall be considered as on duty as firefighters of the City.

I) The members of the Department may form and organize a Volunteer Firefighters Relief Association, pursuant to state law.

## CHAPTER 24: CITY POLICIES

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### 24.01. ELECTION PROCEDURE; DATE.

A) The regular City election shall be held biennially on the first Tuesday after the first Monday in November in every even-numbered year.

B) Anyone seeking election must meet the requirements in Minn. Stat. 204B.06. Specifically any person seeking election must be 21 years of age at the time of assuming office, a resident of the City of Montrose, and an eligible voter in the State of Minnesota.

### 24.02. UNCLAIMED PROPERTY

A) Definition. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning. **UNCLAIMED PROPERTY.** Any money or personal property, except animals and motor vehicles, lawfully coming into the possession of the City, and remaining unclaimed by the owner.

#### B) Procedure.

- 1) The designated law enforcement agency shall make a reasonable and diligent effort to find the owner of any unclaimed property and restore the same to him or her.
- 2) Abandoned motor vehicles shall be disposed of as provided by in the Chapter 51 of this code related to Abandoned Vehicles and M.S. Ch. 168B, as it may be amended from time to time.
- 3) Abandoned animals shall be disposed of as provided by in the Chapter 52 of this Code related to Animals.

#### C) Found Property

- 1) A receipt shall be issued to any person who finds lost or abandoned property or money and deliver it to the custody of the City. The person may indicate in writing that he or she wishes to assert a claim to the property or money as a finder.
- 2) If the finder so indicates, and the property or money remains unclaimed by the owner for 90 days, the property or money shall be delivered to the finders.

D) Perishable or Dangerous Property

- 1) Any unclaimed property which is perishable, or which would lose the greater part of its value by being retained for 90 days, or which is determined by the designated law enforcement agency to be dangerous shall be disposed of at the discretion of the designated law enforcement agency in the manner deemed appropriate by it.

E) Money

- 1) Any money which is not claimed by the owner within 90 days or by a finder pursuant hereto or which was seized from illegal gambling shall be deposited in the City's general fund.

F) Property Seized as Evidence

- 1) Any property seized as evidence shall, when no longer needed as evidence, be returned to the owner unless otherwise subject to lawful detention. The property which is otherwise subject to lawful detention shall be destroyed or otherwise disposed of as directed by the court.

G) Disposal

- 1) Any unclaimed property for which no other manner of disposal is provided hereby and which is not claimed by the owner within 90 days may be appropriated to City use upon approval of the appropriation by the Council.

2) Sale

- a) Any Unclaimed Property which is not appropriated to City use shall be sold by the designated law enforcement agency to the highest bidder at public auction.
- b) Notice shall be published for two successive weeks of the time, place and manner of sale.
- c) The notice shall also describe the property to be sold.

3) Proceeds

- a) The proceeds from a sale of unclaimed property shall be deposited in the City's general fund.
- b) A record shall be made of the sale price of each item sold and the sale price shall be paid to the former owner, if claim is made within six months of the sale and satisfactory proof of ownership is presented.

- 4) Any unclaimed property remaining unsold after public auction shall be disposed of as directed by the Council.

## 24.03. ESCROW DEPOSITS

### A) Intent.

- 1) Certain licensed and permitted activities carried on in the City require the assistance of the City Engineer, City Attorney or other City personnel.
- 2) As these activities primarily benefit private persons rather than the City as a whole, it is appropriate that the cost of these services be borne by those benefitting thereby.
- 3) This section is intended to provide a method whereby this end will be furthered.

### B) Escrow Deposit Required

- 1) Applications for subdivision approval, rezonings, conditional use permits, planned unit developments, zoning variances, sewer connection permits, liquor licenses, building permits and other municipal considerations may require a cash deposit which shall be placed in an applicant's escrow account in an amount sufficient to pay all engineering, legal and planning fees incurred by the City and other costs as may be made the applicant's responsibility, in connection with the application and the supervision, inspection and investigation of the permitted activity.
- 2) Account and Charges
  - a) The deposit shall be held in the account and shall be credited to the applicant making the deposit.
  - b) All engineering, legal and planning fees and other costs as may be made the applicant's responsibility incurred in connection with an application shall be charged to the applicant's escrow account and credited to the City.

### C) Fee Schedule

- 1) The Council shall, by ordinance establish fees for services rendered by the City Attorney, City Engineer and other City personnel. The fee schedule shall be provided to all persons making applications listed in this section upon request.

### D) Individual Fees

- 1) Based on the fee schedule adopted pursuant to this section, the Administrator/Clerk-Treasurer shall determine the amount of the escrow deposit required after consultation with the City Attorney, City Engineer and other City personnel whose services may be required. If a dispute arises over a fee imposed by M.S. § 462.353, as it may be amended from time to time, then if the person aggrieved by that fee makes an escrow deposit of the fee, the work on a permit, license or project shall continue and the applicant may then appeal the amount of the fee to the district court as provided in that statute.

- 2) All time, services and materials to be billed to an escrow account shall be itemized.

E) Enforcement

- 1) The application listed in this section shall not be accepted or processed by the City unless signed by all parties with an interest in the property or project and accompanied by an escrow deposit as provided in this section.
- 2) If at any time it appears that a deficit will occur in any escrow account, the Administrator/ Clerk-Treasurer may then require an additional deposit in the escrow account sufficient to cover the additional expenses.
- 3) Failure to make additional deposits, or to pay to the City money owed for legal, engineering or other services for which the applicant is, by ordinance, made responsible in connection with an application in this section shall be grounds for denial or revocation of the permit or license, or cessation of work on a particular project. The permit or license shall be revoked only after a hearing preceded by ten days written notice.

F) Refund

- 1) Any money remaining in an applicant's escrow account after payment of all required engineering, legal and other fees shall be returned to the applicant.

#### 24.04. SERVICES, LICENSES AND PERMIT FEES

A) Fees Established by Resolution

- 1) The City Council shall establish the amounts of all fees for all City services, licenses, permits and penalties by ordinance on an annual or more frequent basis.
- 2) A copy of the current fee schedule ordinance may be obtained from the Administrator/ Clerk-Treasurer upon request.

B) General Licensing Requirements

- 1) All license applications to operate a business shall provide evidence of compliance with M.S. § 176.182, as it may be amended from time to time. Failure to provide evidence shall be grounds for denial of a license and termination of processing of application.

## CHAPTER 25: ADMINISTRATIVE ENFORCEMENT

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### 25.01. PURPOSE AND INTENT.

The administrative enforcement procedures established within this chapter are intended to provide the City with an informal, cost-effective and more efficient alternative to criminal prosecution or civil litigation for certain violations of the adopted City code and zoning ordinance. The City retains the right, at its sole discretion, to also enforce provisions of this code and zoning ordinance by bringing criminal charges or commencing civil litigation in any case where the City determines it is appropriate or necessary, but finds that an administrative process is beneficial to the residents of the City and further finds that such a process is a legitimate and necessary alternative method of enforcing code violations. The penalties imposed by this chapter may be in addition to any other enforcement mechanism available to the City for violations of the City code and zoning ordinance.

### 25.02. ADMINISTRATIVE CITATION PROCEDURE.

A) Notice of Violation: Any member of the Wright County Sheriff's Department and any other persons employed by the city with authority to enforce this code shall, upon determining that there has been a violation, notify the violator or person responsible for the violation, either in person or by mail. The notice of the violation will set forth the nature and date-of the violation, the name of the official issuing the notice and the amount of the scheduled initial penalty and, where applicable, any charges relating to the violation.

B) Administration Procedure: The city administrator, or designee, shall adopt procedures for administering an administrative citation program.

C) Scheduling Penalties: Penalties shall be imposed for a violation of the scheduled administrative offenses according to a schedule established by Resolution of the City Council.

D) Payment of Fine: The person responsible for the violation shall, within seven (7) days of the issuance of the notice, pay the full fine to the city administrator, or designee. The person may pay the fine in person or by mail, and payment shall be admission of the violation.

E) Unpaid Fines: An unpaid fine will constitute a personal obligation of the person(s) to whom the citation was issued and the City shall have the right to collect the unpaid fine, together with the City's costs and reasonable attorney's fees, in criminal or civil proceedings.

F) Assessment of Fine: Pursuant to M.S. §§ 429.101, 514.67 and other applicable law, a lien in the amount of the fine may be assessed against the property where the code offense occurred and collected in the manner of taxes. Any such assessment shall not preclude the

City from issuing additional citations for a continuing code offense, nor from making additional assessments for a continuing or new code offense.

G) Licenses or Permits: The City may suspend or revoke a license or permit or other approval associated with the code offense if the fine is not timely paid.

#### 25.03. APPEAL TO CITY COUNCIL.

A) Requesting a hearing. Any person contesting a citation issued pursuant to this chapter may, within 15 days of the issuance of the citation, request a hearing before the City Council. Any request for a hearing shall be made in writing.

B) Conduct of hearing. At the hearing, the parties will have the opportunity to present testimony, documents and exhibits and question witnesses. The City Council shall tape record the proceedings and receive testimony and exhibits. Strict rules of evidence will not apply.

#### 25.04. APPEAL OF CITY COUNCIL DECISION.

The City Council's decision shall be appealable as provided for in state law.

## CHAPTER 26: ETHICS IN GOVERNMENT

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### 26.01. PURPOSE AND INTENT.

The City Council of the City of Montrose, Minnesota determines that a code of conduct for its members, as well as the members of the various boards and commissions of the City of Montrose and full-time staff and volunteers of the city, is essential for the efficient administration of the public affairs of the city. By eliminating conflicts of interest and providing standards for conduct in city matters, the city council hopes to promote the faith and confidence of the citizens of Montrose in their government and to encourage its citizens to serve on the council and city commissions.

### 26.02. STANDARDS OF CONDUCT.

A) No member of the Montrose City Council, or a member of a board or commission established by the City of Montrose, or full-time or part-time staff employed by the City of Montrose, or a volunteer acting on behalf or for the benefit of the City of Montrose, may knowingly:

- 1) Violate the Minnesota Open Meeting Law, as codified at Minnesota Statutes, Chapter 13D, as amended.
- 2) Participate in a matter that affects such person's financial interests or those of a business with which the person is associated, unless the effect on the person or business is no greater than on other members of the same business classification, profession or occupation. The City Council hereby professes a preference for local businesses if at all possible, within state law guidelines for conflicts of interest, including Minnesota Statutes, Sections 471.87 through 471.89, as amended.
- 3) Use the person's public position to secure special privileges or exemptions for such person or for others associated or dependent upon such person.
- 4) Use the person's public position to solicit personal gifts or favors, subject to the exceptions contained in the Minnesota Gift Law, Minnesota Statutes, Section 471.895, as amended.
- 5) Use the person's public position for personal gain, whether financial or otherwise.
- 6) Except as specifically permitted pursuant to the Minnesota Gift Law, Minnesota Statutes, Section 471.895, as amended, accept or receive any gift of substance, whether in the form of money, services, loans, travel, entertainment, hospitality,

promises, or in any other form, under circumstances in which the public could reasonably perceive that such person could be reasonably expected to be influenced through the person's performance of official action or otherwise, or be intended as a reward for such person's official action.

- 7) Disclose to the public, or use for the person's or another associated or dependent person's personal gain, financially or otherwise, information that was gained by reason of such person's public position, if the information was not public data or was discussed at a closed session of the City Council.
- 8) Disclose information that was received, discussed or decided in conference with the City's legal counsel that is protected by the attorney-client privilege, unless a majority of the City Council has authorized the disclosure.
- 9) Represent private interests before the City Council or any City committee, board, commission or agency.
- 10) Act detrimentally against the best interests of the City and the members of the community pursuant to any official or informal action or correspondence.

B) Except as prohibited by the provisions of Minnesota Statutes, Section 471.87, as amended (as such section relates to personal financial interests in official city contracts), there is no violation of this Section 26.02 for a matter that comes before the City Council, or a City-established board or commission, if the member of the City Council, board or commission publicly discloses the circumstances that would violate these standards and refrains from participating in the discussion and vote on the matter. Nothing herein shall be construed to prohibit a contract with a member of the City Council under the circumstances described under Minnesota Statutes, Section 471.88, as amended, if proper statutory procedures are followed.

#### 26.03. COMPLAINT; HEARING.

A) Any person may file a written complaint with the City Administrator or any member of the City Council alleging a violation of the standards of conduct in Section 26.02. The complaint must contain specific supporting facts for the allegation and must contain the name and address of the complainant. The complainant's contact information will be subject to the Minnesota Data Practices Act, found at Minnesota Statutes, Chapter 13, as amended.

B) The complaint will first be distributed to and heard by the City's Personnel Committee. The Personnel Committee may, in its reasonable discretion, take testimony from the complainant, the alleged wrongdoer, and any other persons of interest. The Personnel Committee may then determine, in its reasonable discretion, whether the complaint has merit. If the complaint is without merit, it shall be dismissed by the Personnel Committee, and no further action shall be taken by the city.

C) If the complaint has merit under the criteria of this Section 26.03, the complaint shall be passed on to the City Council. The City Council shall hold a hearing on the complaint only if;

- 1) Upon the advice of the City Attorney, the factual allegations of the complaint state a sufficient claim of a violation of these standards to rise to the level of a legally recognized conflict of interest or a violation of the standards of conduct recited herein, and;
- 2) The complaint has been lodged in good faith and not for impermissible purposes such as delay, harassment, or personal retribution.

D) The City Council's determination of whether the complaint requires a hearing must be made within 45 days after the complaint has been heard by the Personnel Committee. If the City Council determines there is an adequate justification for holding a hearing based on the criteria described in this Section, the hearing must be held within 30 days after such determination. At the hearing, the person accused of a violation of the standards of conduct of this chapter must have the opportunity to be heard. If, after the hearing, the City Council finds that a violation of these standards of conduct or of state law has occurred or does exist, as the case may be, the City Council may censure the person, refer the matter for criminal prosecution, request such person not to participate in a certain decision, remove such person from an advisory board or commission established by the City Council, or take other disciplinary action against the person. Under no circumstances may a City Council member be removed from office, except as allowed by state law.

E) If a complaint is filed against a member of the Personnel Committee or the City Council, that person is not prohibited from voting on the merit of the complaint, either at the Personnel Committee or City Council level.

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### 30.01. DEFINITIONS.

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

- 1) COMPANY, GRANTEE and FRANCHISEE. Any public utility system to which a franchise has been granted by the City.
- 2) CONSUMER and CUSTOMER. Any user of a utility.
- 3) HOOK-UP. The original connection to the utility for that property.
- 4) MUNICIPAL UTILITY. Any City-owned utility system, including, but not by way of limitation water, sewerage and refuse service.
- 5) SERVICE. Providing a particular utility to a customer or consumer.
- 6) UTILITY. All utility services, whether the same be public City-owned facilities or furnished by public utility companies.

### 30.02. CONTRACTUAL CONTENTS.

A) Provisions of this chapter relating to municipal utilities shall constitute portions of the contract between the City and all consumers of municipal utility services. Every consumer shall be deemed to assent to the same.

B) All contracts between franchisees and consumers of utility services other than municipal shall be in strict accord with the provisions of this title.

### 30.03. APPLICATION, CONNECTION AND SALE OF SERVICE.

A) Application for municipal utility services shall be made upon forms supplied by the City, and strictly in accordance therewith. No connection shall be made until consent has been received from the City to make the same. All municipal utilities shall be sold and

delivered to consumers under the then applicable rate applied to the amount of the utilities taken as metered or ascertained in connection with the rates.

#### 30.04. FIXING RATES AND CHARGES FOR UTILITIES.

A) All rates and charges for municipal utilities, including, but not by way of limitation rates for service, permit fees, deposit, hook-up, meter testing fees, disconnection fees, re-connection fees and penalty fees for delinquency, shall be fixed, determined and amended by the City Council and adopted by resolution.

B) The resolution, containing the effective date thereof, shall be kept on file and open to inspection in the Office of the City Administrator/ Clerk-Treasurer and shall be uniformly enforced.

C) For the purpose of fixing the rates and charges, the Council may categorize and classify under the various types of service, provided, that the categorization and classification shall be included in the resolution authorized by this section.

D) Properties that contain no buildings or impervious surface as determined by the Public Works Director will not be charged utility charges by the City, including water, sewer and storm sewer. Any property owner that believes their property qualifies for this exemption may submit a written request to the Public Works Director to have utility charges halted. As soon as the property is built upon or has impervious surface added, the property will no longer be exempt and will begin receiving utility bills.

#### 30.05. TRUNK CHARGES

A) Trunk Sanitary Sewer and Watermain Fees. As a condition of subdivision plat approval, subdividers shall pay both a Trunk Sanitary Sewer Fee and a Trunk Watermain Fee to the City to fund the sanitary sewer and watermain improvements required by the proposed development. The City shall establish the trunk fees by resolution based on the subdivision's acreage and shall periodically update the fees to account for changes in costs and revenues. The City shall incorporate these trunk fees into a development agreement with the subdivider.

B) Storm Sewer District. The City established a Storm Sewer Tax Improvement District pursuant to Minn. Stat. Chap. 444. The District encompasses the entire geographical area of the City of Montrose, Wright County, Minnesota. The City shall from time to time establish the Storm Sewer District Fees by resolution. As a condition of subdivision plat approval, subdividers may be required to pay additional storm sewer fees to fund the storm sewer improvements required by the proposed development.

#### 30.06. WATER RATES.

A) Water rates will be periodically established by an ordinance adopted by the City Council.

B) Base Rates or minimum charges shall be imposed to all utility customers as defined in Minn. Stat. 444.075. With the exception being second water meters used for residential irrigation purposes.

C) The City of Montrose is required to comply with and adopt the State mandated water conservation rate structure as defined in M.S. 103G.291.

- 1) In addition to the standard base rate, the Increasing Block or Tier Rate is defined as: the cost per unit of water increases as water use increases within specified “blocks” or “tiers” in volume. The following block or tier rate is as follows for the City of Montrose residential users.

Current Standard Base Rate plus:

**Tier 1:** 0 to 5,999 gallons is at the current per 1000 gallon water rate.

**Tier 2:** 6,000 to 11,999 gallons is a 10% rate increase from Tier 1 rate.

**Tier 3:** 12,000 gallons and above is a 10% rate increase from Tier 2 rate.

D) With properties that have more than one water meter, the monthly water meter totals will be added together for a total monthly water usage figure. The tier rate structure will use this monthly total figure to calculate the total monthly usage charge.

E) Multiple-Family Dwellings: Total water use in a multiple-family dwelling, which has only one water meter for the entire dwelling, may exceed that of a single family dwelling. The M.S. statute does not require individual water meters for each residential unit within a multiple-family dwelling; however, the required conservation rate at which the multiple-family dwellings water use is billed must consider the number of residential units within that multiple family dwelling, and take into account that each residential unit is an individual user. The number of residential units for these multiple family dwellings shall be updated annually.

F) Seasonal Residents. Seasonal residents who have their utility services disconnected will still be charged the base rate or minimum charges.

### 30.07. BILLING, PAYMENT AND DELINQUENCY.

#### A) Services

- 1) Payment for all municipal utility service and charges shall be the primary responsibility of the owner of the premises served. If a tenant fails to pay any charge the owner of the property is responsible for all charges.
- 2) The City may collect the same in a civil action or, in the alternative and at the option of the City, as otherwise provided in this section.

B) All municipal utilities shall be billed monthly and a utility billing statement or statements shall be mailed to each consumer each month.

C) All utility accounts shall be delinquent if not paid by the twentieth day of the month following the billing statement date. If the twentieth of the month falls on a Saturday, Sunday or legal holiday, the time shall be extended to the close of business on the next succeeding day on which normal business is normally transacted.

D) After a utility account is determined delinquent a penalty fee shall be calculated on all delinquent accounts as determined by City Council resolution, and the penalty fee shall be added to, and become part of, the delinquent utility account. A past due notice may not be generated or mailed when the past due balance is less than \$25, however the late penalty will apply.

E) On the twenty-fourth day of the month a Late Fee Penalty will be applied to all utility accounts that are past due. In addition, a delinquency notice will be generated and mailed stating that the utility service will be disconnected on the fifth day of the following month if the utility bill is not paid.

If the twenty-fourth day falls on a Saturday, Sunday or legal holiday the Late Fee Penalty and delinquency notice will be generated on the next regular business day.

If the fifth day of the following month falls on a Saturday, Sunday or legal holiday the utility services will be disconnected on the next regular business day.

F) Pro-rating. In the event that utility services are not needed for the entire service period pro-rating of utility services will accurately reflect the usage of such services.

G) If service is disconnected due to non-payment, service shall not be restored at that location until a disconnection/re-connection charge has been paid for each utility reconnected in addition to amounts owed for service and administration.

H) The list of unpaid utility charges plus interest shall be delivered to the City Council for adoption in October of each year. Upon approval thereof, the Administrator/ Clerk/ Treasurer shall certify to the County Auditor the amount due, and the County Auditor shall thereupon enter the amount as part of the tax levy on the premises to be collected during the ensuing year as authorized under Minn. Stat. 444.075. This action may be optional or subsequent to taking legal action to collect delinquent accounts.

I) The City provides payment plans for payment of arrears pursuant to Minn. Stat. 216B.098 subd. 3. The City does not provide budget billing plans because the City is exempt from the requirement in Minn. Stat. 216B.098 as the City has fewer than 3000 customers.

### 30.08. DISCONTINUED SERVICE

A) Any person desiring to discontinue the use of City utilities, or desiring a change in their application as to change of premises or otherwise shall notify the Utility Billing office to that effect, must give notice thereof at the Utility Billing office at least five days previous to such change. The person desiring the change shall schedule to have the service at the curb stop box shut off by authorized City personnel. No unauthorized person shall shut off the water service. Where the City water has been turned off, it will be turned on only when:

- 1) A reconnection fee is paid; and
  - 2) All unpaid fees, usage charges and late payment penalties are paid.
- B) All municipal utilities may be shut off or discontinued any time whenever it is found that:
- 1) The owner or occupant of the premises served, or any person working on any connection with the municipal utility systems, has violated any requirement of the city code related to utilities;
  - 2) Any charge for a municipal utility service, or any other financial obligation imposed on the present owner or occupant of the premises served, is unpaid after due notice;
  - 3) There is fraud or misrepresentation by the owner or occupant in connection with any application for service or delivery or charges.
  - 4) An Emergency condition exists as determined by the Emergency Board with a potential to threaten public drinking water supply
  - 5) A duly authorized employee of the City has been refused entry to private property if the Public Works Director has determined that such entry is necessary; or
  - 6) A temporary shut off is required by the City to complete maintenance, repairs, or replacement of the City's utility infrastructure.
- C) Any time a municipal utility is disconnected, unless the situation is deemed an emergency by the Public Works Director, the City shall provide notice of the impending disconnection. The notice shall detail why the utility is being disconnected, when it will be disconnected, how the property owner can assure the utility will not be disconnected, that the property owner has the right to challenge the disconnection and charges, and who to contact to make such a challenge.
- D) As provided for in M.S. 216B.097 the Cold Weather Rule, as it may be amended from time to time, no service of a residential customer shall be disconnected if the disconnection affects the primary heat source for the residential unit when the disconnection would occur during the period between October 15 and April 15, the customer has declared inability to pay on forms provided by the City, the household income of the customer is at or below 50 percent of the state median income level as documented by the City, and the customer's account is current for the billing period immediately prior to October 15 or the customer has entered into payment schedule and is reasonably current with payments on the schedule. The City shall, between September 1 and October 15, of each year, notify all residential customers a summary of the rights and responsibilities of these provisions.

### 30.09. METER READINGS.

A) Beginning on the 15th of each month the City of Montrose Public Works Department shall read all water meters either by remote radio read or by manual read in accordance with each particular route. An exception will be determined by the Public Works Director on the

manual read routes during the winter months due to deep snow cover making it impossible for a city employee to obtain meter readings safely. When this condition exists the Utility Billing Clerk will take the past 12 months usage to determine an average, and estimate the water usage for that particular month.

#### 30.10. RIGHT OF ENTRY.

A) The City shall not enter a customer's premises if: the customer has not consented; or the City has not obtained a court order authorizing entry; or an emergency situation involving imminent danger to life or property does not reasonably appear to exist.

B) For monthly exterior manual water meter reading purposes consent is implied by acceptance of utility services to enter private property to obtain the monthly meter reading. Consent has to be granted by property owner before the authorized meter reader can obtain any interior manual water meter readings.

C) The City shall notify the jurisdictional law enforcement agency before entering the customer's premises without the customer's consent unless it would be unreasonable under the facts and circumstances to do so.

#### 30.11. UNLAWFUL ACTS.

A) It is unlawful for any person to willfully or carelessly break, injure, mar, deface, disturb or in any way interfere with any building, attachment, machinery apparatus, equipment, fixture or appurtenance of any municipal utility or municipal utility system or commit any act tending to obstruct or impair the use of any municipal utility.

B) It is unlawful for any person to make any connection with, opening into or alter in any way any municipal utility system without first having applied for and received written permission to do so from the City.

C) It is unlawful for any person to turn on or connect a utility when the same has been turned off or disconnected by the City for non-payment of a bill, or for any other reason, without first having obtained a permit to do so from the City.

D) It is unlawful for any person to jumper or by any means or device fully or partially circumvent a municipal utility meter, or to knowingly use or consume unmetered utilities or use the services of any utility system, the use of which the proper billing authorities have no knowledge.

E) Any unmetered water service on the City distribution system is prohibited. Violators shall be subject to immediate disconnection of service and imposition of penalty.

#### 30.12. SERVICE OUTSIDE AND INSIDE CITY.

A) No municipal utility service to premises outside the City shall be provided, except such as are being served on the effective date of this section.

B) Upon Annexation into the City, the affected properties have one year to connect to City utilities once they become available. In instances where only city water is available to

the property owner, the property owner may hook up to city water at that time, or delay utility connections until both city water and sewer services become available.

C) All properties within the City for which sewer and water are available must connect to those services within one year of both services becoming available. All properties within the City that has both sewer and water available shall be charged a Sewer Access Charge, a Water Access Charge, monthly base rates and if applicable a monthly charge for sewer service without water service.

D) In the event an owner shall fail to connect to a public sewer or water when required by this Code, the City may undertake to have said connection made and shall charge the cost thereof against the property and said charge shall be a lien against said property. Such charge, when made, shall bear interest at the rate of 1.5% over the prime interest rate per annum and shall be certified to the auditor of the county in which the land is situated and shall be collected and remitted to the City in the same manner as assessments for local improvements. The rights of the City under this division shall be in addition to any other remedial or enforcement provisions of this chapter.

### 30.13. CONNECTION/TAPPING PROHIBITED; DELINQUENT.

A) No permit shall be granted to tap or connect with sewer or watermain when any assessment or connection charge for the sewer or watermain against the property to be connected is in default or delinquent.

B) If the assessment or connection charges are payable in installments, no permit shall be granted unless all installments then due and payable have been paid.

## CHAPTER 31: SOLID WASTE

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### 31.01. DEFINITIONS.

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

- 1) AGENCY. The State Pollution Control Agency.
- 2) CITY. The City of Montrose.
- 3) COLLECTOR. Any person who performs the act of waste collection.
- 4) COUNCIL. The City Council.
- 5) COUNTY. Wright County.
- 6) FLOODPLAIN. Any land that is subject to a 1% or greater chance of flooding in any given year from any source as defined and determined by FEMA.
- 7) GARBAGE. Discarded material resulting from the handling, processing, storage, preparation, serving and consumption of food and any other putrescible waste.
- 8) LANDSPREADING. The placement of waste or waste byproducts on, or incorporation of them into, the soil surface.
- 9) LEACHATE. Liquid that has percolated through solid waste and has extracted, dissolved or suspended materials from it.
- 10) OPERATOR. The person or persons responsible for the operation of any facility.
- 11) OWNER. The person or persons who own a facility or any part of a facility.
- 12) PERSON. Any natural person, municipality, municipal corporation, county or any other governmental or political subdivision or public agency, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing, or any other legal entity.
- 13) REFUSE. Putrescible and nonputrescible solid wastes, including garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings and market

and industrial solid wastes and municipal treatment wastes which do not contain free moisture.

- 14) **RELEASE.** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into the environment which occurred at a point in time or which continues to occur.
- 15) **RUBBISH.** Nonputrescible solid wastes, including ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery or litter of any kind.
- 16) **BIOSOLIDS.** Any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial waste water treatment plant, water supply treatment plant or air contaminant treatment facility or any other waste having similar characteristics and effects.
- 17) **SOURCE SEPARATION.** The segregation by the generator of recyclable and reusable materials and yard waste from mixed municipal solid waste for collection in a separate waste stream.
- 18) **WETLAND.** A surface water feature classified as a wetland by the State Department of Natural Resources Wetlands Inventory of the county or by a Technical Evaluation Panel under the laws of the Wetland Conservation Act.
- 19) **YARD WASTE.** Garden wastes, leaves, lawn cuttings, weeds and prunings.
- 20) **YARD WASTE COMPOSTING FACILITY.** A facility accepting yard waste originating on other property and processing that waste to produce a useable end product.

B) Other terms shall have the meaning given them in M.S. Ch. 115A.03, as it may be amended from time to time.

## 31.02. COLLECTION.

### A) Responsibility for collection.

- 1) **Residential mixed municipal solid waste.**
  - a) The City shall provide for collection and disposal of all residential mixed municipal solid waste.
  - b) All residences within the corporate limits of the City shall be required to utilize the collection service provided by the City except such residences that at the time of the adoption of this Code are within the corporate limits of the City but are not using the City's collection service.
- 2) **Commercial.** Commercial establishments and multiresident buildings, including but not limited to apartments and condominiums, offices, manufacturing facilities, industrial facilities and retail sales establishments shall be responsible for the

satisfactory and prompt collection of all waste accumulated at a business establishment, industry or premises and its transportation to an appropriate waste disposal facility.

B) Generators.

- 1) Waste storage. Owners and occupants of any premises, business establishment or industry shall be responsible for storing the generated waste in a satisfactory manner that prevents threats to community health, safety and welfare. Storage of waste by any collector is prohibited within the limits of the City.
- 2) Garbage containers. Garbage shall be placed in a durable, rust resistant, non-absorbent, watertight, rodent proof cleanable container with a close fitting, fly-tight cover.
- 3) Refuse containers. Refuse must be stored in a durable, waterproof container. Where refuse and garbage are stored together, the container must meet the requirements for a garbage container.
- 4) Container size and type. Container types shall be approved by the City for the purpose intended and shall meet the above standards.
- 5) Container maintenance. All storage containers shall be maintained to prevent creation of a nuisance or any menace to public health.
- 6) Exceptions. Any objects or materials too large or otherwise unsuitable for storage containers shall be stored for collection in a pollution and nuisance free manner.

C) Collectors.

- 1) Residential. The collection of mixed municipal solid waste from residences in the City shall be by general City contract.
- 2) Commercial. Solid waste collection from commercial enterprises and multi-unit residential premises shall utilize free contracting between the generator and a collector, except as regulated by this chapter. The collector shall be subject to the requirements for containers, vehicles, liability for releases and all other conditions placed on contracted collectors by this chapter.

### 31.03. ORGANIZED COLLECTION FOR RESIDENTIAL WASTE.

A) The City shall provide, by contract, for the collection of all mixed municipal solid waste from all residential generators within the corporate limits of the City. The contract for the collection shall be maintained by the City and altered when the City, in its sole discretion and subject to applicable state statutes and rules, deems a change or modification in the contract is appropriate to protect the health, safety and welfare of the community. The contract shall include a clause, approved in form by the City Attorney, defending, indemnifying and holding the City harmless from all liability and damages relating to any intentional or negligent act of the collector.

B) The Council shall set the maximum fee that can be charged for collection. All collection fees shall be based on the volume of waste generated and collected.

C) Recyclable material shall be exempt from the organization of solid waste collection upon a showing by a generator or collector that the materials are or will be separated from mixed municipal solid waste by the generator, separately collected and delivered for reuse in their original form or for use in a manufacturing process.

D) Any non-contracted collector operating within the City and collecting residential mixed municipal solid waste shall be liable for any damage or threat to community health, safety and welfare and be subject to this chapter and the terms of the City collection contract just as if that collector was a contracted collector.

E) Collectors of waste shall utilize vehicles and containers that are covered, leak proof, durable, of easily cleanable construction and suitable for the type of waste being collected. The vehicles and containers shall be cleaned to prevent nuisances, pollution and insect breeding and shall be maintained in good repair and serviceable condition.

F) Material released from a collectors vehicle or container shall be picked up immediately and the area properly cleaned. If the material is hazardous in nature, the collector must immediately notify the City and comply with all other applicable statutes, rules and regulations.

G) Mixed municipal solid waste, source separated recyclable material and yard waste are the only materials authorized for regular collection. Waste, oil, lead acid batteries, any part of those batteries or new or used tires are prohibited as part of the mixed municipal solid waste stream.

H) Ownership of waste shall transfer from the generator to the collector upon collection. At no time shall ownership of any waste reside in the City. If the City comes into possession of any waste by responding to a release, ownership shall continue to rest in the person owning the waste when released.

#### 31.04. YARD WASTE.

A) All persons who are owners, lessees or occupants of any building, commercial or residential, within the City that generates yard waste shall separate that yard waste from all solid waste. Commingling of yard waste and mixed municipal solid waste is prohibited.

B) Yard waste that is source separated shall be bagged or bundled and set out for disposal in accordance with policies established by resolution of the Council. Yard waste shall not be allowed to accumulate in excessive amounts representing a hazard to public health.

C) Yard waste generated in the City shall not be disposed of in any landfill.

D) Self composting of yard waste in a backyard composting facility or by leaving lawn clippings in place is encouraged as an efficient, safe and cost effective method of disposal for this waste.

### 31.05. RECYCLING.

A) Recycling shall be provided as part of the City's regularly contracted solid waste services. The City may enter into any contract it deems, in its sole discretion and subject to applicable state statutes and rules, appropriate for establishing and maintaining a recycling program in the City. The City shall charge for the provided recycling service regardless of whether a person chooses to use the provided service or not.

B) The contracted recycler is deemed the owner of the recyclables upon collection. In the event a drop-off location is established, ownership of recyclables shall transfer from the generator to the contracted recycler at the time of drop off.

C) Each shall submit a quarterly report to the City in the form and containing the information requested by the City administrative staff.

#### D) Recycling Requirements

- 1) The Council has determined that, at a minimum, the following recyclable materials are targeted for present or future recycling through the City recycling program.
  - a) Paper;
  - b) Cans, including aluminum and other metal;
  - c) Glass; and/or
  - d) Plastic.
- 2) Containers shall be maintained in a clean and sanitary condition. The style, type and construction material for any containers may be designated by the City.

#### E) Contracted Collector

- 1) The collection, removal and disposal of recyclable material shall be by City contract with a collector.
- 2) It shall be unlawful for any person other than the contracted collector, a City employee acting with authority or any other authorized person to distribute, collect, remove, disturb or dispose of recyclable materials after the materials have been placed or deposited for collection.

#### F) Collector Requirements.

- 1) Source separated recyclable materials shall be delivered for reuse in their original form or for use in a manufacturing process that does not cause the destruction of recyclable materials in a manner that precludes further use.
- 2) Disposal of source separated recyclable material in any manner other than as stated above shall operate to void the exemption from mixed municipal solid waste and bring the material within the full scope of this chapter.

- 3) The collector of the material in question shall be liable for all costs and charges relating to the proper disposal of the material after the exemption is void.

G) Nothing in this chapter shall abridge the right of any person to give or sell their recyclable materials to any recycling program lawfully operated for profit, non-profit or charitable purposes.

#### 31.06. WASTE DISPOSAL FACILITIES.

A) No waste disposal facility of any type or kind shall be located in, on or within 300 feet of a floodplain or a wetland. This prohibition is not waivable and overrides any and all waivers or conditional uses allowed.

B) Location of any waste disposal facility, including, but not limited to a yard waste composting facility, a yard waste landspreading facility, a construction debris disposal facility, a mixed municipal solid waste disposal facility, an industrial waste disposal facility, a hazardous waste disposal facility, an infectious waste disposal facility or any waste incineration facility within the corporate limits of the City is prohibited without a permit granted in accordance with this chapter.

- 1) Backyard yard waste composting facilities are exempt from the facility prohibition to the extent that they do not have any deleterious effect on the public health, environment, surface water or groundwater.

- 2) Proof of the lack of deleterious effect is the burden of the generator.

C) It is within the discretion of the Council to grant a permit waiving the prohibition on waste disposal facilities on a site specific basis. The permit shall be requested and processed in the manner provided for in this Code for the application for a conditional use. This application for a permit shall include submission of facts and plans by the proposed operator and owner of the facility. If allowed by the Council, the facility must, at a minimum, conform to the rules promulgated by the Agency for the type of waste facility allowed.

- 1) Facts and plans shall contain the following materials, at a minimum, and any other materials requested by the Council.
  - a) Name of the site owner;
  - b) Name of the site operator;
  - c) Address of a contact person for the facility operation;
  - d) A telephone number for the contact person;
  - e) Location of the site;
  - f) An environmental impact statement or environmental assessment worksheet as applicable, including, but not limited to an assessment of the potential impact on surface and groundwater, the potential for litter, the

potential for particulate air pollution, the potential for runoff, the potential for leachate formation and the potential for excessive or offensive odors;

- g) A description of any processing of the waste;
- h) The plan for acceptance and disposal of the waste;
- i) The end product of the process and its planned disposition if the waste is processed;
- j) A description of steps to be taken to abate, ameliorate or negate the potential environmental hazards; and
- k) Any preliminary information or indications from the Agency or any other governmental or private organization relative to the potential hazards or problems with the site.

- 2) A decision to allow a facility constitutes a conditional use permit and the Council may attach conditions as are appropriate to protect the public health, safety and welfare and the environment.
- 3) As a required condition of granting a permit, any facility allowed within the City and its owners and operators shall provide a separate contract indemnifying and holding the City harmless against any and all intentional and negligent actions of the facility, its owners or operators, any employees or any agents of the facility.

D) The City may set up, operate and utilize a yard waste composting facility without a waiver.

### 31.07. LIABILITY AND INDEMNIFICATION.

A) Compliance with this chapter does not act to shift any liability legally accruing to the generator, collector or facility owner or operator to the City.

B) Each generator of waste residing within the City shall take all reasonable precautions necessary to protect the public from injury and shall defend, indemnify and save the City harmless from any liability, claims, damages, costs, judgments, expenses and claims of damages that may arise by reason of any tort claim for bodily or personal injury, disease, death or damage to property resulting directly or indirectly from an act or omission of the generator.

C) Each collector of waste operating within the City shall take all reasonable precautions necessary to protect the public from injury and shall defend, indemnify and save the City harmless from any liability, claims, damages, costs, judgments, expenses and claims for damages that may arise by reason of any tort claim for bodily or personal injury, disease, death or damage to property resulting directly or indirectly from an act or omission of the collector, its agents, employees or independent contractors.

D) Each facility of any type located within the City shall take all reasonable precautions necessary to protect the public from injury and shall defend, indemnify and save the City

harmless from any liability, claims, damages, costs, judgments, expenses and claims for damages that may arise by reason of any tort claim for bodily or personal injury, disease, death or damage to property resulting directly or indirectly from an act or omission of the facility owner or operator, their agents, employees or independent contractors.

## CHAPTER 32: WATER

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### 32.01. CONNECTIONS.

A) The purpose of the Water Access Charge (W.A.C) is to establish and impose just and equitable charges for the availability of certain municipal utility systems, including water works systems, and related facilities, and for the connections therewith, to pay for the construction, reconstruction, repair, enlargement, improvement, or other obtainment and maintenance, operation and use of such facilities. Such charges are authorized and shall be determined and imposed in accordance with Minnesota Statute Sections 444.075 and 429.021.

B) Water Access Charges (W.A.C) shall be levied against a property whenever a connection is made to the City of Montrose water system at a rate fixed by the City council, as adopted by ordinance, and may be amended from time to time. The connection fee is charged on a per unit basis and shall be collected at the time a building permit is applied for.

#### C) Computation of W.A.C Units.

- 1) Single Family Homes = 1 unit
- 2) Townhomes and Duplexes = 1 unit per dwelling
- 3) Multi-Family Dwellings with potential for laundry facilities included in each unit = 1 unit per dwelling.
- 4) Multi-Family Dwellings w/o potential for laundry included in each unit = 0.80 unit per dwelling.
- 5) Mobile Homes = 1 unit.
- 6) Low-income and subsidized housing units = 85% of the calculated unit (i.e. 0.85 x 0.80 for LI Multi-Family Housing without private laundry facilities).

- 7) Other buildings and commercial structures based on usage equivalents as outlined in the most recent “Standard Criteria” published by the Metropolitan Waste Control Commission.
- 8) For more detailed information refer to the City of Montrose Water and Sewer Access Policies.

#### 32.02. PERMIT REQUIRED.

A) No person shall open, make any connection with or opening into, use, alter or disturb any public water line or appurtenance thereof without first obtaining a developers agreement, building permit, right of way permit or other approval from the City Administrator.

B) No person, except a state licensed plumber, or a duly authorized employee or agent of the City, will be permitted to do any work on service pipes connected with the water system.

C) Application for water service shall be made on printed forms that are available at City Hall; they shall state the legal description, the PID, street and official house numbers of the premises to be supplied and the nature of the improvement to be done. Application shall be signed by the owner of the premises or his or her authorized agent or by the occupant or person in possession thereof. Each applicant, by application, shall subscribe to and be obliged to be bound by the rules and regulations.

D) The charge for tapping mains and the amount of the permit fee specified shall be paid at the time the application is submitted and before service is installed.

- 1) The plumber requesting the tap shall give notice at least one week in advance of the tap being made.
- 2) The plumber must help uncover the main and locate the tap if requested by the Public Works Director, or City Engineer.
- 3) The tap and service line up to and including the curb stop must be inspected, and approved by the Public Works Director, or City Engineer prior to any back filling being done.

E) The written permit must be on display at the site of work at all times.

F) A water access charge will be levied for each new tap made into the City water main or each new connection made to an existing water service that was tapped and installed previously in accordance with the WAC policy included in this Code.

G) The permit fees and water access charge fees for connecting to the water system is set forth annually by City Council Ordinance.

#### 32.03. WATER METERS.

A) The City shall exclusively own and control the water meters to be used in the water system. All water meters shall be installed in accordance with the following regulations. All water meters shall be purchased by the property owner and the purchase is non-refundable.

- 1) Water meters shall be installed by the Public Works Department, homeowner, or a duly licensed plumber.
- 2) The meter shall be located so the bottom is from 12 to 18 inches above the finished floor line. The meter shall not be set more than 12 inches, measured horizontally, from the inside line of the basement wall. Deviation from these standards may be made only with written permission of the Public Works Director, or City Engineer. An approved yoke or horn shall be provided to support the meter in proper vertical position.
- 3) All meter installations shall have a ball valve on the street side of the meter. In no case shall there be more than 12 inches of pipe exposed between the point of entrance through the floor and the gate valve. A ball valve shall also be installed on the house side of the meter. The ball valves shall meet the following requirements: All valves shall be heavy duty brass, full port ball valves with handle and FIP threading. Valves shall be manufactured by A.Y. McDonald or Mueller. All valves shall be equipped with a stainless steel operating handle. Ball valve thread types can be modified from FIP to MIP to better accommodate existing fittings or meter setters.
- 4) The water service connecting with the curb stop shall not be run within any structure or under any basement floor for a distance of no more than two feet, measured from the inside foundation wall, before being connected to the water meter unless otherwise directed by the Public Works Director or City Engineer.
- 5) The consumer is prohibited from obstructing the meter so as to prohibit the reading or repairing of the meter.
- 6) It shall be unlawful for anyone to tamper with any water meter as to avoid charges for water.
- 7) It shall be unlawful for anyone to bypass a meter, or otherwise use City water without making just compensation thereof, except as may be specifically authorized in this chapter.
- 8) Any water meter twenty years old or older may be subject for replacement, which shall be purchased by the City at the property owner's expense, and shall be the maintenance responsibility of the City.

B) If any meters are damaged by freezing, hot water and of the like, either by carelessness or neglect of the owner or occupant of the premises or other agents, the owner or occupants must pay for the repair of the damages. The cost of ordinary maintenance and repairs of all meters owned by the City shall be borne by the City.

C) When a customer has a complaint that the bill for any past service period is excessive, the City shall have the meter reread on request. If the customer remains dissatisfied, they may, on a written request and payment of the deposit set annually by City council ordinance, have the meter tested. If the test shows an error in the City's favor exceeding 5% of the water consumed, the deposit shall be refunded, an accurate meter shall be installed, and the bill

adjusted accordingly. Such adjustment shall not extend back more than one service period from the date of the written request. In cases when the test shows an accurate measurement of the water or an error in favor of the customer, the amount deposited shall be retained by the City to cover expenses of making such test.

D) A water meter permit fee for connecting to the water system shall be paid by the user before any water meter is installed.

E) The fee shall be established by ordinance for a five- eighths-inch meter and remote reader. The fees for larger meters will be set according to their cost to the City. Fees paid are not refundable.

F) Any unmetered water service on the City distribution system is prohibited. Violators shall be subject to immediate disconnection of service and imposition of penalty.

G) A Second Water Meter is allowed for outside irrigation purposes only. The goal of the second irrigation water meter is to be more accurate in determining the residential wastewater usage by eliminating outside water usage that is not contributing to the waste water system.

- 1) Residential customers shall purchase the second irrigation water meter from the City to record water use only. The type of meter and the cost of the meter will be determined annually by the City.
- 2) Procedure to purchase.
  - a) Submit a building permit application (forms are available at City hall or on the City website) to install a second irrigation water meter.
  - b) After the City Building Inspector reviews and approves the second irrigation water meter permit application and the second water meter and associated permit fees are paid, the property owner shall be given the second irrigation water meter for installation.
  - c) Second irrigation water meter model and serial numbers are recorded to the property owner's utility account by the utility billing office.
- 3) Purchase of the second irrigation water meter is not refundable.
- 4) The property owner shall inform the City Building Inspector when the second irrigation meter has been installed so that the Building Inspector can inspect the meter to ensure that it has been properly installed and sealed.
- 5) The second irrigation water meter shall not reflect a base rate charge, or sewer charge.

#### 32.04. OWNERSHIP.

A) For Residential users, the City shall own, operate, and be responsible for the portion of the service line from the main up to and including the curb stop or gate valve shut off.

The service pipe from the curb stop/gate valve to the meter and the connections thereto shall be the property of the user.

B) For Commercial/Industrial users, the City shall own, operate and be responsible for the portion of the service line from the main to the right of way line. The service pipe from the right of way line to the meter and the connections thereto shall be the property of the user.

#### 32.05. USERS' SERVICE PIPES.

A) The pipe must be protected and maintained by the property owner.

B) The service pipe from the City curb stop to the meter shall be three-fourths-inch type K copper pipe or Polyethylene (PE) pipe as specified unless otherwise directed by the Public Works Director or City Engineer to comply with the Minnesota State plumbing Codes.

- 1) Polyethylene (PE) pipe shall be ENDOD ENDOPURE.
- 2) PE pipe shall conform to Grade PE-3408 or PE-4710 pipe and shall be rated for 200PSI working pressure, SODR 9
- 3) PE pipe shall conform to ASTM D-1248 & D-2737 for Copper Tube Size, outside diameter controlled.
- 4) PE water service pipe connections shall be compression type.
- 5) PE pipe shall be permanently marked at 2 foot intervals indicating Manufacture, PE material type, Date of manufacture etc.
- 6) Type 304 stainless steel pipe inserts/stiffeners shall be furnished and installed in the end of the PE pipe at all connections.
- 7) PE pipe inserts shall meet requirements of AWWA C901 and ASTM 240-92B.

C) All joints on copper tubing shall be flared or compression-fitted and kept to a minimum.

D) No joints shall be used for a service up to one hundred feet in length, and then only one joint for each additional one hundred feet in length.

E) All service lines including the curb stop connection, and any joints, must be left uncovered until inspected and approved by the Public Works Director, or City Engineer .

F) The service pipe from the City water main to the curb stop and the curb stop box and cover at the main and the boulevard are the property of the City and all persons are forbidden to interfere with them.

G) The service pipe shall be placed not less than eight feet below the surface in all cases so arranged as to prevent rupture and stoppage by freezing.

H) In the event the user shall fail to make any necessary repairs to the service connections or pipe within 24 hours after being notified to do so by the Public Works Director, the Director shall forthwith disconnect the City water from the premises.

I) The installation of new service piping including curb stops in or underneath driveways, unless otherwise directed and approved by the Public Works Director or the City Engineer is prohibited.

J) The service pipe from the City curb stop to the meter, where the water enters the building, shall be brought through the floor in a vertical position.

K) Service pipes larger than two inches in diameter shall be ductile iron.

L) All service pipes which become frozen between the curb stop and the premises served shall be thawed at the expense of the property owner. Any frozen pipes from the water main to the curb stop shall be thawed at the expense of the City. It shall be strictly prohibited to use any type of electrical device to thaw frozen pipes.

M) All buildings with a fire sprinkler system shall have a separate fire suppression system service line and domestic water service line. A shut off valve shall be located on each line no less than 5 feet away from the building. The services may be combined into 1 pipe within 5 feet of the building.

#### 32.06. CITY LIABILITY.

A) The City shall not be liable for any damages resulting from stopping of the supply or flow of water as the result of breaks in any mains, service pipes or fixtures, by reason of the breaking of machinery or stoppage for necessary repair or any other interruption of service.

B) The City will be responsible for service leaks from the main up to and including the curb stop.

C) The City shall bear the responsibility, and expense to restore any public road right-of-way (boulevard, sidewalk, curb, gutter, and street) to City specifications when the damage is a result of a problem in the main up to and including the curb stop. When the damage is a result of a problem in the service line from the curb stop to the connection to the individual property, the property owner shall bear the responsibility and expense to restore any public road right-of-way (boulevard, sidewalk, curb, gutter, and street) to City specifications.

D) In any repair related to a public main, the City will not replace any private infrastructure and items such as landscaping, trees, driveway surfacing, etc. Boulevards and utility easement areas will be brought up to grade, raked out, and seeded down with grass seed. Driveway areas will be brought up to grade with class 5 and it shall be the property owner's responsibility to replace any surfacing. The City will restore any private streets to the satisfaction of the Public Works Director.

#### 32.07. SERVICE INITIATION

A) No person shall turn on City water to any premises without having written authorization from the City and until a meter has been placed on the service and in a manner

that it will register all water consumed and all other parts of the plumbing and pipe fittings in and about the pipes are in full compliance with the rules and regulations of this chapter and all other applicable regulations.

- 1) No person shall make any connection with any service pipe between the curb stop and the meter.
- 2) No person shall make any replacement tap or connect any tap or connection in any water main without shutting off the water in the old tap or connection at the connection point in the water main.
- 3) No water will be turned on until all charges and fees are paid, including any unpaid usage charges and late payment penalties for the premises.

#### 32.08. EMERGENCY BOARD.

A) Because critical shortages of water may result from time to time and the shortage may come about suddenly, the following emergency procedures are hereby established. These procedures must be followed at all times, when the Emergency Board, hereinafter established, determines that any emergency exists. The Emergency Board shall consist of the Mayor and the Public Works Director.

- 1) Whenever, in the judgment of the Emergency Board, the pressure or quantities of water in any part of the City water system have become or are about to become inadequate for fire or other needs, the Emergency Board shall declare a water emergency and shall impose necessary water use restrictions to abate the emergency and shall post and publicize the restrictions.
- 2) Notice of confirmed, modified, or the removal of water restrictions shall be published in the City's official and legal newspaper, and City website at the first opportunity, and as such, other times as the Emergency Board deems reasonably necessary.
- 3) The water restrictions shall remain in effect until removed by the action of the Emergency Board.
- 4) If necessary to preserve the public health, safety and welfare and/or the water supply system during an emergency, the Emergency Board may terminate water service to any or all users.
- 5) If the termination of water service is determined by the Emergency Board to last beyond the initial emergency duration, an extension of the termination shall be recommended from the Emergency Board for City Council approval.

#### 32.09. FIRE HYDRANTS.

A) All fire hydrants erected within and by the City for fire extinguishing purposes, shall hereby be declared to be public hydrants unless specified under a separate City approved agreement. Except for the Director of Public Works, no person other than members of the fire department of the City, and then only for the uses and purposes of the department, shall

open any hydrant, or remove, or attempt to remove there from any matter or thing designated or intended for the protection of the hydrant or in any manner interfere or intermeddle with any hydrant. The Public Works Director of the City or its agent may grant any suitable person permission to open any hydrant, and draw water therefrom, in which event such person shall not open the hydrant to any greater extent, nor keep the hydrant open any greater length of time, nor draw water therefrom for any purpose, not in any greater quantity than may be specified in the permit. No person authorized to open hydrants shall delegate his or her authority to another nor let out or permit any person to take wrenches furnished him or her, nor permit the wrenches to be taken from any facility of the City, except for purposes strictly connected with the fire department, or as they accompany firefighting equipment at fires.

B) Private Use of hydrants. No hydrants, except public drinking fountains, shall be placed within the public right of way of any street, unless such hydrants are securely closed and protected against general use.

C) Drinking Fountains. No drinking fountains shall be erected for public use which have openings by which they can be used as a source of domestic water supply.

D) Private Hydrants. If proprietors of lumber yards, manufacturing establishments, halls, stores, elevators, warehouses, hotels, mobile home parks, or public buildings, who are hooked up to the City water supply, wish to lay large pipes with hydrants and hose couplings to be used only in case of fire, they shall be permitted to connect with street mains at their own expense, upon application to the City Council, and under its direction. The City shall have the right to inspect and flush the hydrants when deemed necessary with all associated maintenance costs being the responsibility of the hydrant owner.

#### 32.10. PRIVATE WELLS & WATER SUPPLY SYSTEMS PROHIBITED.

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

1) Private Water Supply System. A system owned and operated by a person for collection and delivery of piped water into commercial, industrial or residential buildings or structures.

B) No water pipe of the municipal water supply shall be connected with any pump, well, pipe, tank or any device that is connected with any other source of water supply and when such are found, the Public Works Director or City Engineer shall notify the owner or occupant to disconnect the same and, if not done immediately, the water supply shall be turned off.

C) The City of Montrose is required to comply with the State mandated wellhead protection program. The City must protect the aquifer from contamination from private as well as public sources within its jurisdiction. The City must also protect the public water system from contaminating cross-connections made from private wells. These connections are very hard to regulate. For that reason, the City of Montrose prohibits private water wells or any private water supply system where City water is available. Any property that contains

a private water well or private water supply system must discontinue use of the well or system and connect to City water within 1 year of City water becoming available.

D) A licensed well contractor must properly seal any existing private well at the owner's expense that is within City Limits.

E) The City Council may allow the use of an existing private well if the following conditions exist:

- 1) The well is located on property within the Urban Reserve Zoning District; and
- 2) The well is being utilized for agricultural purposes only.

### 32.11. BACKFLOW PREVENTION

A) Approved devices or assemblies for the protection of the potable water supply must be installed at any plumbing fixture or equipment where backflow or back-siphonage may occur and where a minimum air gap cannot be provided between the water outlet to the fixture or equipment and its flood level rim.

B) Any device or assembly for the prevention of backflow or back-siphonage installed shall have first been certified by a recognized testing laboratory and have a certification number clearly visible on the device. AWWA, ASSE, and USC are the certified labs recognized by the City Public Works Director, City Engineer, and City Inspectors.

C) The installation of reduced pressure backflow preventers shall be permitted only when a periodic testing and inspection program conducted by qualified, accredited personnel will be provided by an agency acceptable to the Public Works Director or the City Engineer. Inspection intervals shall not exceed one year, and overhaul intervals shall not exceed five years. The Public Works Director or the City Engineer may require more frequent testing if deemed necessary to assure protection of the potable water. Backflow preventers shall be inspected frequently after initial installation to assure that they have been properly installed and that debris resulting from piping installation has not interfered with the functioning of the assembly.

### 32.12. CROSS CONNECTION CONTROL.

A) Cross connection between potable water systems and other systems or equipment containing water or other substances of unknown or questionable safety are prohibited, except when and where, as approved by the Public Works Director or City Engineer having jurisdiction, suitable protective devices such as air breaks, break tanks, RPZs or equal, are installed, tested, and maintained to insure proper operation on a continuing basis.

B) All industrial and commercial customers must have their facilities inspected and audited by a qualified accredited person from any agency approved by the Public Works Director or the City Engineer. The inspection is to determine whether all applicable plumbing fixtures and/or processes that require backflow and cross connection control devices have the appropriate control devices installed and that they are installed properly and that all appropriate maintenance has been performed to date. The audit will show a listing of all such

devices, make and model, serial number, and ASSE, AWWA or USC number. The accredited person and /or agency shall submit a signed certified report to the City Public Works Department and the facility that the person and/or agency is doing the work for. These records will be kept for a period of 7 years. A new inspection of the entire facility is required whenever a substantial modification to the existing facility is done. A new audit is required whenever control devices are replaced or added. The Public Works Director or the City Engineer may require more frequent inspections or audits if deemed necessary to assure protection of the potable water system.

### 32.13. LAWN WATERING RESTRICTIONS.

A) The Public Works Director shall be given the authority to implement emergency lawn watering restrictions to restrict water use during such periods. The Public Works Director shall notify utility users of a watering ban by publishing notice in the City's legal newspaper, City web site and/or local television station or radio station.

B) **Stage 1 (Mild):** A request for voluntary reduction measures will be implemented when City wells operate for more than 20 hours per day for 3 consecutive days or as deemed necessary by the Public Works Director.

C) **Stage2 (Moderate):** Residents with an odd house number shall water lawns or wash cars when necessary only on odd numbered calendar days, and those with even numbered addresses shall water lawns or wash cars only on even numbered days. Lawns shall not be watered between the hours of 10:00am and 6:00pm. This mandatory reduction measure will be implemented when City wells operate for more than 20 hours per day for 5 consecutive days or as deemed necessary by the Public Works Director.

D) **Stage 3 (Severe):** In extreme cases, the Public Works Director shall have the authority to issue a total watering ban until such time the situation ceases to exist. This mandatory ban will be implemented when the City wells operate for more than 20 hours per day for 7 consecutive days or as deemed necessary by the Public Works Director.

E) **Critical Water Deficiency under M.S.103G.291.** As authorized by Executive Order from the Governor and as provided in the above stages.

F) An exception may be granted for recently established lawns. Those lawns may be watered daily for up to one month after installation, but only during the hours listed above.

G) The penalty for violating the Utilities watering ban shall be a warning for the first day of violation, a \$25.00 per day fine for the second violation, and a \$50.00 per day fine for the third violation.

## CHAPTER 33: SEWERS

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### 33.01. PURPOSE AND POLICY.

A) This chapter sets forth uniform requirements for discharges of wastewater to the City's facilities and enables the City to comply with all state (Minnesota Pollution Control Agency) and federal (U.S. Environmental Protection Agency) laws.

B) The objectives of this chapter are:

- 1) To prevent the introduction of pollutants into the City's facilities which will interfere with the operation of the facilities or the treatment or disposal of wastewater;
- 2) To provide for the efficient and safe collection, conveyance and treatment of wastewater from the City.

C) This chapter provides for the regulation of discharges into the City's wastewater facilities through enforcement of the general requirements for all users, authorizes monitoring and enforcement activities, provides for penalty relief, requires user reporting, and provides for the setting of fees necessary to carry out the program established herein.

D) This chapter shall apply to the City and users of the City's facilities.

### 33.02. DEFINITIONS.

A) Unless the context specifically indicates otherwise, the following terms, as used in this chapter, shall have the meanings hereinafter designated.

- 1) ACT. The Federal Water Pollution Control Act, Public Law 92-500 and the Clean Water Act, Public Law 95-217 as amended.

- 2) **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 feet (1.5 meters) outside the inner face of the building wall.
- 3) **BUILDING SEWER.** The extension from the building drain to the public sewer or other place of disposal.
- 4) **CARBONACEOUS BIOCHEMICAL OXYGEN DEMAND (CBOD).** The quantity of oxygen utilized in the biochemical oxidation of organic matter, in the presence of a nitrification inhibitor, under standard laboratory procedures in five days at 20°C expressed in terms of weight and concentration (milligrams per liter-mg/l).
- 5) **CHEMICAL OXYGEN DEMAND.** The quantity of oxygen utilized in the chemical oxidation of organic matter, expressed in milligrams per liter, as determined in accordance with standard laboratory procedure as set out in the latest edition of Standard Methods of the Examination of Water and Wastewater.
- 6) **COOLING WATER.** The water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added to the water is heat.
- 7) **DIRECTOR.** The Public Works Director.
- 8) **DOMESTIC WASTE.** Wastes from residential users and from the sanitary conveniences of multiple dwellings, commercial buildings, institutions, and industrial facilities.
- 9) **EPA.** The U.S. Environmental Protection Agency.
- 10) **FACILITIES.** The system of trunk and lateral lines, gravity and force mains, pumps, lift stations, wastewater water treatment facilities and other appurtenance constructed to collect and convey wastewater from the City.
- 11) **FLOW.** The quantity of wastewater expressed in gallons or cubic feet per 24 hours.
- 12) **GARBAGE.** Solid wastes resulting from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage of meat, fish, fowl, fruit, vegetables, and condemned food.
- 13) **GENERAL PRETREATMENT REGULATIONS.** The general pretreatment regulations for existing and new sources of pollution promulgated by the EPA under § 307(b) and (c) of the Act and found at 40 CFR Part 403.
- 14) **INDIRECT DISCHARGE.** The introduction of pollutants or wastes into the facilities from any non-domestic source regulated under § 301(b), (c), or (d) of the Act.

- 15) **INDUSTRIAL USER.** A source of indirect discharge.
- 16) **INDUSTRIAL WASTE.** Solid, liquid, or gaseous wastes, including cooling water, resulting from any industrial, manufacturing, or business process, or from the development, recovery, or processing of a natural resource.
- 17) **INTERFERENCE.** A discharge which alone or in conjunction with a discharge or discharges from other sources inhibits or disrupts the facilities, the City's treatment processes or operations or the City's biosolids processes, use or disposal and, therefore, is a cause of a violation of any requirement of any NPDES permit or of the prevention of sewage biosolids use or disposal with statutory provisions and regulations or permits.
- 18) **MAY.** The act is permissive.
- 19) **MPCA.** The Minnesota Pollution Control Agency.
- 20) **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT.** Any permit or requirements issued by the Minnesota Pollution Control Agency (MPCA) pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.); for the purpose of regulating the discharge of wastewater, industrial wastes, or other wastes under the authority of § 402 of the Act.
- 21) **ORDINANCE.** The set of rules contained herein and in the City's Sewer Rate and Cost Recovery Ordinance.
- 22) **OTHER WASTES.** Other substances except wastewater and industrial wastes.
- 23) **PERSON.** The state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and including any officer or governing or managing body of any municipality, governmental subdivision or public or private corporation, or other entity.
- 24) **pH.** The logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.
- 25) **PRETREATMENT.** The process of reducing the amount of pollutants, eliminating pollutants, or altering the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the facilities. The reduction, elimination, or alteration may be obtained by physical, chemical or biological processes, process changes or other means, except as prohibited by this chapter.
- 26) **PRETREATMENT STANDARDS.** Standards for industrial groups (categories) promulgated by the EPA pursuant to the Acts which regulate the quality of

effluent discharge to publicly owned treatment works and must be met by all users subject to such standards.

- 27) **PUBLIC UTILITY.** The unit of municipal government and its people responsible for the operation of the facilities and this chapter.
- 28) **PUBLICLY OWNED TREATMENT WORKS (POTW).** The treatment works as defined by § 212 of the Act, which is owned by the municipality (as defined by § 502(4) of the Act). This includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW plant. The term also means the municipality as defined in § 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works plant.
- 29) **RULES.** The waste discharge rules for the City's disposal system contained herein.
- 30) **SANITARY SEWER.** A sewer which carries wastewater and to which storm, surface, and groundwater are not intentionally admitted.
- 31) **SEWAGE BIOSOLIDS.** Solids and associated liquids in municipal wastewater which are encountered and concentrated by a municipal wastewater treatment plant.
- 32) **SEWER.** A pipe or conduit for carrying wastewater, industrial waste, or other waste liquids.
- 33) **SEWER SYSTEM.** Pipelines or conduits, pumping stations, force mains, and all other devices and appliances appurtenant thereto, used for collecting or conducting wastewater.
- 34) **SHALL.** The act is mandatory.
- 35) **SLUG.** Any waste discharge which, in concentration of any given constituent or in quantity of flow, exceeds four times the average 24-hour concentration or flow during normal operation which may, by itself or in combination with other wastes, cause an interference within the POTW.
- 36) **STATE.** The State of Minnesota or its designated agency, the Minnesota Pollution Control Agency (MPCA).
- 37) **STORM SEWER or STORM DRAIN.** A sewer which carries storm and surface water and drainage, but excludes wastewater and industrial wastes, other than unpolluted cooling or process water.
- 38) **STORMWATER.** Any flow occurring during or following any form of natural precipitation and resulting therefrom.

- 39) **SUSPENDED SOLIDS (SS).** The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by a standard glass fiber filter.
- 40) **TOTAL TOXIC ORGANICS.** The summation of all values greater than 0.01 mg/l of toxic organics listed in § 307(A) of the Act.
- 41) **UNPOLLUTED WATER.** Clean water uncontaminated by industrial wastes, other wastes, or any substance which renders such water unclean, or noxious, or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety, or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, birds, fish, or other aquatic life.
- 42) **USER.** Any person who discharges, causes, or permits the discharge of wastewater into the facilities.
- 43) **WASTE TRANSPORT HAULER.** An industrial user who transports industrial or domestic waste for the purpose of discharge into the City's POTW.
- 44) **WASTEWATER.** The liquid and water- carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which is discharged into or permitted to enter the facilities.

### 33.03. CONNECTIONS.

A) The purpose of the Sewer Access Charge (SAC) is to establish and impose just and equitable charges for the availability of certain municipal utility systems, including the city sewer system, and related facilities, and for the connection therewith, to pay for the construction, reconstruction, repair, enlargement, improvement, or other obtainment and maintenance, operation and use of such facilities. Such charges are authorized and shall be determined and imposed in accordance with Minnesota Statute Sections 444.075 and 429.021.

B) Sewer Access Charges (S.A.C) shall be levied against a property whenever a connection is made to the City of Montrose sewer system at a rate fixed by the City Council, as adopted by ordinance, and may be amended from time to time. The connection fee is charged on a per unit basis and shall be collected at the time a building permit is applied for.

C) Computation of S.A.C Units.

- 1) Single Family Home = 1 unit
- 2) Townhomes and Duplexes = 1 unit per dwelling
- 3) Multi-Family Dwellings with a potential for laundry facilities included in each unit = 1 unit per dwelling.
- 4) Multi-Family Dwellings w/o potential for laundry included in each unit = .80 unit per dwelling.

- 5) Mobile Homes = 1 unit.
- 6) Low- income and subsidized housing units = 85% of the calculated unit (i.e. 0.85 x 0.80 for LI Multi-Family Housing without private laundry facilities).
- 7) Other buildings and commercial structures based on usage equivalents as outlined in the most recent “Standard Criteria” published by the Metropolitan Waste Control Commission.
- 8) For more detailed information refer to the City of Montrose Water and Sewer Access Policies.

#### 33.04. BUILDING SEWERS AND CONNECTIONS.

A) No person, unless authorized, shall uncover, make any connections with, or disturb any portion of the facilities, except in accordance with the applicable provisions of this title.

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

C) A separate and independent building sewer shall be provided for every building, unless a special permit is issued by the City for extenuating circumstances. Such a permit shall require a written agreement between the property owners and the City as to the share of the costs of construction and maintenance that each will contribute.

D) Old building sewers may be used in connections with new buildings only when they are found, upon examination and testing by the City at the property owner’s expense, to meet all requirements of this chapter.

E) The size, slope, alignment, materials of construction of a building sewer, and the method to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench shall all conform to the requirements of the building and plumbing codes or other applicable rules and regulations. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of Water Pollution Control Federation Manual of Practice No. 9 and applicable American Society of Testing and Materials (ASTM) standards shall apply.

F) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, such building drain shall be provided with a lifting device approved by the City and discharged to the building sewer.

G) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain that is connected directly or indirectly to the facilities.

H) The construction of the building sewer and its connection to the facilities shall conform to the requirements of the building and plumbing codes, the sewer specifications

included herein, or other applicable rules and regulations and the procedures set forth in appropriate specifications of the Water Pollution Control Federation Manual of Practice No. 9, and the American Society for Testing and Materials (ASTM). All such construction shall be made gas-tight and watertight. Any deviation from the prescribed procedures and materials must be approved by the City before installation.

I) The City shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the connection shall notify the City when the work is ready for final inspection and no underground portions shall be covered before the final inspection is completed. The connection shall be made under the supervision of the City or its representative.

J) Any new connections to the facilities shall be prohibited unless sufficient capacity is available in all downstream portions of the facilities and at the POTW, including, but not limited to capacity for flow, CBOD and suspended solids, as determined by the City.

### 33.05. OWNERSHIP.

A) The City shall own, operate and be responsible for the public sewer main lines. The sewer service line including the connection of the sewer service line to the sewer main line shall be the property of the user.

### 33.06. CITY LIABILITY.

A) The City shall not be liable for any damages resulting from stopping of the septic system as the result of breaks in any sewer mains, sewer service pipes or fixtures, by reason of the breaking of machinery or stoppage for necessary repair or any other interruption of service.

B) The City will be responsible for the mainline sanitary sewer. The City is not responsible for anything between the sewer main and the connection to the property, including the service wye on the sewer main.

C) The City shall bear the responsibility and expense to restore any public road right-of-way (boulevard, sidewalk, curb, gutter, and street) to City specifications when the damage is a result of a problem in the main. When the damage is a result of a problem in the service line from the connection to the main to the connection to the individual property, the property owner shall bear the responsibility and expense to restore any public road right-of-way (boulevard, sidewalk, curb, gutter, and street) to City specifications.

D) In any repair related to a public main, the City will not replace any private infrastructure and items such as landscaping, trees, driveway surfacing, etc. Boulevards and utility easement areas will be brought up to grade, raked out, and seeded down with grass seed. Driveway areas will be brought up to grade with class 5 and it shall be the property owner's responsibility to replace any surfacing. The City will restore any private streets to the satisfaction of the Public Works Director.

### 33.07. CONNECTIONS, ALTERATIONS, MAIN AND LATERAL SEWERS.

A) No person, unless authorized, shall uncover, make any connections with or opening into, use, alter, or disturb any portion of the facilities without first obtaining a written permit from the City. The City may charge a reasonable permit fee to cover the costs of inspections associated with alterations or connections to the facilities as well as administrative expenses incurred by the City on account of such alterations and connections.

B) No main or lateral sewer shall be constructed in the City (except house or building service sewers) except by the City. No such main or lateral sewer shall be considered to be a part of the facilities unless accepted by the City.

C) No lift station or check valve shall be installed on any portion of the facilities (except house or building service sewers) except by the City. No such lift station or check valve shall be considered to be a part of the facilities unless accepted by the City.

D) The size, slope, alignment, material of construction, methods to be used in excavation, placing of pipe, jointing, testing, backfilling and other work connected with the construction of sewers shall conform to the requirements of the City.

### 33.08. PROTECTION FROM DAMAGE.

A) 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 facilities.

### 33.09. USE OF PUBLIC SEWERS.

A) It shall be unlawful to discharge into any natural outlet within the City or in any area under the jurisdiction of the City any wastewater or other polluted water.

B) It shall be unlawful within the City to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater. Temporary portable toilet facilities may be permitted by special permit issued by the City for the purpose of providing toilet services for construction projects or special events or purposes.

C) Construction of any new structures within the City from which wastewater is or shall be discharged shall not occur without first securing a connection to the facilities.

D) On commercial or industrial property, when there is going to be any change in sewer use, including but not limited to flow, volume, type or strength, the property owner must notify the City of the change and obtain City approval before any change can occur.

E) No person shall discharge or cause to be discharged directly or indirectly any stormwater, surface water, groundwater, roof runoff, subsurface drainage, unpolluted cooling or process water to the facilities unless there is no prudent and feasible alternative and unless as approved by the City.

F) Stormwater and all other unpolluted water shall be discharged to a storm sewer or other appropriate outlet, subject to existing regulatory requirements including the requirement to obtain an NPDES permit by the MPCA, when necessary.

#### 33.10. PRIVATE SYSTEMS PROHIBITED.

A) All private septic systems and other similar facilities shall be properly abandoned or removed within one year of both sanitary sewer and water service becoming available. Where both septic sewer and water service is available private septic systems are prohibited.

#### 33.11. INDUSTRIAL USES AND USERS.

A) All industrial users are required to meet all State and MPCA regulations and must submit to the City a copy of the required State and MPCA permits.

#### 33.12. LIMITATIONS ON WASTEWATER STRENGTH.

A) Federal Pretreatment Standards. Federal Pretreatment Standards and General Regulations promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Act shall be met by all users which are subject to such standards in any instance where they are more stringent than the limitations in this chapter unless the Director has applied for, and obtained from the MPCA, approval to modify the specific limits in the federal pretreatment standards. In all other respects, industrial users subject to pretreatment standards shall comply with all provisions of these rules and any permit issued thereunder, notwithstanding less stringent provisions of the general pretreatment regulations or any applicable pretreatment standard.

B) State requirements. State requirements and limitations on discharges shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this chapter.

C) City's right of revision. The City reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the facilities if deemed necessary to comply with the objectives of this chapter.

D) Dilution. No user shall increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in any local or state requirements or federal pretreatment standards.

E) Reports. Reports specified in 40 CFR 403.12 of the General Pretreatment Regulations shall be submitted to the City by affected users.

#### 33.13. DISCHARGE OF CERTAIN MATERIALS PROHIBITED.

A) No person shall discharge or cause or allow to be discharged, directly or indirectly, into the facilities any of the following waste pollutants containing concentrations in excess of the following maximum limitations for any operating day:

- 1) All waste of any type generated from any source outside the designated sewer service area as provided for in this chapter.
- 2) All waste generated from septic tank contents, privy vault contents, sewage holding tanks and the like generated from within the limits of the designated sewer service area.
- 3) Any wastes which may directly or indirectly impair the proper functioning of the City's POTW.
- 4) Any wastes the strength or pollutional effects of which are not effectively altered by ordinary treatment processes, or the presence of which in the receiving stream would violate state and federal water quality standards.
- 5) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the City's POTW or to the operation of the facilities. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides, and any wastes with a closed- cup flash point of less than 140°F (60°C).
- 6) Solid or viscous substances that will or may cause obstruction to the flow in a sewer or other interference with the operation of the City's POTW, such as, but not limited to, grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshing, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.
- 7) Any wastewater having a pH less than 6.0 or more than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the City's POTW.
- 8) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater treatment system. A TOXIC POLLUTANT shall include, but not be limited to, any pollutant identified pursuant to § 307(a) of the Federal Water Pollution Control Act as amended.
- 9) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair.
- 10) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

- 11) Any wastewater which creates conditions at or near the City's POTW that violate any statute or any rule, regulation, or ordinance of any public agency or state or federal regulatory body.
- 12) Any wastewater with CBOD in excess of 260 mg/l and TSS in excess of 280 mg/l.
- 13) Any wastewater having a temperature greater than 150°F (65.6°C), or causing, individually or in combination with other wastewater, the influent at the City's POTW to have a temperature exceeding 104°F (40°C) or having heat that will inhibit biological activity in the City's POTW resulting in interference.
- 14) Any SLUG LOAD, which shall mean any pollutant, including oxygen demand pollutants (CBOD, and the like), released in a discharge of such volume or strength as to cause inhibition or disruption in the City's treatment works.
- 15) Non-contact cooling water or unpolluted storm or ground water.
- 16) Concentrations of mineral or animal origin of greater than 50 mg/l whether or not emulsified.
- 17) Wastewater containing inert suspended solids, such as, but not limited to, fuller's earth, lime slurries, and lime residues, or of dissolved solids, such as, but not limited to, sodium chloride and sodium sulfate in such quantities that they would cause disruption with the City's POTW.
- 18) Radioactive wastes or isotopes of such a half-life or concentration that they are in non-compliance with standards issued by the appropriate authority having control over their use and which will or are likely to cause damage or hazards to the City's POTW or the personnel operating it.
- 19) Wastewater containing the following substances in excess of the limits shown herein:

Pollutants	Maximum Allowable Concentration*(mg/l)
Arsenic	0.13
Cadmium	0.091
Chromium, total	2.28
Copper	2.76
Cyanide, total	3.11
Lead	0.79
Mercury	0.016

Molybdenum	0.11
Nickel	0.75
Selenium	0.19
Silver	0.56
Zinc	4.23

\*Based on a 24-hour flow proportional composite sample of a total discharge from the facilities.

B) Fats, Oils, and Grease.

- 1) Any wastewater containing fats, oils, or grease whether emulsified or not, in excess of 50 mg/l or containing substances that may solidify or become viscous at temperatures between 32 ° F (0°C) and 150°F (65.6°C); or as identified in the most current EPA method as listed in 40-CFR 136.3 shall be pre-treated by the User in accordance with the City of Montrose Fats, Oils and Grease Management Policy. All operation, maintenance, management and reporting of the pre-treatment operations shall also be in accordance with the City of Montrose Fats, Oils and Grease Management Policy.

C) All Waste Transport Hauler activity, dumping, and discharge is prohibited within City limits.

D) Connection to System.

- 1) It is unlawful for any person to make or maintain a connection between eave troughs, rainspouts, footing drains, or any other conductor used to carry natural precipitation or groundwater, and the sanitary system or any part thereof.
- 2) Any property owner in violation of this section and upon receiving notice of said violation, shall disconnect the conductor from the facilities. Any property owner in violation of this section shall be assessed a monthly surcharge, the amount of which will be established by the Council, for each month that the conductor is not permanently disconnected. Failure to permanently disconnect the conductor, or reconnection of a disconnected conductor, may result in the suspension of facilities.

E) It is unlawful for any person to construct, alter or extend any sewer connected or proposed to be connected to the facilities without first having the plans and specifications therefor approved by the City.

F) It is unlawful for any owner, tenant, agent, occupant, or other person having charge of any premises to maintain thereon any drain or sewer connected with the facilities in a

clogged, obstructed, broken or damaged condition, or not in conformance with the existing plumbing code.

G) It is unlawful for any person to discharge, or cause or permit to be discharged, any sewage or unhealthful matter into any lake, natural ravine, or public waters.

H) It is unlawful to discharge stormwater or any other unpolluted drainage anywhere other than a specifically designed storm sewer or to a natural outlet approved by the City and other regulatory agencies.

#### 33.14. ACCIDENTAL DISCHARGES.

A) Accidental discharges of prohibited waste into the facilities, directly or through another disposal system, or to any place from which such waste may enter the facilities, shall be reported to the City by the persons responsible for the discharge, or by the owner or occupant of the premises where the discharge occurred, immediately upon obtaining knowledge of the fact of such discharge. Such notification will not relieve users of liability for any expense, loss or damage to the wastewater disposal system or treatment process, or for any fines imposed on the City on account thereof under any state or federal law. The responsible person shall take immediate action as is reasonably possible to minimize or abate the prohibited discharge.

B) The responsible person shall send a letter describing the prohibited discharge to the City within seven days after obtaining knowledge of the discharge. The letter shall include the following information:

- 1) The time and location of the spill;
- 2) Description of the accidentally discharged waste, including estimate of pollutant concentrations;
- 3) Time period and volume of wastewater discharged;
- 4) Actions taken to correct or control the spill; and
- 5) A schedule of corrective measures to prevent further spill occurrences.

#### 33.15. MONITORING.

A) Monitoring facilities.

- 1) When required by the City, a user shall install a suitable control structure, together with such necessary meters and other appurtenances at or near the service connection, to facilitate observation sampling, flow measurement, and measurement of the wastes. Such structure and equipment, when required, shall be constructed at the user's expense in accordance with plans approved by the City and shall be maintained by the user so as to be safe and accessible at all times.

- 2) The monitoring facility should normally be situated on the user's premises but the City may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed elsewhere.

B) Flow measurement.

- 1) A user, when required by the City, shall install and maintain a flow measurement device for instantaneous rate and/or cumulative flow volume determinations. Metered water supply may be used in lieu of flow measurement devices if it can be documented that the water usage and waste discharge are the same, or where a measurable adjustment to the metered supply can be made to determine the waste volume.
- 2) Meters and flow records shall be maintained at the user's expense in good operating condition at all times. The user shall notify the City in writing within five days in the event that the user becomes aware that the meter or flow recorder has failed to accurately register the flow. The user shall also notify the City of the user's intention to alter the installation of a meter or flow recorder so as to affect the accurate recording of industrial waste entering the facilities.

C) City's self-monitoring analyses. All measurements, tests, and analyses of the characteristics of water and wastes shall be determined in accordance with EPA guidelines established in 40 CFR Part 136 and 40 CFR 403.12 (g) of the General Pretreatment Regulations. Representative samples of the City's waste shall be collected on a normal operating day.

D) Self-monitoring reports. The City shall complete and submit accurate routine self-monitoring reports.

E) Inspection and sampling.

- 1) The City may conduct such tests as are necessary to enforce this chapter, and employees of the City may enter upon any property for the purpose of taking samples, obtaining information or conducting surveys or investigations relating to such enforcement. Entry shall be made during operating hours unless circumstances require otherwise. In all cases where tests are conducted by the City for the purpose of determining whether the user is in compliance with regulations, the cost of such tests shall be charged to the user and added to the user's user fee. In those cases where the City determines that the nature or volume of a particular user's wastewater requires more frequent than normal testing, the City may charge such user for the tests, after giving the user ten days written notice of its intention to do so, and the cost thereof shall be added to the user's user fee. Duly authorized employees of the City, MPCA, and EPA bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. Those employees shall have no authority to inquire into any processes except as is necessary to determine the kind and source of the discharge to the facilities.

- 2) While performing the necessary work on private properties referred to in this section, the authorized employees of the City shall observe all safety rules applicable to the premises established by the user.
- 3) Duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds an easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the facilities lying within said easement. All entry and subsequent work, if any, on said easement shall be done in all accordance with the terms of the easement pertaining to the private property involved.

F) Testing procedures. Testing procedures for the analysis of pollutants shall conform to the guidelines established in the EPA Code of Regulations, Title 40, Part 136 and 40 CFR 403.12 (g) of the Federal Pretreatment Regulations.

G) Wastewater discharge records. Wastewater discharge records of the City shall be kept by the City for a period of not less than five years or as otherwise required by law.

#### 33.16. CONFIDENTIAL INFORMATION.

A) Information and data on a user obtained from reports, questionnaires, permit applications, permits, monitoring programs, and from inspections shall be available to the public or other governmental agencies without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the user.

B) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this chapter, the NPDES permit, state disposal system permit, and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

C) Information accepted by the City as confidential shall not be transmitted to any governmental agency or to the general public by the City until and unless a 10-day notification is given to the user.

#### 33.17. REGULATION OF GARAGE FLOOR DRAINS

A) Purpose and Applicability.

- 1) This section is hereby established in order to safely discharge oil and/or flammable liquid wastes when such waste is discharged into building drainage systems (or other point of disposal) when floor drains or trench drains are provided.

- 2) This section shall apply to all new plumbing systems and parts of existing systems which will be altered, extended or repaired, contained in enclosed garages housing motor vehicles, repair garages, gasoline stations with grease racks, work or wash racks, auto washes, and all buildings where oil and/or flammable wastes are produced located in the City. Said systems will be inspected and tested by the City or its designated authority and such inspection and enforcement is subject to the applicable provisions of the Minnesota Plumbing Code.

B) Oil and Flammable Liquids Separator.

- 1) All enclosed garages housing motor vehicles, repair garages, gasoline stations with grease racks, work or wash racks, auto washes, and all buildings where oily and/or flammable liquid wastes are produced shall have a separator installed into which all oil, grease, and sand bearing and/or flammable wastes shall be discharged before emptying into the building drainage system or other point of disposal, when floor drains or trench drains are provided.
- 2) Each separator shall be of watertight construction and of not less than 35 cubic feet holding capacity, be provided with a water seal of not less than three inches on the inlet and not less than 18 inches on the outlet. The minimum depth below the invert of the discharge drain shall be three feet. The minimum size of the discharge drain shall be four inches. The separator may be constructed of monolithic poured reinforced concrete with a minimum floor and wall thickness of six inches, or of iron or steel of a minimum thickness of 3/16 inch, protected with an approved corrosion resistant coating on both the inside and outside.
- 3) The separator must be provided with a non-perforated iron or steel cover and ring of not less than 24 inches in diameter, and the air space in the top of the tank must have a three-inch vent pipe, constructed of approved metallic material, extending separately to a point at least 12 inches above the roof of the building. Drains and piping from motor vehicle areas must be a minimum of three inches in size. Drains discharging to an interceptor must not be trapped and must be constructed so as not to retain liquids. In motor vehicle wash facilities, a sand interceptor which meets the requirements of Minn. Rules 4715.1130, subpart 1 (Minnesota Plumbing Code), except that no water seal is permitted, may be installed to receive wastes before discharging into a flammable waste separator.
- 4) No cleanout, mechanical joint, or backwater valve shall be installed inside the separator which could provide a bypass of the trap seal. Only wastes that require separation shall discharge into the separator, except that a water supplied and trapped sink may be connected to the vent of the separator. Whenever the outlet branch drain serving a separator is more than 25 feet from a vented drain, such branch drain shall be provided with a two-inch vent pipe. A backwater valve shall be installed in the outlet branch drain whenever, based upon the judgment of the City or its designated official, backflow from the building drain could occur.

- 5) A separator must be installed to be readily accessible for service and maintenance, and must be maintained by periodic removal of accumulated liquids and solids from the separator.

C) Interceptors and Separators for Specific Installations.

- 1) Sand interceptors, commercial, establishments. Sand and similar interceptors for heavy solids shall be so designed and located as to be readily accessible for cleaning, and shall have a water seal of not less than six inches.
- 2) Laundries. Commercial laundries shall be equipped with an interceptor having a wire basket or similar device, removable for cleaning, that will prevent passage into the drainage system of solids one-half inch or larger in size, string, rags, buttons, or other material detrimental to the public sewage system.
- 3) Bottling establishments. Bottling plants shall discharge their process wastes into an interceptor which will provide for separation of broken glass or other solids before discharging liquid wastes into the drainage system.
- 4) Slaughter houses. Slaughtering and dressing room drains shall be equipped with separators or interceptors approved by the administrative authority, which shall prevent the discharge into the drainage system of feathers, entrails, or other material likely to clog the drainage system.

D) Venting of Interceptors and Separators.

- 1) Interceptors and separators shall be so designed that they will not become airbound if closed covers are used. Each interceptor or separator shall be properly vented.

E) Maintenance of Interceptors and Separators.

- 1) Interceptors and separators shall be maintained in efficient operating condition by periodic removal of accumulated grease, scum, oil, or other floating substances, and solids, deposited in the interceptor or separator.
- 2) Each interceptor and separator shall be so installed that it is readily accessible for removal of cover, servicing, and maintenance. If installed substantially below grade, a manhole with flush manhole cover should be provided.

F) Inspections.

- 1) Garage floor drains shall be permitted only when a periodic testing and inspection program conducted by qualified, accredited personnel will be provided by an agency acceptable to the Public Works Director or the City Engineer. Inspection intervals shall not exceed five years. The Public Works Director or the City Engineer may require more frequent testing if deemed necessary to assure protection of the potable water.

### 33.18. SUMP PUMPS

A) Purpose. Based on the type and condition of surface and subsurface soils existing in the City, the City Council finds it essential to the maintenance of health and safety, and to prevent infiltration of waters into the sanitary sewer system, the requirement that a sump pump system be installed in all new construction of residential, commercial, and industrial primary structures located within the City.

B) Required. A sump pump system must be installed in all new construction of residential, commercial and industrial primary structures located within the City unless the City determines that the installation of a sump pump system is not necessary to protect the health, safety and general welfare. There is a presumption that a sump pump system is necessary and exceptions to this requirement will not be granted unless the owner, occupant, or user of the property makes application to the City. In order to receive an exception the application materials must establish to the satisfaction of the City or its designated agent that a sump pump system is not necessary to protect health, safety and general welfare.

C) Construction Standards. All sump pump systems must be constructed in accordance with the written standards prescribed by the City.

D) Drain.

- 1) All premises on which sump pumps are installed or in use shall have permanently installed thereon a drain for the discharge of waste from the pump directly into the storm sewer system or into a natural waterway.
- 2) Whenever the drain is connected directly to the storm sewer, an air break shall be provided to the ground surface to allow the pump to discharge overland should the storm sewer become plugged or be hydraulically surcharged. The air break shall be inspected and approved by the Public Works Director or City Engineer.
- 3) All underground drain construction hereafter performed shall be inspected by a City representative before it is covered.

E) By-Pass.

- 1) If, in the opinion of the Public Works Director, it is either impossible or impractical to install a year-round frost-free sump pump drain on certain premises within the established written standards, the Public Works Director may direct the issuance of a written permit (by-pass permit) to install a by-pass for temporarily pumping into the sanitary sewage system during any time or times as the permanent drain is frozen or in danger of freezing.
- 2) The time of by-pass use (by-pass time) shall be fixed and determined by the Public Works Director and notice to permit holders of the beginning and ending of the time shall be given through mailed notice to each owner or occupant of premises upon which a written permit has been issued.

- 3) The construction and use of a by-pass shall at not time be considered a substitute for the construction and use of a permanent drain requirement in D above.
- F) It is unlawful for any customer of other person:
- 1) To fail or refuse to have permanently installed on the premises owned by him or her a sump pump drain constructed in accordance with the written standards prescribed by the City.
  - 2) To pump or direct the water into the sanitary sewage system except by-pass permit holders pumping during a by-pass time.
- G) It is unlawful for any plumber or other contractor to install a connection not permitted hereby.
- H) Discontinue.
- 1) In any case where access for inspection of premises by a representative of the City to verify compliance with this section is denied, the City may discontinue water service to the premises.
  - 2) In any case of failure or refusal to comply with any provision of this section the City may discontinue water service to the premises.

## CHAPTER 34: STORMWATER MANAGEMENT

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### 34.01. PURPOSE.

A) The purpose of this chapter is to control or eliminate stormwater pollution along with soil erosion and sedimentation within the City. It establishes standards and specifications for conservation practices and planning activities, which minimize stormwater pollution, soil erosion and sedimentation.

### 34.02. DISTRICT.

A) Authority. The City Council is authorized by Minnesota Statutes, Chapter 444 to establish by ordinance a Storm Sewer Tax Improvement District within which the council may acquire, construct, reconstruct, extend, maintain and otherwise improve storm sewer drainage systems and related facilities within the district and finance the cost of such improvements, including maintenance and the payment of principal and interest on obligations issued in making such improvements.

B) Establishment of District. There is hereby established a Storm Sewer Improvement Tax District encompassing the entire geographical area of the City of Montrose, Wright County, State of Minnesota.

### 34.03. PERMIT.

A) Except where a variance is granted, any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision proposing a land disturbance activity within

the City shall apply to the City for the approval of a stormwater pollution prevention plan (SWPPP.) No land shall be disturbed until the plan is approved by the City and conforms to the standards set forth herein.

#### 34.04. DEFINITIONS.

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

- 1) **APPLICANT.** Any person or entity that applies for a building permit, subdivision approval or a permit to allow land disturbing activities. APPLICANT also means that person's agents, employees and others acting under the person's direction.
- 2) **BEST MANAGEMENT PRACTICES or BMPs.** Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing and minimizing degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions and other management practices published by state or designated area-wide planning agencies. Examples of BMPs can be found in the current versions of the State Pollution Control Agency's publications, "Minnesota Storm Water Manual," "Protecting Water Quality in Urban Areas," and "Stormwater and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Stormwater and Snow-Melt Runoff on Wetlands," the United States Environmental Protection Agency's, "Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites"(as a reference for BMPs) and the State Department of Transportation's, "Drainage Design & Erosion Control Design Manual."
- 3) **BUFFER.** A protective vegetated zone located adjacent to a natural resource, such as a water of the state, that is subject to direct or indirect human alteration. The width of a BUFFER STRIP is the width along each bank of a stream. Therefore, a 30-foot wide stream with 100-foot buffer strips has a total width of 230 feet. Acceptable buffer vegetation includes preserving existing pre-development vegetation and/or planting locally distributed native state trees, shrubs and grassy vegetation. Alteration of the areas is strictly limited. BUFFER AREAS are designated with permanent signs and protected by easements or located in outlots. As a plant species selection guide of what species not to plant, the State Department of Natural Resources' Minn. Rules Ch. 6216, as they may be amended from time to time, contains a list of exotic prohibited, regulated, unlisted and unregulated plant species.
- 4) **DEVELOPER.** A person, firm, corporation, sole proprietorship, partnership, state agency or political subdivision thereof engaged in a land disturbance activity.
- 5) **DISCHARGE.** The conveyance, channeling, runoff or drainage of stormwater, including snowmelt, from a construction site.

- 6) **ENERGY DISSIPATION.** This refers to methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to aprons, riprap, splash pads and gabions that are designed to prevent erosion.
- 7) **EROSION.** Any process that wears away the surface of the land by the action of water, wind, ice or gravity. EROSION can be accelerated by the activities of people and nature.
- 8) **EROSION AND SEDIMENT PRACTICE SPECIFICATIONS OR PRACTICE.** The management procedures, techniques and methods to control soil erosion and sedimentation as officially adopted by either the City, county, state or local watershed group, whichever is more stringent.
- 9) **EROSION CONTROL.** Methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover and construction phasing.
- 10) **EXPOSED SOIL AREAS.** All areas of the construction site where the vegetation (trees, shrubs, brush and the like) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site. It does not include stockpiles or surcharge areas of sand, gravel, concrete or bituminous.
- 11) **FILTER STRIPS.** A vegetated section of land designed to treat runoff as overland sheet flow. They may be designed in any natural vegetated form from a grassy meadow to a small forest. Their dense vegetated cover facilitates pollutant removal and infiltration.
- 12) **FINAL STABILIZATION.** All soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 75% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures have been employed. Examples of vegetative cover practices can be found in the current version of the State Department of Transportation's publication, Supplemental Specifications to the (Year) Standard Specifications for Construction. Simply sowing grass seed is not considered STABILIZATION.
- 13) **HYDRIC SOILS.** Soils that are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part.
- 14) **HYDROPHYTIC VEGETATION.** Macrophytic, large enough to be observed by the naked eye, plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.
- 15) **INFILTRATION/FILTRATION BASIN.** A permanent man-made structure for the infiltration or filtration of runoff into the ground. No permanent standing pool of water is present. If only filtration is desired, an underdrain system is installed underneath the basin. If both filtration and infiltration is desired, the underdrain

system will be placed closer to the ground surface. If only infiltration is desired, no underdrain system is installed.

**16) IMPERVIOUS SURFACE.**

- a) A constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to runoff the surface in greater quantities and at an increased rate of flow than existed prior to development.
- b) Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas and concrete, asphalt or gravel roads.

**17) LAND DISTURBANCE ACTIVITY.** Any land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands within the government's jurisdiction, including clearing and grubbing, grading, excavating, transporting and filling of land. Within the context of this rule, LAND DISTURBANCE ACTIVITY does not mean:

- a) Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs and maintenance work.
- b) Construction, installation and maintenance of electric, telephone and cable television, utility lines or individual service connection to these utilities, which result in creating under 5,000 square feet of exposed soil;
- c) Tilling, planting or harvesting of agricultural, horticultural or silvicultural crops;
- d) Installation of fence, sign, telephone and electric poles and other kinds of posts or poles which result in creating under 5,000 square feet of exposed soil and/or
- e) Emergency work to protect life, limb or property and emergency repairs unless the land disturbing activity would have otherwise required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the City's requirements as soon as possible.

**18) ORDINARY HIGH WATER MARK.**

- a) This is generally the boundary elevation where the vegetation changes from predominately aquatic to terrestrial. This elevation delineates the highest water level, which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. Water often reaches this elevation in spring. For rivers and

streams, the ORDINARY HIGH WATER MARK is usually the top of the bank. It is less well defined for lakes and wetlands.

- b) The definition in M.S. § 103G.005(14), as it may be amended from time to time, says that the ...ORDINARY HIGH WATER LEVEL means the boundary of water basins, watercourses, public waters and public waters wetlands, and:
  - i The ORDINARY HIGH WATER LEVEL is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;
  - ii For watercourses, the ORDINARY HIGH WATER LEVEL is the elevation of the top of the bank of the channel; and
  - iii For reservoirs and flowages, the ORDINARY HIGH WATER LEVEL is the operating elevation of the normal summer pool.
- c) The term ORDINARY HIGH WATER MARK is further defined in Minn. Rule Part 6120.2500(11), as it may be amended from time to time. ORDINARY HIGH WATER MARKS are determined by the State Department of Natural Resources' area hydrologist.

19) **PAVED SURFACE.** A constructed hard, smooth surface made of asphalt, concrete or other pavement material. Examples include, but are not limited to roads, sidewalks, driveways and parking lots.

20) **PERMANENT COVER.** Final stabilization. Examples include grass, gravel, asphalt and concrete.

21) **RESIDENTIAL EQUIVALENT FACTOR (REF).** The ratio of the average volume of run-off generated by one acre of typical single family residential land, during a standard two-year rainfall event.

22) **RUNOFF COEFFICIENT.** The average annual fraction of total precipitation that is not infiltrated into or otherwise retained by the soil, concrete, asphalt or other surface upon which it falls that will appear at the conveyance as runoff.

23) **SEDIMENT.** The product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported or has been moved by water, air or ice, and has come to rest on the earth's surface either above or below water level.

24) **SEDIMENTATION.** The process or action of depositing sediment caused by erosion.

25) **SEDIMENT CONTROL.** The methods employed to prevent sediment from leaving the development site. Sediment control practices include silt fences,

sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection and temporary or permanent sedimentation basins.

- 26) **SOIL.** The unconsolidated mineral and organic material on the immediate surface of the earth. For the purposes hereof, stockpiles of sand, gravel, aggregate, concrete or bituminous materials are not considered **SOIL STOCKPILES**.
- 27) **STABILIZED.** The exposed ground surface after it has been covered by sod, erosion control blanket, riprap or other material that prevents erosion from occurring. Simply sowing grass seed is not considered **STABILIZATION**.
- 28) **STORMWATER.** Under Minn. Rule Part 7077.0105(41b), **STORMWATER** means precipitation runoff, stormwater runoff, snow melt runoff and any other surface runoff and drainage. According to Title 40 C.F.R. Part 122.26 [b][13], **STORMWATER** means stormwater runoff, snow melt runoff and surface and drainage. **STORMWATER** does not include construction site dewatering.
- 29) **STORMWATER POLLUTION PREVENTION PLAN.** A joint stormwater and erosion and sediment prevention plan that is a document containing the requirements of this Chapter, that when implemented will decrease soil erosion on a parcel of land and off-site non-point pollution.
- 30) **STRUCTURE.** Anything manufactured, constructed or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots and paved storage areas.
- 31) **SUBDIVISION.**
  - a) Any tract of land divided into building lots for private, public, commercial, industrial and the like development.
  - b) Minn. Rule 6120.2500(17), as it may be amended from time to time, defines **SUBDIVISION** as land that is divided for the purpose of sale, rent or lease, including planned unit development.
- 32) **TEMPORARY PROTECTION.** Short-term methods employed to prevent erosion. Examples of such protection include; straw, mulch, erosion control blankets, wood chips and erosion netting.
- 33) **URBAN.** Of, relating to, characteristic of and constituting a City.
- 34) **VEGETATED OR GRASSED SWALES.**
  - a) A vegetated earthen channel that conveys stormwater, while treating the stormwater by biofiltration.
  - b) Swales remove pollutants by both filtration and infiltration.

- 35) **WATERS OF THE STATE.** As defined in M.S. § 115.01(22), as it may be amended from time to time, all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof. According to Minn. Rules Part 7050.0130(A), as they may be amended from time to time, disposal systems or treatment works operated under either a state pollution control agency permit or an agency certificate of compliance are not considered **WATERS OF THE STATE**. Under Minn. Rules Part 7050.0130(F), as they may be amended from time to time, constructed wetlands designed for wastewater treatment are not **WATERS OF THE STATE**. Also see the definition of wetlands.
- 36) **WET SEDIMENTATION FACILITY.** A permanent man-made structure for the storage of runoff that contains a permanent pool of water.
- 37) **WETLANDS.** As defined in Minn. Rules Part 7050.0130(F), as they may be amended from time to time those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. **WETLANDS** generally include swamps, marshes, bogs and similar areas. **CONSTRUCTED WETLANDS** designed for wastewater treatment are not waters of the state. **WETLANDS** must have the following attributes.
- a) A predominance of hydric soils;
  - b) Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
  - c) Under normal circumstances, support a prevalence of the vegetation. Two quick references of what is an existing identified wetland are the national wetlands inventory maps distributed by the U.S. Department of the Interior's Fish and Wildlife Service and the State Department of Natural Resources' maps of protected waters and wetlands.

#### 34.05. ABROGATION AND GREATER RESTRICTIONS.

- A) It is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.
- B) All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

#### 34.06. STORMWATER DRAINAGE RULES AND REGULATIONS.

A) The municipal stormwater drainage system shall be operated as a public utility pursuant to M.S. § 444.075, from which revenue shall be derived subject to the provisions of this section and Minnesota Statutes.

B) Stormwater drainage fees. Stormwater drainage fees for parcels of land shall be determined by multiplying the REF for a parcel's land use by the fee established by the City.

- 1) All parcels containing single family residential dwellings shall have an REF value of 1 multiplied by the parcel's acreage (in acres). All parcels containing single family residential dwellings shall have a minimum REF value of 1. (Example 1: A 2 acre lot with a single family dwelling would have an REF = 2; Example 2: A ½ acre lot with a single family dwelling would have an REF=1)
- 2) All duplexes and townhomes shall have an REF value of 1 per unit.
- 3) All mobile home parks, commercial and industrial parcels shall have an REF value of 3 multiplied by the parcel's acreage (in acres). All mobile home parks, commercial and industrial parcels shall have a minimum REF value of 3.
- 4) All parcels containing multifamily or condo residential dwellings shall have an REF value of 3 multiplied by the parcel's acreage (in acres). All parcels containing multifamily or condo residential dwellings shall have a minimum REF value of 3.

C) Fee exemptions. Public right-of-ways, public parks, City facilities, urban reserve and agricultural land are exempt from stormwater drainage fees.

D) Recalculation of fees. Property owners may request recalculation of the charge by written request to the City Council. Requests must be received within 60 days of the billing.

E) Violations. Any person violating any provision of this section shall, upon conviction, be punished by the penalties applicable to a misdemeanor as set forth by state statute and as later amended.

#### 34.07. GENERAL POLICY.

A) Plan and Approval.

- 1) Every applicant for a building permit, subdivision approval or a permit to allow land disturbing activities must submit a stormwater pollution prevention plan to the City Engineer.
- 2) No building permit, subdivision approval or permit to allow land disturbing activities shall be issued until the City approves this plan.
- 3) At a minimum, these pollution abatement control practices must conform to those in the current version of the State Pollution Control Agency's publication,

Protecting Water Quality in Urban Areas and the Minnesota Pollution Control Agency's NPDES Construction Stormwater Permit..

B) Rates and Erosion.

- 1) For all sites, stormwater discharge rates must not increase over the pre-development two-year, ten-year and 100-year peak storm discharge rates, based on the last ten years of how that land was used. Calculations shall be based on criteria established in the City of Montrose Stormwater Management Plan.
- 2) Also, accelerated channel erosion must not occur as a result of the proposed activity.
- 3) For wetlands volume control is generally more important. The wetland must not be deprived of water nor flooded to the point where the functional class of wetland would be changed.
- 4) Volume control shall be accomplished by methods outlined in the City of Montrose Stormwater Management Plan or as otherwise approved by the City Engineer.
- 5) Low Impact Development (LID) practices shall be used whenever possible and deemed practical by the City Engineer. Further LID practices are outlined in the City of Montrose Stormwater Management Plan.

34.08. STORMWATER POLLUTION PREVENTION AND GRADING PLAN.

A) The stormwater pollution prevention plan's measures, the limit of disturbed surface and the location of buffer areas shall be marked on the approved grading plan and identified with flags, stakes, signs and the like on the development site before work begins.

34.09. INSPECTION OF MEASURES.

A) At a minimum, inspections shall be done weekly and after every storm event that is large enough to result in runoff from the site by the NPDES applicant or designated representative. The City may also complete inspections but such inspections shall not take the place of the applicant's required inspections.

34.10. MINIMUM REQUIREMENTS.

A) The following shall be minimum requirements.

- 1) The name and address of the applicant and the location of the activity;
- 2) Project description; the nature and purpose of the land disturbing activity and the amount of grading, utilities and building construction involved;
- 3) Phasing of construction; time frames and schedules for the project's various aspects;

- 4) A map of the existing site conditions; existing topography, property information, steep slopes, existing drainage systems/patterns, type of soils, waterways, wetlands, vegetative cover, 100-year flood plain boundaries, locations of existing and future buffer strips and labeling the portions of the site that are within trout stream or outstanding resource value water watersheds;
- 5) A site construction plan that includes the location of the proposed land disturbing activities, stockpile locations, erosion and sediment control plan, construction schedule and the plan for the maintenance and inspections of the stormwater pollution prevention measures;
- 6) Adjacent areas; neighboring streams, lakes, residential areas, roads and the like, which might be affected by the land disturbing activity;
- 7) Designate the site's areas that have the potential for serious erosion problems;
- 8) Erosion and sediment control measures; the methods that will be used to control erosion and sedimentation on the site, both during and after the construction process;
- 9) Permanent stabilization; how the site will be stabilized after construction is completed, including specifications, time frames or schedules; and
- 10) Calculations that were made for the design of such items as sediment basins, wet detention basins, diversions, waterways, infiltration zones and other applicable practices.

#### 34.11. PLAN CRITERIA.

##### A) The plan shall address the following.

- 1) Stabilizing all exposed soils and soil stockpiles and the related time frame or schedule;
- 2) Establishing permanent vegetation and the related time frame or schedule;
- 3) Preventing sediment damage to adjacent properties and other designated areas such as streams, wetlands, lakes and unique vegetation (e.g., oak groves, rare and endangered species habitats);
- 4) Scheduling for erosion and sediment control practices;
- 5) Where permanent and temporary sedimentation basins will be located;
- 6) Engineering the construction and stabilization of steep slopes;
- 7) Measures for controlling the quality and quantity of stormwater leaving a site;
- 8) Stabilizing all waterways and outlets;
- 9) Protecting storm sewers from the entrance of sediment;

- 10) What precautions will be taken to contain sediment when working in or crossing water bodies;
- 11) Re-stabilizing utility construction areas as soon as possible;
- 12) Protecting paved roads from sediment and mud brought in from access routes;
- 13) Disposing of temporary erosion and sediment control measures;
- 14) How the temporary and permanent erosion and sediment control practices will be maintained; and
- 15) How collected sediment and floating debris will be disposed of.

#### 34.12. CONTROL MEASURES AND RELATED INSPECTIONS.

A) These minimum control measures are required where bare soil is exposed. Due to the diversity of individual construction sites, each site will be individually evaluated. Where additional control measures are needed, they will be specified at the discretion of the City Engineer. The City will determine what action is necessary to prevent excessive erosion from occurring on the site.

B) All grading plans and building site surveys must be reviewed by the City for effectiveness of erosion control measures in the context of the site topography and drainage.

##### C) Sediment Control.

- 1) Sediment control measures must be properly installed by the builder before construction activity begins. The structures may be adjusted during dry weather to accommodate short-term activities, such as those that require the passage of very large vehicles.
- 2) As soon as this activity is finished or before rainfall, the erosion and sediment control structures must be returned to the configuration specified by the City.
- 3) A sediment control inspection must then be scheduled, and passed before a footing inspection will be done.

D) Diversion of channeled runoff around disturbed areas, if practical, or the protection of the channel.

E) If a stormwater management plan involves directing some or all of the site's runoff, the applicant or his or her designated representative shall obtain from adjacent property owners any necessary easements or other property interests concerning the flowing of the water.

F) The scheduling of the site's activities to lessen their impact on erosion and sediment creation, so as to minimize the amount of exposed soil.

G) Control runoff by one of the following:

- 1) Unless precluded by moderate or heavy snow cover, mulching can take place if a light snow cover is present, stabilize all exposed inactive disturbed soil areas within 100 feet of any water of the state or within 100 feet any conveyance, curb, gutter, storm sewer inlet, drainage ditch and the like, to a water of the state with sod, seed or weed free mulch. This must be done, if the developer will not work the area for seven days.
- 2) For disturbed areas greater than one acre, prepare a stormwater pollution prevention plan. If more than one acre of new impervious surface is being added, permanent stormwater management such as an on-site sedimentation basin, an infiltration/filtration basin, or a regional sedimentation basin is required. Sedimentation basins must be constructed in accordance with accepted design specifications including access for operations and maintenance. The “Minnesota Stormwater Manual” provides guidance on proper design of stormwater management practices. Basin discharge rates must also be controlled to prevent erosion in the discharge channel. The applicant is required to obtain a NPDES/SDS construction stormwater permit from the State Pollution Control Agency for any project that disturbs one acre or more of land.
- 3) For disturbed areas less than one acre with less than one acre of new impervious surface, sedimentation basins are encouraged, but not required, unless specifically required by the City Engineer. The applicant shall install erosion and sediment controls at locations directed by the City. Minimum requirements include silt fences, rock construction entrances, inlet protection, rock check dams, erosion control blanket, or other equivalent control measures along slopes. Silt fences are required along channel edges to reduce sediment reaching channel. Silt fences, rock check dams and the like must be regularly inspected and maintained.

#### H) Runoff into State Waters

- 1) Sediment basins related to impervious surface area. Where a project's ultimate development replaces surface vegetation with one or more acres of new cumulative impervious surface, and all runoff has not been accounted for in a local unit of government's existing stormwater management plan or practice, the runoff must be discharged to a wet sedimentation basin or infiltration/filtration basin prior to entering waters of the state.
- 2) At a minimum the work must conform with the current version of the State Pollution Control Agency’s publication, “Minnesota Stormwater Manual” and “Protecting Water Quality in Urban Areas,” and the current requirements found in the same agency’s NPDES/SDS permits for stormwater associated with construction activities.

I) Generally, sufficient silt fence will be required to hold all sheet flow runoff generated at an individual site, until it can either infiltrate or seep through silt fence’s pores.

J) Temporary stockpiling of 50 or more cubic yards of excess soil on any lot or other vacant area will not be allowed without issuance of a grading permit for the earth moving activity in question.

K) Soil Stockpiles.

- 1) For soil stockpiles greater than ten cubic yards the toe of the pile must be more than 25 feet from a road, drainage channel or stormwater inlet. If stockpiles will be left for more than seven days, they must be stabilized with mulch, vegetation, tarps or other means.
- 2) If left for less than seven days, erosion from stockpiles must be controlled with silt fences or rock check dams.
- 3) If for any reason a soil stockpile of any size is located closer than 25 feet from a road, drainage channel or stormwater inlet, and will be left for more than seven days, it must be covered with tarps or controlled in some other manner.

L) All sand, gravel or other mining operations taking place on the development site shall have a National Pollutant Discharge Elimination System general stormwater permit for industrial activities and all required State Department of Natural Resources permits.

M) Temporary rock construction entrances may be required wherever vehicles enter and exit a site.

N) Parking is prohibited on all bare lots and all temporary construction entrances, except where street parking is not available. Gravel entrances are to be used for deliveries only as per the development contract.

O) Streets must be cleaned and swept whenever tracking of sediments occurs and before sites are left idle for weekends and holidays. Establishment of a regular sweeping schedule is encouraged.

P) Water, impacted by the construction activity, removed from the site by pumping must be treated by temporary sedimentation basins, geotextile filters, grit chambers, sand filters, up-flow chambers, hydro-cyclones, swirl concentrators or other appropriate controls. The water shall not be discharged in a manner that causes erosion or flooding of the site, receiving channels, adjacent property or a wetland.

Q) All storm drain inlets must be protected during construction until control measures are in place with inlet protection devices as required in the City of Montrose Development Standards and as approved by the City Engineer.

R) All newly constructed and reconstructed buildings must route roof drain leaders to pervious areas, not natural wetlands, where the runoff can infiltrate. The discharge rate shall be controlled so that no erosion occurs in the pervious areas.

S) Follow Up.

- 1) Follow-up inspections may be performed by the City on a regular basis to ensure that erosion and sediment control measures are properly installed and maintained. In all cases, the inspectors will attempt to work with the developer and/or builder to maintain proper erosion and sediment control at all sites.
- 2) In cases where cooperation is withheld, construction stop orders may be issued by the City, until erosion and sediment control measures meet specifications. A second erosion and sediment control/grading inspection must then be scheduled and passed before the next building inspection will be completed.

T) Removal of more than one acre of topsoil shall not be done, unless written permission is given by the City Engineer. Excessive removal of topsoil can cause significant soil erosion problems.

U) All stormwater pollution prevention management facilities must be designed to minimize the need of maintenance, to provide easy vehicle and personnel access for maintenance purposes and be structurally sound. These facilities must have a plan of operation and maintenance that ensures continued effective removal of the pollutants carried in stormwater runoff. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the stormwater management facilities for inspection and maintenance purpose.

#### 34.13. POLLUTION CONTROLS.

A) The applicant shall either install, construct or pay the City fees for all stormwater management facilities necessary to manage increased runoff, so that the discharge rates from stormwater treatment basins do not exceed the pre-development two-year, ten-year and 100-year peak storm discharge rates. These pre-development rates shall be based on the last ten years of how that land was used. Accelerated channel erosion must not occur as a result of the proposed land disturbing or development activity. An applicant may also make an in-kind or a monetary contribution to the development and maintenance of community stormwater management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant. The City shall make the determination if the applicant shall construct the necessary facility or pay a fee to utilize regional facilities to meet these requirements.

B) All calculations and information used in determining these peak storm discharge rates shall be submitted along with the stormwater pollution prevention plan.

C) The applicant shall consider reducing the need for stormwater management facilities by incorporating the use of natural topography and land cover such as natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of treated (e.g., settled) water without compromising the integrity or quality of the wetland or pond. The sensitivity of a wetland to degradation varies with the type of vegetation. Sedge meadows, open bogs and swamps, coniferous bogs, calcareous fens, low prairies, lowland hardwood swamps and seasonally flooded basins are highly sensitive to

degradation. Flood plain forests, reed canary grass meadows, shallow (reed canary grass, cattail, giant reed or purple loosestrife) marshes are only slightly sensitive to degradation.

D) The following stormwater management practices must be investigated in developing the stormwater management part of the stormwater pollution prevention plan in the following descending order of preference:

- 1) Protect and preserve as much natural or vegetated area on the site as possible, minimizing impervious surfaces and directing runoff to vegetated areas rather than to adjoining streets, storm sewers and ditches;
- 2) Flow attenuation of treated stormwater by use of open vegetated swales and natural depressions;
- 3) Stormwater wet detention facilities, including percolation facilities; and
- 4) A combination of successive practices may be used to achieve the applicable minimum control requirements specified in division (A) above. The applicant shall provide justification for the method selected.

#### 34.14. WET DETENTION FACILITIES.

A) At a minimum, these facilities must conform to the most current technology as reflected in the current version of the State Pollution Control Agency's publication, Protecting Water Quality in Urban Areas and the current requirements found in the same agency's NPDES permits for stormwater associated with construction activities. All facilities must also meet requirements in the City of Montrose Stormwater Management Plan.

B) Regional stormwater ponds are required whenever possible. Detention facilities and storm sewer facilities shall be designed to accommodate regional ponds as outlined in the City of Montrose Stormwater Management Plan.

#### 34.15. MINIMUM PROTECTION FOR NATURAL WETLANDS.

A) Runoff must not be discharged directly into wetlands without appropriate quality (i.e. treated) and quantity runoff control, depending on the individual wetland's vegetation sensitivity. The sensitivity of a wetland to degradation varies with vegetation type. Sedge meadows, open bogs and swamps, coniferous bogs, calcareous fens, low prairies, lowland hardwood swamps, and seasonally flooded basins are highly sensitive to degradation, while flood plain forests, reed canary grass meadows, shallow (reed canary grass, cattail, giant reed or purple loosestrife) marshes are only slightly sensitive to degradation.)

B) Wetlands must not be drained or filled, wholly or partially, unless replaced by either restoring or creating wetland areas of at least equal public value. Compensating for the impact by replacing or providing substitute wetland resources or environments with those of at least equal public value. Compensation, including the replacement ratio and quality of replacement should be consistent with the requirements outlined in the rules adopted by the Board of Water and Soil Resources to implement the Wetland Conservation Act of 1991 including any and all amendments to it.

C) Work in and around wetlands must be guided by the following principles in descending order of priority:

- 1) Avoid both the direct and indirect impact of the activity that may destroy or diminish the wetland;
- 2) Minimize the impact by limiting the degree or magnitude of the wetland related activity and its implementation;
- 3) Rectify the impact by repairing, rehabilitating or restoring the affected wetland environment with one of at least equal public value; and
- 4) Reduce or eliminate the adverse impact over time by preservation and maintenance operations during the life of the activity.

#### 34.16. VEGETATIVE BUFFER; RIVERS, STREAMS AND WETLANDS.

A) At the minimum a 30 foot wide protective buffer strip of, if possible pre-development vegetation shall be left along each bank, providing a tree canopy in the buffer zone closest to the channel. When new buffer vegetation is planted, native vegetation is preferred, since some non-native plant species can out-compete native species and create an undesirable mono-culture of decreased environmental value. Useful references are the State Pollution Control Agency's publications "Minnesota Stormwater Manual."

- 1) Detailed buffer design is usually site specific. Therefore the City Engineer can require a larger buffer than the minimum.
- 2) Design Criteria.
  - a) For newly constructed buffer sites the design criteria should follow common principles and the example of nearby natural areas. The site should be examined for existing buffer zones and mimic the slope structure and vegetation as much as possible. Buffer design and protection during construction should do any or all of the following: slow water runoff, trap sediment, enhance water infiltration, trap fertilizers, pesticides, pathogens, heavy metals, trap blowing snow and soil, and act as corridors for wildlife.
  - b) How much stress is put on these functions will determine the buffer zone's final configuration. Native state plant species have root systems and growth characteristics that are well suited to buffer functions, root systems and growth characteristics. By way of comparison, deep-rooted native grasses have a root system that is about ten times greater than soy beans or corn. Useful guides for starting the species selection includes the State Department of Transportation's seeding manual, and their Plant Selection Matrix CD ROM.
  - c) Good plant species design stresses diversity and allows plant succession and zoning of species from wet soil preference to drier upland species.

Useful guides for starting the plant selection include State Department of Transportation's seeding manual and their Plant Selection Matrix CD ROM.

- d) The State Department of Natural Resources requires permits when vegetation is introduced downgrade of a water's ordinary high water mark. The State Department of Natural Resources' area hydrologist defines the ordinary high water mark. Planting permits are obtained from the State Department of Natural Resources Regional Fisheries Office.
- 3) The applicant and/or developer shall maintain the buffer strip for the first year or until the buffer strip is well established whichever comes later. After that the City, or a party designated by the City, shall maintain the buffer strip. Even after a buffer strip is established it will require periodic inspection and possibly maintenance to ensure that it is functioning properly. Otherwise siltation and channeling may short-circuit the strip's function.
- 4) Drain tiles will short-circuit the benefits of vegetated buffer strips. Therefore, drain tiles on the development site should be identified and rendered inoperable.
- 5) Buffer strips shall be contained within an outlot owned by the City of Montrose.
- 6) Buffer strips shall be marked as such with permanent signs.

B) Water courses used solely for drainage, such as roadside ditches, are exempt from this provision.

#### 34.17. ADDITIONAL REQUIREMENTS.

##### A) Trout Streams.

- 1) For discharges directly to or to tributaries directly to State Department of Natural Resources designated trout streams and State Pollution Control Agency designated outstanding resource value waters there shall be no increase in either the volume or rate of discharge from any design storm with a statistical recurrence interval of less than ten years (i.e., for the two-year, five-year and the like storm events), unless diversion is not practical and/or the soil is not suitable for stormwater infiltration techniques. This pertains to discharges directly to or upstream of the waters.
- 2) The intent is to encourage either stormwater infiltration or diversion, since urban trout streams are a unique resource and therefore deserve special consideration.
- 3) Residential development increases the total volume of runoff resulting from a given storm. Since there is a larger volume of water to deal with, limiting the rate of storm runoff to pre-development rates means that high flows (and therefore scouring velocities) will persist for longer periods of time than during pre-development conditions. This increases channel erosion.

- 4) Infiltration or diversion deals with this increased scouting problem by lessening the volume of runoff and therefore the duration of the scouring velocities. In the case of trout streams, increasing the inputs of warm stormwater increases the impact of thermal shocks. Since trout are temperature sensitive, increasing thermal shocks adversely impacts trout habitat.
  - a) The phrase, tributaries directly to, refers to tributaries within at least one State Department of Natural Resources Division of Waters minor watershed of the designated water. At its discretion the City may extend this area of protection.
  - b) The phrase, soil not suitable for stormwater infiltration techniques, means soils with permeability values less than Group C soils (less than two and one-half inches per hour), as defined by the U.S. Department of Agriculture's Natural Resources Conservation Service, and a seasonally high groundwater table is not present within 3 feet of the bottom of the infiltration facility. Infiltration basins should not be placed within a wellhead protection area or within 50 feet of a well.
- B) During construction temporary sedimentation basins are required for disturbed areas over one acre.
- C) Stormwater treatment devices that remove oil and floatable material (e.g., basin outlets with submerged entrances) must be part of BMP systems.
- D) Lightly used vehicle traffic areas such as overflow parking lots should use pervious surfaces where feasible.
- E) If the proposed project site includes a tributary that currently experiences erosion and/or sedimentation problems, the applicant shall work with the City to include channel modifications in the project that will also address the existing erosion and/or sedimentation problem.
- F) Permanent buildings erected on sites that border directly on and all tributaries to a State Department of Natural Resources designated trout stream and/or a State Pollution Control Agency designated outstanding resource value water must not be occupied until the permanent vegetative cover has been established. The cover must meet this permit's definition of final stabilization.
- G) Reduce Impervious Surface.
  - 1) The applicant shall consider methods for reducing the amount of impervious surface on the site. A useful publication is Better Site Design: A Handbook for Changing Development Rules in Your Community available from the Center for Watershed Protection in Ellicott City, Maryland.

2) Suggestions include:

- a) Disking in compost or in some other manner increasing the porosity of the soil that will become covered by lawn. (The movement of heavy vehicles associated with construction activities compacts the soil, and thus decreases its ability to absorb water. This is true even for some types of sandy soils. The common grasses chosen for lawns do not have a deep enough root system to overcome construction vehicle related soil compaction problems.)
- b) Reduced road widths;
- c) Reducing sidewalk widths;
- d) Allowing and providing for shared parking;
- e) Installing semi-permeable/ permeable or porous paving;
- f) Vegetated swales instead of curb and gutter;
- g) Filter strips; and
- h) Green vegetated roofs.

34.18. MODELS, METHODOLOGIES AND COMPUTATIONS.

A) Hydrological models and design methodologies used for the determining runoff characteristics and analyzing stormwater management structures must be approved by the City Engineer.

B) Plans, specifications and computations for stormwater management facilities submitted for review must be sealed and signed by a registered professional engineer.

C) All computations must appear in the plans submitted for review, unless otherwise approved by the City Engineer.

34.19. REVIEW; PERMIT REQUIRED.

A) Review. The City Engineer shall review the stormwater pollution prevention plan.

B) If the City determines that the stormwater pollution prevention plan meets the requirements of this chapter, the City shall issue a permit valid for a specified period of time that authorizes the land disturbance activity contingent on the implementation and completion of this plan.

C) If the City determines that the stormwater pollution prevention plan does not meet the requirements of this chapter, the City shall not issue a permit for the land disturbance activity.

D) All land use and building permits for the site in question must be suspended until the developer has an approved stormwater pollution prevention plan.

E) Fee. A permit shall not be issued until the stormwater plan fee as set by the City Council has been paid.

#### 34.20. MODIFICATION OF PLAN.

A) An approved stormwater pollution prevention plan may be modified on submission of a written application for modification to the City, and after written approval by the City Engineer. In reviewing an application, the City Engineer may require additional reports and data.

#### 34.21. NOTIFICATION OF FAILURE OF PLAN.

A) The City shall notify the developer, when the City is going to act on the financial securities part of this chapter.

B) The initial contact will be to a party or parties listed on the application and/or the stormwater pollution prevention plan. Forty-eight hours after notification by the City or 72 hours after the failure of erosion control measures, whichever is less the City, at its discretion, may begin corrective work. The notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical.

C) If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner and implement the cleanup and restoration plan within 48 hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the City, shall more than seven calendar days go by without corrective action being taken. If in the discretion of the City, the applicant does not repair the damage caused by the erosion, the City may do the remedial work required and charge the cost to the applicant.

##### D) Cleanup.

- 1) If eroded soils, including tracked soils from construction activities, enter or appear likely to enter streets, wetlands or other water bodies, prevention strategies, cleanup and repair must be immediate.
- 2) The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

E) When an applicant fails to conform to any provision of this policy within the time stipulated, the City may take the following actions:

- 1) Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy;
- 2) Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction;
- 3) Direct the correction of the deficiency by City forces or by a separate contract: (The issuance of a permit constitutes a right-of-entry for the City or its contractor

to enter upon the construction site for the purpose of correcting deficiencies in erosion control.)

- 4) All costs incurred by the City in correcting stormwater pollution control deficiencies must be reimbursed by the applicant.
- 5) If there is an insufficient financial amount, in the applicant's financial securities as described herein, to cover the costs incurred by the City, then the City may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the City, concur that the benefit to the property exceeds the amount of the assessment, and waive all rights by virtue of M.S. § 429.081, as it may be amended from time to time, to challenge the amount or validity of assessment.

#### 34.22. WAIVER.

A) In any case where, upon application of the responsible person or persons, the City finds that, by reason of exceptional circumstances, strict conformity with this chapter would be unreasonable, impractical or not feasible under the circumstances, the City in its discretion may grant a waiver therefrom upon the conditions as it may prescribe for prevention, control or abatement of pollution in harmony with the general purposes of this chapter.

B) The waiver request must be in writing.

C) The waiver response must be in writing, and include the justification for either granting or denying the requested variance.

D) The waiver shall become void one year after being granted, unless used.

E) If any of the waiver's conditions are violated, the City may revoke the waiver.

#### 34.23. RIGHT OF ENTRY AND INSPECTION.

A) The applicant shall allow the City and their authorized representatives, upon presentation of credentials, to:

- 1) Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, surveys or investigations;
- 2) Bring such equipment upon the permitted development as is necessary to conduct the surveys and investigations;
- 3) Examine and copy any books, papers, records or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site;
- 4) Inspect the stormwater pollution prevention measures required by the City; and
- 5) Sample and monitor any items or activities pertaining to permits issued by the City.

## CHAPTER 35: PHOSPHOROUS FERTILIZER

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### 35.01. AUTHORITY.

A) Based on the authority granted to local units of government in M.S. § 18C.60, Subd. 2(b), as it may be amended from time to time, the City elects to adopt the restrictions on the use of phosphorous fertilizer on turf as set forth in M.S. § 18C.60, Subd. 2(a), as it may be amended from time to time.

### 35.02. DEFINITIONS.

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

- 1) **FERTILIZER.** A substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value for promoting plant growth. FERTILIZER does not include animal and vegetable manures that are not manipulated, marl, lime, limestone, and other products exempted by rule by the Minnesota Commissioner of Agriculture.
- 2) **IMPERVIOUS SURFACE.** A highway, street, sidewalk, parking lot, driveway or other material that prevents infiltration of water into the soil.
- 3) **MANIPULATED.** Fertilizers that are manufactured, blended or mixed, or animal or vegetable manures that have been treated in any manner, including mechanical drying, grinding, pelleting, and any other means, or by adding other chemicals or substances.
- 4) **TURF.** Noncrop land planted in closely mowed, managed grasses including, but not limited to, residential and commercial residential property, private golf courses, and property owned by federal, state, or local unit of government, including parks, recreation areas, and public golf courses. Turf does not mean pasture, hayland, hay, turf grown on turf farms, or any other form of agricultural production.

### 35.03. PHOSPHOROUS USE RESTRICTIONS.

A) A person may not apply a fertilizer containing the plant nutrient phosphorous to turf located within the City limits unless:

- 1) A tissue, soil, or other test by a laboratory or method approved by the Minnesota Commissioner of the Agriculture and performed within the last three years

indicates that the levels of available phosphorous in the soil are insufficient to support healthy turf growth; or

- 2) The property owner or agent of the property owner is first establishing turf via seed or sod procedures, and only during the first growing season.

B) The application of fertilizer authorized under this Section, must not exceed rates recommended by the University of Minnesota and approved by the Minnesota Commissioner of Agriculture.

#### 35.04. IMPERVIOUS SURFACES.

A) A person may not apply a fertilizer to an impervious surface. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.

## CHAPTER 36: RIGHT-OF-WAY MANAGEMENT

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### 36.01. FINDINGS, PURPOSE, AND INTENT.

A) To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

B) This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

C) This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the City and users of the right-of-way. This chapter shall also be interpreted consistent with Minn. Rules 7819.0050 to 7819.9930 where possible. To the extent any provision of this chapter cannot be interpreted

consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

#### 36.02. ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY.

A) Pursuant to the authority, granted to the City under state and federal statutory, administrative and common law, the City hereby elects, pursuant to M.S. § 237.163, Subd. 2(b), to manage rights-of-way within its jurisdiction.

#### 36.03. ADOPTION OF RULES BY REFERENCE.

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full.

#### 36.04. DEFINITIONS.

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

- 1) **ABANDONED FACILITY.** A facility no longer in service or physically disconnected from a portion of the operating facility or from any other facility, that is in use or still carries service.
- 2) **APPLICANT.** Any person requesting permission to excavate or obstruct a right-of-way.
- 3) **CITY.** The City of Montrose, Minnesota. CITY also means its elected officials, officers, employees and agents.
- 4) **COMMISSION.** The State Public Utilities Commission.
- 5) **CONGESTED RIGHT-OF-WAY.** A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with M.S. § 216D.04, Subd. 3, over a continuous length in excess of 500 feet.
- 6) **CONSTRUCTION PERFORMANCE BOND.** Any of the following forms of security provided at permittee's option:
  - a) Individual project bond.
  - b) Cash deposit.
  - c) Letter of credit in a form acceptable to the City.
  - d) A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

- 7) **DEGRADATION.** A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.
- 8) **DEGRADATION COST.** Subject to Minn. Rules 7819.1100, means the cost to achieve a level of restoration, as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. Rules parts 7819.9900 to 7819.9950.
- 9) **DEGRADATION FEE.** The estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost. This fee is in addition to the permittee's obligation to fully restore the right-of-way.
- 10) **DEPARTMENT.** The Department of Public Works of the City.
- 11) **DEPARTMENT INSPECTOR.** Any person authorized by the City to carry out inspections related to the provisions of this chapter.
- 12) **DIRECTOR.** The Director of the Department of Public Works of the City, or his or her designee.
- 13) **DELAY PENALTY.** The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.
- 14) **EMERGENCY.** A condition that poses a danger to life or health or of a significant loss of property, or requires immediate repair or replacement of facilities in order to restore service to a customer.
- 15) **EQUIPMENT.** Any tangible asset used to install, repair or maintain facilities in any right-of- way.
- 16) **EXCAVATE.** To dig into, directionally bore, or in any way remove or physically disturb or penetrate any part of a right-of-way.
- 17) **FACILITY or FACILITIES.** Any tangible asset in the right-of-way required to provide utility service.
- 18) **FIVE-YEAR PROJECT PLAN.** Projects adopted by the City for construction within the next five years.
- 19) **HIGH DENSITY CORRIDOR.** A designated portion of the public-right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

- 20) **HOLE.** An excavation in the pavement with the excavation having a length less than the width of the pavement.
- 21) **LOCAL REPRESENTATIVE.** A local person or persons or designee of such person or persons authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.
- 22) **MANAGEMENT COSTS.** The actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and costs of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; M.S. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to this chapter.
- 23) **OBSTRUCT.** To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- 24) **PATCH or PATCHING.** A method of pavement replacement that is temporary in nature. A patch consists of the compaction of the sub-base and aggregate base and the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.
- 25) **PAVEMENT.** Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.
- 26) **PERMIT.** The meaning given “right-of-way permit” in M.S. § 237.162.
- 27) **PERMITTEE.** Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this chapter.
- 28) **PERSON.** An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate or political.
- 29) **PROBATION.** The status of a person that has not complied with the conditions of this chapter.
- 30) **PROBATIONARY PERIOD.** One year from the date that a person has been notified in writing that they have been put on probation.
- 31) **PUBLIC RIGHT-OF-WAY.** The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the City has an

interest, including other dedicated rights-of-way, for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service. Public right-of-way includes outlots or parks and drainage and utility easements that are dedicated to and/or owned by the City.

- 32) **REGISTRANT.** Any person who has or seeks to have its equipment or facilities located in any right-of-way, or in any way, occupies, uses, or seeks to occupy or use the right-of-way or place its facilities or equipment in the right-of-way.
- 33) **RESTORE or RESTORATION.** The process by which an excavated right-of-way and surrounding area, including pavement, foundation, sidewalk, turf and trail is returned to the same condition and life expectancy that existed before excavation.
- 34) **RESTORATION COST.** The amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Commission rules.
- 35) **RIGHT-OF-WAY USER.** A telecommunications right-of-way user as defined by M.S. § 237.162, Subd. 4 or person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
- 36) **SERVICE or UTILITY SERVICE.**
  - a) Those services provided by a public utility as defined in M.S. § 216B.02, Subd. 4 and 6.
  - b) Services of a telecommunications right-of-way user, including transporting of voice or data information.
  - c) Services of a cable communications systems as defined in M.S. Ch. 238.
  - d) Natural gas or electric energy or telecommunications services provided by the City.
  - e) Services provided by a cooperative electric association organized under M.S. Ch. 308A.
  - f) Water, and sewer, including service laterals, steam, cooling or heating services.
- 37) **SERVICE LATERAL.** An underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.
- 38) **SUPPLEMENTARY APPLICATION.** An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

- 39) TEMPORARY SURFACE. The compaction of sub-base and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation.
- 40) TRENCH. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
- 41) TELECOMMUNICATION RIGHT-OF-WAY USER. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under M.S. Ch. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in M.S. §216B.02, a municipality, a municipal gas or power agency organized under M.S. Ch. 453 and 453A, or a cooperative electric association organized under M.S. Ch. 308A, are not telecommunications right-of-way users for purposes of this chapter.

#### 36.05. ADMINISTRATION.

A) The Director is the principal City official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

#### 36.06. REGISTRATION AND RIGHT-OF- WAY OCCUPANCY.

A) Registration. Each person who occupies or uses, or seeks to occupy or use the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, shall register with the City. Registration will consist of providing application information and paying a registration fee.

B) Registration prior to work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the City.

C) Exceptions. Nothing herein shall be construed to repeal or amend the City provisions concerning boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. However, nothing herein relieves a person from complying with the provisions of the M.S. Ch. 216D Gopher One-Call Law.

#### 36.07. REGISTRATION INFORMATION.

A) Information required. The information provided to the City at the time of registration shall include, but not be limited to:

- 1) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
- 2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be

available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

3) A certificate of insurance.

- a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state and acceptable to the City.
- b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property.
- c) Naming the City and its engineering consultants as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages.
- d) Requiring that the City be notified 30 days in advance of cancellation of the policy or material modification of a coverage term.
- e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage. The limits of the coverage shall not be less than \$1,000,000.

4) The City will require a copy of the actual insurance policies.

5) If the person is a corporation, a copy of the certificate is required to be filed under M.S. § 300.06 as recorded and certified to by the Secretary of State.

6) The registrant shall submit a construction performance bond, cash deposit, letter of credit, or blanket bond in the amount of \$10,000 to the City. The security is to insure compliance with the approved plan.

7) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person lawfully required to have such certificate from said commission or other state or federal agency.

B) Notice of changes. The registrant shall keep all of the information listed above current at all times by providing to the City information as to changes within 15 days following the date on which the registrant has knowledge of any change.

### 36.08. PERMIT REQUIREMENT.

A) Permit required. Except as otherwise provided in this chapter, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City to do so. A permit is required by a registrant to excavate or directionally bore that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

B) Permit extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

C) Delay penalty. In accordance with Minn. Rule 7819.1000, Subd. 3 and notwithstanding division (B), the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

D) Permit display. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

### 36.09. PERMIT APPLICATIONS.

A) Application for a permit is made to the City. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- 1) Registration with the City pursuant to this chapter.
- 2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- 3) Payment of money due the City for:
  - a) Permit fees, estimated restoration costs, and other management costs.
  - b) Prior obstructions or excavations.
  - c) Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City.
  - d) Franchise fees or other charges, if applicable.
- 4) Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

- 5) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

#### 36.10. ISSUANCE OF PERMIT; CONDITIONS.

A) Permit issuance. If the applicant has satisfied the requirements of this chapter, the City shall issue a permit.

B) Conditions. The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

#### 36.11. PERMIT FEES.

A) Permit fee. The City shall establish a permit fee in an amount sufficient to recover the following costs:

- 1) The City management costs.
- 2) Degradation costs, if applicable.
- 3) City labor and engineering costs.

B) Payment of permit fees. No permit shall be issued without full payment of the permit fees.

C) Non refundable. Permit fees that were paid for a permit that the City has revoked for are not refundable.

D) Application to franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

#### 36.12. RIGHT-OF-WAY PATCHING AND RESTORATION.

A) Timing. The work to be done under the permit, and the patching and restoration of the right- of-way as required herein, shall be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee.

B) Patch and restoration. Permittee shall patch and restore its own work. The City may choose to restore the right-of-way itself if the work is not completed in accordance with the deadlines outlined in the permit.

- 1) City restoration. If the City restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within 30 days of billing, all costs associated with correcting the defective work.

- 2) Permittee restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.

C) Standards. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the City and shall comply with Minn. Rule 7819.1100.

D) Duty to correct defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.

E) Failure to restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

### 36.13. JOINT TRENCH APPLICATIONS.

A) Joint application. Registrants may jointly apply for permits to excavate or obstruct the right-of- way at the same place and time.

B) Shared fees. Registrants who apply for permits for the same excavation, which the City does not perform, may share in the payment of the permit fee. In order to obtain a joint permit, registrants shall agree among themselves as to the portion each will pay and indicate the same on their applications.

C) With City projects. Registrants who join in a scheduled excavation performed by the City, whether or not it is a joint application by two or more registrants or a single application, are not required to the permit fee, but a permit would still be required.

### 36.14. SUPPLEMENTARY APPLICATIONS.

A) Limitation on area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated shall before working in that greater area make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.

B) Limitation on dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it shall apply for a new permit for the additional time it needs, and receive

the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application shall be submitted before the permit end date.

#### 36.15. OTHER OBLIGATIONS.

A) Compliance with other laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to M.S. §§ 216D.01 through 216D.09 (Gopher One Call Excavation Notice System) and Minn. Rules Ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

B) Prohibited work. Except in an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

C) Interference with right-of-way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area unless parked in conformance with City parking regulations. The loading or unloading of trucks shall be done solely within the defined permit area unless specifically authorized by the permit.

D) Trenchless excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in M.S. Ch. 16D and Minn. Rules Ch. 7560, and shall require potholing or open cutting over existing, underground utilities before excavating.

E) Compliance with erosion and sediment control requirements. A permittee must comply with all erosion and sediment control requirements found in this Code and in any other State, County or local law.

#### 36.16. DENIAL OF PERMIT.

A) The City may deny a permit for failure to meet the requirements and conditions of this chapter or if work is not completed on a previous permit issued to the same applicant, or if the City determines that the denial is necessary to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

#### 36.17. INSTALLATION REQUIREMENTS.

A) The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the M.S. §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance

with Minn. Rules Ch. 7560. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and all requirements and conditions set forth in this Code.

#### 36.18. INSPECTION.

A) Notice of completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minn. Rule 7819.1300.

B) Site Inspection. Permittee shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

C) Authority of Director.

- 1) At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- 2) The Director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit.

#### 36.19. WORK DONE WITHOUT A PERMIT.

A) Emergency situations. Each registrant shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One-Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency. If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

B) Non-emergency situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way shall subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the City, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter.

### 36.20. SUPPLEMENTARY NOTIFICATION.

A) If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known.

### 36.21. REVOCATION OF PERMITS.

A) Substantial breach. The City reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to the following:

- 1) The violation of any material provision of the right-of-way permit.
- 2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens.
- 3) Any material misrepresentation of fact in the application for a right-of-way permit.
- 4) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control.
- 5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by the City.

B) Written notice of breach. If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit, the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

C) Response to notice of breach. Within 24 hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. Permittee's failure to so contact the City, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the City, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one full year.

D) Cause for probation. From time to time, the City may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full

year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

E) Automatic revocation. If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

F) Reimbursement of City costs. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

### 36.22. MAPPING DATA.

A) Information required. Each registrant and permittee shall provide mapping information required by the City in accordance with Minn. Rules 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the Director accurate maps and drawings certifying the “as-built” location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City's electronic mapping system, when practical or as a condition imposed by the Director. Failure to provide maps and drawings pursuant to this division shall be grounds for revoking the permit holder's registration.

B) Service laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules 7560.0150, Subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the Director reasonably requires it. Permittees or their subcontractors shall submit to the Director evidence satisfactory to the Director of the installed service lateral locations. Compliance with this division and with applicable Gopher State One Call law and Minn. Rules governing service laterals install after December 31, 2005 shall be a condition of any City approval necessary for payments to contractors working on a public improvement project including those under M.S. Ch. 429, and City approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462. The Director shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service lateral installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

C) Sewer service lateral information. All gas pipeline operators shall protect all sanitary sewer service laterals from damage and inadvertent puncture in accordance with the Minnesota Office of Pipeline Safety requirements. All information on existing sewer service laterals obtained by the gas pipeline operator or its contractors during this process shall be forwarded to the Public Works Director.

### 36.23. LOCATION AND RELOCATION OF FACILITIES.

A) Placement. Placement, location, and relocation of facilities shall comply with the Act, with other applicable law, and with Minn. Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

B) Corridors. The City may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

C) Nuisance. One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

D) Limitation of space. To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest. The City may require joint trenching in the event there are multiple right-of-way applications or permits in a specific location.

### 36.24. PRE-EXCAVATION FACILITIES LOCATION.

A) In addition to complying with the requirements of M.S. §§ 216D.01 through 216D.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

### 36.25. DAMAGE TO OTHER FACILITIES.

A) When the City does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the City shall notify the local

representative as early as is reasonably possible. If the registrant does not maintain support or move the facilities at the City's request, and the City maintains, supports, or moves the facilities, the costs associated therewith will be billed to that registrant and shall be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

#### 36.26. RIGHT-OF-WAY VACATION.

A) If the City vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules 7819.3200.

#### 36.27. INDEMNIFICATION AND LIABILITY.

A) By registering with the City, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the City in accordance with the provisions of Minn. Rule 7819.1250.

#### 36.28. ABANDONED AND UNUSEABLE FACILITIES.

A) Discontinued operations. A registrant who has determined to discontinue all or a portion of its operations in the City shall provide information satisfactory to the City that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

B) Removal. Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

#### 36.29. APPEAL.

A) A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked, believes that the fees imposed are not in conformity with M.S. § 237.163, Subd. 6, or has been accused of breaching the conditions or requirements of a permit or of this Code may have the denial, revocation, fee imposition, or decision reviewed, upon written request to by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

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## CHAPTER 40: GENERAL PROVISIONS

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### 40.01. DEFINITIONS.

A) Any term used in this code and defined in M.S. § 169.011, as it may be amended from time to time, has the meaning given it by that section.

### 40.02. NOISE.

A) For regulations related to traffic noise see the Chapter 54 of this Code, Noise Regulations.

## CHAPTER 41: TRAFFIC RULES

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### 41.01. TURNING MOVEMENTS; RESTRICTIONS ON TURNS.

A) The Council, by resolution, may, whenever necessary to preserve a free flow of traffic on to prevent accidents:

- 1) Designate any intersection as one where the turning of vehicles to the left or to the right, or both, is to be restricted at all times or during specified hours; or (The Street Superintendent shall mark, by appropriate signs, any intersection so designated. No intersection on a trunk highway shall be so designated until the consent of the Commissioner of Highways to the designation is first obtained.)
- 2) Designate any intersection or street as one where U-turns of vehicles is prohibited. The Street Superintendent shall mark, by appropriate signs, any intersection or street so designated.

B) No person shall turn a vehicle contrary to the directions on the signs.

### 41.02. THROUGH STREETS; ONE-WAY STREETS.

A) The Council, by resolution, may designate any street or portion of a street as a through highway or a one-way roadway where necessary to preserve the free flow of traffic or to prevent accidents. The Street Superintendent shall post appropriate signs at the entrance of the streets. No trunk highway shall be so designated unless the consent of the Commissioner of Highways to the designation is first secured.

### 41.03. TRUCK RESTRICTIONS.

A) The Council, by resolution, may designate streets on which travel by commercial vehicles in excess of a specified gross weights prohibited. The Street Superintendent shall erect appropriate signs on the streets. No person shall operate a commercial vehicle on the posted streets in violation of the restrictions stated.

### 41.04. SEASONAL WEIGHT RESTRICTIONS.

A) The Maintenance Department may recommend the prohibition of operation of vehicles upon any street within the City or recommend weight restrictions to be operated on the street whenever the street by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles on the street is prohibited or the permissible weights thereof reduced. The Council shall act on the

recommendation and may direct the Maintenance Department, by resolution, to erect and maintain appropriate signs plainly indicating the prohibition or restriction at each end of that portion of the street so affected. No person shall operate a vehicle on a posted street in violation of the prohibition or restriction.

#### 41.05. SAFETY ZONES; LANES OF TRAFFIC.

A) To assist in the direction and control of traffic, to improve safe driving conditions at any intersection or dangerous location, and to warn pedestrians or drivers of motor vehicles of dangerous conditions or hazards, the Council may establish safety zones, lanes of traffic and stop intersections, and may order installation by the Street Superintendent of stop signs, yield signs, warning signs, signals, pavement markings or other devices. No regulation may be established on a trunk highway unless the consent of the Commissioner of Highways is first secured.

#### 41.06. EXHIBITION DRIVING.

A) 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. 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.

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### 42.01. DIAGONAL ANGLE AND PARALLEL PARKING.

A) The Council, by resolution, may designate streets where vehicles shall be parked with the front of the vehicle facing the curb or the edge of the traveled portion of the street at an angle of approximately 60 degrees.

B) On all other streets, cars shall be parked parallel to the curb or edge of the roadway in accordance with law.

### 42.02. NO PARKING, STOPPING OR STANDING ZONES.

A) The Council may, by resolution, 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. The Street 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.

B) 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 the zone for the purpose of forming a funeral procession and a truck may be parked temporarily between the hours of 7:00 a.m. and 6:00 p.m. of any business day for the purpose of loading or unloading where access to the premises is not otherwise available.

### 42.03. TIME LIMIT ZONES.

A) The Council may, by resolution, designate certain areas where the right to park is limited during hours specified.

B) The Street Superintendent shall mark by appropriate signs each zone so designated.

C) During the hours specified on the sign, no person shall park a vehicle in any limited parking zone for a longer period than is so specified.

#### 42.04. WINTER PARKING RESTRICTIONS.

A) No parking during the period from November 1 to March 30 inclusive, for all or any part of the period of time from 1:00 a.m. to 7:00 a.m. on any day of the week City-wide. If conditions warrant commencement of City snow/ice removal operations as regulated by the City's Snow and Ice Removal Policy (i.e., removal is curb-to-curb), the City specifically reserves the right to call for towing services and the owner of the vehicle will be responsible for all costs incurred. This restriction shall be enforced 24 hours a day, 7 days a week from the period November 1 to March 30, inclusive.

#### 42.05. IMPOUNDMENT.

A) Any police officer may remove a vehicle from a street to a garage or other place of safety when the vehicle is left unattended and constitutes an obstruction to traffic or hinders snow removal or street improvement or maintenance operations.

B) The vehicle shall not be released until the fees for towing and storage are paid in addition to any fine imposed for violation of this chapter.

#### 42.06. OWNER RESPONSIBILITY.

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

#### 42.07. TRUCK PARKING AND LOADING ZONES.

A) The Council may, by resolution, establish spaces in streets as loading zones or truck zones. The hours of 7:00 a.m. and 6:00 p.m. of any day, except Sundays, New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day or other time as the Council may specify in the resolution establishing the zone, shall be the loading zone or truck zone hours. The Street Superintendent shall mark each zone by appropriate signs.

B) During truck zone hours, no person shall stop, stand or park any vehicle, except a truck in a truck zone. No person shall stop, stand or park a truck in a truck zone during truck zone hours, except to receive or discharge passengers or freight and then only for a period no longer than is necessary for the purpose.

C) During loading zone hours, no person shall stop, stand or park any vehicle in a loading zone, except to receive or discharge passengers or freight and then only for a period no longer than is necessary for the purpose. No person shall occupy a loading zone with a vehicle other than a truck for more than five minutes during the hours.

D) Any person desiring the establishment of a loading zone or zone abutting premises occupied by him or her shall make written application to the Council. If the Council grants the request, the proper City officer shall bill the applicant for the estimated cost of placing signs and of painting the curb. When the amount is paid to the Administrator/ Clerk-Treasurer, the designated law enforcement agency shall install the necessary signs and paint the curb.

E) No person shall allow a semi-trailer to stand or be parked unattached from a tractor unit for any length of time on any street in the City, except in an emergency in order to change tractors.

F) No person shall allow any bus, motor truck, truck tractor, truck trailer or commercial vehicle to be parked or stand longer than 2 hours continuously on, in front of, or beside any property in the City, except for vehicles parked in private parking lots in Industrial Zones. For the purpose of this section, a bus is a vehicle designed for carrying passengers and having a seating capacity of more than 20 persons, and a motor truck, truck tractor, truck trailer or commercial vehicle is a vehicle having either a capacity of more than one ton or a weight of more than 5,000 pounds, or both.

#### 42.08. REMOVING KEYS.

A) No person shall leave a motor vehicle, except a truck which is engaged in 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. Whenever any designated law enforcement agent finds any motor vehicle standing in violation of this provision, he or she shall remove the keys from the vehicle and deliver them to City Hall.

## CHAPTER 43: SNOWMOBILES; RECREATIONAL MOTOR VEHICLES

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### 43.01. STATE LAW ADOPTED BY REFERENCE.

A) M.S. §§ 84.81 through 84.929, Minn. Rules 6100.5000 through 6100.5800, and Minn. Rules 7460.5100 through 7460.5200, as they presently exist and as they may be amended from time to time, are hereby adopted and are incorporated by reference and made part of this chapter as completely as if set out in full.

### 43.02. DEFINITIONS.

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

- 1) RECREATIONAL MOTOR VEHICLE. Any self-propelled vehicle and any vehicle used for recreational purposes, including but not limited to snowmobiles, trail bikes or other all-terrain vehicles, hovercrafts or motor vehicles licensed for highway operation which is being used for off-road recreational purposes. This definition includes ALL-TERRAIN VEHICLES, as defined by M.S. § 84.02, Subd. 8, as it may be amended from time to time.
- 2) RIGHT-OF-WAY. The entire strip of land traversed by a highway or street in which the public owns the fee or easement for road purposes.
- 3) SNOWMOBILE. A self-propelled vehicle designed for travel on snow or ice steered by skis or runners.
- 4) STREET. A public thorough fare, roadway, alley or trail used for vehicular traffic which is not an interstate, trunk, county state-aid or county highway.

### 43.03. LIMITATION OF OPERATION.

A) No person shall operate a snowmobile or recreational motor vehicle in the City, except on public trails, waterways, highways and streets specifically designated for the use.

B) No person shall operate a snowmobile or recreational motor vehicle on lands not his or her own, except where otherwise allowed by law, without the written permission of the owner, occupant or lessee of the lands.

#### 43.04. HOURS OF OPERATION.

A) No person shall operate a snowmobile or recreational motor vehicle in the City between the hours of 10:00 p.m. and 7:00 a.m., prevailing time in the county, Sunday through Thursday, and from 1:00 a.m. to 7:00 a.m. on other days, including the day preceding a national holiday.

#### 43.05. SPEED REGULATIONS.

A) No person shall operate a snowmobile or recreational motor vehicle in the City at speed in excess of 15 miles per hour within 150 feet of any pedestrian, skier, skater, skating rink, sliding area, City property or other area where the operation would conflict with or endanger other persons or property.

#### 43.06. TOW BARS.

A) No person shall operate a snowmobile or recreational vehicle so as to tow any person, sled, trailer or other device, except by the use of a rigid tow bar attached to the rear of the snowmobile or recreational motor vehicle. Persons towing disabled snowmobiles or recreational vehicles shall be exempt.

#### 43.07. MANDATORY LIGHTS.

A) No person shall operate a snowmobile or recreational motor vehicle unless the vehicle is equipped with approved head lamp(s) and tail lamp(s) that are illuminated at all times during operation.

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## CHAPTER 50: GENERAL PROVISIONS

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### 50.01. ASSESSABLE CURRENT SERVICES.

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

1) **CURRENT SERVICE.** One or more of the following: snow, ice or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S. §§ 463.15 through 463.261 as they may amended from time to time; installation or repair of water service lines; street sprinkling, street flushing, light street oiling or other dust treatment of streets; repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.

B) Snow, ice, dirt and rubbish.

1) Duty of owners and occupants.

- a) The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep the walk safe for pedestrians.
- b) No owner or occupant shall allow snow, ice, dirt or rubbish to remain on the walk longer than 24 hours after its deposit thereon.

2) Removal by City.

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

C) Public health and safety hazards. When the City removes or eliminates public health or safety hazards from private property under the following provisions of this chapter, the administrative officer responsible for doing the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and annually deliver that information to the City Administrator/Clerk- Treasurer.

D) Installation and repair of water service lines. Whenever the City installs or repairs water service lines serving private property hereunder, the City Administrator/Clerk-Treasurer shall keep a record of the total cost of the installation or repair against the property.

E) Repair of sidewalks and alleys.

- 1) Duty of owner. The owner of any property within the City abutting a public sidewalk or alley shall keep the sidewalk or alley in repair and safe for pedestrians. Repairs shall be made in accordance with the standard specifications approved by the City Council and on file in the Office of the City Administrator/Clerk-Treasurer.
- 2) Inspections; notice.
  - a) The City Council or its designee shall make inspections as are necessary to determine that public sidewalks and alleys within the City are kept in repair and safe for pedestrians or vehicles.
  - b) If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering the owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the City will do so and that the expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned.
- 3) Repair by City. If the sidewalk or alley is not repaired within 30 days after receipt of the notice, the City Administrator/Clerk-Treasurer shall report the facts to the City Council and the City Council shall by resolution order the work done by contract in accordance with law. The City Administrator/Clerk-Treasurer shall keep a record of the total cost of the repair attributable to each lot or parcel of property.

F) Personal liability.

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

G) Damage to public property.

- 1) Any person driving any vehicle, equipment, object or contrivance upon any street, road, highway or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or

moving of the vehicle, equipment or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code.

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

#### H) Assessment.

- 1) On or before September 1 of each year, the City Administrator/Clerk-Treasurer shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section.
- 2) The City Council may then spread the charges against property benefitted as a special assessment under the authority of M.S. Chapter 429, M.S. § 366.011, § 366.012 and § 415.01 and any other authority for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

#### 50.02. TREE DISEASES.

A) Trees constituting nuisance declared. The following are public nuisances whenever they may be found within the City:

- 1) 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* (Marsh);
- 2) Any dead elm tree or part thereof, including 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;
- 3) Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt fungus *Ceratocystis fagacearum*;
- 4) Any dead oak tree or part thereof which in the opinion of the designated officer constitutes a hazard, including but not limited to logs, branches, stumps, roots, firewood or other oak material which has not been stripped of its bark and burned or sprayed with an effective fungicide; and
- 5) Any other shade tree with an epidemic disease.

### 50.03. DISPOSITION OF ABANDONED PROPERTY.

A) Procedure. Except for abandoned and junked vehicles, all property lawfully coming into possession of the City shall be disposed of as provided in this section which is adopted pursuant to M.S. § 471.195, as it may be amended from time to time. Abandoned and junked vehicles shall be disposed of according to the procedures of Chapter 51 of this Code related to Abandoned Vehicles.

B) Storage. The department of the City acquiring possession of the property shall arrange for its storage. If City facilities are unavailable or inadequate, the department may arrange for storage at a privately-owned facility.

C) Claim by owner. The owner may claim the property by exhibiting satisfactory proof of ownership and paying the City any storage or maintenance costs incurred by it. A receipt for the property shall be obtained upon release to the owner.

D) Sale. If the property remains unclaimed in the possession of the City for 60 days, the property shall be sold to the highest bidder at a public auction conducted by the City Administrator/Clerk-Treasurer or his or her designee after two-weeks' published notice setting forth the time and place of the sale and the property to be sold.

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

## CHAPTER 51: ABANDONED VEHICLES

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### 51.01. FINDINGS AND PURPOSE.

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

### 51.02. DEFINITIONS.

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

#### 1) ABANDONED VEHICLE.

- a) A motor vehicle, as defined in M.S. § 169.011 as it may be amended from time to time, that:
  - i) Has remained illegally: For a period of more than 48 hours on any property owned or controlled by a unit of government, or more than four hours on that property when it is properly posted; or On private property for a period of time, as determined under the Chapter, without the consent of the person in control of the property; and
  - ii) Lacks vital component parts or is in an inoperable condition that it has no substantial potential for further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building.
- b) A classic car or pioneer car, as defined in M.S. § 168.10 as it may be amended from time to time, is not considered an abandoned vehicle.

- c) Vehicles on the premises of junk yards and automobile graveyards that are defined, maintained, and licensed in accordance with M.S. § 161.242 as it may be amended from time to time, or that are licensed and maintained in accordance with local laws and zoning regulations, are not considered abandoned vehicles.
  - d) A vehicle being held for storage by agreement or being held under police authority or pursuant to a writ or court order is not considered abandoned, nor may it be processed as abandoned while the police hold, writ or court order is in effect.
- 2) DEPARTMENT. The Minnesota Department of Public Safety.
- 3) IMPOUND. To take and hold a vehicle in legal custody. There are two types of impounds: public and nonpublic.
- 4) IMPOUND LOT OPERATOR or OPERATOR. A person who engages in impounding or storing, usually temporarily, unauthorized or abandoned vehicles. OPERATOR includes an operator of a public or nonpublic impound lot, regardless of whether tow truck service is provided.
- 5) JUNK VEHICLE. A vehicle that:
  - a) Is three years old or older;
  - b) Is extensively damaged, with the damage including things as broken or missing wheels, motor, drive train or transmission;
  - c) Is apparently inoperable;
  - d) Does not have a valid, current registration plate; and
  - e) Has an approximate fair market value equal only to the approximate value of the scrap in it.
- 6) MOTOR VEHICLE or VEHICLE. Has the meaning given MOTOR VEHICLE in M.S. § 169.011, as it may be amended from time to time.
- 7) MOTOR VEHICLE WASTE. Solid waste and liquid wastes derived in the operation of or in the recycling of a motor vehicle, including such things as tires and used motor oil, but excluding scrap metal.
- 8) MPCA or AGENCY. The Minnesota Pollution Control Agency.
- 9) NONPUBLIC IMPOUND LOT. An impound lot that is not a public impound lot.
- 10) PUBLIC IMPOUND LOT. An impound lot owned by or contracting with a unit of government under.

- 11) **UNAUTHORIZED VEHICLE.** A vehicle that is subject to removal and impoundment pursuant to this Chapter or M.S. § 169.041 as it may be amended from time to time, but is not a junk vehicle or an abandoned vehicle.
- 12) **UNIT OF GOVERNMENT.** Includes a state department or agency, a special purpose district, and a county, statutory or home rule charter City, or town.
- 13) **VITAL COMPONENT PARTS.** Those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including such things as the motor, drive train and wheels.

#### 51.03. VIOLATION TO ABANDON MOTOR VEHICLE.

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

#### 51.04. AUTHORITY TO IMPOUND VEHICLES.

A) Abandoned or junk vehicles. The City Administrator/Clerk-Treasurer or his or her designee or any peace officer employed or whose services are contracted for by the City may take into custody and impound any abandoned or junk vehicle if the vehicle is on public property. If the abandoned or junk vehicle is located on private property, the vehicle shall not be removed or impounded until the provisions of this Section relating to vehicles on private property are complied with.

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

- 1) In a public location not governed by M.S. § 169.041 as it may be amended from time to time:
  - a) On a highway and properly tagged by a peace officer, four hours;
  - b) Located so as to constitute an accident or traffic hazard to the traveling public, as determined by a peace officer, immediately; or
  - c) That is a parking facility or other public property owned or controlled by a unit of government, properly posted, four hours; or
- 2) On private property, only with the express permission of the owner of the property, a resident or other person in control of the premises:
  - a) That is single-family or duplex residential property, immediately;
  - b) That is private, nonresidential property, properly posted, immediately;
  - c) That is private, nonresidential property, not posted, 24 hours; or

- d) That is any residential property, properly posted, immediately.
- 3) If under a provision that requires permission, permission is not granted, then the City shall not remove and impound any vehicle until an appropriate procedure has been followed to allow entry onto the private property.

C) If the vehicle is on private property, the City Administrator/Clerk-Treasurer or his or her designee or any peace officer employed or whose services are contracted for by the City may take into custody and impound any abandoned or junk vehicle on private property only with the permission of the owner of the property, a resident, or other person in control of the premises. If permission is denied, the City may declare the existence of the abandoned or junk vehicle to be a nuisance and proceed to abate the nuisance. Once the abatement procedure has been completed, the City may apply for an order from a court of competent jurisdiction authorizing the removal and impoundment of the vehicle and, after the order has been granted, the City may then remove and impound the vehicle.

#### 51.05. SALE; WAITING PERIODS.

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

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

B) Sale after 45 days. An impounded vehicle is eligible for disposal or sale under this Chapter, 45 days after notice to the owner, if the vehicle is determined to be an unauthorized vehicle.

#### 51.06. NOTICE OF TAKING AND SALE.

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

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

B) Notice by mail or publication. The notice shall be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lienholders of record. The Department makes this information available to impound lot operators for notification

purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy.

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

#### 51.07. RIGHT TO RECLAIM.

A) Payment of charges. The owner or any lienholder of an impounded vehicle shall have a right to reclaim the vehicle from the City or impound lot operator taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within 15 or 45 days, as applicable under this Chapter and with the notice required by this Chapter.

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

#### 51.08. OPERATOR'S DEFICIENCY CLAIM; CONSENT TO SALE.

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

- 1) Twenty-five-days' storage for a junk vehicle or abandoned vehicle; and
- 2) Fifty-five-days' storage for an unauthorized vehicle.

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

#### 51.09. DISPOSITION BY IMPOUND LOT.

A) Auction or sale.

- 1) If an abandoned or unauthorized vehicle and contents taken into custody by the City or any impound lot is not reclaimed under this Chapter, it may be disposed of or sold at auction or sale when eligible pursuant to the procedures set out in this Chapter.

- 2) The purchaser shall be given a receipt in a form prescribed by the Registrar of Motor Vehicles which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. Before a vehicle is issued a new certificate of title, it must receive a motor vehicle safety check.

B) Unsold vehicles. Abandoned or junk vehicles not sold by the City or public impound lots pursuant to this Section shall be disposed of in accordance with this Chapter.

C) Sale proceeds; public entities. From the proceeds of a sale under this section by the City or public impound lot of an abandoned or unauthorized motor vehicle, the City shall reimburse itself for the cost of towing, preserving and storing the vehicle, and all administrative, notice and publication costs incurred in handling the vehicle pursuant to this chapter. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for 90 days and then shall be deposited in the treasury of the City.

D) Sale proceeds; nonpublic impound lots. The operator of a nonpublic impound lot may retain any proceeds derived from a sale conducted under the authority of this Section. The operator may retain all proceeds from sale of any personal belongings and contents in the vehicle that were not claimed by the owner or the owner's agent before the sale, except that any suspected contraband or other items that likely would be subject to forfeiture in a criminal trial must be turned over to the appropriate law enforcement agency.

#### 51.10. DISPOSAL AUTHORITY.

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

#### 51.11. CONTRACTS; REIMBURSEMENT BY MPCA.

A) MPCA review and approval. If the City proposes to enter into a contract with a person licensed by the MPCA pursuant to this section or a contract pursuant to the City's disposal authority, the MPCA may review the proposed contract before it is entered into by the City, to determine whether it conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules. A contract that does so conform may be approved by the MPCA and entered into by the City. Where a contract has been approved, the MPCA may reimburse the City for the costs incurred under the contract that have not been reimbursed under another Section of this Chapter. Except as otherwise provided in this Chapter, the MPCA shall not approve any contract that has been entered into without prior notice to and request for bids from all persons duly licensed by the MPCA to be a party to a disposal contract pursuant to M.S. § 116.07, as it may be amended from time to time; does not provide for a full performance bond; or does not provide for total collection and transportation of abandoned motor vehicles, except that the MPCA may approve a contract

covering solely collection or transportation of abandoned motor vehicles where the MPCA determines total collection and transportation to be impracticable and where all other requirements herein have been met and the unit of government, after proper notice and request for bids, has not received any bid for total collection and transportation of abandoned motor vehicles.

B) The City may perform work. If the City utilizes its own equipment and personnel pursuant to its Disposal Authority, and the use of the equipment and personnel conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules, the City may be reimbursed by the MPCA for reasonable costs incurred which are not reimbursed under another Section of this Chapter.

C) The City required to contract work. The MPCA may demand that the City contract for the disposal of abandoned motor vehicles and other scrap metal pursuant to the MPCA's plan for solid waste disposal. If the City fails to contract within 180 days of the demand, the MPCA, through the Department of Administration and on behalf of the City, may contract with any person duly licensed by the MPCA for the disposal.

## CHAPTER 52: ANIMALS

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### 52.01. NUISANCE.

A) The owner or custodian of any animal or bird otherwise lawfully kept within the City limits shall not allow the odor of the animal or bird to become a nuisance to his or her neighbors. The nuisance may, upon written complaint of two or more neighbors, be abated.

### 52.02. DEFINITIONS.

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

- 1) AT LARGE. A dog is at large when it is off the property of the person owning, harboring or keeping the dog and it is not under restraint.
- 2) PERSON. Any person, firm or corporation owning, harboring or keeping a dog.
- 3) UNDER RESTRAINT. A dog is under restraint if it is on the premises of the person harboring or keeping the dog; or is controlled by a leash not exceeding six feet in length, is at heel beside a person having custody of it or obedient to the person's command or is within a private motor vehicle of a person owning, harboring or keeping the dog.

### 52.03. REMOVAL OF FECES.

A) Persons owning any animal, whether that animal is at large or under restraint, are responsible for the prompt removal of all feces left by the animal.

### 52.04. ABANDONMENT PROHIBITED.

A) It shall be unlawful for any person to abandon any animal within the City.

#### 52.05. DOGS; LICENSE REQUIRED.

##### A) License.

- 1) No person shall own, harbor or keep any dog over three months of age, for a period in excess of three days, without first having obtained a dog license from the City.
- 2) This section shall not apply to any premises maintained by a licensed veterinarian.

##### B) Collar.

- 1) Every person required to obtain a dog license under this chapter shall place and keep around the neck of the dog a permanent-type collar.
- 2) The collar shall be securely attached to the metallic license tag issued at the time the license was applied for.

C) The initial dog license fee, the license fee for dog caught in violation that are unlicensed, and the amount of the fines for the first and subsequent violations of this chapter shall be as prescribed by the City Council.

#### 52.06. DOGS; RUNNING AT LARGE PROHIBITED.

A) Any female dog in heat or season shall be confined indoors or in a kennel run or pen so constructed as to keep other dogs out.

B) No person shall own, harbor or keep any dog over five months of age unless the dog has been vaccinated within the last 12 months with a killed rabies vaccine or within the past 24 months with a live rabies vaccine and a certificate of vaccination has been obtained.

C) No dog license shall be issued pursuant hereto unless the owner presents said certificate of vaccination at the time of license application.

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

E) The restrictions imposed hereby shall not prohibit the appearance of a dog upon the streets or other public place when the dog is on a leash or under restraint, except a female dog in heat or season.

#### 52.07. DOGS; CITY POUND; DESIGNATION AND LOCATION.

A) The City, from time to time, shall designate the place or places as City Dog Pound for keeping and maintaining any dog which may be seized or impounded pursuant hereto.

B) The City Dog Pounds may be within or outside the City limits.

## 52.08. DOGS; SIEZURE AND IMPOUNDMENT.

A) A City Official or Law Enforcement Officer is authorized to seize and impound dogs found in the City running at large as defined in this Chapter.

B) Any City Official or Law Enforcement Officer may enter upon private property and seize any animal with the permission of the owner of the property or with a warrant issued by a court of competent jurisdiction, provided that the following exist:

- 1) There is an identified complainant other than the City Official or Law Enforcement Officer making a contemporaneous complaint about the animal;
- 2) The City Official or Law Enforcement Officer reasonably believes that the animal meets either the barking dog criteria set out in Chapter 54 of this Code related to Noise Regulations; the criteria for cruelty; or the criteria for an at large animal set out in this Chapter;
- 3) The City Official or Law Enforcement Officer can demonstrate that there has been at least one previous complaint of a barking dog; inhumane treatment of the animal; or that the animal was at large at this address on a prior date; and
- 4) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the animal is not possible.

C) The City Official or Law Enforcement Officer shall not enter the property of the owner of an animal described in this section unless the officer has first obtained the permission of the owner of the property to do so or has obtained a warrant issued by a court of competent jurisdiction, to search for and seize the animal. If the City Official or Law Enforcement Officer has the permission of the owner, a property manager, landlord, innkeeper, or other authorized person to enter the property or has obtained a pass key from a property manager, landlord, innkeeper, or other authorized person to have that key shall not be considered unauthorized entry, and a warrant to search for and seize the animal need not be obtained; and

D) In lieu of picking up an animal on private property, the City Official or Law Enforcement Officer will notify the City Administrator/Clerk-Treasurer and then will issue a citation to the owner of the animal found to be in violation.

## 52.09. DOGS; RABIES CONTROL.

A) If the City becomes aware of any dog exhibiting symptoms of rabies or known or thought to have come in contact with rabies, the City may notify the appropriate authority or may seize on the premises of the owner or elsewhere and impounded the dog. Once the dog has been impounded and turned over to the City Dog Pound all regulations relating to impoundment are the responsibility of the pound.

#### 52.10. DOGS; LIMIT ON NUMBER.

A) The keeping of more than two dogs without the permission of the Montrose City Council in any dwelling shall be deemed a public nuisance and unlawful. For purposes of this Section dwelling is defined as any building or portion thereof, designated exclusively for residential occupancy.

B) The keeping of a dog or dogs that annoy other persons by habitually barking, howling or baying shall be deemed a public nuisance and unlawful. For purposes of this section, a public nuisance is determined to be barking, howling, baying or making any other noise continuously for a period of ten minutes, or that makes noises intermittently for one-half hour or more, and in so doing disturbs another person.

#### 52.11. FARM ANIMALS AND NON-DOMESTIC ANIMALS.

##### A) Definitions.

- 1) **FARM ANIMALS.** Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, farm animals shall include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, and other animals associated with a farm, ranch, or stable.
- 2) **NON-DOMESTIC ANIMALS.** Those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, non-domestic animals shall include:
  - a) Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats.
  - b) Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.
  - c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.
  - d) Any member or relative of the rodent family including any skunk (whether or not descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.
  - e) Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators.

- f) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.

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

C) Farm animals. Farm animals shall only be kept in an agricultural district of the City, or on a residential lot of at least ten acres in size provided that no animal shelter shall be within 300 feet of an adjoining piece of property. An exception shall be made to this section for those animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

#### 52.12. HORSES.

A) Horses may be ridden on City streets in an orderly manner so as not to cause traffic. Riders of horses are to clean up feces deposited by horses they are riding or handling.

B) Horses may be tied up during daylight hours in an area approved by the Council.

#### 52.13. POTENTIALLY DANGEROUS OR DANGEROUS ANIMALS.

A) All potentially dangerous or dangerous animals will be referred to the County to be dealt with pursuant to the County Ordinance.

#### 52.14. ADOPTION OF STATE LAW.

A) The provisions of M.S. §§ 35.67, 35.68 and 35.69, as they may be amended from time to time, are hereby adopted by reference and are incorporated in and made a part of this chapter as completely as if the same were set down in full.

## CHAPTER 53: DRUG LAB SITES

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### 53.01. PURPOSE.

A) The City Council finds that the existence of drug lab sites and chemical dump sites in the City pose a serious health and safety threat to members of the public, particularly minors and persons of child bearing age, through the exposure to hazardous chemicals and chemical residue. The Council has therefore determined that the regulation and proper removal of those sites is necessary for the protection of the public health, safety, and general welfare.

### 53.02. DEFINITIONS.

A) For the purposes of this chapter the following definitions will apply.

- 1) **CHEMICAL DUMP SITE.** Any place or location where chemicals and/or other hazardous waste material used in a clandestine drug lab have been deposited.
- 2) **CHIEF BUILDING OFFICIAL.** The chief building official for the City or the official's designee.
- 3) **CLANDESTINE DRUG LAB.** The unlawful manufacture or attempt to manufacture controlled substances.
- 4) **CLANDESTINE DRUG LAB SITE.** Any place or location where conditions associated with the operation of a clandestine drug lab are found to exist and may include dwellings, accessory buildings or structures, mobile homes, motorized or non-motorized vehicles, or any parcels of land.
- 5) **CONTROLLED SUBSTANCE.** Any drug, chemical, substance, or immediate precursor thereto as defined by M.S. § 152.02, Schedules I-V, as may be amended from time to time, but does not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.
- 6) **HAZARDOUS WASTE.** Any chemicals or other substances used in the manufacture of controlled substances in a clandestine drug lab and the resulting by-products therefrom which pose a risk to the health, safety, and welfare of occupants, visitors, or neighbors of the site.

- 7) MANUFACTURE. The production, cultivation, quality control, and standardization, in locations other than a pharmacy, of controlled substances by mechanical, physical, chemical, or pharmaceutical means, and the packing, repacking, tablet producing, encapsulating, labeling, relabeling, filling or other similar process relating to such substances.
- 8) MDH. The Minnesota Department of Health or any successor thereto.
- 9) MINOR. Any person under the age of 18 years.
- 10) MPCA. The Minnesota Pollution Control Agency or any successor thereto.
- 11) OWNER. Any person, firm, partnership, company, corporation, or other entity that owns or has title to in full or in part, the land, buildings, structures, or other property associated with a clandestine drug lab site or a chemical dump site.
- 12) SITE. Any defined location, including buildings, structures, or other property, where appropriate tests have determined that, due to the existence of a clandestine drug lab site or chemical dump site, a risk to the health, safety, and welfare exists for any persons who occupy, visit, or neighbor on the location.

#### 53.03. PUBLIC NUISANCE.

A) Existence and maintenance of a clandestine drug lab site or chemical dump site in the City constitutes a public nuisance subject to the regulations of this chapter in addition to any and all applicable federal, state, or local laws and ordinances.

#### 53.04. NOTICE TO OTHER AUTHORITIES.

A) Law enforcement agencies that identified conditions associated with a clandestine drug lab site or chemical dump site which place neighbors, visiting public, or present and future occupants of the site at risk for exposure to harmful chemicals or other contaminants must promptly notify the Wright County Sheriff's Department, the Chief Building Official, appropriate child protection agencies, and the appropriate health authorities. The notice must, at a minimum, identify the location of the site, the site owner, if known, and the conditions found on the site.

#### 53.05. NOTICE TO CONCERNED PARTIES.

A) Upon receipt of the notice to Other Authorities, the Chief Building Official must promptly notify the following parties by registered or certified mail:

- 1) The owner of the property, if known;
- 2) Occupants of the property;
- 3) Any neighbors that have been determined to be at risk;
- 4) Other appropriate state and local authorities including, but not limited to, the MDH and the MPCA, which are known to have applicable public and environmental protection responsibilities;

B) The notice must, at a minimum, include the location of the site, the name of the property owner, if known, the type and nature of the contamination, and the extent of the contamination.

C) The Chief Building Official must also cause a copy of the notice to be posted at each appropriate access point to the site.

#### 53.06. ISSUANCE OF ORDER.

A) In addition to the required notices, the Chief Building Official will issue an order to the property owner to abate the public nuisance. The order must include at a minimum the following:

- 1) A description of the site and all portions thereof that are determined to be contaminated. The description may be in any form that readily identifies the contaminated portion of the site;
- 2) That all portions of the site that are determined to be contaminated and a risk to occupants or visitors are immediately vacated;
- 3) That the owner commence and complete all testing and clean up procedures and other required remedial actions on the site by dates specified in the order or such other dates agreed to by the City;
- 4) That the site may not be re-occupied or used in any manner until it has been completely cleaned in accordance with the guidelines established by the MDH;
- 5) That if the owner does not commence testing and complete the clean up procedures by the dates established in the order, the City, its officials, employees, or agents, will enter the property and provide for the testing and clean up services at the owner's expense; and
- 6) That the owner is responsible for all costs associated with the clean up of the site including all costs incurred by the City and other public agencies, and that if the owner does not promptly pay those costs, they will be assessed against the property and collected in the manner of a special tax.

B) The order must be served upon the owner by personal service or by registered or certified mail and posted at appropriate access points to the site. If, after due diligence, the owner cannot be located, the order, in addition to being posted, must be published once in the official newspaper of the City.

#### 53.07. RESPONSIBILITIES OF OWNER.

A) Upon receipt of the notice and order, the owner will be responsible for the following:

- 1) Ensure that the site and all surrounding areas determined to be at risk are properly vacated;

- 2) Engage an appropriate environmental testing firm to assess the extent of the contamination, monitor the clean up process, provide follow up testing after the completion of the clean up process, and certify that the risks of contamination have been sufficiently reduced to allow safe occupancy of the site;
- 3) Engage an appropriate contractor to properly clean the site in accordance with guidelines of the MDH;
- 4) Provide the City with copies of all testing results and the clean up plan;
- 5) Keep the City regularly advised through the process of the testing and clean up;
- 6) Upon completion of the clean up process, provide the City with a copy of the final certification from the testing firm that the site is fit for human habitation, including a written, signed statement that the clean up met all MDH guidelines.

B) If the owner, after due diligence, cannot be located or has not commenced appropriate action toward the clean up of the site on or before the commencement date established by the order, or has not completed the process by the completion date established by the order, the City, its officials, employees and agents, are hereby authorized to enter the property for the purpose of abating the public nuisance through vacating, testing and cleaning the site, or completing that process, in accordance with the requirements of this chapter. When appropriate, the abatement process may include the demolition and removal of any hazardous building or structure.

#### 53.08. RESPONSIBILITY FOR COSTS.

A) The owner of the site is responsible for any and all costs incurred in the clean up of that site including, but not limited to, the costs of vacating the site and surrounding areas, testing, clean up, and public expenses.

B) Public expenses will include all costs that may be incurred by the City and other public agencies such as:

- 1) Laboratory fees;
- 2) Preparing and serving notices;
- 3) Preparing and serving the order;
- 4) Posting the site;
- 5) Vacating the site and other necessary properties;
- 6) Testing services;
- 7) Clean up services;
- 8) Expenses incurred in recovering costs including all special assessment expenses;
- 9) Administrative fees; and

10) All other costs associated with the clean up of the site.

#### 53.09. RECOVERY OF CITY COSTS.

A) Within 30 days after receipt of an invoice from the City, the owner will submit payment in full of all City costs associated with the clean up project.

B) If the City has been unable to locate the owner, or the owner fails to submit timely payment to the City, the City is authorized to collect its costs by assessing those costs against the property in the same manner as a special assessment which will be certified and collected in the manner of a special tax in accordance with applicable law.

C) Other collection as allowed by law.

#### 53.10. REMOVAL OF PUBLIC NUISANCE DESIGNATION.

A) Upon receipt of the appropriate certification that the site has been cleaned in accordance with MDH guidelines and is no longer a risk to occupants of the site or others, the Chief Building Official will remove the public nuisance designation of the site and will so notify in writing the owner and all parties previously notified. The Chief Building Official will also promptly cause all postings on the site to be removed.

#### 53.11. RELATIONSHIP TO OTHER LAWS AND REGULATIONS.

A) If any regulation, standard, condition, or requirement imposed by this chapter is determined to be either more or less restrictive than comparable provisions of any other law, statute, ordinance, rule or regulations, whether federal, state, or local, the more restrictive provision, or the one providing for the higher standards or requirements will prevail.

## CHAPTER 54: NOISE REGULATIONS

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### 54.01. PROHIBITION.

A) No person shall make, continue or cause to be made any loud, unnecessary or unusual noise or any noise which unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of others or precludes their enjoyment of property or affects their property value. This general prohibition is not limited by any specific restrictions of this Section.

B) The following acts listed herein are declared to be nuisance noises in violation of this chapter, but this listing shall not be deemed to be exclusive.

- 1) The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street, public place or private property within the City, except as a present danger warning;
- 2) The creation, by means of any horn or signaling device, of any unreasonably loud or harsh sound;
- 3) The sounding of any device for an unnecessary and unreasonable period of time;
- 4) The use of any signaling device, except one operated by hand or electricity;
- 5) The use of any, hour, whistle or other device operated by engine exhaust; and
- 6) The use of any signaling device when traffic is held up for any reason.
- 7) The using, operating or permitting to be played any radio, musical insert, phonograph, juke box, amplifier or other machine or device for the producing, reproducing or amplifying of sound in a manner as to disturb the peace, quiet or comfort of persons residing or working or peaceably gathered in its vicinity. The operation of the machine or device between the hours of 10:00 p.m. and 7:00 a.m. shall be prima facie evidence of a violation of this section if done in a manner as to be plainly audible:
  - a) Within any building or structure used for residential purposes; or
  - b) At a distance of 50 feet from the building, structure or vehicle in which it is located.
- 8) The using, operating or permitting to be played any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for

the purpose of commercial advertising or attracting the attention of the public to any building or structure;

- 9) Yelling, shouting, hooting, whistling or singing at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel, motel or other place of residence, or of any persons in the vicinity;
- 10) It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. HABITUAL BARKING shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.
- 11) The blowing of a locomotive whistle or steam whistle attached to any stationary whistle or any siren whatsoever, except to give notice of the time to begin or stop work or as a warning of fire or danger, or by public emergency vehicles;
- 12) The use of any automobile, motorcycle or vehicle so out or repair, operation or in a manner as to create loud and unnecessary grating, grinding, rattling or other noise which shall disturb the comfort or repose of any persons in the vicinity;
- 13) The use of sound trucks or any other vehicle equipped with sound-amplifying devices for the purposes of advertising any program, project or meeting of any public agency, private business, religious organization, civic group, political party or charitable organization;
- 14) The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers;
- 15) The erection, including excavating, demolition, alteration or repair of any building between the hours of 9:00 p.m. and 6:00 a.m. on week days and all day Sunday, except where single individuals or families work on single-family residences owned by them for their own occupancy provided that the Building Inspector may, in cases of emergency, grant permission to repair at any time when he or she finds that the repair work will not affect the health and safety of the persons in the vicinity;
- 16) The creation of any excessive noise on any street or private property adjacent to any school, institution of learning, church, court or hospital while the same are in use which unreasonably interferes with the use thereof provided conspicuous signs are displayed in the streets indicating that the same is a school, hospital or court street;
- 17) The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood;

- 18) The operation between the hours of 9:00 p.m. and 6:00 a.m. of any pile driver, power shovel, pneumatic hammer, jack hammer, derrick, power or electric hoist or other appliance the use of which is attended by loud or unusual noise;
- 19) The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from the blower or fan is muffled and the engine is equipped with a muffler device sufficient to deaden the noise; and/or
- 20) Party.
  - a) No person shall, between the hours of 10:00 p.m. and 7:00 a.m., congregate because of or participate in any party or gathering of people from which noise emanates of a sufficient volume so as to disturb the peace quiet or repose of persons residing in any residential area.
  - b) Noise between the hours of 10:00 p.m. and 7:00 a.m. of a volume as to be plainly audible at a distance of 50 feet from the residential dwelling unit wherein the party or gathering is located shall be prima facie evidence of a violation of this section.
  - c) No persons shall visit or remain within any residential dwelling unit wherein the party or gathering is taking place, except the owner, persons residing in that unit or persons who have gone there for the sole purpose of abating the disturbance.

#### 54.02. MOTOR VEHICLE NOISE.

A) Definitions. For the purposes of this section, the following phrases are defined as follows:

##### 1) ABNORMAL OR EXCESSIVE NOISE.

- a) A distinct and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort and repose of any person or precludes their enjoyment of property or affects their property's value;
- b) Noise in excess of that permitted by M.S. § 169.69, as it may be amended from time to time, which requires every motor vehicle to be equipped with a muffler in good working order or;
- c) Noise in excess of that permitted by M.S. § 169.693 and Minn. Rules parts 7030.1000 through 7030.1050, as this statute and these rules may be amended from time to time, which establish motor vehicle noise standards.

- 2) ENGINE RETARDING BRAKE. A Dynamic Brake, Jake Brake, Jacobs Brake, C-Brake, Paccar Brake, transmission brake or other similar engine retarding brake system which alters their normal compression of the engine and subsequently releases that compression.

B) It shall be unlawful for any person to discharge the exhaust or permit the discharge of the exhaust from any motor vehicle except through a muffler that effectively prevents abnormal or excessive noise and complies with all applicable state laws and regulations.

C) It shall be unlawful for the operator of any truck to intentionally use an engine retarding brake on any public highway, street, parking lot or alley within the City which causes abnormal or excessive noise from the engine because of an illegally modified or defective brake system, except in an emergency.

D) M.S. §§ 169.69 and 169.693 (motor vehicle noise limits) and Minn. Rules parts 7030.1000 through 7030.1050, as these statutes and rules may be amended from time to time, are hereby adopted by reference.

E) Signs stating VEHICLE NOISE LAWS ENFORCED may be installed at locations deemed appropriate by the City Council to advise motorists of the prohibitions contained in this section, except that no sign stating VEHICLE NOISE LAWS ENFORCED shall be installed on a state highway without a permit from the Minnesota Department of Transportation. The provisions of this section are in full force and effect even if no signs are erected.

#### 54.03. RESPONSIBILITY.

A) The owner and tenant of any premises on which a violation of this Section occurs shall make every reasonable effort to see that the violation ceases. Violation of this Section shall be deemed the act of the person committing the act and the person in possession, control, custody or having charge of premises who allows or permits the violation to take place. Violation of this Section shall also be deemed the act of the nonresident landlord, provided he or she has received written notice from the City of the violation and has failed to make every reasonable effort to see that the violation ceases.

## CHAPTER 55: NUISANCES

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### 55.01. PUBLIC NUISANCE.

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

- 1) 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;
- 2) Interferes with, obstructs or renders dangerous for passage any public highway or right-of-way or waters used by the public; or
- 3) Is guilty of any other act or omission declared by law or this Chapter, or any other part of this code to be a public nuisance and for which no sentence is specifically provided.

### 55.02. PUBLIC NUISANCES AFFECTING HEALTH.

A) The following are hereby declared to be nuisances affecting health:

- 1) Exposed accumulation of decayed or unwholesome food or vegetable matter;
- 2) All diseased animals running at large;
- 3) All ponds or pools of stagnant water;
- 4) Carcasses of animals not buried or destroyed within 24 hours after death;
- 5) Accumulations of manure, refuse or debris;
- 6) 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;
- 7) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances;
- 8) All noxious weeds and other rank growths of vegetation upon public or private property;
- 9) Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities;

- 10) All public exposure of people having a contagious disease; and
- 11) Any offensive trade or business as defined by statute not operating under local license.

#### 55.03. PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

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

- 1) All gambling devices, slot machines and punch boards, except as otherwise authorized by federal, state or local law;
- 2) Betting, bookmaking and all apparatus used in those occupations;
- 3) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame and bawdy houses;
- 4) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor, or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place;
- 5) Any vehicle used for the unlawful transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.

#### 55.04. PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

A) The following are declared to be nuisances affecting public peace and safety:

- 1) All snow and ice not removed from public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;
- 2) All trees, hedges, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;
- 3) 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;
- 4) All obnoxious noises in violation of Minn. Rules Ch. 7030, as they may be amended from time to time which are hereby incorporated by reference into this code.
- 5) The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations.

- 6) The using or operation or permitting the using or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet and comfort of any person nearby. Operation of any device referred to above between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of violation of this section.
- 7) The participation in a party or gathering of people giving rise to noise which disturbs the peace, quiet or repose of the occupants of adjoining or other property.
- 8) Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks or public grounds, except under conditions as are permitted by this code or other applicable law;
- 9) Radio aerials or television antennae erected or maintained in a dangerous manner;
- 10) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or sidewalk;
- 11) All hanging signs, awnings and other similar structures over streets and sidewalks, so situated so as to endanger public safety, or not constructed and maintained as provided by ordinance;
- 12) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;
- 13) Any barbed wire fence less than six feet above the ground and within three feet of a public sidewalk or way;
- 14) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;
- 15) Waste water cast upon or permitted to flow upon streets or other public properties;
- 16) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;
- 17) Any well, hole or similar excavation which is left uncovered or in another condition as to constitute a hazard to any child or other person coming on the premises where it is located;
- 18) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash of other materials;

- 19) The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over the substance;
- 20) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;
- 21) All other conditions or things which are likely to cause injury to the person or property of anyone.
- 22) Accumulation in the open. Accumulation in the open of broken or unused metal, wood, lumber, cement, electrical fixtures, plumbing fixtures, building materials (but excluding building materials awaiting use in construction or improvement presently in progress on the same premises), trash, debris, rubbish, in a manner conducive to the harboring of rats, mice, snakes, or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from such accumulation.

#### 55.05. DUTIES OF CITY OFFICERS.

A) The Police Department or Sheriff, if the City has at the time no Police Department, shall enforce the provisions relating to nuisances. Any peace officer shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.

## CHAPTER 56: WEEDS

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### 56.01. SHORT TITLE.

A) This chapter shall be cited as the Weed Chapter.

### 56.02. JURISDICTION.

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

### 56.03. DEFINITIONS; EXCLUSIONS.

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

- 1) **DESTRUCTION ORDER.** The notice served by the City Council or designated City official, in cases of appeal, on the property owner of the ordinance violation.
- 2) **PROPERTY OWNER.** The person occupying the property, the holder of legal title or a person having control over the property of another, such as a right-of-way, easement, license or lease.
- 3) **WEEDS, GRASSES and RANK VEGETATION.** Includes but is not limited to the following:
  - a) Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip;
  - b) Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated or otherwise maintained for two consecutive years;
  - c) Bushes of the species of tall, common, or European barberry, further known as berberis vulgaris or its horticultural varieties;

- d) Any weeds, grass or plants, other than trees, bushes, flowers or other ornamental plants, growing to a height exceeding 12 inches.
- e) Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennial plants.
- f) The term WEEDS does not include shrubs, trees, cultivated plants or crops.

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

#### 56.04. OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

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

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## CHAPTER 60: PARKS AND RECREATION

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### 60.01. RESERVATIONS.

A) The City parks shall be available for all of the people in the area for picnics. Reservations for the use of the City park shelter may be made through the Administrator/ Clerk-Treasurer or designee, and shall be granted in the order received. The grant of a reservation of the City park shelter shall not prohibit any other person from using park facilities other than the shelter during the same period as the reservation period.

### 60.02. OVERNIGHT USE.

A) The City parks shall not be used or occupied between 10:00 p.m. and 6:00 a.m. of the following day. Overnight camping or parking is prohibited, except by special permit obtained from the Administrator/Clerk-Treasurer.

### 60.03. VANDALISM.

A) No person shall remove, break, destroy, injure, mutilate, deface or damage in any way any structure, monument, statue, vase, foundation, fence, railing, flag pole, vehicle, bench, tree, shrub, fern, plant, flower, fireplace or other property in the parks.

### 60.04. NOISE.

A) Noises or obnoxious behavior reasonably tending to annoy other persons within or without the parks is prohibited.

## CHAPTER 61: LARGE ASSEMBLIES

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### 61.01. PURPOSE.

A) It is the purpose of the Council of the City to regulate the assemblage of large numbers of people, in excess of those normally needing the health, sanitary, fire, police, transportation and utility services regularly provided in the City, in order that the health, safety and welfare of all persons in the City, residents and visitors alike, may be protected.

### 61.02. DEFINITION.

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

- 1) ASSEMBLY. A company of persons gathered together at any location at any single time for any purpose.

### 61.03. PERMIT REQUIRED.

A) No person shall permit, maintain, promote, conduct, advertise, act as entrepreneur, undertake, organize, manage or sell or give tickets to an actual or reasonably anticipated assembly of 250 or more people, which continues or can reasonably be expected to continue for four or more consecutive hours, whether on public or private property, unless a permit to hold the assembly has first been issued by the City. A permit to hold an assembly issued to one person shall permit any person to engage in any lawful activity in connection with the holding of the permitted assembly.

B) A separate permit shall be required for each day and each location in which 250 people assemble or can reasonably be anticipated to assemble.

C) The fee for each permit shall be established as set by Council.

D) This chapter shall not apply to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum or other similar permanently established place of assembly for assemblies which do not exceed, by more than 50%, the maximum seating capacity of the structure where the show or exhibition is held.

E) This chapter shall not apply to activities conducted upon City ground or public property with the prior approval of the Council. The City shall make appropriate conditions on the use of the park and public property to assure compliance with the intent of this chapter.

#### 61.04. CONDITIONS OF ISSUANCE.

A) No permit shall be issued unless the applicant shall make provision of the following:

- 1) A fence or barrier, sufficient to prevent ingress/exit, except at established gates, completely enclosing the proposed location of sufficient height and strength to prevent people in excess of the maximum permissible number from gaining access to the assembly grounds, which shall have sufficient entrances and exits to allow easy movement into and out of the assembly grounds and provide traffic control onto established public road systems;
- 2) Potable water, meeting all federal and state requirements for sanitary quality, sufficient to provide drinking water for the maximum number of people to be assembled at the rate of at least one gallon per person per day and where the assembly is to continue for more than 12 hours, water for bathing at the rate of at least ten gallons per person per day, or portion of a day;
- 3) Enclosed toilets, meeting all state and local specifications, conveniently located throughout the grounds, sufficient to provide facilities for the maximum number of people to be assembled, in accordance with the State Board of Health Regulations and Standards;
- 4) A sanitary method of disposing of solid waste, in compliance with state and local laws and regulations, sufficient to dispose of the solid waste production of the maximum number of people to be assembled at the rate of at least two and one-half pounds of solid waste per person per day, together with a plan for holding and collecting all waste at least once each day of the assembly, and sufficient trash containers and personnel to perform tasks;
- 5) Physicians and nurses licensed to practice in the state sufficient to provide the average medical care enjoyed by residents of the state for the maximum number of people to be assembled at the rate of at least one physician and nurse for every 1,000 people, together with an enclosed covered structure where treatment may be rendered, containing separately enclosed treatment rooms for each physician, and at least two emergency ambulances with attendants for each 1,000 people;
- 6) If the assembly is to continue during hours of darkness, illumination sufficient to light the entire area of the assembly, but not to shine unreasonably beyond the boundaries of the enclosed location of the assembly;
- 7) A parking area sufficient to provide parking space for the maximum number of people to be assembled at the rate of at least one parking space for every four persons;

- 8) If the assembly is to continue overnight, camping facilities in compliance with all state and local requirements, as set forth in state statutes and regulations and ordinances of the City, sufficient to provide camping accommodations for the maximum number of people to be assembled;
- 9) Security and traffic and narcotics control plan which will meet the requirements of local authorities and the State Department of Public Safety; regularly employed off-duty state law enforcement officers or protective agents licensed in the state sufficient to provide adequate security for the maximum number of people to be assembled; (At least one security guard for every 100 people will be provided for the first 1,000 people to assemble. For assemblies of more than 1,000 people, additional security guards will be provided at the rate of one for each 250 people or major fraction thereof.)
- 10) Fire protection shall be provided by the sponsor which may include, but not be limited to fire alarms, extinguishing devices and fire lanes, and which shall be sufficient to meet all applicable state laws and local regulations which are in effect, or may be set forth by the political subdivision concerned; and sufficient emergency personnel to efficiently operate the required equipment will be provided by the sponsor;
- 11) All reasonably necessary precautions to insure that the sound of the assembly will not carry unreasonably beyond the enclosed boundaries of the location of the assembly;
- 12) Administrative control center with telephones where local authority can contact the sponsors and law enforcement personnel inside the assembly area;
- 13) Direction of pedestrians and vehicle traffic to prevent trespass on private abutting property;
- 14) Prevention on littering and deposit of waste materials on private and public property and clean-up of private and public property; and

#### 61.05. APPLICATION.

A) Application for a permit must be made at least 60 days in advance of an assembly. Each application shall be in writing and shall contain a statement made under oath or affirmation that the statements contained therein are true and correct to the best knowledge of the applicant and shall be signed and sworn to or affirmed by the individual making application in the case of a corporation, by all partners in the case of a partnership or by all officers of an unincorporated association, society or group, or, if there are no officers, by all members of the association, society or group.

B) Each application shall contain the following.

- 1) The name, date of birth, residence and mailing address of all persons required to sign the application, and in the case of a corporation, a certified copy of the articles of incorporation together with the name, date of birth, residence and

mailing address of each person holding 10% or more of the stock of the corporation;

- 2) The address or legal description of all property upon which the assembly is to be held, together with the name, residence and mailing address of the record owner(s) of all property;
- 3) Proof of ownership of all property upon which the assembly is to be held or a statement made upon oath or affirmation by the record owner(s) of all property that the applicant has permission to use the property;
- 4) The nature or purpose of the assembly;
- 5) The total number of days and/or hours during which the assembly is to last;
- 6) The maximum number of persons which the applicant shall permit to assemble at any time, not to exceed the maximum number which can reasonably assemble at the location of the assembly, in consideration of the nature of the assembly, or the maximum number of persons allowed to sleep within the boundaries of the location of the assembly by the zoning regulations of the City if the assembly is to continue overnight;
- 7) The maximum number of tickets to be sold, if any; and
- 8) The plans of the applicant to limit the maximum number of people permitted to assemble.

C) Attached to each application shall be complete plans for complying with the requirements in this Chapter.

D) Fee and Bond.

- 1) Each application shall be accompanied by payment in full of the permit fee.
- 2) The City reserves the right to require a bond or insurance policy, if such is required it must be attached to the application. Any person who violates any provision or condition of this Chapter shall forfeit an appropriate amount from the bond. No portion of the bond shall be released until all provisions of the permit agreement and this Chapter have been met.

E) Also, attached to each application shall be certified copies of any other necessary state license or permit.

#### 61.06. ISSUANCE.

A) The application for a permit shall be processed within 60 days of receipt and shall be issued if all conditions are complied with.

B) Ten days prior to the assembly, the City shall cause the premises to be inspected to determine whether the requirements of this chapter are met.

#### 61.07. WAIVER.

A) In cases deemed appropriate, the City may grant a waiver from any section of this chapter, where the waiver will not deter from the basic intent and purpose of this chapter.

#### 61.08. CONDUCT OF ASSEMBLY.

A) Each assembly permitted under this chapter shall be conducted in accordance with the following.

- 1) The permit shall allow assembly of only the maximum number of persons stated in the permit application. The permittee shall not sell tickets to or allow to assemble at the permitted location more than that number of persons.
- 2) The permit shall not allow the sound of the assembly to carry unreasonably beyond the enclosed boundaries of the location of the assembly. The City hereby adopts by reference the regulations of the State Pollution Control Agency Noise Pollution Control Section. Sound from the permitted activity shall not exceed the standard set for the protection of household or residential units.
- 3) In the event that any boundary of the permitted premises is within 500 feet of any residential dwelling, the permitted activity shall not be carried on between the hours of 8:00 p.m. and 8:00 a.m.
- 4) All persons sleeping during the night hours shall sleep only in a tent, camper, enclosed trailer, mobile home, building or similar enclosed item.

## CHAPTER 62: OPEN BURNING

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### 62.01. DEFINITIONS.

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

- 1) FIRE CHIEF, FIRE MARSHAL and ASSISTANT FIRE MARSHALS. The Fire Chief, Fire Marshal and Assistant Fire Marshals of the Fire Department which provides fire protection services to the City.
- 2) OPEN BURNING. The burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct or chimney, except a recreational fire, as defined herein. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices are not defined as OPEN BURNING.
- 3) RECREATIONAL FIRE.
  - a) A fire set with approved starter fuel no more than three feet in height, contained within the border of a recreational fire site using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans and air quality so that nuisance, health or safety hazards will not be created.
  - b) No more than one RECREATIONAL FIRE is allowed on any property at one time.
- 4) RECREATIONAL FIRE SITE.
  - a) An area of no more than a three foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural

rock, cement, brick, tile or blocks or ferrous metal only an which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces.

- b) Burning barrels are not a RECREATION FIRE SITE, as defined herein. RECREATIONAL FIRE SITES shall not be located closer than 25 feet to any structure.

- 5) STARTER FUELS. Dry, untreated, unpainted, kindling, branches, cardboard or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution must be used to start an open burn.

- 6) WOOD.

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

#### 62.02. PROHIBITED MATERIALS.

A) No person shall conduct, cause or permit open burning oils, petro fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, Sheetrock, wiring, paint or paint fillers.

B) No person shall conduct, cause or permit open burning of hazardous waste or salvage operations, open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment or building material generated from demolition of commercial or institutional structures.

C) No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

D) No person shall conduct, cause or permit open burning of any leaves or grass clippings.

#### 62.03. PERMIT REQUIRED FOR OPEN BURNING.

A) No person shall start or allow any open burning on any property in the City without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in this Chapter.

#### 62.04. PURPOSES ALLOWED FOR OPEN BURNING.

- A) Open burn permits may be issued only for the following purposes:

- 1) Elimination of fire of health hazard that cannot be abated by other practical means.
- 2) Ground thawing for utility repair and construction.
- 3) Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, landspreading or other alternative methods are not practical.
- 4) Disposal of diseased trees generated on site, diseased or infected nursery stock, diseased bee hives.
- 5) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.
- 6) Public Purpose bonfire held on public property by city officials for special events.

B) Fire Training permits can only issued by the State Department of Natural Resources.

#### 62.05. PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

A) Open burning permits shall be obtained by making application on a form prescribed the Department of Natural Resources (DNR) and adopted by the Fire Department. The permit application shall be presented to the Fire Chief, Fire Marshal and Assistant Fire Marshals for reviewing and processing those applications.

B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established by the City from time to time.

#### 62.06. PERMIT PROCESS FOR OPEN BURNING.

A) Upon receipt of the completed open burning permit application and permit fee, the Fire Chief, Fire Marshal or Assistant Fire Marshals shall schedule a preliminary site inspection to locate the proposed burn site, note special conditions and set dates and time of permitted burn and review fire safety considerations.

#### 62.07. PERMIT HOLDER RESPONSIBILITY.

A) Responsible For:

- 1) Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect.
- 2) Every open burn event shall be constantly attended by the permit holder or his or her competent representative.
- 3) The open burning site shall have available, appropriate communication and fire suppression equipment as set out in the fire safety plan.

- 4) The open burn fire shall be completely extinguished before the permit holder or his or her representative leaves the site.
- 5) No fire may be allowed to smolder with no person present.
- 6) It is the responsibility of the permit holder to have a valid permit, as required by this chapter, available for inspection on the site by the Police Department, Fire Department, MPCA representative or DNR forest officer.

B) The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and the burn event safety plan as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

#### 62.08. REVOCATION OF OPEN BURNING PERMIT.

A) The open burning permit is subject to revocation at the discretion of DNR forest officer, the Fire Chief, Fire Marshal or Assistant Fire Marshals.

B) Reasons for revocation include but are not limited to a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developing during the course of the burn, or a fire smoldering with no flame present.

#### 62.09. DENIAL OF OPEN BURNING PERMIT.

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

#### 62.10. BURNING BAN OR AIR QUALITY ALERT.

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

#### 62.11. RULES AND LAWS ADOPTED BY REFERENCE.

A) The provisions of M.S. §§ 88.16 to 88.22 and the Minnesota Uniform Fire Code, Minn. Rules Ch. 1510, as these statutes and rules may be amended from time to time, are hereby adopted by reference and made a part of this chapter as if fully set forth at this point.

## CHAPTER 63: GENERAL OFFENSES.

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### 63.01. WEAPONS AND FIREARMS.

#### A) No person shall do any of the following.

- 1) Recklessly handle or use a gun or other dangerous weapon or explosive so as to endanger the safety of another;
- 2) Intentionally point a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another;
- 3) Manufacture or use for any unlawful purpose any weapon known as a sling-shot or sand club;
- 4) Manufacture, transfer or possess metal knuckles or a switch blade knife opening automatically;
- 5) Possess any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another; and/or
- 6) Sell or have in his or her possession any device designated to silence or muffle the discharge of a firearm.

#### B) Age Limits.

- 1) No person shall, without the parent's or guardian's consent, furnish a child under 14 years of age a firearm or airgun of any kind or any ammunition or explosive.
- 2) No parent or guardian shall permit a child under 14 years of age to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind or any ammunition or explosive.
- 3) No person shall furnish a minor under 18 years of age with a firearm, airgun, ammunition or explosive without the written consent of his or her parent or guardian or of the Chief of Police.

C) No person shall shoot or discharge any firearm, air rifle, pellet gun or any other weapon within the City, nor shall any person cause any projectile to be fired from outside the City into the City, except as follows:

- 1) Persons duly authorized to act as law enforcement officers or members of the military forces of the country or the state in the discharge of their duties; or

- 2) Persons engaged in target, trap or skeet shooting at a target, trap, skeet range for which a permit has been issued by the Council. Prior to issuing a permit, the Council shall direct the designated law enforcement agency to investigate and report to the Council on the safety of the proposed range.

#### 63.02. CURFEW.

A) Purpose. The curfew for minors established by this section is maintained for four primary reasons:

- 1) To protect the public from illegal acts of minors committed during the curfew hours;
- 2) To protect minors from improper influences that prevail during the curfew hours, including involvement with gangs;
- 3) To protect minors from criminal activity that occurs during the curfew hours; and
- 4) To help parents control their minor children.

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

- 1) **EMERGENCY ERRAND.** A task that if not completed promptly threatens the health, safety or comfort of the minor or a member of the minor's household. The term shall include, but shall not be limited to seeking urgent medical treatment, seeking urgent assistance from law enforcement or Fire Department personnel and seeking shelter from the elements or urgent assistance from a utility company due to a natural or human-made calamity.
- 2) **OFFICIAL CITY TIME.** The time of day as determined by reference to the master clock used by the Police Department.
- 3) **PLACES OF AMUSEMENT, ENTERTAINMENT OR REFRESHMENT.** Those places that include, but are not limited to movie theaters, pinball arcades, shopping malls, nightclubs catering to minors, restaurants and pool halls.
- 4) **PRIMARY CARE or CUSTODY.** The person who is responsible for providing food, clothing, shelter and other basic necessities to the minor. The person providing primary care or custody to the minor shall not be another minor.
- 5) **SCHOOL ACTIVITY.** An event which has been placed on a school calendar by public or parochial school authorities as a school-sanctioned event.

C) Hours. No minor under the age of 18 years shall be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; nor in or upon places of amusement, entertainment or refreshment; nor in or upon any vacant lot, between the hours of 10:00 p.m. and 5:00 a.m. the following day, official City time.

D) Effect on control by adult responsible for minor. Nothing in this section shall be construed to give a minor the right to stay out until the curfew hours designated in this section if otherwise directed by a parent, guardian or other adult person having the primary care and custody of the minor; nor shall this section be construed to diminish or impair the control of the adult person having the primary care or custody of the minor.

E) Exceptions. The provisions of this section shall not apply in the following situations:

- 1) To a minor accompanied by his or her parent or guardian or other adult person having the primary care and custody of the minor;
- 2) To a minor who is upon an emergency errand at the direction of his or her parent, guardian or other adult person having the primary care and custody of the minor;
- 3) To a minor who is in any of the places described in this section if in connection with or as required by an employer engaged in a lawful business, trade, profession or occupation or to a minor traveling directly to or from the location of the business trade, profession or occupation and the minor's residence; (Minors who fall within the scope of this exception shall carry written proof of employment and proof of the hours the employer requires the minor's presence at work.)
- 4) To a minor who is participating in or traveling directly to or from an event which has been officially designated as a school activity by public or parochial school authorities or who is participating in or traveling directly to or from an official activity supervised by adults and sponsored by the City, a civic organization, school, religious institution or similar entity that takes responsibility for the minor and with the permission of the minor's parent, guardian or other adult person having the primary care and custody of the minor;
- 5) To a minor who is passing through the City in the course of interstate travel during the hours of curfew;
- 6) To a minor who is attending or traveling directly to or from an activity involving the exercise of First Amendment rights of free speech, freedom of assembly or freedom of religion;
- 7) To minors on the sidewalk abutting his or her residence or abutting the residence of a next-door neighbor if the neighbor does not complain to the City's designated law enforcement provider about the minor's presence; or
- 8) To a minor who is married or has been married, or is otherwise legally emancipated.

F) Duties of person legally responsible for minor. No parent, guardian or other adult having the primary care or custody of any minor shall permit any violation of the requirements of this section by the minor.

G) Duties of other persons. No person operating or in charge of any place of amusement, entertainment or refreshment shall permit any minor to enter or remain in his or

her place of business during the hours prohibited by this section unless the minor is accompanied by his or her parent, guardian or other adult person having primary care or custody of the minor, or unless one of the exceptions to this section apply.

H) Defense. It shall be a defense to prosecution under this section that the owner, operator or employee of an establishment promptly notified the City's designated law enforcement provider that a minor was present on the premises of the establishment during curfew hours and refused to leave.

### 63.03. LURKING, LOITERING AND PROWLING

A) Purpose and Applicability. To prohibit the lurking, loitering and prowling in the City of Montrose or to create circumstances to cause alarm

B) Prohibition. A person must not lurk, loiter or prowl in any place, at a time or in a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of persons or property in the vicinity.

C) Loitering: Intent to Commit Crime. A person must not in any public or private place lurk, loiter, prowl, lie in wait or be concealed with intent to commit any act prohibited by law.

D) Circumstances causing alarm. Among the circumstances that may be considered in determining whether alarm is warranted is the fact that the person or persons take flight upon the appearance of a deputy, refuse to identify themselves, endeavors to conceal him/herself or an object, that damage to persons or property have occurred in the past in the area where the person or persons are lurking loitering or prowling, or whether the persons have been previously advised by a Deputy not to lurk, loiter, or prowl at the same location under similar circumstances.

E) Authority to detain. A police officer may stop and briefly detain a person suspected of violating paragraph 1 if the person's behavior reasonably causes suspicion of criminal activity. The deputy's reasonable suspicion must be based on objective, articulable facts and reasonable inferences drawn from all the circumstances surrounding the person's behavior.

F) Opportunity to dispel alarm. Unless flight by the person or other circumstances make it impracticable, a police officer must, prior to any arrest or issuing of a citation for a violation of paragraph 1, allow the person to dispel any alarm which otherwise be warranted by requesting him or her to identify him/herself and explain his/her presence and conduct. An explanation of the person's presence and conduct will be sufficient to dispel alarm if it shows that the person was engaging in lawful activity consistent with his/her actions and all of the circumstances surrounding his/her behavior, and that the explanation is reasonable and believable to the Deputy based upon his experience with the persons or location in question.

G) Requisites for conviction. A person may not be convicted of violating this Section if:

- 1) no Deputy gave the person the opportunity provided in subdivision 4 to dispel the alarm created by his/her actions; or

- 2) the finder-of –fact determines that the Deputy should have accepted the person’s explanation as sufficient to dispel alarm.

#### 63.04. PUBLIC DRINKING.

A) No person shall consume intoxicating liquor or 3.2% malt liquor on any public sidewalk or street or in a vehicle upon a public street.

B) No person shall have, in his or her possession, intoxicating liquor or 3.2% malt liquor in an open container on any public sidewalk or street or in a vehicle upon a public street.

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## CHAPTER 70: PEDDLERS AND SOLICITORS

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### 70.01. DEFINITIONS.

A) Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

#### 1) PEDDLER.

a) A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personnel property that the person is carrying or otherwise transporting.

b) The term PEDDLER shall mean the same as the term HAWKER.

2) PERSON. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term shall include each member, officer, partner, associate, agent or employee.

#### 3) REGULAR BUSINESS DAY.

a) Any day during which the City Hall is normally open for the purpose of conducting public business.

b) Holidays, defined by state law, shall not be counted as REGULAR BUSINESS DAYS.

#### 4) SOLICITOR.

a) A person who goes from house-to-house, door-to-door, business-to-business, street-to-street or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property or services of which he or she may be carrying or transporting samples, or that may be described in a

catalog or by other means, and for which delivery or performance shall occur at a later time.

- b) The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term CANVASSER.
- 5) **TRANSIENT MERCHANT.** A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days.

#### 70.02. EXCEPTIONS TO DEFINITIONS.

A) For the purpose of the requirements of this chapter, the terms PEDDLER, SOLICITOR and TRANSIENT MERCHANT shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.

B) In addition, persons conducting the type of sales commonly known as garage sales, rummage sales or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of PEDDLERS, SOLICITORS and TRANSIENT MERCHANTS, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

#### 70.03. LICENSING; EXEMPTIONS.

A) County license authorized. No person shall conduct business as a peddler, solicitor or transient merchant within the City limits without first having obtained the appropriate license from the county, if the county licenses peddlers, solicitors or transient merchants, as authorized by M.S. Ch. 329 as it may be amended from time to time.

B) City license required. Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the City. Solicitors need not be licensed, but are still required to register pursuant to this Chapter.

C) Application. Application for a City license to conduct business as a peddler or transient merchant shall be made at least 14 regular business days before the applicant desires

to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Administrator/Clerk-Treasurer. All applications shall be signed by the applicant. All applications shall include the following information.

- 1) Applicant's full legal name;
- 2) All other names under which the applicant conducts business or to which applicant officially answers;
- 3) A physical description of the applicant, such as hair color, eye color, height, weight, distinguishing marks and features and the like;
- 4) Full address of applicant's permanent residence;
- 5) Telephone number of applicant's permanent residence;
- 6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent;
- 7) Full address of applicant's regular place of business, if any;
- 8) Any and all business related telephone numbers of the applicant;
- 9) The type of business for which the applicant is applying for a license;
- 10) Whether the applicant is applying for an annual or daily license;
- 11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the City, maximum 14 consecutive days;
- 12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the City, including the location where a transient merchant intends to set up business;
- 13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses;
- 14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant;
- 15) Proof of any requested county license;
- 16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant;
- 17) A general description of the items to be sold or services to be provided;
- 18) All additional information deemed necessary by the City Council;

19) The applicant's driver's license number or other acceptable form of identification;  
and

20) The license plate number, registration information and vehicle identification  
number for any vehicle to be used in conjunction with the licensed business and a  
description of the vehicle.

D) Fee. All applications for a license under this chapter shall be accompanied by the fee  
established by the Council.

E) Procedure.

1) Upon receipt of the completed application and payment of the license fee, the City  
Administrator/Clerk-Treasurer, within two regular business days, must determine  
if the application is complete. An application is determined to be complete only if  
all required information is provided.

2) If the City Administrator/Clerk- Treasurer determines that the application is  
incomplete, the City Administrator/Clerk-Treasurer must inform the applicant of  
the required necessary information that is missing. If the application is complete,  
the City Administrator/Clerk-Treasurer must order any investigation, including  
background checks, necessary to verify the information provided with the  
application.

3) Within ten regular business days of receiving a complete application, the City  
Administrator/Clerk-Treasurer must issue the license unless there exist grounds  
for denying the license under this Chapter, in which case the Administrator/  
Clerk-Treasurer must deny the license. If the City Administrator/Clerk-Treasurer  
denies the license, the applicant must be notified in writing of the decision, the  
reason for denial, and of the applicant's right to appeal the denial by requesting,  
within 20 days of receiving notice of rejection, a public hearing before the City  
Council.

4) The City Council shall hear the appeal within 20 days of the date of the request.  
The decision of the City Council following the public hearing can be appealed by  
petitioning the State Court of Appeals for a writ of certiorari.

F) Duration.

1) An annual license granted under this chapter shall be valid for one calendar year  
from the date of issue.

2) All other licenses granted under this chapter shall be valid only during the time  
period indicated on the license.

G) License exemptions.

1) No license shall be required for any person to sell or attempt to sell, or to take or  
attempt to take orders for, any product grown, produced, cultivated or raised on  
any farm.

- 2) No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when the activity is for the purpose of exercising that person's state or federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
- 3) Professional fund-raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

#### 70.04. LICENSE INELIGIBILITY.

- A) The following shall be grounds for denying a license under this chapter.
- 1) The failure of the applicant to obtain and show proof of having obtained any required county license;
  - 2) The failure of the applicant to truthfully provide any of the information requested by the City as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application;
  - 3) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner; (Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices and any form of actual or threatened physical harm against another person.)
  - 4) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant; and/or
  - 5) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

#### 70.05. LICENSE TRANSFERABILITY.

A) No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

#### 70.06. REGISTRATION.

A) All solicitors, and any person exempt from the licensing requirements of this chapter, shall be required to register with the City. Registration shall be made on the same form required for a license application, but no fee shall be required.

B) Immediately upon completion of the registration form, the City Administrator/Clerk-Treasurer shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferable.

#### 70.07. PROHIBITED ACTIVITIES.

A) No peddler, solicitor or transient merchant shall conduct business in any of the following manners.

- 1) Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out or by any other noise, so as to be unreasonably audible within an enclosed structure;
- 2) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way;
- 3) Conducting business in a way as to create a threat to the health, safety and welfare of any individual or the general public;
- 4) Conducting business before 7:00 a.m. or after 9:00 p.m.;
- 5) Failing to provide proof of license or registration, and identification, when requested, or using the license or registration of another person;
- 6) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement; and (No peddler, solicitor or transient merchant shall claim to have the endorsement of the City solely based on the City having issued a license or certificate of registration to that person.)
- 7) Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

#### 70.08. EXCLUSION BY PLACARD.

A) No peddler, solicitor or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors or Transient Merchants," or "Peddlers, Solicitors and Transient Merchants Prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section.

## CHAPTER 71: AMUSEMENTS

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### 71.01. DEFINITIONS.

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

- 1) AMUSEMENT CENTER. Any place wherein any person operates four or more machines for public use upon premises solely within one enclose. Premises licensed as a liquor establishment may not be an AMUSEMENT CENTER and are not eligible for a license.
- 2) MACHINE. A mechanical amusement device of any of the following types.
  - a) A machine or contrivance, including electric game, pinball machines, mechanical pool tables, foos ball, bowling machines, shuffle boards, electric rifle or gun ranges, miniature mechanical devices and games or amusements patterned after baseball, basketball, hockey and similar games and like devices, machines or games which may be played solely for amusement and not as a gambling device and which devices or games are played by the insertion of a coin or coins or at a fee fixed and charged by the establishment in which the devices or machines are located, and which contain no automatic pay-off devices for the return of coins, merchandise, checks, takers or any other thing or item of value; provided, however, that the machine may be equipped to permit a free play or game.
  - b) Amusement devices designed for and used exclusively as rides by children, such as, but not limited to kiddie cars, miniature airplane rides, mechanical horses and other miniature mechanical. devices not operated as a part of or in connection with any carnival, circus, show or other entertainment or exhibition.

### 71.02. LICENSE REQUIRED.

A) No person shall own, operate or permit operation of a machine and/or an amusement center on premises owned, leased or operated by him or her, or engage in the business of operating an amusement center, in the City unless an amusement center or machine license has been obtained.

B) Nothing in this chapter shall be construed to require licensing of coin-operated music boxes, more commonly known as jukeboxes. Nothing in this chapter shall be held to apply to any machine held or kept for sale or storage and which is not actually in use or displayed for use.

#### 71.03. APPLICATION.

A) The application for the licenses shall contain the following information:

- 1) Name and address of the applicant, age, date and place of birth;
- 2) Prior convictions for violation of law of applicant, if any;
- 3) Place where machine or device is to be displayed or operated and the business conducted at that place;
- 4) If the interest of the applicant be that of a corporation or other business entity, the names of any persons having a 5% or more interest in the business entity shall be listed; and
- 5) For all amusement centers, the applicant shall provide proof of general liability insurance in a form acceptable to the City. The insurance shall provide minimum coverage of \$300,000 per occurrence and \$100,000 per individual and \$50,000 property damage.

#### 71.04. ISSUANCE.

A) A copy of each application for license shall be referred to the designated law enforcement agency. The designated law enforcement agency or its designee shall investigate the location wherein it is proposed to operate the amusement center and shall ascertain if the applicant is of good moral character. On the basis of his or her investigation, the Police Department shall recommend either approval or denial of the license. The completed application, together with the Police Department's report and recommendation, shall be presented to the Council which shall, in its discretion, grant or refuse the license.

#### 71.05. TERM AND FEE.

A) Licenses for amusement centers and machines shall cover an annual period from July 1 to June 30. The license fee shall be established pursuant hereto. The initial license fee for each applicant shall be prorated as of the date of the application.

#### 71.06. DISPLAY OF LICENSE.

A) The license shall be posted permanently and conspicuously at the location the machine in the premises wherein the device is to be operated or maintained to be operated.

#### 71.07. LOCATION OF MACHINES.

A) No machine shall be located, placed, maintained or operated on any public street, avenue, boulevard, lane, alley or other public ground within the City. No machine shall be so located that its operation will create a nuisance.

#### 71.08. GAMBLING RESTRICTIONS.

A) No machine shall be so constructed, maintained or operated as to be capable of taking more than one coin, token or plug per player for any one game.

B) It shall be unlawful for the owner of any machine; or for the owner or operator of any establishment where it is located, to permit the same to be used for gambling or for the making of bets or wagers.

C) It shall be unlawful for the licensee or for the owner or operator of the establishment where the machine is located to give any money, token, merchandise or any other thing of value or any reward or prize in lieu of free games registered on the machine, and all free games so registered shall be played on the machine registering the free games, and there shall be no device on the machine whereby the operator can cancel registered free games.

D) No person shall keep, maintain, sell or permit to be operated in his or her place of business any machine which has been converted into an automatic pay-off device which shall automatically award money, prizes, tokens, merchandise, gifts or anything of value, other than free games to the operator or player of the machine. No person shall convert any machine into an automatic pay-off device.

E) Any machine which shall have been made use of in violation of this Section may be seized and destroyed in compliance with the provisions of the statutes of the state relating to gambling devices.

#### 71.09. AMUSEMENT CENTER RESTRICTIONS.

A) Days and Hours.

- 1) Amusement centers shall be closed at 10:00 p.m. on Sunday through Thursday and at 12:00 a.m. on Friday and Saturday evenings.
- 2) Amusement centers shall not open until 9:00 a.m. on weekdays or until 12:00 p.m. on Sundays.

B) No amusement center nor any coin-operated amusement device or coin-operated musical device therein shall be operated so as to constitute a public nuisance.

C) It shall be the responsibility of the licensee to maintain order on the licensed premises at all times.

D) Overcrowding.

- 1) It shall be the responsibility of the licensee to see that the license premises do not become overcrowded so as to constitute a hazard to the health or safety of persons therein.
- 2) The Fire Chief may designate the maximum number of persons to be permitted on the licensed premises.

E) The licensee shall provide reasonable adult supervision, with a minimum of one, taking into consideration the number of machines and patrons, and the number, nature, type and proximity of other businesses in the premises or in the vicinity.

F) It shall be unlawful for any person engaged in the business of operating an amusement center to sell, offer for sale or knowingly permit to be sold or offered for sale or to be dispensed or consumed or knowingly brought on the licensed premises any alcoholic beverages, controlled substances or to knowingly allow any illegal activity upon the licensed premises.

G) No food or beverages shall be sold or dispensed upon the licensed premises without special approval by the Council.

H) The licensee of an amusement center shall not permit intoxicated persons to remain on the premises.

## CHAPTER 72: JUNK YARDS AND BUSINESSES

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### 72.01. DEFINITIONS.

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

- 1) JUNK. Any old, used or second hand materials of any kind, including, but not limited to cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, brass, copper or other metals, furniture, unlicensed, used and inoperative boats and motor vehicles or parts thereof, used and inoperative agricultural and construction equipment, or parts thereof, building materials or any other article which from its worn condition renders it useless for the purpose for which it was made and which is commonly classed and referred to as JUNK.
- 2) JUNK BUSINESS. The keeping, conducting or maintaining of any building, structure, yard or place for keeping, storing or piling in commercial quantities, whether temporarily, irregularly or continually, or the buying and selling at retail or wholesale or dealing in any junk.
- 3) JUNK DEALER. Any person engaged in the junk business.
- 4) JUNK YARD. Any building, structure, yard or place in or upon which is kept, stored or piled in commercial quantities, whether temporarily, irregularly or continually any junk.
- 5) PERSON. Natural persons, corporations, partnerships and unincorporated associations.

### 72.02. LICENSE REQUIRED.

A) No junk dealer shall henceforth engage in the junk business within the City limits, without first obtaining a license pursuant to this chapter.

### 72.03. APPLICATION.

A) Every applicant for a license to engage in the junk business shall file with the City Administrator/ Clerk-Treasurer a written application to be supplied by the City, signed by the applicant and accompanied by a license fee established pursuant hereto.

B) The application shall state:

- 1) The natives and residences of the applicants or its or their principal offices and their residences if the applicant is an association or corporation;
- 2) The detailed nature of the business to be conducted and the kind of materials to be collected, stored, bought, sold or otherwise handled; and
- 3) The premises where the business or activity is to be located or carried on.

#### 72.04. INSPECTION.

A) The City Administrator/Clerk-Treasurer shall report the application to the Fire Chief and Building Inspector, who shall inspect or cause to be inspected the premises to determine whether they are appropriate for carrying on the junk business in terms of whether there is or will be compliance with all laws and ordinances and whether a fire, health or safety hazard would be created by the activity. The City officers shall report their findings to the City Council at its next regular meeting.

#### 72.05. TERM OF LICENSE.

A) The City Council shall act upon all applications and its discretion shall grant a license to conduct the junk business for a period not to exceed one year. After expiration of one year, the applicant must resubmit a new application pursuant to this chapter.

#### 72.06. PREMISES REQUIREMENTS.

A) The following general operating requirements shall apply to all junk dealers license in accordance with this chapter.

- 1) The license issued pursuant hereto shall be plainly displayed on the business premises.
- 2) The premises on which the junk business is carried on shall, at all times, be maintained in a sanitary condition.
- 3) No land or space, not covered by the license, shall be used in the licensed business.
- 4) No water shall be allowed to stand in any place on the premises in a manner as to afford a breeding place for mosquitoes.
- 5) Weeds and vegetation on the premises, other than trees and shrubs, shall be kept at a height of not more than four inches.
- 6) No garbage or waste liable to give off a foul odor or attract vermin shall be kept on the premises.
- 7) No junk shall be allowed to rest upon or protrude over any public street, sidewalk or become scattered or blown off the business premises.

- 8) There shall be maintained a so-called buffer zone of not less than ten feet between any public street or right-of-way bordering the licensed premises and the area on the licensed premises wherein the licensee keeps, stores or piles the junk or articles for sale, within which buffer zone no junk shall be kept, stored or piled. The buffer zone shall be landscaped with the planting of appropriate grass and/or sod and trees and shrubbery which shall be maintained and kept by the licensee in a presentable appearance.
- 9) Junk shall be stored in piles not exceeding seven feet in height, and shall be arranged in a neat and tidy manner with accessways between rows sufficient to allow easy firefighting access to all areas of the premises wherein junk is kept, stored or piled.
- 10) No combustible material of any kind not necessary or beneficial to the licensed premises shall be kept on the premises; nor shall the premises be allowed to become a fire hazard.
- 11) All gasoline and oil shall be removed from any inoperative engines or motor vehicles on the premises.
- 12) No junk or material shall be burned on the premises.
- 13) No noisy processing of junk or other noisy activity shall be carried on in connection with the licensed premises on Sunday, Christmas, Easter, Thanksgiving or at anytime between the hours of 6:00 p.m. and 7:00 a.m.
- 14) The area on the premises where junk is kept, stored, piled other than indoors shall be enclosed, except for entrances and exits, with a solid vertical wall or fence of a minimum height of seven feet measured from ground level. There shall be not more than one entrance and exit of a width of not more than ten feet on any one side of the licensed premises. All entrances and exits shall have a closeable solid gate of a height not less than that of the fence itself.
- 15) The licensee shall permit inspection of the premises by any employee or agent of the City at any reasonable time.
- 16) No junk dealer licensed hereunder or his or her agent or employee shall purchase or receive any junk for use in the licensed business from any person under the age of 18 years without the written consent of a parent or guardian of the person.
- 17) No licensee shall allow the licensed premises to become a nuisance; nor shall any junk business be operated in a manner as to become injurious to the health, safety or welfare of the community or of any residents close by.

## CHAPTER 73: LAWFUL GAMBLING

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### 73.01. INTENT AND PURPOSE.

#### A) Authority and Fee.

- 1) M.S. Ch. 349, as it may be amended from time to time, provides that the State Gambling Control Board is authorized to license certain organizations, as defined by the law to conduct lawful gambling within the City.
- 2) M.S. § 349.213, as it may be amended from time to time, empowers the City to require a permit for organizations conducting lawful gambling which are exempt from licensing, pursuant to M.S. § 349.166, as it may be amended from time to time, and to charge a fee for the permit.
- 3) The requirement for a permit is hereby instituted within the City and a permit fee of \$100 is hereby established.

#### B) Authority; Intent and Purpose.

- 1) M.S. Ch. 349, as it may be amended from time to time, allows the City to adopt more stringent regulations of any form of lawful gambling within its jurisdiction.
- 2) The intent and purpose of this chapter is to limit the organizations that are eligible to receive a lawful gambling license from the State Gambling Control Board.
- 3) Lawful gambling can be a nuisance-prone activity; it is more easily controlled by restricting the licenses to local organizations, or, in the alternative, if an organization, other than a local organization, is going to conduct lawful gambling, then it is reasonable and fair that at least a portion of the profits be used for lawful purposes within the City since the source of a majority of collected funds will be from residents of the City.

### 73.02. DEFINITIONS.

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

1) ORGANIZATION, LAWFUL GAMBLING and LAWFUL PURPOSES and PROFITS.

- a) The same meanings as defined in M.S. Ch. 349, as it may be amended from time to time.
- b) Further, any term that is defined in M.S. Ch. 349, as it may be amended from time to time, and that is also used in this chapter shall for the purpose of this chapter have the same meaning as defined by the statutes.

73.03. ELIGIBLE ORGANIZATION.

A) An organization shall not be eligible to receive a lawful gambling license from the Minnesota Charitable Gambling Control Board unless the organization meets all of the requirements imposed by state law and unless the organization meets at least one of the following four conditions unless otherwise specified:

- 1) The organization has at least 15 members that are residents of the City; or
- 2) The physical site for the organization's headquarters or the registered business office of the organization is located within the City and has been located within the City for at least two years immediately preceding application for a license; or
- 3) The organization owns real property within the City and the lawful gambling is conducted on the property owned by the organization within the City; or
- 4) The physical site where the organization regularly holds its meetings and conducts its activities, other than lawful gambling and fund raising, is within the City and has been located within the City for at least two years immediately preceding application for a license.

B) If an organization meets all of the requirements imposed by state law but does not meet at least one of the conditions set forth above then the organization may, nevertheless, be eligible to receive a lawful gambling license from the Minnesota Charitable Gambling Control Board but only for the sole and limited purpose of conducting lawful gambling at one lawful gambling occasion per license year. The occasion shall not be longer than 72 continuous hours.

C) In addition, if an organization meets all of the requirements imposed by state law but does not meet at least one of the conditions set forth above then the organization may, nevertheless be eligible to receive, at the discretion of the City Council, a lawful gambling license from the Minnesota Charitable Gambling Control Board if:

- 1) The new organization is seeking a lawful gambling license to replace the operations of an organization that received a previously issued lawful gambling license under this chapter, and the organization has permanently ceased its charitable gambling operation; and
- 2) There are no organizations that meet all of the requirements imposed by state law and meet at least one of the four conditions set forth above, willing to apply for a

lawful gambling license to replace the operations of the organization which was previously issued a lawful gambling license under this chapter and has permanently ceased its charitable gambling operation.

D) Any organization which purports to meet one of the conditions set forth above shall certify, in writing, on its application which condition or conditions are being met.

E) In addition to the above, all organizations shall not be eligible to receive a lawful gambling license until they certify which of the four condition(s) are being met. Further, all organizations receiving the licenses shall comply with the following guidelines for spending gambling profits.

- 1) Twenty percent of the profits may be spent for lawful purposes and authorized expenses.
- 2) Eighty percent of the profits must be spent within the designated trade area.
- 3) Fifty percent of the profits must be spent within the corporate limits of the City.

F) Additional Requirements.

- 1) The designated trade area for purposes of this chapter is immediately adjacent cities and townships.
- 2) The expenditures shall be made within the designated areas prescribed above within six months after a lawful gambling event, and the organization shall certify in writing to the Board and City that the required percentages of profit have been expended and the manner in which it has been expended.
- 3) Each organization receiving a lawful gambling license must supply the City with a yearly audit of gambling by July 1 of each year.

#### 73.04. APPLICABILITY.

A) This chapter shall apply to and govern all original and renewal licenses for which application is made after the effective date of this chapter.

#### 73.05. DISAPPROVAL.

A) Nothing contained in this chapter shall be deemed to limit the City Council's authority to disapprove a license for lawful gambling.

#### 73.06. GAMBLING CONTROL BOARD; FILING.

A) This chapter shall be filed with the State Charitable Gambling Control Board.

#### 73.07. BACKGROUND INFORMATION.

A) A copy of all applications and reports required by and submitted to the State Charitable Gambling Control Board shall also be submitted to the City within seven days after they are submitted to the Board.

## CHAPTER 74: ADULT BUSINESSES

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### 74.01. FINDINGS AND PURPOSE.

A) Studies conducted by the State Attorney General, the American Planning Association and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Hopkins, Minnesota; Ramsey, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; and Seattle, Washington, have studied the impacts that adult establishments have in those communities.

B) These studies have concluded that adult establishments have adverse impacts on the surrounding neighborhoods.

C) These impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks.

D) Based on these studies and findings, the City Council concludes:

- 1) Adult establishments have adverse secondary impacts of the types set forth above;
- 2) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by geographic, licensing and health requirements;
- 3) It is not the intent of the City council to prohibit adult establishments from having a reasonable opportunity to locate in the City;
- 4) M.S. § 462.357, as it may be amended from time to time, allows the City to adopt regulations to promote the public health, safety, morals and general welfare; and
- 5) The public health, safety, morals and general welfare will be promoted by the City adopting regulations governing adult establishments.

### 74.02. DEFINITIONS.

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

1) ADULT ESTABLISHMENT.

- a) Any business that is conducted exclusively for the patronage of adults and that excludes minors from patronage, either by operation of law or by the owners of the business;
- b) Any business that devotes 25% or more of its floor area (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public) to items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, discussing or relating to specified sexual activities or specified anatomical areas; or
- c) Any business that engages in any adult use as defined herein.

2) ADULT USE. Any of the following activities or businesses.

- a) **ADULT BODY PAINTING STUDIO.** An establishment or business that provides the service of applying paint, ink or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.
- b) **ADULT BOOKSTORE.** An establishment or business used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film, if:
  - i The business 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
  - ii Twenty-five percent or more of the floor area of the business (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public) is devoted to items, merchandise or other materials distinguished or characterized by an emphasis on material depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas.
- c) **ADULT CABARET.** A business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on:
  - i The depiction of specified sexual activities or specified anatomical areas; or
  - ii The presentation, display or depiction of matter that seeks to evoke, arouse or excite sexual or erotic feelings or desire.
- d) **ADULT COMPANIONSHIP ESTABLISHMENT.** A business or establishment that excludes minors by reason of age, and that provides the

service of engaging in or listening to conversation, talk or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

- e) **ADULT CONVERSATION/RAP PARLOR.** A business or establishment that excludes minors by reason of age, and that provides the services of engaging in or listening to conversation, talk or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- f) **ADULT HEALTH/SPORT CLUB.** A health/sport club that excludes minors by reason of age, and that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- g) **ADULT HOTEL OR MOTEL.** A hotel or motel that excludes minors by reason of age, and that presents material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- h) **ADULT MASSAGE PARLOR/ HEALTH CLUB.** A massage parlor or health club that excludes minors by reason of age, and that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- i) **ADULT MINI-MOTION PICTURE THEATER.** A business or establishment with a capacity of less than 50 persons that presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- j) **ADULT MODELING STUDIO.** A business or establishment that provides figure models who, with the intent of providing sexual stimulation or sexual gratification, engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted.
- k) **ADULT MOTION PICTURE ARCADE.** Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are used 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.
- l) **ADULT MOTION PICTURE THEATER.** A motion picture theater with a capacity of 50 or more persons that as a prevailing practice excludes minors by reason of age or that as a prevailing practice presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

- m) **ADULT NOVELTY BUSINESS.** An establishment or business that devotes 25% or more of its floor area (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public) to items, merchandise or if the business not open to the public, to items, merchandise or devices that either simulate specified sexual activities or specified anatomical areas or are designed for sexual stimulation.
  - n) **ADULT SAUNA.** A sauna that excludes minors by reason of age, and that provides a steam bath or heath bathing room used for the purpose of bathing, relaxation or reducing, 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, if the building or portion of a building restricts minors by reason of age and 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.
- 3) **NUDE or SPECIFIED ANATOMICAL AREAS.**
- a) Less than completely and opaquely covered human genitals, pubic regions, buttocks, anuses or female breasts below a point immediately above the top of the areola; and
  - b) Human male genitals in a discernable turgid state, even if completely and opaquely covered.
- 4) **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 a sexual relationship, the use of excretory functions in the context of a sexual relationship, anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio; necrophilia, pederasty, pedophilia, piquerism, sapphism or zooerastia;
  - 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 regions, buttocks or female breasts;

- e) Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding or other physical restraints of any person;
- f) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
- g) Human excretion, urination, menstruation or vaginal or anal irrigation.

#### 74.03. LOCATION.

A) An adult establishment may not be located within 600 feet of any residentially-zoned property boundary or any church site, school site, day-care facility or park. An adult establishment may not be located within 1,000 feet of another adult establishment. For the purposes of this section, this distance is a horizontal measurement from the main public entrance of the adult establishment to the nearest point of a residentially-zoned property boundary, the property line of a church site, school site, day-care facility or park and the main public entrance of another adult establishment.

#### 74.04. HOURS OF OPERATION.

A) An adult establishment may not be open to the public between the hours of 10:00 p.m. and 8:00 a.m.

#### 74.05. ADULT CABARETS; ADDITIONAL PROVISIONS.

A) The following additional conditions apply to adult cabarets.

- 1) An owner, operator or manager of an adult cabaret may not allow any dancer or other live entertainer to display specified anatomical areas or to display or perform specified sexual activities on the premises of the adult cabaret.
- 2) A dancer, live entertainer, performer, patron or any other person may not display specified anatomical areas in an adult cabaret.
- 3) The owner, operator or manager of an adult cabaret must provide the following information to the City concerning any person who dances or performs live entertainment at the adult cabaret: the person's name, home address, home telephone number, date of birth and any aliases.

#### 74.06. LICENSE REQUIRED.

A) A person may not own or operate an adult establishment without having first secured a license as provided for in this section. Notwithstanding any other provision of this code to the contrary, the procedures set forth in this section establish the exclusive method for obtaining an adult establishment license.

B) The application for an adult establishment license must be submitted on a form provided by the City and must include:

- 1) If the applicant is an individual, the name, residence, phone number and birth date of the applicant; if the applicant is a partnership, the name, residence, phone number and birth date of each general and limited partner; if the applicant is a corporation, the names, residences, phone numbers and birth dates of all persons holding more than 5% of the issued and outstanding stock of the corporation;
- 2) The name, address, phone number and birth date of the operator and manager of the adult establishment, if different from the owner's;
- 3) The address and legal description of the premises where the adult establishment is to be located;
- 4) A statement detailing any gross misdemeanor or felony convictions relating to sex offenses, obscenity or the operation of an adult establishment or adult business by the applicant, operator or manager, and whether or not the applicant, operator or manager has ever applied for or held a license to operate a similar type of business in another community; (In the case of a corporation, a statement detailing any felony convictions by the owners of more than 5% of the issued outstanding stock of the corporation, and whether or not those owners have ever applied for or held a license to operate a similar type of business in another community.)
- 5) The activities and types of business to be conducted;
- 6) The hours of operation;
- 7) The provisions made to restrict access by minors; and
- 8) A building plan of the premises detailing all internal operations and activities.

C) The license fee provisions for adult use establishments are as follows.

- 1) The annual license fee is set by Council resolution.
- 2) An application for a license must be submitted to the City Administrator/Clerk-Treasurer and accompanied by payment of the required license fee. Upon rejection of an application for a license, the City will refund the license fee.
- 3) Licenses will expire on December 31 of each year. Each license will be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rated fee. In computing a pro rated fee, any unexpired fraction of a month will be counted as one month.
- 4) No part of the fee paid by any license will be refunded, except that a pro rata portion of the fee will be refunded in the following instances upon application to the City Council within 30 days from the happening of one of the following

events, provided that the event occurs more than 30 days before the expiration of the license:

- a) Destruction or damage of the licensed premises by fire or other catastrophe;
  - b) The licensee's illness, if the illness renders the licensee unable to continue operating the licensed adult establishment;
  - c) The licensee's death; or
  - d) A change in the legal status making it unlawful for the licensed business to continue.
- 5) An application must contain a provision in bold print indicating that withholding information or providing false or misleading information will be grounds for denial or revocation of a license. Changes in the information provided on the application or provided during the investigation must be brought to the attention of the City Council by the applicant or licensee. If a change takes place during the investigation, it must be reported to the Police Chief or the City Administrator/Clerk-Treasurer in writing and they will report it to the City Council. A failure by an applicant or licensee to report a change may result in a denial or revocation of a license.

D) The investigative fee for an adult establishment license is established by Council resolution.

E) The procedures for granting an adult establishment license are as follows.

- 1) The Chief of Police will conduct and complete an investigation within 30 days after the City Administrator/Clerk-Treasurer receives a complete application and all license and investigative fees.
- 2) If the application is for a renewal, the applicant will be allowed to continue business until the City Council has determined whether to renew or refuse to renew a license.
- 3) If, after the investigation, it appears that the applicant and the place proposed for the business are eligible for a license, then the license will be issued by the City Council within 30 days after the investigation is completed. If the City Council fails to act within 30 days after the investigation is completed, the application will be deemed approved.
- 4) Non Transferable; Annual.
  - a) A license will be issued to the applicant only and is not transferable to another holder. Each license will be issued only for the premises described in the application.

- b) A license may not be transferred to another premise without the approval of the City Council. If the licensee is a partnership or a corporation, a change in the identity of any partner or holder of more than 5% of the issued and outstanding stock of the corporation will be deemed a transfer of the license.
  - c) Adult establishments existing at the time of the adoption of this section must obtain an annual license.
- F) A license will not be granted to or held by a person who:
  - 1) Is under 18 years of age;
  - 2) Who is overdue or whose spouse is overdue in payments to the City, county, or state of taxes, fees, fines or penalties assessed against them or imposed upon them;
  - 3) Who has been convicted or whose spouse has been convicted of a gross misdemeanor or felony or of violating any law of this state or local ordinance relating to sex offenses, obscenity offenses or adult establishments;
  - 4) Who is not the proprietor of the establishment for which the license is issued;
  - 5) Who is residing with a person who has been denied a license by the City or any other state municipal corporation to operate an adult establishment or residing with a person whose license to operate an adult establishment has been suspended or revoked within the preceding 12 months; or
  - 6) Who has not paid the license and investigative fees required by this section.
- G) An adult establishment license will not be granted for:
  - 1) Any adult establishment on premises where the applicant or any of its officers, agents or employees has been convicted of a violation of this chapter or where a license hereunder has been revoked for cause, until one year has elapsed after the conviction or revocation; or
  - 2) Any adult establishment that is not in full compliance with the City code and all provisions of state and federal law.
- H) A license is subject to the provisions of this chapter and of any applicable sections of the City code and all provisions of state and federal law.
- I) Licensed premises must have the license posted in a conspicuous place at all times.
- J) A minor may not be permitted on the licensed premises.
- K) Any designated inspection officer of the City has the right to enter, inspect and search the premises of a licensee during business hours.

L) The licensee is responsible for the conduct of the licensed place of business and must maintain conditions of order.

M) Adult goods or materials may not be offered, sold, transferred, conveyed, given or bartered to a minor, or displayed in a fashion that allows them to be viewed by a minor, whether or not the minor is on the licensed premises.

N) Records.

- 1) The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction.
- 2) At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase price or rental price and a detailed description of the item or merchandise that is being purchased or rented.
- 3) These written records must be provided to the City upon request.

#### 74.07. HIGH RISK SEXUAL CONDUCT

A) Findings and Purpose; The City Council makes the following findings regarding the need to regulate commercial premises, buildings and structures that are conducive to the spread of communicable disease of danger to persons in order to further the substantial interest of public health.

- 1) The experience of other cities establishes that certain commercial premises, buildings and structures, or parts thereof, by reason of design and use of the premises, buildings or structures are conducive to the spread of communicable disease of danger to persons frequenting the premises, buildings or structures, as well as to the general public, and that the risk of spreading infectious and contagious diseases can be minimized by regulating the commercial premises, buildings and structures.
- 2) The experience of other cities where the premises, buildings and structures are present indicates that the risk of spreading the sexually transmittable disease of Acquired Immune Deficiency Syndrome (AIDS) is increased by the presence of the premises, buildings and structures, because the design or use of the premises, buildings and structures, or parts thereof can facilitate high-risk sexual conduct.
- 3) AIDS
  - a) Medical publications of the Center for Disease Control of the United States Department of Health and Human Services indicate that the sexually transmittable disease of AIDS is currently irreversible and uniformly fatal.
  - b) Medical research has further established that the risk factors for obtaining or spreading AIDS are associated with high risk sexual conduct.

- 4) Certain commercial premises, buildings and structures, or parts thereof, by reason of their design and use, are conducive to high-risk sexual conduct and hence the spread of communicable disease, and that the risk of spreading infectious and contagious diseases can be minimized by regulating these commercial premises, buildings and structures.
- 5) The public health, safety, morals and general welfare will be promoted by the City adopting regulations governing commercial premises, buildings and structures conducive to high-risk sexual conduct.
- 6) The purpose of these regulations is to prescribe regulations governing commercial premises, buildings, and structures that are conducive, by virtue of design and use, to high-risk sexual conduct which can result in the spread of sexually transmitted diseases to persons frequenting the premises, buildings and structures.

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

- 1) **BOOTHS, STALLS OR PARTITIONED PORTIONS OF A ROOM OR INDIVIDUAL ROOM.** Enclosures specifically offered to persons for a fee or as an incident to performing high-risk sexual conduct, or enclosures which are part of a business operated on the premises which offers movies or other entertainment to be viewed within the enclosure, including enclosures wherein movies or other entertainment is dispensed for a fee, but does not include enclosures that are private offices used by the owners, managers or persons employed by the premises for attending to the tasks of their employment, and which are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or other entertainment for a fee, and are not open to any persons other than employees.
- 2) **DOORS, CURTAINS or PORTAL PARTITIONS.** Full, complete, non-transparent closure devices through which one cannot see or view activity taking place within the enclosure.
- 3) **HAZARDOUS SITE.** Any commercial premises, building or structure, or any part thereof, which is a site of high-risk sexual conduct as defined herein.
- 4) **HIGH-RISK SEXUAL CONDUCT.** Fellatio, anal intercourse and vaginal intercourse with persons who engage in sexual acts in exchange for money.
- 5) **OPEN TO AN ADJACENT PUBLIC ROOM SO THAT THE AREA INSIDE IS VISIBLE TO PERSONS IN THE ADJACENT PUBLIC ROOM.** The absence of any entire door, curtain or portal partition or a door or other device which is made of clear, transparent material such as glass, plexiglass or other similar material meeting building code and safety standards, which permits the activity inside the enclosure to be entirely viewed or seen by persons outside the enclosure.
- 6) **PUBLIC HEALTH OFFICIAL.** An agent or employee of the City, county or state charged with the enforcement of the state or local health laws.

C) Public Health Regulations.

- 1) A commercial building, structure, premises or part thereof or facilities therein may not be constructed, used, designed or operated in the City for the purpose of engaging in, or permitting persons to engage in sexual activities which include high-risk sexual conduct.
- 2) It is unlawful to own, operate, manage, rent, lease or exercise control of a commercial building, structure, premises or portion or part thereof in the City, that contains:
  - a) Partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity, including but not limited to vaginal intercourse, anal intercourse or fellatio, between persons on either side of the partition; or
  - b) Booths, stalls or partitioned portions of a room or individual room, as defined herein, which have doors, curtains or portal partitions, as defined herein, unless the booths, stalls or partitioned portions of a room or individual room have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room as defined herein. Booths, stalls or partitioned portions of a room or individual room that are so open to an adjacent public room must be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but the lighting need not be of the intensity as to prevent the viewing of the motion pictures or other offered entertainment.

D) Exceptions. The regulations set forth in this section do not apply to premises, buildings or structures that are lawfully operating and licensed as hotels, motels, apartment complexes, condominiums, townhomes or boarding houses which are subject to other general health and sanitation requirements under state and local law.

E) Health Enforcement Powers

- 1) In exercising powers conferred by this or any other section of this code relating to communicable diseases, the Public Health Official is to be guided by the most recent instructions, opinions and guidelines of the Center for Disease Control of the United States Department of Health and Human Services that relate to the spread of infectious diseases.
- 2) In order to ascertain the source of infection and reduce its spread, the Public Health Official, and persons under the Public Health Official's direction and control, may inspect or cause to be inspected, and to issue orders regarding any commercial building, structure or premises, or any part thereof, that may be a site of high-risk sexual conduct.

- 3) If the Public Health Official determines that a hazardous site as defined herein exists, the Public Health Official will declare it to be a public health hazard and public health nuisance and will:
- a) Notify the manager, owner or tenant of the hazardous site that the Public Health Official has reasonable belief that the premises, building or structure is a hazardous site, as defined herein;
  - b) Issue two written warnings at least ten days apart to the manager, owner or tenant of the premises stating the specific reasons for the Public Health Official's opinion that the premises, building or structure is a hazardous site, as defined herein;
    - i Once the notices and warnings have been issued, the Public Health Official must proceed as follows:
    - ii After the manager, owner or tenant of the premises has been notified in writing as to the basis of the Public Health Official's determination, the manager, owner or tenant will have ten days from the date of the last warning to request a hearing before the Public Health Official or the Public Health Official's appointee for the determination as to the existence of the hazardous site. If the manager, owner or tenant of the premises does not request a hearing within ten days of the date of the last warning notice, the Public Health Official will then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site and the Public Health Official will cause the orders to be issued to the manager, owner or tenant of the premises constituting the hazardous site to take specified corrective measures to prevent high-risk sexual conduct from taking place within the premises.
    - iii If the manager, owner or tenant of the premises requests a hearing, the hearing will be held before the Public Health Official or the Public Health Official's appointee at a date not more than 30 days after demand for a hearing. After considering all evidence, the Public Health Official or the Public Health Official's appointee will make a determination as to whether the premises constitute a hazardous site, as defined herein, and issue a decision based upon all hearing evidence presented. If the Public Health Official or the Public Health Official's appointee makes a determination that the premises constitute a hazardous site, the Public Health Official will then issue orders to the manager, owner or tenant of the premises to take corrective measures to prevent high-risk sexual conduct from taking place within the premises and cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site.

- c) If, within 30 days after issuance of the orders to the manager, owner, or tenant of the hazardous site, the Public Health Official determines that such corrective measures have not been undertaken, the Public Health Official may order the abatement of the hazardous site as a public nuisance, which may be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction or may secure a court order for the closure of the premises, constituting the hazardous site until the premises, building or structure is in compliance with all provisions of this code.

## CHAPTER 75: PAWN SHOPS, PAWNBROKERS AND THE LIKE

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### 75.01. DEFINITIONS.

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

- 1) **PAWNBROKER.** A person who loans money on deposit or pledge or personal property or other valuable thing, or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgage on personal property, taking possession of the property, or any part thereof so mortgaged.
- 2) **SECONDHAND GOODS DEALER.** A person whose regular business includes selling or receiving tangible personal property, excluding motor vehicles, previously used, rented, owned or leased.

### 75.02. EXEMPTIONS.

A) This chapter does not apply to or include the following.

- 1) The sale of secondhand goods where all of the following conditions are present:
  - a) The sale is held on property occupied as a dwelling by the seller, or owned, rented or leased by a charitable or political organization;

- b) The items offered for sale are owned by the occupant;
  - c) The sale does not exceed a period of three days;
  - d) Not more than four sales are held either by the same person or the same property in any 12-month period; and
  - e) None of the items offered for sale have been purchased for resale or received on consignment for purpose of resale.
- 2) Sales or motor vehicles;
  - 3) The sale of secondhand books, magazines, video recordings or furniture;
  - 4) The sale of goods at an auction held by a licensed auctioneer;
  - 5) The business of buying or selling only those secondhand goods taken as part or full payment of new goods, and where the business is incidental to and not the primary business of a person;
  - 6) A bulk sale of property from a merchant, manufacturer or wholesaler having an established place of business or of goods sold at open sale from bankrupt stock;
  - 7) Goods sold only at a public market;
  - 8) Goods sold at an exhibition;
  - 9) The sale of secondhand goods by a secondhand goods dealer on property where no pawnbroker license is in effect;
  - 10) Sale of secondhand clothes, except furs; and
  - 11) Sale of secondhand washers, dryers, air conditioners, refrigerators, trash compactors, dishwashers or kitchen ranges.

#### 75.03. LICENSE REQUIRED; FEE AND APPLICATION.

##### A) License.

- 1) Except as herein otherwise provided, it is unlawful for any person to engage in the business of second hand goods dealer without first obtaining a secondhand goods dealer license from the City.
- 2) It is unlawful for any person to conduct, operate or engage in the business of pawnbroker without first having obtained a license from the City.
- 3) A pawnbroker may not conduct, operate or engage in the business of secondhand goods dealer without having obtained a secondhand goods dealer license in addition to a pawnbroker license. A secondhand goods dealer license in addition to a pawnbroker license. A secondhand goods dealer may not conduct, operate or

engage in the business of pawnbroker without having obtained a pawnbroker license in addition to a secondhand goods dealer license.

B) Multiple Dealers.

- 1) The owner of a business at which two or more secondhand goods dealers are engaged in business by maintaining separate sales space and identifying themselves to the public as individual dealers may obtain a multiple license provided the following requirements are met:
  - a) The businesses must have a single name and address;
  - b) The businesses must operate in a compact and contiguous space;
  - c) The businesses must be under the unified control and supervision of the one person who hold the license; and
  - d) Sales must be consummated at a central point or register operated by the owner of the business and the owner must maintain a comprehensive account of all sales.
- 2) The holder of a secondhand goods dealer license under this section for a business with more than one dealer at the same location must comply with all of the requirements of this section, including the responsibility for police reporting and record-keeping in the same manner as any other dealer licensed under this section. A dealer licensed under this section is responsible to its customers for stolen or misrepresented goods sold at its place of business in the same manner as any other dealer under this section.

C) Fee.

- 1) The annual license fee for a secondhand goods dealer shall be established by the City Council.
- 2) The annual license fee for a pawnbroker shall be established by the City Council. The fee shall be the same if the license is only issued for part of a year.

D) Application.

- 1) If the applicant is a natural person, the application must be signed and sworn to by the person; if a corporation, by an officer authorized to sign; if a partnership, by all general partners.
- 2) The application must be accompanied by the required license fee. The fee will be returned to the applicant if the application is rejected.
- 3) It is unlawful to knowingly make a false statement in the license application. In addition to other penalties, the license may be subsequently revoked by the Council for a violation of this section.

E) Secondhand goods dealer and pawnbrokers dealing in precious metals and gems must be licensed by the county, as required by M.S. § 325F.73, as it may be amended from time to time.

#### 75.04. BOND.

A) Before a license shall be granted to any person as a pawnbroker, he or she shall execute and deposit with the City a corporate surety bond in the sum of \$2,000 on which the City is obligee, conditioned that the applicant will observe the conditions and provisions of this section and obey all laws governing the licensed business, and pay all fees, taxes, penalties and other charges associated with the business.

#### 75.05. SITE PLAN.

A) The application for a pawnbroker or secondhand goods dealer license must be accompanied by a site plan drawn to scale.

B) The site plan must contain:

- 1) A legal description of the property upon which the proposed licensed premises is situated;
- 2) A plot plan;
- 3) The exact location of the licensed premises on the property, customer and employee parking areas, accesses onto the property and entrance into the premises;
- 4) The location of and distance from the nearest church, school, hospital and residence; and
- 5) A floor plan of the licensed premises.

#### 75.06. INVESTIGATIONS.

A) The City, prior to the granting of an initial or renewed pawnbroker or secondhand goods dealer license, must conduct a preliminary background and financial investigation of the applicant. Any person having a beneficial interest in the license must be investigated. The investigation shall be conducted by the County Sheriff's Department or designated agent to the Council and the results reported to the Council. The investigation shall seek verification of the facts stated in the application, and must report all convicted violations of state law, federal law or City code provisions involving the applicant, interested persons, or the licensed premises while under that applicant's proprietorship.

B) The fee charged by the City to an applicant for the costs of investigation shall be established by the City Council. The investigation fee must accompany the application form when submitted to the City by the applicant.

#### 75.07. PUBLIC HEARING.

##### A) Hearing.

- 1) A pawnbroker or secondhand goods dealer license will not be issued or renewed without a public hearing.
- 2) Any person having an interest in or who will be affected by the proposed license will be permitted to testify at the hearing.

B) The public hearing must be preceded by at least ten-days' published notice specifying the location of the proposed licensed business premises and the purpose of the hearing.

#### 75.08. GRANTING OF LICENSE.

A) After review of the license application, investigation report and public hearing, the Council may grant or refuse the application for a new or renewed pawnbroker or secondhand goods dealer license. A license will not be effective unless the fees have been paid and the bond has been filed with the City Administrator/Clerk-Treasurer's Office.

#### 75.09. INELIGIBILITY FOR LICENSE.

##### A) A pawnbroker or secondhand goods dealer license will not be issued to:

- 1) A person not a citizen of the United States or a legal resident alien;
- 2) A person under 18 years of age;
- 3) Subject to the provisions of law, a person who within five years of license application date has been convicted of receiving stolen property, sale of stolen property or controlled substance, burglary, robbery or any law or City code provision regulating the business of pawnbroker or secondhand goods dealer;
- 4) A person who within five years of the license application date had a pawnbroker or secondhand goods dealer license revoked.
- 5) When the Council determines, after investigation and public hearing, that issuance or renewal of the license would adversely affect the public health, safety or welfare.

B) Partnerships, whose partners include any of the above ineligible persons, or corporations whose officers or board members include any of the above ineligible persons shall not be eligible for a pawnbroker or secondhand goods dealers license.

C) A license will not be issued or renewed under this section for any place or for any business:

- 1) If taxes, assessments or other financial claims of the City or the state on the licensee's business premises are delinquent and unpaid;
- 2) If the premises is located within 300 feet of a school or church;

- 3) Where operation of a licensed premises would violate the zoning provisions of the City code; or
- 4) Where the applicant's present license was issued conditioned upon the applicant making specified improvements to the licensed premises or the property of the licensed premises which improvements have not been completed.

#### 75.10. CONDITIONAL LICENSES.

A) The Council may grant an application for a new or renewed pawnbroker or secondhand goods dealer license conditioned upon the applicant making reasonable improvements to the proposed business premises or the property upon which the business premises is situated.

B) The improvements shall be required by City zoning or building code requirements, or other improvements related to the health, safety, welfare or police power functions.

C) The Council, in granting a conditional license, will specify when the modifications must be completed.

D) Failure to comply with the conditions of the license is grounds for the Council to revoke or refuse to renew the license.

#### 75.11. LICENSE LIMITATIONS.

A) A license will be issued to the applicant only, and only for the business premises as described in the application.

B) The license is effective only for the premises specified in the approved license application and may not be transferred to any other person, partnership, corporation or premises.

#### 75.12. TERM; EXPIRATION.

A) Initial licenses will be effective on the date of issue and expire on December 31 at midnight of the year of issue. Renewals shall be for one-year periods commencing on January 1 with expiration on December 31 at midnight.

#### 75.13. DEATH OF LICENSEE.

A) In the case of death of a licensee, the personal representative of the licensee may continue operation of the business for not more than 90 days after the licensee's death or until the existing license expires, whichever occurs first.

#### 75.14. RECORDS; WEEKLY REPORTS.

A) A licensed secondhand goods dealer and pawnbroker, at the time of receipt of an item, must immediately record, in ink or other indelible medium in a book or word processing unit, the following information.

- 1) An accurate description of the item including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on the item;
- 2) The purchase price;
- 3) Dated receipt;
- 4) Name, address and date of birth of the person from whom the item was received;
- 5) Identification Number.
  - a) The identification number from any one of the following forms of identification of the seller:
    - i Valid picture drivers license;
    - ii State or federal issued picture identification card.
  - b) The form of identification used must be specified in the records.  
Transactions are not permitted with sellers unable to provide the required identification.
- 6) The books as well as the goods received must be open for inspection by the appropriate law enforcement agency at reasonable times. Records required by this section must be stored and maintained by the licensee for a period of at least three years.

B) For all items, regardless of resale price, a secondhand goods dealer or pawnbroker shall make out, on forms approved by the County Sheriff, and send weekly by mail to the County Sheriff's Department, a legible description of the goods received during the preceding week and the price paid, together with the time received and a description of the person from whom the goods were received.

#### 75.15. STOLEN GOODS.

A) A licensed pawnbroker or secondhand goods dealer must report immediately to the Police Department any article pledged or received, or sought to be pledged or received, if the licensee has reason to believe that the article was stolen or lost.

#### 75.16. HOLDING PERIODS.

A) No holding period shall be required for purchases made by the license holder if a receipt showing the name, address and phone number of the seller is on file, however pawned items must be held a minimum of 72 hours after the items are received on deposit, excluding Sundays and legal holidays.

#### 75.17. RECEIPTS.

A) A licensed secondhand goods dealer or pawnbroker must provide a receipt to the seller or consignor of any items which includes:

- 1) The address and phone number of the business;
- 2) The date;
- 3) A description of the item purchased;
- 4) The purchaser's signature; and
- 5) The sum needed to redeem the article.

B) A duplicate of each receipt shall be retained in the records of the license holder.

#### 75.18. POLICE ORDERS.

A) If an authorized law enforcement agency notifies a dealer not to sell an item, the item may not be sold or removed from the licensed premises until authorized to be released by the appropriate law enforcement agency. The release shall be requested by the licensee, and must be approved or denied by the law enforcement agency.

#### 75.19. WEAPONS.

A) A licensed pawnbroker or secondhand goods dealer may not receive as a pledge or otherwise accept for consignment or sale any revolver, pistol, sawed-off shotgun, automatic rifle, blackjack, switchblade, knife or other similar weapons or firearms unless the licensee is in possession of a current valid federal firearms license or federal firearms pawnbrokers license. This section is not intended to restrict the legitimate retailing of firearms under a federal firearms license.

#### 75.20. PROHIBITED ACTS.

A) It is unlawful for any:

- 1) A minor to sell or consign, or attempt to sell or consign, goods with a secondhand goods dealer or pawnbroker; (It is also unlawful for any secondhand goods dealer or pawnbroker to receive goods from a minor.)
- 2) Secondhand goods dealer or pawnbroker to receive any goods from a person of unsound mind or an intoxicated person; and/or
- 3) Secondhand goods dealer or pawnbroker to receive goods unless the seller presents identification in the form of a valid picture driver's license or other pictured identification issued by the state of federal government.

#### 75.21. REDEMPTION PERIOD.

A) A person who pawns an item shall have at least 30 days to redeem the item before it may be sold, subject to the additional holding requirement provided for herein.

#### 75.22. PAYMENTS BY CHECK.

A) When a secondhand goods dealer buys or otherwise receives an item at the licensed place of business, payment must be made by check payable to the named payee who is the actual intended seller.

B) This section does not apply to pawnbrokers.

#### 75.23. INSPECTIONS.

A) A peace officer or any properly designated employee of the City, the county or the state may enter, inspect and search business premises licensed under this section during business hours without a warrant.

#### 75.24. APPLICABILITY.

A) The licenses required by this section shall be applied for within 30 days of the effective date of this section. The licenses shall be obtained within 60 days of the effective date of this section. If the licenses are not obtained within the 60-day period, the designated business shall cease operating within the City, unless the Council extends the time for issuance of the license. All other provisions of this chapter shall be effective and complied with within 60 days after the effective date of this section.

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### 76.01. GARAGE/RUMMAGE/YARD SALES.

A) All garage/rummage/yard sales shall be limited to a maximum of four consecutive days and shall occur no more than five times within one calendar year per property.

B) Signs for garage/rummage/yard sales may be posted up to one week in advance. All signs must be removed promptly at the end of the sale.

## CHAPTER 77: FIREWORKS

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### 77.01. PURPOSE AND APPLICABILITY.

A) This chapter is hereby established in order to regulate the sale of fireworks in the City. This chapter does not regulate the conduct of fireworks displays. Regulation of the conduct of fireworks displays may be regulated elsewhere.

### 77.02. DEFINITIONS.

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

- 1) FIREWORKS. The same meaning as defined in M.S. § 624.20, as it may be amended from time to time.

### 77.03. PERMIT REQUIRED.

A) No person shall sell or possess for sale fireworks without first having obtained an annual permit from the City.

B) The Fire Chief shall give final approval or denial of an application for the manufacture, storage for commercial purposes, or sale of fireworks within 14 days of such application being made to the City.

C) Permits shall be issued for a period not to exceed one calendar year.

D) Prior to processing the application, the City must conduct a criminal records check of the permit applicant. Neither the applicant nor the responsible party for the permit shall have been convicted of a felony or a fire/fireworks-related misdemeanor within the three years prior to the application.

E) Prior to processing the application, the Fire Chief, Code Official and/or Zoning Administrator shall determine that the proposed location complies with relevant City provisions.

F) The application shall include a letter from the person legally responsible for the property which the fireworks related activity will occur. Said letter shall grant permission to the applicant for the use of said property.

#### 77.04. SALES AND STORAGE OF FIREWORKS.

A) No person shall sell or store fireworks within 100 feet of any fuel dispensing apparatus.

B) It shall be unlawful for any seller of any fireworks to permit smoking at any site containing fireworks. “NO SMOKING” signs must be conspicuously posted at the site and approved fire extinguishers must be located at the site and be readily available for use.

C) In buildings that do not have an automated sprinkling system, retail sales displays of fireworks shall be limited to a gross weight of 400 pounds of fireworks. In buildings that do contain an automated sprinkling system, the amount of fireworks contained in retail sales displays shall be determined by the City Fire Chief, Code Official and/or Zoning Administrator on a case by case basis after considering the building’s construction, fire suppression apparatus and any other relevant factors.

D) The requirements of this division are in addition to any requirements otherwise imposed by any building and zoning regulations, fire codes, or state laws.

E) Only persons 18 years of age or older may purchase fireworks and the age of the purchaser must be verified by photographic identification.

F) No exterior storage, display, sales or transient sales of fireworks is permitted. No manufacturing, sales or storage for commercial purposes shall occur on residentially zoned property or properties used for educational purposes or assemblies.

G) A list of all consumer fireworks displayed and stored on the property shall be available at all times. The list shall document the name, weight and quantity of the fireworks and shall be accompanied by the material safety data sheets.

H) Manufacturing, warehouse buildings or display in excess of the quantities listed in division (C) above for retail consumer fireworks shall be classified as an “H occupancy” and protected similarly to explosives and aerosols.

I) A handout describing fireworks shall be provided to each consumer purchasing fireworks.

J) The City Fire Chief, Code Official and/or Zoning Administrator has the right to inspect the site where fireworks are stored at any time during the permit period.

#### 77.05. USE AND POSSESSION.

A) It is unlawful to use, fire or discharge any fireworks along the route of and during any parade, in any place of public assembly, on any public property or in any commercial or industrial zoning district.

B) It is unlawful at any time to throw, toss or aim any fireworks at any person, animal, vehicle or other thing or object or used in any manner that may threaten or cause possible harm to life or property.

C) The discharge of fireworks shall be prohibited inside a building and within 15 feet of any building.

D) The Fire Chief may ban fireworks if dry or windy conditions occur.

E) Juveniles may not possess or use fireworks unless under the direct supervision of a responsible adult.

F) Fireworks may not be discharged in such a manner that may create a nuisance nor between the hours of 10:00 p.m. and 10:00 a.m.

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## CHAPTER 80: INTOXICATING LIQUOR

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### 80.01. ADOPTION OF STATE LAW.

A) The provisions of M.S. Ch. 340A, as it may be amended from time to time, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution and consumption of intoxicating liquor are adopted and made a part of this chapter as if set out in full.

### 80.02. LICENSE REQUIRED.

#### A) Licenses

- 1) No person, except a wholesaler or manufacturer to the extent authorized, state license, shall directly or indirectly deal in, sell or keep for sale in the City any intoxicating liquor without a license to do so as provided in this chapter.
- 2) Liquor licenses shall be of three kinds: on-sale, Sunday on-sale and off-sale.

B) On-sale licenses shall be issued only to hotels, restaurants and exclusive liquor stores and shall permit on-sale of liquor only.

#### C) Sunday.

- 1) A Sunday on-sale license authorizes the licensee to sell or serve liquor between the hours of 10:00 a.m. Sunday and 1:00 a.m. Monday.
- 2) Sunday on-sale licenses shall be issued only to a hotel or restaurant having facilities for serving at least 30 guests at a time, and which has an on-sale license.
- 3) No Sunday on-sale license shall be valid unless a valid on-sale license is also in effect for the same premises.

D) Off-sale licenses shall be issued only to exclusive liquor stores and for a permit off-sale of liquor only. An exclusive liquor store shall include an on-sale or a combination on-sale and off-sale establishment at which food is sold for consumption on the premises.

### 80.03. APPLICATION FOR LICENSE.

#### A) Application.

- 1) Every application for a license to sell liquor shall state the name of the applicant, his or her age, representations as to his or her character, with references as the Council may require, his or her citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the, business, how long he or she has been in that business at that place; and other information as the Council may require from time to time.
- 2) In addition to containing the information, the application shall be in the form prescribed by the Department of Public Safety and shall be verified and filed with the Administrator/ Clerk-Treasurer.
- 3) No person shall make a false statement in an application.

B) Every applicant for the issuance of renewal of an on-sale or off-sale license shall demonstrate proof of financial responsibility by filing with the City one of the following:

- 1) A certificate showing insurance against general liability and that imposed by M.S. § 340A.409, as it may be amended from time to time, in the amount of \$50,000 coverage for bodily injury to one person, \$100,000 for coverage for two or more persons injured in one occurrence, \$10,000 for damage to property of others in one occurrence, and \$100,000 for loss of means of support of any one person in any one occurrence, and \$100,000 for loss of means of support of two or more persons in any one occurrence;
- 2) A surety bond with minimum coverage as provided in this Section; or
- 3) A certificate of the State Treasurer that the licensee has deposited with him or her \$360,000 in cash for securities in accordance with M.S. § 340A.409, as it may be amended from time to time.

C) On-sale or off-sale liquor business without having on file at all times the insurance bond or other security required hereby shall be grounds for immediate revocation of the license.

D) The operation of an on-sale or off-sale liquor business shall be on file at all times. The insurance bond or other security required hereby shall be grounds for immediate revocation of the license.

### 80.04. LICENSE FEES.

#### A) The annual fee for liquor licenses shall be as follows:

- 1) On-sale license: \$3,900.
- 2) Off-sale license: \$100.

- 3) Sunday on-sale: \$200.
- 4) Special three-day on-sale license: \$25.

B) Receipt; General Fund.

- 1) Each application for a license shall be accompanied by a receipt from clerk for payment in full of the license fee.
- 2) All fees shall be paid into the general fund. If an application for a license is rejected, the Administrator/Clerk-Treasurer shall refund the amount paid.

C) Each license shall be issued for a period of one year, except that if the 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 month. Every license shall expire on the last day of December.

D) No refund of any fee shall be made, except as authorized by statute.

#### 80.05. GRANTING OF LICENSES.

A) Investigation; Hearing; Decision.

- 1) The Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license.
- 2) After the investigation and hearing, the Council shall, in its discretion, grant or refuse the application.
- 3) No off-sale license shall become effective until the application, together with the security furnished by the applicant, has been approved by the Department of Public Safety.

B) Each license shall be issued only to the applicant and/or the premises described in the application. No license may be transferred to another person, nor place without Council approval. Any transfer of stock of a corporate licensee is deemed a transfer of the license and a transfer of stock without prior Council approval is a ground for revocation of the license.

#### 80.06. INELIGIBILITY.

A) No license shall be granted to any person made ineligible for a license by state law.

B) Ineligible; Delinquent.

- 1) No license shall be issued for any place or any business ineligible for a license under state law.
- 2) No license shall be granted for operation on any premises on which taxes, assessments or other financial claims of the City are delinquent and unpaid.

#### 80.07. CONDITIONS OF LICENSE.

A) Every license is subject to the conditions in the following subdivisions and other provisions of this chapter and of any other applicable chapter, state law or regulation.

B) Every licensee is responsible for the conduct of his or her place of business and the conditions of sobriety and order in it. The act of any employee in the licensed premises authorized to sell intoxicating liquor there is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

C) Every licensee shall allow any peace officer, health officer or properly designated officer or employee of the City to enter, inspect and search the premises of the licensee during business hours without a warrant.

D) No intoxicating beverage shall be displayed or exhibited upon the bar or tables or booths within the premises of an establishment licensed for on-sale of intoxicating liquor between the hours of 1:15 a.m. and 8:00 a.m. of any day.

E) No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

F) No licensee shall allow any person under 18 years of age to sell or serve liquor. No licensee shall allow any person under the age of 21 who has consumed intoxicating liquor or 3.2% malt liquor to be in or on the licensed premises whether the person has consumed the beverages on the premises or any other place.

#### 80.08. CLOSING HOURS.

A) No person other than an employee of the licensed establishment shall remain on the premises of any licensed liquor establishment after one-half hour after sales are closed.

B) Employees shall be off the premises by one hour after sales are closed. Employees shall not re-enter the premises until 8:00 a.m. the following day.

C) The licensee shall post and display a legible list of the names of all current employees. The list shall be displayed in the same location as the liquor license and shall be furnished to law enforcement officers on demand.

#### 80.09. PURCHASE AND CONSUMPTION.

A) No person shall mix or prepare liquor for consumption in any public place or place of business unless it has a license to sell liquor on-sale or a permit from the Department of Public Safety under M.S. § 340A.414, as it may be amended from time to time, and no person shall consume liquor in any place, which does not have a license or permit.

B) Public Area; Parking Lot.

1) No person shall consume liquor on a public street, public sidewalk or is parking lot.

- 2) No license holder shall allow the consumption of intoxicating liquor by its patrons within any parking lot owned or operated by any intoxicating liquor license holder.

## CHAPTER 81: 3.2% MALT LIQUOR

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### 81.01. DEFINITIONS.

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

- 1) 3.2% MALT LIQUOR. Any malt beverage with an alcoholic content of more than one-half of one percent by volume and not more than three and two-tenths percent by weight.
- 2) 3.2% MALT LIQUOR STORE. An establishment for the sale of 3.2% malt liquor, cigars, cigarettes, all forms of tobacco, beverages and soft drinks at retail.

### 81.02. LICENSE REQUIRED.

A) No person, except wholesalers and manufacturers to the extent authorized by law, shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any 3.2% malt liquor within the City without first having received a license as hereinafter provided. Licenses shall be of three kinds: regular on-sale, temporary on-sale and off-sale.

B) Regular on-sale licenses shall be granted only to bona fide clubs, 3.2% malt liquor stores, exclusive on-sale liquor stores, restaurants and hotels where food is prepared and served for consumption on the premises. On-sale licenses shall permit the sale of 3.2% malt liquor for consumption on the premises only.

C) Temporary on-sale licenses shall be granted only to bona fide clubs and charitable, religious and non-profit organizations for the sale of 3.2% malt liquor for consumption on the premises only.

D) Off-sale licenses shall permit the sale of 3.2% malt liquor at retail in the original package for consumption off the premises only.

### 81.03. APPLICATION.

A) Every application for a license to sell 3.2% malt liquor shall be made to the Administrator/Clerk-Treasurer on a form supplied by the City and containing the information as the Administrator/Clerk-Treasurer or the Council may require. It shall be unlawful to make any false statement in an application.

#### 81.04. FEES.

A) Each application for a license shall be accompanied by a receipt from the Administrator/ Clerk-Treasurer for payment in full of the required fee for the license. All fees shall be paid into the general fund of the City. Upon rejection of any application for a license, the Administrator/Clerk-Treasurer shall refund the amount paid.

B) Every license, except a temporary license, shall expire on the last day of December of each year. Each license, except a temporary license, shall be issued for a period of one year, except that if a portion of the license year has elapsed when the license is granted, the license shall be issued for the remainder of the year for a pro rata fee. In computing the fee, any unexpired fraction of a month shall be counted as one month. A temporary license shall be issued for a specific period in which a special event to which the sale is incident is being held and the period shall be stated on the license.

C) The annual fee for 3.2% malt liquor licenses are as set by the Council.

D) No part of the fee paid for any license issued under this chapter shall be refunded, except in the following instances, upon application to the Council within 30 days from the happening of the event. There shall be refunded a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license because of:

- 1) Destruction or damage of the licensed premises by fire or other catastrophe;
- 2) The licensee's illness;
- 3) The licensee's death; and
- 4) A change in the legal status of the municipality making it unlawful for the licensed business to continue.

#### 81.05. GRANTING OF LICENSE.

A) The Council shall investigate all facts set out in an application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall grant or refuse the application in its discretion.

B) Non Transferable.

- 1) Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application.
- 2) No license may be transferred to another place without the approval of the Council.

C) Insurance.

- 1) Prior to the issuance of a license, the applicant shall file with the Administrator/Clerk-Treasurer a dram shop liability insurance policy in the

amount of \$100,000 coverage for one person and \$300,000 coverage for more than one person.

- 2) If sales are less than \$25,000 in the case of an on-sale license and \$50,000 in the case of an off-sale license and no dram shop insurance is required, the City has the right to inspect records of sales.

#### 81.06. INELIGIBILITY.

A) No license shall be granted to any person made ineligible for a license by state law.

B) Premises.

- 1) No license shall be issued for any place or business ineligible for a license under state law.
- 2) No license shall be granted for operation on any premises on which taxes, assessments or other financial claims of the City are delinquent and unpaid.

#### 81.07. CONDITIONS OF LICENSE.

A) Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this chapter and of any other applicable chapter of the City or state law.

B) No 3.2% malt liquor shall be sold or served to any intoxicated person or to any person under 21 years of age.

C) No person under 18 years of age shall be employed on the premises of a 3.2% malt liquor store.

D) No gambling or any gambling device shall be permitted on any licensed premises.

E) No manufacturer or wholesaler of 3.2% malt liquor shall have any ownership or interest in an establishment licensed to sell at retail contrary to the provisions of M.S. § 340A.301, as it may be amended from time to time. No retail licensee and manufacturer or wholesaler of 3.2% malt liquor shall be parties to any exclusive purchase contract. No retail licensee shall receive any benefits contrary to law from a manufacturer or wholesaler of 3.2% malt liquor and no manufacturer or wholesaler shall confer any benefits contrary to law upon a retail licensee.

F) No licensee shall sell 3.2% malt liquor while holding or exhibiting a licensed pressed by a federal retail liquor dealer's special tax stamp unless he or she is licensed under the laws of the state to sell intoxicating liquors.

G) Intoxicating Liquor.

- 1) No licensee who is not also licensed to sell intoxicating liquor and who does not hold a consumption or display permit shall sell or permit the consumption and display of intoxicating liquors on the licensee's premises or serve any liquids for the purpose of mixing with intoxicating liquor.

- 2) The presence of intoxicating liquors on the premises of a licensee shall be prima facie evidence of possession of intoxicating liquors for the purpose of sale and the serving of any liquid for the purpose of mixing with intoxicating liquors shall be prima, facie evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to this chapter.

H) Any peace officer, health officer or other properly designated employee of the City, may enter, inspect and search the premises of a licensee during business hours without a search and seize warrant and may seize all intoxicating liquors found on the licensed premises in violation of this Section.

I) Every licensee shall be responsible for the conduct of his or her place of business and shall maintain conditions of sobriety and order. The act of any employee on the licensed premises authorized to sell or serve 3.2% malt liquor shall be deemed the act of the licensee as well and the licensee shall be liable to all penalties provided by this chapter equally with the employee.

J) A regular on-sale license shall entitle the holder to serve 3.2% malt liquor in a separate room of the licensed premises for banquets or dinners at which are present not fewer than 25 persons.

#### 81.08. CLOSING HOURS.

A) No sale of 3.2% malt liquor shall be made on any Sunday between the hours of 1:00 a.m. and 8:00 p.m. No sales shall be made between the hours of 1:00 a.m. and 8:00 a.m. on any other day.

#### 81.09. PURCHASE AND CONSUMPTION.

A) No person under 21 years of age shall misrepresent his or her age for the purpose of obtaining 3.2% malt liquor.

B) No person shall induce a person under 21 years of age to purchase or procure 3.2% malt liquor.

C) No person other than the parent or legal guardian shall procure 3.2% malt liquor for any person under 21 years of age.

D) No person under 21 years of age shall have 3.2% malt liquor in his or her possession with the intent to consume it at a place other than the household of his or her parent or guardian.

E) No person under 21 years of age shall consume 3.2% malt liquor unless in the company of his or her parent or guardian.

F) Public Property.

- 1) No person shall consume 3.2% malt liquor on a public street, public sidewalk or public parking lot unless the location is under a temporary license in force when the consumption takes place.

- 2) The Council may by resolution regulate 3.2% malt liquor consumption at public parks and shall post notice of the regulations in the park.
- G) No person shall consume or display any intoxicating liquor on premises of a licensee who is not also licensed to sell intoxicating liquors or who does not hold an option and display permit.

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### 82.01. LICENSE REQUIRED.

A) It shall be unlawful for any private club or public place, directly or indirectly or upon any pretense or by any device to allow the consumption or display of intoxicating liquor, or the serving of any liquid for the purpose of mixing with intoxicating liquor without first securing a license from the Commissioner of Public Safety and paying the annual fee as provided in this Chapter.

### 82.02. FEES.

A) Every private club or public place desiring to allow the consumption or display of intoxicating liquor shall, on or before January 1 of each year, pay to the Administrator/Clerk-Treasurer a fee as established herein and shall be issued a written receipt therefor. No proration of fees shall be made. The written receipt shall be posted in scene conspicuous place upon the premises alongside the license issued by the Commissioner of Public Safety and shall be kept posted at all times.

### 82.03. INSPECTIONS.

A) Any private club or public place allowing the consumption or display of intoxicating liquor shall be open at all reasonable hours for inspection by the Commissioner of Public Safety, his or her designated agents, and any peace officer, health officer or other properly designated officer or employee of the City. Refusal to permit the inspection shall be a violation of this chapter.

### 82.04. ADOPTION OF STATE LAW.

A) The regulatory provisions of M.S. § 340A.414, as it may be amended from time to time, are hereby adopted by reference.

### 82.05. EXEMPTIONS.

A) The provisions of this Chapter do not apply to any premises licensed the sale of intoxicating liquor.

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### 83.01. ADOPTION OF STATE LAW.

A) The provisions of M.S. Ch. 340A, as it may be amended from time to time, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale and all other matters pertaining to the retail sale, distribution and consumption of intoxicating liquor insofar as they are applicable to club licenses authorizing the sale of liquor for consumption on the licensed premises only, are adopted and made a part of this subchapter as if set out in full.

### 83.02. APPLICATION FOR A LICENSE.

A) Every club, as herein defined, requesting a club license pursuant to M.S. § 340A.404, as it may be amended from time to time, from the City shall, through its proper officers, file with the City Administrator/Clerk-Treasurer, a verified application setting forth all information necessary to show whether or not the club qualifies for a license within the meaning of this subchapter, together with all additional information as may be required by the City Council. In addition to containing this information, the application shall be in the form prescribed by the Commissioner of Public Safety. No person shall make a false statement in an application.

B) Each application for a license shall be accompanied by a surety bond or, in lieu thereof, cash or U.S. Government bonds of equivalent market value as provided in M.S. § 340A.409, as it may be amended from time to time. The surety bond or other security shall be in the sum of \$3,000.

C) Prior to the issuance of a club license, the applicant shall file with the City Administrator/Clerk-Treasurer a liability insurance policy in the amount of \$50,000 coverage for one person and \$100,000 coverage for more than one person and shall comply with the provisions of M.S. § 340A.409, as it may be amended from time to time, relating to liability insurance policies. If a liability insurance policy is made subject to all the conditions of a bond under that statute, the policy may be accepted by the Council in lieu of the bond required under this Section.

D) The security offered under this Section above shall be approved by the City Council and the Commissioner of Public Safety. Surety bonds and liability insurance policies shall be approved as to form by the City Attorney. Operation of a licensed club without having on file with the City at all times effective security, as required in this Section, is a cause for revocation of the license.

### 83.03. FEES.

A) The annual fee for a club license is \$100.

B) Each application for a club license shall be accompanied by a receipt from the City Administrator/Clerk-Treasurer for payment in full of the license fee. All fees shall be paid into the general fund. If an application for a license is rejected, the City Administrator/Clerk-Treasurer shall refund the amount paid.

C) Each license shall be issued for a period of one year, except that if the 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 month. Every license shall expire on the last day of December.

D) No refund of any fee shall be made, except as authorized by statute.

### 83.04. GRANTING OF LICENSES.

A) The City Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall, in its discretion, grant or refuse the application. No club license shall become effective until it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety.

B) No license shall be granted for a building within 500 feet of any school.

C) No license shall be granted or renewed for operation on any premises on which taxes, assessments or other financial claims of the City are delinquent and unpaid.

### 83.05. CONDITIONS OF LICENSE.

A) Every license is subject to the conditions in the following subdivisions and all other provisions of this ordinance and of any other applicable ordinance, state law and regulation.

B) Every licensee is responsible for the conduct of its place of business and the condition of sobriety and order in it. The act of any employee on the licensed premises authorized to sell intoxicating liquor there is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

C) The license shall not be transferable as to the premises without the approval of the City Council.

D) The sale of intoxicating liquor under a club license is restricted to card-carrying members of the licensed club, bona fide guests of members, guests of an event sponsored by the licensee, or guests of an event held at the licensee's building, pursuant to a rental agreement, with the licensee.

E) Every licensee shall allow any peace officer, health officer or properly designated officer or employee of the City to enter, inspect and search the premises of the licensee during business hours without a warrant.

F) The licensee shall not permit access to intoxicating or 3.2% malt liquor by any person during hours when the sale of liquor is prohibited.

G) No licensee shall possess a federal wholesale liquor dealers special tax stamp or a federal gambling stamp.

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## CHAPTER 90: BUILDING REGULATIONS; CONSTRUCTION

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### 90.01. ADOPTION OF MINNESOTA STATE BUILDING CODE.

A) The Minnesota State Building Code is hereby adopted by reference and shall govern the construction, improvement and occupancy of buildings within the City in accordance with its terms. Permit fees shall be as set forth in the 1985 Uniform Building Code, and all later amendments or revisions thereto.

### 90.02. ADOPTION OF HAZARDOUS BUILDING LAW.

A) The Hazardous Building Law, M.S. §§ 463.15 through 463.261, as it may be amended from time to time, is adopted by reference. Any hazardous building or dangerous excavation may be abated in accordance with the provisions of that law.

## CHAPTER 91: CARTWAYS

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### 91.01. SCOPE OF SUBCHAPTER.

A) Except as otherwise specifically provided herein, the method of establishing cartways, as provided herein, shall apply to all property located within the City of Montrose. The City of Montrose has determined that it is in the best interests of the city that all cartway petitions be submitted to and determined by the City of Montrose in a manner which is consistent with Minnesota Law, as amended.

### 91.02. DEFINITIONS.

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

- 1) CITY. City of Montrose.
- 2) DAMAGES. The monetary value, if any, of the damages that the establishment of a cartway will cause to the owners in question, based upon the fair value of the land that is subject to the cartway, and the economic affect of the cartway on the land that is not subject to the cartway, less the monetary value of the benefit, if any, that the establishment of the cartway will confer on the property owners in question. DAMAGES also include the costs of the city associated with the cartway proceeding.

### 91.03. ESTABLISHMENT OF CARTWAY PROCEDURE.

A) Within the city, a property owner who owns a tract of land containing at least five acres, who has no access thereto except over a navigable waterway or over the lands of others, or whose access thereto is less than two rods in width, may present a petition for the establishment of a cartway to the City Council.

B) The petition must be signed by the owner of the tract of land requesting a cartway. The petition must contain the following:

- 1) A clear statement requesting a cartway;
- 2) The size and description, including legal description, of the land to be served;
- 3) A statement identifying the necessity or the request for a cartway;

- 4) The name and address of the property owner(s) of the property over which the cartway is proposed to be crossed; and
- 5) A survey of the parcel that will be using the cartway as access, showing, at a minimum:
  - a) All structures located on the parcel;
  - b) The width of cartway desired;
  - c) The desired route for the cartway;
  - d) The legal description of the tract of land over which the proposed cartway shall cross, including its point of beginning, general course and termination;
  - e) All parcels of property within 500 feet of the proposed cartway; and
  - f) The location of all structures, roads or driveways located on parcels of property within 500 feet of the proposed cartway.

C) The petitioning party is required to pay all costs related to the establishment of the cartway, including any damages that must be paid to the owner of the land upon which the cartway is established, together with the costs of all of the city's professional and other services, hearing costs, administrative costs, recording costs and other costs and expenses that the city may incur in connection with the proceeding for the establishment of the cartway.

D) The City Administrator shall determine whether the petition is sufficient, and the City Administrator, with the assistance of other members of city staff, shall recommend the amount of the bond which is necessary to be filed by the petitioner. The Council may pass a resolution directing a bond to be filed by the petitioner for the amount of damages, as provided above, before proceeding further.

E) The petitioning party shall post a bond or other security acceptable to the city for the total estimated damages, plus all costs to be incurred by the city before the Council will take action upon the petition.

F) The City Council will set a date for a public hearing regarding the establishment of the cartway. Prior to the public hearing, the City Council may refer the matter to the City Planning Commission for further study, input and/or recommendations. The public hearing(s) may be held at the Montrose Community Center Hall, or the other place as the Council deems appropriate, and the Council or Planning Commission may review the property to determine if the proposed location of the cartway is adequate, or if an alternative route other than that petitioned for is deemed by the city to be less disruptive and damaging to the affected land owners and in the public's best interest.

G) The City Council may appoint one or more of its members to meet with the affected parties to determine if a resolution and agreement can be reached regarding the damages issues.

H) Notice of the hearing regarding the cartway shall be posted by petitioner at least ten days prior to the hearing on the cartway. This notice is to be posted at City Hall. Further, notice of the cartway hearing shall be served by the petitioner, or his or her agents, personally, upon all affected parties, including the owner of the land over which the cartway is proposed, as well as all property owners who own land adjacent to the proposed cartway. The petitioner shall provide an affidavit of the service and posting showing that this has been accomplished. The notice to be provided to parties shall include the following:

- 1) Notice of the time, date and place of the hearing upon the cartway petition;
- 2) A description, as near as practicable, of the cartway proposed to be established and each tract of land through which it is proposed to pass; and
- 3) Summary of the cartway proceeding to date.

I) At a hearing regarding the establishment of a cartway, the petitioning party and the affected land owner may present whatever evidence he or she deems necessary concerning the request for the petition and the damages, if any, to be awarded to the land owner over whose land the proposed cartway is to be established. The City Council shall determine the amount of damages to be awarded and may choose to retain professionals to assist it with the determination.

J) Following the hearing described above, the City Council, by resolution, will determine the appropriate route for the cartway, and the amount of damages to be paid by the petitioning party, including damages, if any, awarded to the owner of the land upon which the cartway is established, together with the costs of professional and other services, hearing costs, administrative costs, recording costs and other costs and expenses that the city may occur in connection with the proceeding for the establishment of the cartway.

#### 91.04. SURVEYS.

A) The City Council may direct a surveyor to enter the land over which a cartway is proposed to be located for the purposes of providing a legal description of the cartway and to mark the location of the cartway.

#### 91.05. EXPENDITURE OF CITY FUNDS.

A) The city may not expend street or bridge funds on the cartway unless the City Council, by resolution, determines that an expenditure is in the public interest. If no resolution is adopted to that affect, all grading or other construction work and the maintenance of the cartway is the responsibility of the petitioner.

#### 91.06. CARTWAYS AS PRIVATE DRIVEWAY.

A) After a cartway has been constructed, the City Council may, by resolution, designate the cartway as a private driveway with the written consent of the affected land owners, in which case from the effective date of the resolution, no city road or bridge funds may be expended for the maintenance of the cartway.

#### 91.07. CARTWAY MAINTENANCE COSTS.

A) When a cartway is not maintained by the city, one or more of the private property owners who own land adjacent to a cartway, or one or more of the private property owners who have no access to the owners land except by way of the cartway, may maintain the cartway.

B) The cost of maintenance is to be equitably divided among all of the private property owners who:

- 1) Own land adjacent to the cartway; and
- 2) Have no access to their land except by way of the cartway.

C) Proper cost of the maintenance and the proper allocation of the cost is a matter to be determined by and between the parties involved and not by the city; however, the City Council may determine the maintenance cost to be apportioned to each private property owner if the private property owners cannot agree on the division of the costs.

D) If the Council decides the issue of maintenance costs, the Council's decision may be appealed within 30 days to the Wright County District Court.

E) Private property owners who pay the cost of maintenance have a civil cause of action against any of the private property owners who refuse to pay their share of the maintenance costs.

#### 91.08. APPEALS TO DISTRICT COURT.

A) The petitioner or any affected property owner may appeal the City Council's decision to the Wright County District Court, within 40 days after the filing of the award of damages by filing a notice of appeal with the Wright County Administrator. The owner or occupant of the land over which the cartway is to be established must file the notice of appeal within ten days in order to delay the opening, construction, alteration, change or other improvement in or on the road. A copy of the notice of appeal shall be mailed by registered or certified mail to the City Clerk-Treasurer and the petitioner. The notice of appeal shall specify the award or failure to award appealed from the land to which it relates, the nature and amount of the claim of the appellant and the grounds of the appeal. The appeal shall proceed in Wright County District Court.

## CHAPTER 92: MANUFACTURED HOMES AND HOME PARKS

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### 92.01. PURPOSES.

A) The purposes of this chapter are to promote health, safety, order, convenience and general welfare by enforcing minimum standards for manufactured home parks, the location and use of mobile homes and the design, construction, alteration and arrangement of homes on the lots, authorizing the inspection of manufactured home parks, the licensing of operators and fixing penalties for violations.

### 92.02. DEFINITION.

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

- 1) **MANUFACTURED HOME.** A structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in it, and which complies with the Manufactured Home Building Code established by M.S. § 327.31, Subd. 3.

### 92.03. LOCATION OF HOMES AND HOME PARKS.

A) It shall be unlawful within the City for any person to park any manufactured home on any street, alley, highway, other public place or on any tract of land owned by any person, occupied or unoccupied, except as provided in this section.

B) Emergency or temporary stopping or parking is permitted on any street, alley or highway for not longer than three hours subject to any other and further prohibitions, regulations or limitations imposed by the traffic and parking regulations or ordinances for that street, alley or highway.

C) Temporary Special Permits.

- 1) Temporary special permits may be issued by the Council for use of a trailer as an office or residence by persons directly connected with new construction in the

City, provided that the person has obtained a building permit for the construction and is proceeding with the work.

- 2) The temporary special permits shall be limited to periods of not more than ten days following completion of the project or for 12 months, whichever is less.

D) No person shall construct, locate, operate or maintain a manufactured home or manufactured home park within the City without first obtain a conditional use permit, and all other permits and licenses as shall be required and described herein.

E) No person shall construct, locate, operate or maintain a manufactured home or manufactured home park in the City unless the proposed area is served by a public, municipal sanitary sewer, municipal water and the property is zoned for residential manufactured home park.

F) No person shall park or occupy any manufactured home on either the premises of any dwelling or on any lot which is situated outside an approved manufactured home park unless the owner or person complies with applicable provisions of the zoning regulations adopted by reference in this Title, including housing performance standards.

G) Manufactured homes within an approved manufactured home park shall not be required to comply with housing performance standards, but shall be subject to the provisions of this chapter.

#### 92.04. CONDITIONAL USE PERMIT; APPLICATION.

A) Required conditional use permits may be applied for pursuant to the terms of applicable City ordinances and shall be issued if all requirements in the ordinances are met and all fees established by applicable City ordinances have been paid.

#### 92.05. DESIGN STANDARDS.

A) All manufactured home parks shall conform to the standards, and requirements of M.S. §§ 327.14 through 327.29, as they may be amended from time to time, and State Board of Health regulations governing manufactured home parks and recreational camping areas, all of the provisions being incorporated herein by reference, being made a part of this chapter as if set out in full.

B) All lots in the manufactured park are subject to the following regulations.

- 1) Every manufactured home lot shall have a base of at least four inches of compacted gravel or aggregate on the site where the home is to be parked, in addition to whatever foundation structures are necessary to secure the manufactured home anchors and tiedowns.
- 2) Every manufactured here park staff have a warning device for providing tornado or serious wind storm warning to its residents. This requirement may be waived if the device is located outside the park but is found to be servicing the park area.

C) Each manufactured home park shall have one or more service buildings to provide space for the park office, sanitation facilities and recreational space.

- 1) Every manufactured home park shall have a central office manager or caretaker of the park.
- 2) Setbacks from internal streets for all service buildings shall conform to City and state residential setback requirements.
- 3) A minimum of 500 square feet per open space shall be provided for definable play areas and open space within the manufactured home park. The areas of open space and play area shall not be areas included within any setback nor shall they include any areas of less than 20 feet in length or width.

D) Water and Sewer.

- 1) All manufactured home parks and the lots thereof shall be connected to the municipal water system.
- 2) All manufactured home parks shall have a sanitary sewer system connection to either a public municipal sewer system, or an appropriate public regional sewer system. The design and specifications of the sewer system shall meet the approval of the City Engineer and the State Department of Health.
- 3) All sewer and water system lines shall be underground.

E) Utilities; Lights.

- 1) All utility lines for electricity, telephone and TV cable must be underground. There shall be no overhead wires or supporting poles, except poles for street lights or other lighting purposes.
- 2) All fuel supply and storage systems shall be and maintained in accordance with applicable state codes and regulations governing the systems.
- 3) The manufactured home park shall provide overhead lights to adequately illuminate the streets and thoroughfare sidewalks of the park and all service building parking areas and entrances. The lighting will be shielded to prevent any light to be directed at traffic, nearby manufactured homes or neighboring residential property in the brilliance as to constitute a danger or a nuisance.

## 92.06. ANNUAL INSPECTION FEES.

A) Inspections.

- 1) All manufactured home parks shall be inspected annually by the City Building Inspector to ascertain that all provisions of this chapter, all other applicable City ordinances, and the provisions of any conditional use permit are being observed.
- 2) All manufactured home parks shall be inspected annually by the City Building Inspector to ascertain that no fire hazards are present, to ascertain that fire

hydrants and fire extinguishing equipment are in working order and to ascertain that all provisions of this chapter and other applicable codes and ordinances pertaining to fire protection and prevention are being observed.

- 3) All manufactured home parks shall have the water system inspected annually by a designated City inspector to insure that all hydrants and other water facilities are in proper working order.

B) City inspectors may make more frequent inspections as they may deem necessary.

#### 92.07. OPERATION REQUIREMENTS.

A) General operation and maintenance.

- 1) Every manufactured home park shall have an adult manager or caretaker on duty in or about the park at all times, 24 hours per day, to keep the park, its facilities and equipment in a clean, orderly and sanitary condition, and to be available in case of emergencies. The manager or caretaker shall be answerable with the owner for the violations of any provisions of this chapter.
- 2) Each manufactured home park shall maintain a central office for the use of the owner or manager, distinctly marked OFFICE.
- 3) A map of the park, with all lots clearly numbered, shall be displayed at the park office. The lots themselves shall also be numbered in a manner visible from the frontage street. The park shall be open at reasonable times to the visiting public and a directory shall be readily available to visitors.
- 4) The park grounds shall be lighted as approved by the City at all hours of darkness.
- 5) No public address or loud speaker systems shall be permitted.
- 6) Each park shall adopt a set of rules and regulations for orderly operation of the park in conformance with this chapter. These rules shall be made available to the residents of the park.
- 7) No domestic animals or house pets of park occupants shall allowed to run at large or commit any nuisances within the limits of the park.
- 8) No exterior clothes drying shall be permitted upon any lot or any other area of the park, except in areas specifically provided, and in those areas where resident individual home owners regularly dried their clothes prior to July 1, 1985.
- 9) The use of any lot or other area within the park or tent sites, camper trailers, pickup campers or other transient occupancy use is prohibited.

B) Lot regulations.

- 1) No more than one unit shall be parked upon any lot.

- 2) No home may be inhabited by a greater number of occupants than that for which it was designed.
- 3) Base; Beneath.
  - a) The base of all manufactured homes shall be enclosed with skirting, the skirting to be installed within 30 days from the date of installation of the unit.
  - b) The enclosure must be accessible for inspection and no obstruction shall be permitted that impedes the inspection of the manufactured house, plumbing, electrical facilities and related equipment.
  - c) No storage shall be permitted beneath the manufactured home.
- 4) All lots shall be used for residential purposes only. No commercial activity or signage will be permitted unless otherwise permitted by zoning ordinances other than this section.

C) Lot display regulations.

- 1) No homeowner or prospective homeowner shall be required to purchase a home from the owner or operator of the park in which the owner desires to locate or from someone designated by the owner of the park.
- 2) This provision, however, shall not prevent the owner of the park from establishing certain minimal standards and conditions of quality and design as to homes permitted in a park owned by him or her.

D) Park street system; maintenance, walkways and regulations.

- 1) All manufactured home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each manufactured home lot. The access shall be provided by streets, driveways or other means.
- 2) Entrances to manufactured home parks shall be designed to minimize congestion and hazards and allow free movement of traffic on adjacent streets. No parking shall be permitted on the park entrance street for a distance of 100 feet from its point of beginning.
- 3) The park operator shall remove snow from all streets, guest parking areas and public sidewalk areas within the park after each snowfall and these areas shall be kept sanded and/or free of ice and snow.
- 4) All streets within the park shall be kept clean and free of litter.
- 5) Dead-end streets shall be limited in length to 500 feet and shall be provided at the closed end with a cul-de-sac having an outside roadway diameter of at least 80 feet or a T-shaped alternative design. All dead-end streets shall be marked with approved signs at the entrance to the dead-end street.

- 6) A speed limit of ten miles per hour shall be maintained within the park limits and signs shall be posted accordingly. The operator may use raised bumps or ridges across the road surfaces to assure compliance with the posted limits.
  - 7) All parks shall be provided with safe, convenient, all season pedestrian access of adequate width for intended use, durable and convenient to maintain, between individual manufactured homes, the park streets and all community facilities provided for park residents. Sudden changes in alignment and gradient shall be avoided.
  - 8) A common walk system shall be provided and maintained between locations where pedestrian traffic is concentrated. The common walks shall have a minimum width of two and one-half feet.
  - 9) All manufactured homes shall be connected to common walks, to paved streets or to paved driveways or parking spaces connecting to a paved street. The individual walks shall have a minimum width of two feet.
  - 10) A minimum of one tree per, lot is required. In open area and park area, a minimum of 20 trees per acre is required.
  - 11) No more than two automobiles may be parked on any home lot.
- E) Fire and police protection.
- 1) Every home occupied in the park shall be equipped with a fire extinguisher in usable condition. The occupant of the home shall be responsible for providing the extinguisher for his or her home.
  - 2) Portable fire extinguishers rated for Classes B and C fires, with a capacity of ten pounds dry powder, shall be kept visible in service buildings and at other locations as approved or required by the Fire Chief, for convenient access by all of the occupants of the park. The fire extinguishers shall be maintained in good operating condition.
  - 3) No fire shall be kindled or maintained, except in a stove, fireplace, barbecue pit, incinerator or other equipment intended for that purpose. No fire shall be left unattended. No fuel shall be used and no material burned which emits, dense smoke or objectionable odors, open burning is prohibited.
  - 4) Storage of flammable liquids or materials or gases within or under the home is forbidden.
  - 5) All areas of the park sere kept free glitter, rubbish and other flammable material.
  - 6) The park shall be open to fire, police and other emergency vehicles and personnel at all times, and the law enforcement officers and the fire department shall be provided with a current directory showing the lot numbers and addresses.
- F) Storm protection.

- 1) The storm warning device required for the park shall be kept in good operating condition and tested once a month at a designated time in a manner approved by the City.
- 2) The park manager shall be responsible for obtaining weather warning information from the appropriate media, and for alerting residents to the hazards of a storm via the warning device when any storm with damaging winds is eminent.

G) Refuse handling.

- 1) The park shall provide for the collection disposal of all refuse and garbage generated within the park. The park may contract with private garbage haulers or provide the service itself.
- 2) All refuse handling must adhere to the following standards.
  - a) The storage, collection and disposal or use in the park shall be so conducted so as to create no health hazards, rodent harborage, insect breeding, accident or fire hazards or air pollution.
  - b) Garbage and refuse shall be collected and disposed of as frequently as may be necessary to insure that garbage receptacles shall not overflow.

H) Sewer and water.

- 1) All sewer and water systems within the park shall be kept in good operating condition in conformance with regulations of the State Department of Health and the City. Any maintenance of water and sewer systems within the park shall be at the owner's expense, but shall be under the supervision of an official designated by the City, who shall have authority to initiate necessary repairs.
- 2) If the City deems it necessary, auxiliary pumps to boost water pressure shall be installed at the expense of the park owner to maintain needed pressure for fire protection.
- 3) For sewer service and water service, when available, the City will charge the service rates as established by City Council resolution.

I) Insect and rodent control.

- 1) Where the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.
- 2) The growth of brush, weeds and grass shall be controlled to prevent harborage of ticks, chiggers and other noxious insects. Parks shall be so maintained as to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
- 3) Open areas shall be maintained free of wild undergrowth of any description.

## 92.08. ADMINISTRATION.

### A) Building Inspector.

- 1) Except as otherwise provided herein, this chapter shall be altered and enforced by the Building Inspector, who is hereby designated as enforcing officer.
- 2) The Building Inspector may institute in the name of the City any appropriate actions or proceedings against a violator as provided by law.

B) The park management shall notify park occupants of all provisions of this chapter and inform them of their duties and responsibilities under this chapter.

## CHAPTER 93: ZONING AND SUBDIVISION REGULATIONS.

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### 93.01. ZONING; ADOPTION OF REGULATIONS.

A) The City's zoning regulations are hereby adopted by reference and incorporated fully as if set out herein.

### 93.02. SUBDIVISION; ADOPTION OF REGULATIONS.

A) The City's subdivision regulations are hereby adopted by reference and incorporated fully as if set out herein.

## TITLE X: TABLE OF SPECIAL ORDINANCES

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TABLE I: ANNEXATIONS

<b>Ord. No.</b>	<b>Date Passed</b>	<b>Description</b>
601	7-12-1960	Annexing certain property
2000-02	6-26-2000	Annexing certain property
2001-01	3-12-2001	Annexing certain property
2001-02	6-11-2001	Annexing certain property
2001-03	6-26-2001	Annexing certain property
2001-05	12-10-2001	Annexing certain property
2002-02	4-4-2002	Annexing certain property
2002-04	6-10-2002	Annexing certain property

TABLE II: DETACHMENTS

<b>Ord. No.</b>	<b>Date Passed</b>	<b>Description</b>
		Detaching certain property
		Detaching certain property
		Detaching certain property
		Detaching certain property
		Detaching certain property

TABLE III: FRANCHISE AGREEMENTS

<b>Ord. No.</b>	<b>Date Passed</b>	<b>Description</b>
1984-4	7-9-1984	Granting a cable television franchise to Rolling Rebuilding, Inc.
1024	1-13-1992	Granting a gas distribution franchise to Western Gas Utilities, Inc.
1023	4-13-1992	Granting an electric distribution franchise to Northern States Power Company
94-01	7-11-1994	Amendment; granting a cable television franchise to Minnesota Cable Properties, Inc.
98-01	8-18-1998	Amendment; granting a cable television franchise to Minnesota Cable Properties, Inc.
2005-02	8-22-2005	Granting a cable television franchise to Lakedale Telephone Company.

TABLE IV: OTHER ORDINANCES

<b>Ord. No.</b>	<b>Date Passed</b>	<b>Description</b>	<b>Why Omitted from Code</b>
		Electrical Inspection Ordinance	Sunsetted when State Shutdown ended