

**TITLE II**  
**PUBLIC UTILITIES**

**CHAPTERS:**

- 2-01. Municipal and Public Utilities - Rules and Regulations, Rates, Charges and Collections.
- 2-02. Franchises.

## CHAPTER 2-01

### MUNICIPAL AND PUBLIC UTILITIES - RULES AND REGULATIONS, RATES, CHARGES AND COLLECTIONS

#### SECTIONS:

- 2.0101. Definitions.
  - 2.0102. Fixing Rates and Charges for Municipal Utilities.
  - 2.0103. Contractual Contents.
  - 2.0104. Rules and Regulations Relating to Municipal Utilities.
  - 2.0105. Abandoned Services - Penalties.
  - 2.0106. Rules and Regulations Relating to Refuse and Garbage Collection and Disposal.
  - 2.0107. Rules and Regulations Relating to Water Service.
  - 2.0108. Rules and Regulations Relating to Sewerage Use.
  - 2.0109. Sewer Service Charges.
  - 2.0110. Rules and Regulations Relating to Electric Service.
  - 2.0111. Electric Heating System Regulations.
  - 2.0112. Sump Pump Drain Regulations and Unlawful Acts.
  - 2.0113. Establishment of Certain Telephone, Cable TV, DSL and High Speed Internet Service Rates, Minimum Requirements, and Adoption of Telecommunications Tariffs.
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**SEC. 2-0101. DEFINITIONS.** As used in this Chapter, the following words and terms shall have the meanings stated:

1. **"Utility"** means all utility services, whether the same be public City-owned facilities or furnished by public utility companies.
2. **"Municipal Utility"** means any City-owned utility system, including, but not by way of limitation, water, sewerage, electric, refuse, telephone and cable TV service.
3. **"Company", "Grantee", and "Franchisee"** mean any public utility system to which a franchise has been granted by the City.
4. **"Consumer" and "Customer"** mean any user of a utility.
5. **"Service"** means providing a particular utility to a customer or consumer.

**SEC. 2-0102. FIXING RATES AND CHARGES FOR MUNICIPAL UTILITIES.** All rates and charges for municipal utilities shall be fixed, determined and amended by the Council and adopted by consolidated ordinance, except where the filing of a tariff is required. Such ordinance, containing the effective date thereof, shall be kept on file and open to inspection in the office of the City Administrator and shall be uniformly enforced. For the purpose of fixing such rates and charges, the Council may categorize and classify under the various types of service, provided, that such categorization and classification shall be included in the ordinance authorized by this Section.

(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)

**SEC. 2-0103. CONTRACTUAL CONTENTS.** Provisions of this Chapter relating to municipal utilities shall constitute portions of the contract between the City and all consumers of municipal utility services, and every such consumer shall be deemed to assent to the same.

**SEC. 2-0104. RULES AND REGULATIONS RELATING TO MUNICIPAL UTILITIES.**

**Subd. 1. Billing, Payment and Delinquency.** All municipal utilities shall be billed monthly unless specifically stated otherwise in this Chapter, and a utilities statement or statements shall be mailed to each consumer each month. All utilities charges shall be delinquent if they are unpaid at the close of business on the 14th day of the month following such billing; provided, that if the 14th day shall fall on a Saturday, Sunday or legal holiday, payment is due before close of business of the next business day. A finance charge of 18% annual interest (1.5% per month) will be imposed on all amounts unpaid after the 14<sup>th</sup> day of the month. A minimum finance charge of \$1.00 will be imposed. If service is suspended due to delinquency it shall not be restored at that location until a reconnection charge has been paid for each utility reconnected in addition to amounts owed for service and penalties.

**Subd. 2. Application, Connection and Sale of Service.** 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 such utilities taken as metered or ascertained in connection with such rates.

**Subd. 3. Discontinuance of Service.** All municipal utilities may be shut off or discontinued whenever it is found that:

**A.** 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 relative thereto, or any connection therewith, or,

**B.** 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 thereof, or,

**C.** There is fraud or misrepresentation by the owner or occupant in connection with any application for service or delivery or charges therefor.

**D.** It is determined that the owner or occupant of the premises is in violation of the provisions in SECTION 2-0104, Subd. 8 Unlawful Acts.

Source: Ord. 2018-04

**Subd. 4. Reconnection.**

**A.** The Council shall establish rates for reconnection of public utilities made during regular business hours, 7:30 a.m. through 4:30 p.m., Monday through Friday; and a separate fee to apply evenings, weekends and holidays.

**B.** Reconnection of utility services shall be made provided:

1. Current bill, penalties, service order charges and reconnect fee are paid in full.

2. A formal payback agreement is established with the City which shall include the reconnect fee.

**Subd. 5. Mosquito Control.** The City conducts annual mosquito control activities which require the expenditure of City funds for various services, equipment and supplies. A fee, as established by consolidated ordinance of the Council, is hereby charged against all utility customers, to be payable monthly and to be billed to each utility customer on the monthly utility bills issued by the City.

**(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

**Subd. 6. Ownership of Municipal Utilities.** Ownership of all municipal utilities, plants, lines, mains, extensions and appurtenances thereto, shall be and remain in the City and no person shall own any part or portion thereof. Provided, however, that private facilities and appurtenances constructed on private property are not intended to be included in municipal ownership.

**Subd. 7. Right of Entry.** By applying for, or receiving, a municipal utility service, a customer irrevocably consents and agrees that any City employee acting within the course and scope of his/her employment may enter into and upon the private property of the customer, including dwellings and other buildings, at all reasonable times under the circumstances, in or upon which private property a municipal utility, or connection therewith, is installed, for the purpose of inspecting, repairing, reading meters, connecting or disconnecting the municipal utility service. Failure to allow entry to a city employee onto private property for the above stated purposes within 30 days of the City's initial request to do so shall result in a \$50 surcharge being placed on the customer's utility bill each month until access is granted and the required task accomplished. After being billed the \$50 surcharge for 3 months, if the property owner continues to fail to allow entry for the above stated purposes, the surcharge shall increase to \$250 until access is granted and the required task is accomplished.

Source: Ord. 2018-03

**Subd. 8. 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 buildings, attachments, 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, use, 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 written permission 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 person has caused, allowed, or attempted the connection to a City utilities service from a property with a permanent permitted connection allowable under City rules, regulations, and ordinances to a property without permanent or with temporarily-permitted connection under City rules, regulations, and ordinances.

Source: Ord. 2018-04

**Subd. 9. Municipal Utility Services and Charges a Lien.**

A. Payment for all municipal utility (as that term is defined in City Code, Section 2.01) service and charges shall be the primary responsibility of the fee owner of the premises served and shall be billed to such owner unless otherwise contracted for and authorized in writing by the fee owner and any other person (such as a tenant, contract purchaser, manager, etc.), as agent for the fee owner, and consented to by the City of Barnesville, Minnesota. If the utility service and charges are for a single metered multi-unit rental residential building, the owner of said building shall be the customer of record and this responsibility shall not be waived by contract or otherwise. 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 Subdivision.

B. Each such account is hereby made a lien upon the premises served. All such accounts which are more than forty-five days delinquent may, when authorized by majority vote of the Council, be certified by the City Administrator of the City of Barnesville, Minnesota, to the County Auditor, and the City Administrator in so certifying shall specify the amount thereof, the description of the premises served, and the name of the owner thereof. The amount so certified shall be extended by the Auditor on the tax rolls against such premises in the same manner as other taxes, and collected by the County Treasurer, and paid to the City along with other taxes.

**Subd. 10. Municipal Utility Service Outside the City.** Premises located outside the City shall not be connected to or served by any municipal utility, except such premises as are publicly owned or presently served. Persons needing municipal utility service whose property is located outside the corporate limits must initiate and complete annexation proceedings prior to being provided with such service or services.

**SEC. 2-0105. ABANDONED SERVICES - PENALTIES.** All service installations connected to the water and sewerage system that have been abandoned or, for any reason, have become useless for further service shall be forthwith disconnected at the main. The owner of the premises served shall pay all costs of excavation, capping, main and street restoration. The City shall perform the actual disconnection and all pipe and appurtenances removed from the street right-of-way shall become the property of the City. It is unlawful for any person to cause or allow any service pipe to be hammered or squeezed together at the ends to stop the flow of water, or to save expense in improperly removing such pipe from the main. Also, such improper disposition thereof shall be corrected by the City and the cost incurred shall be borne by the person causing or allowing such work to be performed. If any property owner shall fail to pay the costs incident to services performed under this Section, the City may collect payment therefor as any other utility charge.

**SEC. 2-0106. RULES AND REGULATIONS RELATING TO REFUSE AND GARBAGE COLLECTION AND DISPOSAL.**

**Subd. 1. Definitions.** The following terms, as used in this Section, shall have the meanings stated:

**A. "Garbage"** means organic refuse resulting from the preparation of food, decayed and spoiled food from any source, animal excretion and carcasses of dead animals of not more than 10 pounds in weight each, and glass and tin cans in which foods are customarily purchased, but excluding human excretion, sewage and other water-carried wastes.

**B. "Recyclable Materials"** means that refuse generated and collected at residences, more particularly described as newsprint, unbroken glass containers, aluminum containers and aluminum scrap, certain plastic containers, bi-metal containers, office paper, magazines, clippings and corrugated cardboard.

**C. "Refuse"** means all drained organic material resulting from the preparation of food and spoiled or decayed food from any source, bottles, cans, glassware, paper or paper products, crockery, ashes, rags, and discarded clothing, but not including sand, earth, brick, stone, concrete, trees, tree branches, wood, construction material or debris.

**D. "Rubbish"** consists of wood, leaves, chips, shavings, printed matter, paper, paste board, boxes, grass, rags, straw, discarded wearing apparel, and all other combustible matter not included in the term "Garbage".

**Subd. 2. Storage and Transporting Refuse.**

**A.** It is unlawful for any person to store refuse except as herein provided.

**B.** It is unlawful for any person to transport refuse over any street, for hire, except by special permit from the Council, or acting within the course and scope of a written contract with the City, or his/her employment with the City.

**C.** It is unlawful for any person to transport refuse on any street unless it is carried in a vehicle equipped with a leak-proof body or container and completely covered with a heavy canvas or top to prevent loss of contents.

**Subd. 3. Containers.** All refuse shall be stored in clean, rust-resistant, water-tight, non-absorbent and washable closed containers.

**Subd. 4. Collection and Disposal of Garbage, Refuse and Recyclable Materials.** The City shall provide by contract with a hauler for collection and disposal of all garbage, refuse and recyclable materials in a sanitary manner to insure the health, safety and general welfare of its residents, under such conditions as the City may, from time to time, deem appropriate. Fees shall be set by the Council by consolidated ordinance. Unpaid fees may be collected from the occupant or owner of the real property from which the garbage, refuse or rubbish was collected, by civil action or by assessing the same against the real estate. Personnel of the City, or other County, State or Federal government personnel, may collect garbage and rubbish in the City as needed and when required. Refuse containers shall be placed at the designated collection point on days specified by the City. Collection points will generally be the alley adjacent to the property from which refuse is collected; but where there is no alley, the curb line in front of such property. Recyclable materials must be taken to the City's recycling center.

**(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

**Subd. 5. Property of the City.** All materials at public disposal sites are the property of the City. It is unlawful for any person to separate, collect, carry off or dispose of such materials except by direction of the City.

## **SEC. 2-0107. RULES AND REGULATIONS RELATING TO WATER SERVICE.**

**Subd. 1. Deficiency of Water and Shutting Off Water.** The City is not liable for any deficiency or failure in the supply of water to customers whether occasioned by shutting the water off for the purpose of making repairs or connections or by any other cause whatever. In case of fire, or alarm of fire, water may be shut off to insure a supply for fire fighting. In making repairs or construction of new works, water may be shut off at any time and kept off so long as may be necessary.

**Subd. 2. Repair of Leaks.** It is the responsibility of the consumer or owner to maintain the water service from the main into the house or other building. In case of failure upon the part of any consumer or owner to repair any leak occurring in his/her water service within twenty-four (24) hours after oral or written notice has been given the owner or occupant of the premises, the water may be shut off and will not be turned on until a reconnection charge has been paid and the water service has been repaired. When the waste of water is great or when damage is likely to result from the leak, the water will be turned off if the repair is not proceeded with immediately.

**Subd. 3. Increasing Size of Water Service.** When it is desired to increase the size of water service from the main, payment of a fee shall be made, a new permit shall be issued, and the regular tapping charge shall be made as if this were a new service.

### **(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

**Subd. 4. Service Pipes.** Every service pipe must be laid in such manner as to prevent rupture by settlement. The service pipe shall be placed not less than seven feet below the surface in all cases so arranged as to prevent rupture and stoppage by freezing. Frozen service pipes between the main and the building shall be the responsibility of the owner. Service pipes must extend from the curb stops to the inside of the building; or if not taken into a building then to the hydrant or other fixtures which they are intended to supply. A valve, the same size as the service pipe, shall be placed close to the inside wall of the building, ahead of the meter and well protected from freezing. Joints on copper tubing shall be flared or compression-fitted, and kept to a minimum. Not more than one joint shall be used for a service up to seventy feet in length. All joints shall be left uncovered until inspected. Minimum size connection with the water mains shall be 3/4 inch in diameter.

**Subd. 5. Private Water Supplies.** No water pipe of the City water system 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 City shall notify the owner or occupant to disconnect the same and, if not immediately done, the City water shall be turned off. Before any new connections to the City system are permitted, the City shall ascertain that no cross-connections will exist when the new connection is made. When a building is connected to "City Water" the private water supply may be used only for such purposes as the City may allow.

### **Subd. 6. Prohibited Uses or Restricted Hours.**

**A.** Whenever the Council determines that a shortage of water threatens the City, it may, by resolutions limit the times and hours during which City water may be used for sprinkling, irrigation, car washing, air conditioning, or other uses. After publications of the resolution or two days after the mailing of the resolution to each customer, no person shall use or permit water to be used in violation of the resolution and any customer who does so shall be charged

\$25.00 for each day of violation. Subsequent violation in the same calendar year, shall be charged \$50.00 for each day of the violation, and the charge shall be added to the next water bill. If the emergency requires immediate compliance with terms of the resolution, the Council may provide for the delivery of a copy of the resolution to the premises of each customer and any customer who has received such notice and thereafter uses or permits water to be used in violation of the resolution shall be subject to the charge provided above. Continued violation shall be cause for discontinuance of water service.

**B.** The Council does further ordain that permanent water restrictions are necessary and are hereby adopted, and are hereby referred to as Stage 1 restrictions. As water shortages become more serious, the Council may declare a Stage 2 or Stage 3 watering restriction. These stages are hereby defined and will be implemented as follows:

**1. Stage 1:** Water restrictions are in effect from June 1 to September 1. No lawns shall be watered between the hours of 10:00 a.m. and 7:00 p.m. Residents with off house numbers shall water lawns or wash cars only on odd-numbered calendar days, and those with even-numbered addresses shall water lawns or wash cars on even-numbered days. Exception may be granted for recently established lawns. Those lawns may be watered daily for up to six weeks after installation, but only during the hours listed above. The use of hand-held water devices is permitted without restriction for any purpose except when the device is left on unattended, or no device is used to control the flow of water. If a hand-held watering device is left on unattended, it is subject to the restriction for an automatic sprinkler device. These Stage 1 restrictions are hereby adopted as permanent until further action of the Council.

**2. Stage 2:** The City is divided into three (3) areas; these are your voting wards. During Stage 2 phase, the City would limit turf watering to every five (5) days, hand-held watering devices to trees, and shrubs could be watered every three (3) days. Car washing is prohibited. For example:

Lawn watering:	Sat.	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.
Ward Number			1		2		3

**3. Stage 3:** At this stage, the City would implement a complete ban on all nonessential water usage.

**Subd. 7. Private Fire Hose Connections.** Owners of structures with self-contained fire protection systems may apply for and obtain permission to connect to the street mains with hydrants, large pipes, and hose couplings, for use in case of fire only, at their own installation expense and at such rates as the Council may adopt by resolution as herein provided.

**Subd. 8. Opening Hydrants.** It is unlawful for any person, other than members of the Fire Department or other person duly authorized by the City, in pursuance of lawful purpose, to open any fire hydrant or attempt to draw water from the same or in any manner interfere therewith. It is also unlawful for any person so authorized to deliver or suffer to be delivered to any other person any hydrant key or wrench, except for the purposes strictly pertaining to their lawful use.

**Subd. 9. Unmetered Service.** Unmetered service may be provided for construction, flooding skating rinks, and any other purpose. Such service shall be at a duly adopted rate. Where it is difficult or impossible to accurately measure the amount of water taken, unmetered service may be provided and the unmetered rate applied; provided, however, that by acceptance thereof the consumer agrees to have the City estimate the water used. In so estimating the City shall consider the use to which the water is put and the length of time of unmetered service.

**Subd. 10. Water Meters.** All water meters exceeding 5/8ths inch in size shall be purchased and maintained by the property owner. All repairs of water meters not resulting from normal usage shall be the responsibility of the property owner, as shall any maintenance and repair of meters which are not of the remote reading type. Any meter twenty years old, or older, or in need of replacement, shall be replaced with a remote type which shall be purchased by the property owner and shall be the maintenance responsibility of the City. All water meters shall be installed and controlled by the City and the cost of installation shall be the responsibility of the property owner. Any remote type meter in need of replacement by reason of normal usage shall be furnished by the City, installed at the expense of the property owner, and the City shall thereafter own such meter.

**Subd. 11. Access for Meter Reading; Fees.**

**A.** Employees of the City and their authorized agents shall be admitted to premises during regular City business hours in order to inspect, test, repair, or read an authorized meter or remote reading device upon such premises. Such employees or authorized agents shall, upon request, show identification as determined by the City.

**B.** In an emergency, to include but not be limited to situations which threaten the City's water supply or situations where a customer's property is suffering water damage because of a leak, the City may enter the premises without notice to take corrective measures.

**C.** In the event the customer's water meter cannot be read by the meter reader, a Meter Reading Card shall be left at the residence. The meter must be read by the customer and then the reading filled in the space on the card, and the card then returned to the City by the 15<sup>th</sup> of the month. If the card is not received, the City shall bill the customer's account an amount equal to the highest charge for water in any month of the previous year plus an \$18.50 late charge. This shall continue for each month until the meter reading is received by the City.

**(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

**Subd. 12. Code Requirement.** All piping, connections and appurtenances shall be installed and performed strictly in accordance with the Minnesota Plumbing Code. Failure to install or maintain the same in accordance therewith, or failure to have or permit required inspections shall, upon discovery by the City, be an additional ground for termination of water service to any consumer.

**Subd. 13. Additional Rules and Regulations.** The Council may, by resolution, adopt such additional rules and regulations relating to usage rates and fees, placement, size and type of equipment as it, in its discretion, deems necessary or desirable. Copies of such additional rules and regulations shall be kept on file in the office of the City Administrator, and uniformly enforced.

**SEC. 2-0108. RULES AND REGULATIONS RELATING TO SEWERAGE USE.**

**Subd. 1. Definitions.** The following terms, as used in this Section, shall have the meanings stated.

**1. "Act"** - The Federal Water Pollution Control Act also referred to as the Clean Water Act, as amended, 33. U.S.C. 1251, et seq.

**2. "ASTM"** - American Society for Testing Materials.

3. **"Authority"** - The City of Barnesville, Minnesota, or its representative thereof.

4. **"BOD<sub>5</sub> or Biochemical Oxygen Demand"** - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C Centigrade in terms of milligrams per liter (mg/l).

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

6. **"Building Sewer"** - The extension from the building drain to the public sewer or other place of disposal, also referred to as a house connection or service connection.

7. **"Chemical Oxygen Demand (COD)"** - The quantity of oxygen utilized in the chemical oxidation of organic matter as determined by standard laboratory procedures, and as expressed in terms of milligrams per liter (mg/l).

8. **"Compatible Pollutant"** - Biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria, plus additional pollutants identified in the NPDES/SDS Permit if the treatment facilities are designed to treat such pollutants to a degree which complies with effluent concentration limits imposed by the permit.

9. **"Control Manhole"** - A structure specially constructed for the purpose of measuring flow and sampling of wastes.

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

11. **"Fecal Coliform"** - Any number of organisms common to the intestinal tract of man and animals whose presence in sanitary sewage is an indicator of pollution.

12. **"Floatable Oil"** - Oil, fat, or grease in a physical state, such that it will separate by gravity from wastewater.

13. **"Garbage"** - Animal and vegetable waste resulting from the handling, preparation, cooking, and serving of food.

14. **"Incompatible Pollutant"** - Any pollutant that is not defined as a compatible pollutant including non-biodegradable dissolved solids.

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

16. **"Industrial Waste"** - Gaseous, liquid, and solid wastes resulting from industrial or manufacturing processes, trade or business, or from the development, recovery, and processing of natural resources, as distinct from residential or domestic strength wastes.

**17. "Infiltration"** - Water entering the sewage system (including building drains and pipes) from the ground through such means as defective pipes, pipe joints, connections, and manhole walls.

**18. "Infiltration/Inflow (I/I)"** - The total quantity of water from both infiltration and inflow.

**19. "Inflow"** - Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, sump pumps, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, cooling towers, storm water surface runoff, street wash waters or drainage. "Inflow" does not include, and is distinguished from, "Infiltration".

**20. "Interference"** - The inhibition or disruption of the City's wastewater disposal system processes or operations which causes or significantly contributes to a violation of any requirement of the City's NPDES and/or SDS Permit. The term includes sewage sludge use or disposal by the City in accordance with published regulations providing guidelines under Section 405 of the Act or any regulations developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or more stringent State criteria applicable to the method of disposal or use employed by the City.

**21. "MPCA"** - Minnesota Pollution Control Agency.

**22. "National Categorical Pretreatment Standards"** - Federal regulations establishing pretreatment standards for introduction of pollutants in publicly-owned wastewater treatment facilities which are determined to be not susceptible to treatment by such treatment facilities or would interfere with the operation of such treatment facilities, pursuant to Section 307 (b) of the Act.

**23. "National Pollutant Discharge Elimination System (NPDES) Permit"** - A permit issued by the MPCA, setting limits on pollutants that a permittee may legally discharge into navigable waters of the United States pursuant to Sections 402 and 405 of the Act.

**24. "Natural Outlet"** - Any outlet, including storm sewers and combined sewers, which overflow into a watercourse, pond, ditch, lake or other body of surface water or ground water.

**25. "Non-Contact Cooling Water"** - The water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added, is heat.

**26. "Normal Domestic Strength Waste"** - Wastewater that is primarily introduced by residential users with a BOD<sub>5</sub> concentration not greater than 250 mg/l and a suspended solids (TSS) concentration not greater than 300 mg/l.

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

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

**29. "Properly Shredded Garbage"** - The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be

carried freely under the flow conditions normally prevailing in public sewers with no particle greater than 1/2inch (1.27 cm) in any dimension.

**30. "Sewage"** - The spent water of a community. The preferred term is "wastewater".

**31. "Sewer"** - A pipe or conduit that carries wastewater or drainage water.

**A. "Collection Sewer"** - A sewer whose primary purpose is to collect wastewaters from individual point source discharges and connections.

**B. "Combined Sewer"** - A sewer intended to serve as a sanitary sewer and a storm sewer.

**C. "Forcemain"** - A pipe in which wastewater is carried under pressure.

**D. "Interceptor Sewer"** - A sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.

**E. "Private Sewer"** - A sewer which is not owned and maintained by a public authority.

**F. "Public Sewer"** - A sewer owned, maintained and controlled by a public authority.

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

**H. "Storm Sewer or Storm Drain"** - A drain or sewer intended to carry storm waters, surface runoff, ground water, sub-surface water, street wash water, drainage, and unpolluted water from any source.

**32. "Significant Industrial User"** - Any industrial user of the wastewater treatment facility which has a discharge flow (1) in excess of 25,000 gallons per average work day, or (2) has exceeded five percent (5%) of the total flow received at the treatment facility, or (3) whose waste contains a toxic pollutant in toxic amounts pursuant to Section 307 (a) of the Act, or (4) whose discharge has a significant effect, either singly or in combination with other contributing industries, on the wastewater disposal system, the quality of sludge, the system's effluent quality, or emissions generated by the treatment system.

**33. "Slug"** - Any discharge of water or wastewater which in concentration of any given constituent, or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes, more than five (5) times the average 24-hour concentration of flows during normal operation, and shall adversely affect the collection and/or performance of the wastewater treatment works.

**34. "State Disposal System (SDS) Permit"** - Any permit (including any terms, conditions and requirements thereof) issued by the MPCA pursuant to Minnesota Statutes 115.07 for a disposal system as defined by Minnesota Statutes 115.01, Subdivision 8.

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

**36. "Toxic Pollutant"** - The concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse effects as defined in standards issued pursuant to Section 307 (a) of the Act.

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

**38. "User"** - Any person who discharges or causes or permits the discharge of wastewater into the City's wastewater disposal system.

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

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

**41. "Watercourse"** - A natural or artificial channel for the passage of water, either continuously or intermittently.

**42. "WPCF"** - The Water Pollution Control Federation.

**Subd. 2. Control by the Water and Wastewater Superintendent.** The Water and Wastewater Superintendent shall have control and general supervision of all public sewers and service connections in the district, and shall be responsible for administering the provisions of this Section to the end that a proper and efficient public sewer is maintained.

**Subd. 3. Unlawful Acts.**

**A.** It is unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, any human or animal excrement, garbage or objectionable waste.

**B.** It is unlawful to discharge to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Section and the City's NPDES/SDS Permit.

C. Except as provided hereinafter, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

D. The owners of all houses, buildings, or properties used for human occupancy, employment, recreation or other purposes from which wastewater is discharged, and which is situated within the City and adjacent to any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the City, shall be required at the owner's expense to install a suitable service connection to the public sewer in accordance with provisions of this Section, within 180 days of the date said public sewer is operational, provided said public sewer is within 100 feet of the structure generating the wastewater. All future buildings constructed on property adjacent to the public sewer shall be required to immediately connect to the public sewer. If sewer connections are not made pursuant to this Subdivision, an official thirty (30) days notice shall be served instructing the affected property owner to make said connection.

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

#### **Subd. 4. Private Wastewater Disposal.**

A. Where a public sewer is not available under the provisions of Subdivision 3, above, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Subdivision.

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

#### **(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

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

D. The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of 6 MCAR 4.8040, entitled "Individual Sewage Treatment System Standards". No septic tank or cesspool shall be permitted to discharge to any natural outlet.

E. At such time as a public sewer becomes available to a property serviced by a private wastewater disposal system, a direct connection shall be made to the public sewer within 180 days in compliance with this Section, and within 30 days any septic tanks,

cesspools, and similar private wastewater disposal systems shall be cleaned of sludge. The bottom shall be broken to permit drainage, and the tank or pit filled with suitable material.

**F.** The owners shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times at no expense to the City.

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

#### **Subd. 5. Building Sewers and Connections.**

**A.** Any new connection to the sanitary sewer system shall be prohibited unless sufficient capacity is available in all downstream facilities including, but not limited to, capacity for flow, BOD<sub>5</sub>, and suspended solids, as determined by the Superintendent.

**B.** It is unlawful for any unauthorized person to uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.

**C.** Applications for permits shall be made by the owner or authorized agent and the party employed to do the work, and shall state the location, name of owner, street number of the building to be connected, and how occupied. It is unlawful for any person to extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.

**D.** There shall be two classes of building sewer permits: (1) for residential and commercial service, and (2) for service to establishments producing industrial wastes. In either case, the application shall be supplemented by any plans, specifications, or any other information considered pertinent in the judgment of the City. The industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics, and type of activity.

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

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

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

**H.** The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the State of Minnesota Building and Plumbing Code or other applicable rules and regulations of the City. In the absence of Code provisions or in the

amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9, shall apply.

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

**J.** It is unlawful for any person to make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or indirectly to the wastewater disposal system.

**K.** The connection of the building sewer into the public sewer shall conform to the requirements of the State of Minnesota Building and Plumbing Code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of infiltration/inflow. Any deviation from the prescribed procedures and materials must be approved by the City prior to installation.

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

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

**N.** It is unlawful for any person to make a service connection with any public sewer unless regularly licensed under the City Code to perform such work, and no permit shall be granted to any person except such regularly licensed person.

**O. Infiltration/Inflow Elimination During Construction.** During any new construction, renovation, or demolition, the connections to the sanitary sewer system shall be protected through the use of a cover plug in order to eliminate the potential for inflow to enter the sanitary sewer system. Any such water collected shall not be allowed to enter the sanitary sewer system at any time.

**P. Sump Pump Requirements for New Construction.** All new buildings with groundwater sump systems are required, prior to final inspection by Building Code personnel, to have the sump pump installed in compliance with this Section. Any person responsible for installation of a sump pump system that does not comply with this Section shall be guilty of a misdemeanor, subject to up to the maximum misdemeanor penalties allowed by Minnesota State law. The responsible person shall include, but not necessarily be limited to the plumbing subcontractor and the general contractor.

#### **Subd. 6. Use of Public Services.**

**A. Extraneous Water.** It is unlawful for any person to discharge, or cause to be discharged, unpolluted water (inflow) from any roof, surface, groundwater sump pump, footing tile, swimming pool, or other natural precipitation into the sanitary sewer system. Dwellings and

other buildings and structures which require, because of infiltration of water into basements, crawl spaces, and the like, a sump pump discharge system, shall have a permanently installed discharge line which shall not, at any time, discharge water into the sanitary sewer system except as provided in Item 3, below. A permanent installation shall be one which provides for year-round discharge capability to either the outside of the dwelling, building, or structure, is connected to the City storm sewer, or discharges to the curb and gutter or the street. It shall consist of elements that do not allow altering the path of discharge.

**1.** Before February 1, 1996, any person, firm, or corporation having a roof surface, groundwater sump pump, footing tile, or swimming pool now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove the same. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by the City or its designated agent. The February 1, 1996 date may be extended by Council resolution.

**2.** Any person refusing to allow their property to be inspected for extraneous water connections within fourteen (14) days of the date the City, or its designated agents, are denied admittance to the property, shall immediately become subject to the surcharge hereinafter provided for in Subd. 10 hereof. Any person found to violate this provision shall make the necessary changes to comply with this provision relating to the discharge of unpolluted waters (inflow) into the sanitary sewer system and furnish proof of the changes to the City within ninety (90) days. Each sump pump connection identified may be reinspected by the City, its designated agent, or a licensed plumber to confirm compliance.

**3.** The Water/Wastewater Superintendent shall have the authority and duty of hearing and deciding requests for waivers from the applicability of this provision where strict enforcement would cause undue hardship because of circumstances or cause a safety problem. Application for waivers pursuant to this provision shall be addressed in writing to the Water/Wastewater Superintendent. The applications shall, at a minimum, identify the property for which the waiver is being applied, the name of the property owner/applicant, and describe in detail what characteristics of the subject property create an undue hardship. Within a reasonable time, the Water/Wastewater Superintendent shall make a decision on the matter and serve a copy of such order upon the applicant by mail. If the waiver permits the property owner to temporarily pump directly into the sanitary sewer system between the dates of November 1<sup>st</sup> and March 31<sup>st</sup>, the applicant must agree to pay an additional fee as set by resolution of the Council. The holder of a waiver shall allow the City, or its designated agent, to certify that prior to April 1<sup>st</sup> of each subsequent year their discharge water connection has been removed from the sanitary sewer. Failure to provide such certification will place the waiver holder in violation of Subd. 10 hereof. Any waiver granted shall be recorded at the office of the Clay County Recorder. The City shall record the waiver, but the property owner is responsible for the filing fee. If the property owner brings the system into total compliance, a release of waiver shall be filed by the City upon request of the property owner upon payment of the filing fee.

**4.** Properties identified as having sump pump connections will be reinspected by the City, or its designated agent, to confirm compliance upon sale of the property.

**B.** Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as storm sewers or to a natural outlet approved by the City and other regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet on approval of the City and upon approval and the issuance of a discharge permit by the MPCA.

**C.** It is unlawful for any person to discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

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

**2.** Solid or viscous substances which will cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to, grease, garbage with particles greater than one-half (1/2) inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshes, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.

**3.** Any wastewater having a pH of less than 5.0 or greater than 9.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater disposal system.

**4.** Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater disposal system. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act.

**D.** The following described substances, materials, water, or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either sewers, the wastewater treatment works treatment process or equipment, will not have an adverse effect on the receiving stream and/or soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Superintendent may set limitations lower than limitations established in the regulations below if, in his/her opinion, such more severe limitations are necessary to meet the above objectives. In forming his/her opinion as to the acceptability of wastes, Superintendent will give consideration to such factors as the quantity of subject waste in reaction to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, the City's NPDES and/or SDS permit, capacity of the sewage treatment plant, degree of tractability of wastes in the sewage treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the Superintendent are as follows:

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

**2.** Any wastewater containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg/1 or containing substances which may solidify or become viscous at temperatures between 32°F and 150°F (0°C and 65.5°C); and any wastewater containing oil and grease concentrations of mineral origin of greater than 100 mg/1, whether emulsified or not.

3. Any quantities of flow, concentrations, or both which constitute a "slug" as defined herein.

4. Any garbage not properly shredded, as defined herein. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food on the premises or when served by caterers.

5. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair.

6. Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

7. Non-contact cooling water or unpolluted storm, drainage, or ground water.

8. Wastewater containing inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) in such quantities that would cause disruption with the wastewater disposal system.

9. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or Federal regulations.

10. Any waters or wastes containing the following substances to such degree that any such material received in the composite wastewater at the wastewater treatment works in excess of the following limits for such materials: Arsenic, Cadmium, Copper, Cyanide, Lead, Mercury, Nickel, Silver, Total Chromium, Zinc and Phenolic compounds which cannot be removed by the City's wastewater treatment system.

11. Any wastewater which creates conditions at or near the wastewater disposal system which violates any statute, rule, regulations, or ordinance of any regulatory agency, or State or Federal regulatory body.

12. Any waters or wastes containing BOD<sub>5</sub> or suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the wastewater treatment works, except as may be permitted by specific written agreement subject to the provisions of Subparagraph Q of this Subdivision.

**E.** If any waters or wastes are discharged or are proposed to be discharged to the public sewers which contain substances or possess the characteristics enumerated in Subparagraph D of this Subdivision, and/or which in the judgment of the Utilities Superintendent, may have a deleterious effect upon the wastewater treatment facilities, processes, or equipment; receiving waters, and/or soil, vegetation, and ground water; or which otherwise create a hazard to life or constitute a public nuisance, the City may: (1) Reject the wastes; (2) Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307(b) of the Act and all addendum thereof; (3) Require control over the quantities and rates of discharge; and/or, (4) Require payment to cover the added costs of handling, treating, and disposing of wastes not covered by existing taxes or sewer service charges. If the City permits the pretreatment or equalization of waste

flows, the design, installation, and maintenance of the facilities and equipment shall be made at the owner's expense, and shall be subject to the review and approval of the City pursuant to the requirements of the MPCA.

**F.** No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in this Subdivision, or contained in the National Categorical Pretreatment Standards or any State requirements.

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

**H.** Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in Subparagraph D, Item 2, above, any flammable wastes as specified in Subparagraph C, Item 1, above, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured materials by appropriate means, and shall maintain a record of dates and means of disposal which are subject to review by the Superintendent. Any removal and hauling of the collecting materials not performed by the owner's personnel, must be performed by a currently licensed waste disposal firm.

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

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

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

**L.** Where required by the City, the owner of any property serviced by a sanitary sewer shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this Section. Where necessary, facilities to prevent accidental discharges of

prohibited materials shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Superintendent for review and approval prior to construction of the facility. Review and approval of such plans and operating procedures shall not relieve any user from the responsibility to modify the user's facility as necessary to meet the requirements of this Section. Users shall notify the Superintendent immediately upon having a slug or accidental discharge of substances of wastewater in violation of this Section to enable countermeasures to be taken by the Superintendent to minimize damage to the wastewater treatment works. Such notification will not relieve any user of any liability for any expense, loss or damage to the wastewater treatment system or treatment process, or for any fines imposed on the City on account thereof under any State and Federal law. Employers shall insure that all employees who may cause or discover such a discharge, are advised of the emergency notification procedure.

**M.** It is unlawful for any person, having charge of any building or other premises which drains into the public sewer, to permit any substance or matter which may form a deposit or obstruction to flow or pass into the public sewer. Within 60 days after receipt of written notice from the City, the owner shall install a suitable and sufficient catch basin or waste trap, or if one already exists, shall clean out, repair or alter the same, and perform such other work as the Superintendent may deem necessary. Upon the owner's refusal or neglect to install a catch basin or waste trap or to clean out, repair, or alter the same after the period of sixty (60) days, the Superintendent may cause such work to be completed at the expense of the owner or representative thereof.

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

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

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

**Q.** No statement contained in this Subdivision shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefor by the industrial concern, providing that National Categorical Pretreatment Standards and the District's NPDES and/or State Disposal System Permit limitations are not violated.

**Subd. 7. Damage to Facilities.** It is unlawful for any person to maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities.

**Subd. 8. User Rate Schedule for Charges.** Each user of Sewer service shall pay the charges applicable to the type of service, and in accordance with the provisions set forth in Section 2-0109 establishing a Sewer Service Charge System for the City.

**Subd. 9. Powers and Authority of Inspectors.**

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

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

**C.** While performing necessary work on private properties, the Superintendent, other duly authorized employees of the City, or an authorized agent of the City, shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City's employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except such may be caused by negligence or failure of the company to maintain safe conditions as required herein.

**D.** The Superintendent, other duly authorized employees of the City, or an authorized agent of the City, bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

**Subd. 10. Penalties.**

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

**B.** Any person violating any of the provisions of this Section shall become liable to the City for any expense, loss, or damage occasioned by the City by reason of such violation. Each day in which any such violation occurs shall be deemed as a separate offense.

**C. Surcharge for Infiltration/Inflow.** A monthly surcharge is hereby imposed. This surcharge will be in addition to the regular sewer billing on and after February 1, 1996, to property owners who are not in compliance with Subd. 6, Subparagraph A. The surcharge shall be levied monthly on properties not complying with Subd. 6, Subparagraph A. All properties found during reinspection to have violated said Subd. 6, Subparagraph A, will be subject to a monthly penalty for all months between the two most recent inspections. The surcharge shall be set and from time to time amended by resolution of the Council.

## **SEC. 2-0109. SEWER SERVICE CHARGES.**

**Subd. 1. Purpose.** The purpose of this Section is to recover costs associated with:

- A.** Operation, maintenance, and replacement to ensure effective functioning of the Wastewater Treatment System.
- B.** Local capital costs incurred in the construction of the Wastewater Treatment System.

**Subd. 2. Definitions.** The following terms, as used in this Section, shall have the meanings stated:

**1. "Administration"** - Those fixed costs attributable to administration of the wastewater treatment works (i.e., billing and associated bookkeeping and accounting costs).

**2. "Biochemical Oxygen Demand or BOD<sub>5</sub>"** - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees C, expressed in milligrams per liter.

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

**4. "Commercial User"** - Any place of business which discharges sanitary waste as distinct from industrial wastewater.

**5. "Commercial Wastewaters"** - Domestic wastewater, emanating from a place of business as distinct from industrial wastewater.

**6. "Debt Service Charge"** - A charge levied on users of wastewater treatment facilities for the cost of repaying money bonded to construct said facilities.

**7. "Normal Domestic Strength Wastewater"** - Wastewater that is primarily produced by residential users, with BOD<sub>5</sub> concentrations not greater than 250 mg/l and suspended solids concentrations not greater than 300 mg/l, in accordance with the provisions of Section 2-0108 regulating the use of public sewers.

**8. "Extra Strength Waste"** - Wastewater having a BOD<sub>5</sub> and/or TSS greater than domestic waste as defined herein and not otherwise classified as an incompatible waste.

**9. "Governmental User"** - Users which are units, agencies or instrumentalities of Federal, State, or local government discharging normal domestic strength wastewater.

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

**11. "Industrial Users" or "Industries" are:**

**A.** Entities that discharge into a publicly-owned wastewater treatment works, liquid wastes resulting from the processes employed in industrial or manufacturing processes, or from the development of any natural resources. These are identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemental under one of the following divisions:

**Division A - Agriculture, Forestry and Fishing.**

**Division B - Mining.**

**Division D - Manufacturing.**

**Division E - Transportation, Communications, Electric, Gas, and Sanitary Sewers.**

**Division I - Services.**

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

BOD <sub>5</sub>	Less than 250 mg/l
Suspended Solids	Less than 300 mg/l

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

**12. "Industrial Wastewater"** - The liquid processing wastes from an industrial manufacturing process, trade, or business including, but not limited to, all Standard Industrial Classification Manual Divisions A, B, D, E, and I manufacturers as distinct from domestic wastewater.

**13. "Infiltration/Inflow (I-I)"** - The total quantity of water from both infiltration and inflow.

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

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

**14. "Institutional User"** - Users other than commercial, governmental, industrial or residential users, discharging primarily normal domestic strength wastewater (e.g., Non-profit organizations)

**15. "Operation and Maintenance"** - Activities required to provide for the dependable and economical functioning of the treatment works, throughout the design or useful life, whichever is longer of the treatment works, and at the level of performance for which the treatment works were constructed. Operation and maintenance includes replacement.

**16. "Operation, Maintenance and Equipment Replacement Costs"** - Expenditures for operation and maintenance, including replacement.

**17. "Public Wastewater and Collection System"** - A system of sanitary sewers owned, maintained, operated and controlled by the City.

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

**19. "Replacement Costs"** - Expenditures for replacement.

**20. "Residential User"** - A user of the treatment facilities whose premises or building is used primarily as a residence for one or more persons, including dwelling units such as detached and semi-detached housing, apartments, and mobile homes; and which discharges primarily normal domestic strength sanitary wastes.

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

**22. "Sewer Service Charge"** - The aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the City's treatment facilities.

**23. "Sewer Service Fund"** - A fund into which income from sewer service charges is deposited along with other income, including taxes intended to retire debt incurred through capital expenditure for wastewater treatment. Expenditure of the Sewer Service Fund will be for operation, maintenance and replacement costs; and to retire debt incurred through capital expenditure for wastewater treatment.

**24. "Slug"** - Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration of flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

**25. "Standard Industrial Classification Manual"** - Office of Management and Budget, 1972.

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

**27. "Toxic Pollutant"** - The concentration of any pollutant or combination of pollutants as defined in standards issued pursuant to Section 307(a) of the Act, which upon exposure to or assimilation into any organism will cause adverse effects.

**28. "User Charge"** - A charge levied on users of a treatment works for the user's proportionate share of the cost of operation and maintenance, including replacement.

**29. "Users"** - Those residential, commercial, governmental, institutional and industrial establishments which are connected to the public sewer collection system.

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

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

### **Subd. 3. Establishment of a Sewer Service Charge System.**

**A.** The City hereby establishes a Sewer Service Charge System whereby all revenue collected from users of the wastewater treatment facilities will be used to affect all expenditures incurred for annual operation, maintenance, and replacement and for debt service on capital expenditure incurred in constructing the wastewater treatment works.

**B.** Each user shall pay for water consumption according to rates and tables set, from time to time, by consolidated ordinance of the Council.

**(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

**Subd. 4. Sewer Service Fund.** The City hereby establishes a Sewer Service Fund as a fund to receive all revenues generated by the Sewer Service Charge System.

**Subd. 5. Administration.** The Sewer Service Charge System shall be administered according to the following provisions:

**A.** The City Clerk-Treasurer shall maintain a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the treatment works, and shall furnish the Council with a report of such costs annually in City's Financial Report.

**B.** The Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the treatment works, and whether sufficient revenue is being generated for debt retirement.

**Subd. 6. Penalties.**

**A.** Each and every sewer service charge levied by and pursuant to this Section is hereby made a lien upon the lot or premises served, and all such charges which are on December 31 of each year past due and delinquent, shall be certified to the County Auditor as taxes or assessments on the real estate. Nothing in this Section shall be held or construed as in any way stopping or interfering with the right of the City to levy as taxes or assessments against any premises affected any delinquent or past due sewer service charges.

**B.** As an alternative to levying a lien, the City may, at its discretion, file suit in a civil action to collect such amounts as are delinquent and due against the occupant, owner, or user of the real estate, and shall collect as well all attorney's fees incurred by the City in filing the civil action. Such attorney's fees shall be fixed by order of the court.

**C.** In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at the rate of 10% per annum.

**SEC. 2-0110. RULES AND REGULATIONS RELATING TO ELECTRIC SERVICE.**

(Source: Ord. 2014-03)

**Subd. 1. Code Requirement.** All wiring, connections and appurtenances shall be installed and performed strictly in accordance with the National Electrical Code. Failure to install or maintain the same in accordance therewith, or failure to have or permit required inspections shall, upon discovery by the City, be an additional ground for termination of electrical service to any consumer.

**Subd. 2. Services.** New or changed service installations shall be made at the expense of the consumer, placed underground where designated by the City (refers to the exact buried location and whether the service should go to the transformer or closest pedestal), and the meter location shall also be designated by the City (refers to mounting the meter inside or outside of the building, on the building or at the transformer). Overhead service installations may be permitted by the City

**A.** Temporarily during new construction;

**B.** Temporarily during an emergency to prevent danger to persons or property;

**C.** For a period of not more than seven months when soil conditions make excavation for underground service impractical, or

**D.** Where to require underground service, the consumer has shown that such requirement is unduly burdensome.

**Subd. 3. Electrical Installations.** All electrical installations shall comply with the following, where applicable:

**A.** Soft starts may be required (as determined by the city's electrical engineer) for 20 to 30 HP motors and are required for motors larger than 30 HP. The City may, at its option, make an exception if the total connected motor load required is smaller than the consumer connected load, and the motor starting current is less than the current corresponding to the consumer's total connected load.

**B.** Any establishment having a total motor load of 125 HP or more is required to have 440 volts for its motor load.

**C.** All motor installations of less than 5 HP shall be supplied with 240 volt single phase energy except: (1) motors of 1/2 HP or smaller may be 120 volt; or (2) three phase motors of 3 HP or more may be served from existing secondary power circuits where only service wires and meters are required.

**D.** The City shall make an installation charge for extraordinary expenses required by a consumer.

**Subd. 4. Replacing or Converting to Underground.**

**A. Converting to Underground.** The City may, at its option and at its expense, convert any present service where no change is otherwise required by the consumer, from overhead to underground. Where this is done, the City shall only cover and refill the trench and other ditching maintenance or repair, and all subsequent changing and repairing of the service shall be the obligation of the consumer.

**B. Replacing.** Nothing herein shall prevent the City from replacing an overhead service with the same type.

**C. Meters and Placement Service.** Placement of services and meters shall be determined by the City.

**Subd. 5. Installation of Electric By-Pass Switches.**

**A. Residential:**

**1. New Housing.** All metered electric services will be equipped with an electric by-pass switch.

**2. Existing Housing.** When the existing metered electric service is upgraded or replaced, an electric by-pass switch will be installed.

**B. Industrial/Commercial:**

**1. New Buildings.** All metered electric services will be equipped with an electric by-pass switch.

**2. Existing Buildings.** When the existing metered electric service is upgraded or replaced, an electric by-pass switch will be installed.

**3. Failure to Comply.** In the event a contractor, home owner or building owner fails to comply with this Section, an electric meter will not be installed and the electric service cables will not be connected to the Barnesville Municipal Power Distribution System.

**Subd. 6. Reconnection/Service Chartes.** Reconnection services will occur only during regular business hours, 7:30 a.m. through 4:30 p.m., Monday through Friday, except for holidays, providing:

**A.** Current bill, penalties service order charge and reconnect fees of \$100.00 are paid in full; however, should the customer request reconnection outside of the above mentioned regular business hours or on holidays, the reconnect fee shall be \$200.00.

**B.** Formal payback agreement is established within the City utilities which shall include the reconnect fee whether it is \$100.00 or \$200.00.

**1.** Failure of the customer to adhere to the payment plan as established by the Barnesville Utilities shall result in immediate disconnection of service.

**C.** Relocates: Relocating an established electric service from one location to another. \$19.95 Administrative fee applies.

**SEC. 2-0111. ELECTRIC RATE SCHEDULE.** (Source: Ord. 2018-07)

**Subd. 1. Violation a Misdemeanor.** Every person who violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

**Subd. 2. Electric Rate Schedules:**

**A. RATE SCHEDULE #1:**

GENERAL SINGLE PHASE service Residential: (RL1 & AR1)(HP-2 & HP-4 Summer Rate)

	Current
Base Charge	\$15.00
Energy Charge :	
June-August	\$0.120 per kwh
September-May	\$0.101 per kwh
Available to all residential customers.	

Available to all residential customers.

**B. RATE SCHEDULE #2:**

GENERAL SINGLE PHASE service Commercial: (RC1 & DI1)

	Current
Base Charge	\$18.50
Energy Charge:	
June-August	\$0.117 per kwh
September-May	\$0.102 per kwh

Available to commercial customers for single phase service.

**C. RATE SCHEDULE #3:**

GENERAL THREE PHASE SERVICE: (GS6 & DI9)

	Current
Base Charge	\$25.50
Energy Charge :	
June-August	\$0.117 per kwh
September-May	\$0.102 per kwh

Available to all customers for three phase service with a calculated demand of 20 kw or less.

**D. RATE SCHEDULE #4:**

LARGE POWER THREE PHASE SERVICE: (LP1 & DI1)

	Current
Base Charge	\$42.00
Demand Charge	
All kw:	
June-August	\$15.10 per kw
September-May	\$11.40 per kw
Energy Charge	
All kw	\$0.052 per kwh

Available to all customers for three phase service with a calculated demand over 20 kw. Billing demand to be the maximum measured during any 15 minutes interval during the billing period.

**E. RATE SCHEDULE #5:**

SECURITY LIGHTS: (YL1)

	Current
Charge per light	\$12.25 per month

Available to all customers for un-metered lights, 200 watts or less, owned, installed and maintained by the City.

SECURITY FLOOD LIGHTS (YL2)

	Current
Charge per light	\$24.50 per month

Available to all commercial customers for un-metered lights, 200 watts or greater, owned, installed and maintained by the City.

**F. DEFINITION OF TERMS:**

**1. Residential Customers:** any electric service which includes the primary residence of any person or people.

**2. Commercial Customer:** any electric service which does not include the primary residence of any person or people.

**3. Base Charge:** Applies to all services where a meter is required to measure energy or demand usage. The base charge does not apply to those meters installed where the only purpose is to measure energy utilized by dual fuel or off peak heating sources.

**G. CHARGE TO DELIVER DISCONNECT NOTICES.**

**1.** A charge of \$25.00 will be applied to utility accounts when in the process of collecting past due charges for electricity it is necessary to hand carry and post a disconnect notice at the customer premise.

**2.** This charge will be waived one time per customer account.

**3.** This charge does not apply to notices delivered by mail.

**Subd. 3. Electric Rate Incentives.**

**A. Dual Fuel Services (OP01 & OP02) (HO-1 & HP3 Winter Rate)**

	Current
Dual Fuel Service Rate::	
June-August	\$0.120 per kwh
September-May	\$0.470 per kwh

This rate is available to all customers with a dual fuel heating system (including heat pumps) controlled by the city's load management system. To qualify:

**1.** A heating system must use electricity as its primary source of heat;  
and

**2.** The secondary source of heat must be fossil fuel, thermostatically controlled and capable of heating the structure to 68 degrees and maintaining that temperature; and

**3.** The dual fuel load shall be metered separately. Metering may be subtractive or direct metered; and

4. The customer must make a five-year commitment to the program.

5. Tampering with, bypassing or in any way rendering the electric heat control inoperative will result in the immediate and permanent loss of the dual fuel rate, and, at council discretion, may result in criminal charges for theft of services.

6. Failure to fulfill the 5 year commitment will result in the immediate and permanent loss of the dual fuel rate.

**B. Dual Fuel Incentive for Existing Buildings.** An incentive will be offered for all customers converting to a dual fuel system.

A \$300.00 incentive will be paid to all customers that convert from an all electric heated home to a qualified dual fuel heating system (ref section 5.A.1-5).

A \$100.00 incentive will be paid to all customers that convert from a fossil fuel heating system to a qualified dual fuel heating system (ref section 5.A.1-5).

**C. Dual Fuel Incentive for New Construction.**

A \$200.00 one-time payment will be made to the general contractor.

**D. Financing for Dual Fuel Installations.** All new approved dual fuel heating installations are eligible for a 5-year, 6% annual interest loan of up to \$2,000.00. This loan will be paid back in equal monthly installments on the customer's utility bill. Loans for commercial customers will require prior approval by the T.E.C. Advisory Board or the Council.

**E. Off-Peak Services.**

	Current
Off Peak Service Rate:	
June-August	\$0.120 per kwh
September-May	\$0.470 per kwh

This rate is available for electric thermal storage (ETS) space heaters, under concrete slab electric heating systems and electric heated liquid filled under concrete slab heating systems. Off-Peak Services must be metered separately and controlled by the City's load management system. Central air-conditioners and water heaters do not qualify for the off peak rate, Ref subd. 10 for water heater incentives and subd. 11 for central air-conditional incentives.

**F. Water Heater Incentive Program.**

All electric water heaters are required to be connected to/and controlled by the city's load management system.

All customers shall be eligible for a rebate of \$2.00 per gallon for the installation of a new electric water heater with a storage capacity of at least 50 gallons. This rebate increases to \$3.00 per gallon for new water heaters with a minimum storage capacity of 80 gallons. The rebate shall be credited on the customer's utility bill as soon as the following are provided. Demand water heaters without storage do not qualify for this rebate.

1. Proof of purchase and installation of a qualifying water heater; and

2. Verification by electric utility personnel that the load controls have been installed and properly wired.

3. Tampering with, bypassing or in any way rendering the water heater control inoperative will result in the immediate loss of the water heater rebate. The customer will be responsible for all costs associated with the replacement and reconnection of the load controller including the cost of the replacement controller, any administrative fees, and, at council discretion, may result in criminal charges for destruction of property.

This incentive is limited to one rebate per address during any 5-year period.  
(Water heater incentive subject to budget availability)

#### **G. Central Air Conditioning Incentive Program.**

A \$5.00 per month credit is available to all customers that allow their central air-conditional to be controlled by the city's load management system. This credit is available for the months of June through August. Qualifications for this rebate are:

1. Customer must have a central air-conditioning system such as a ducted or hi-velocity system. Window units and ductless mini split systems are not eligible.

2. Air-source heat pumps and geothermal heat pumps qualify if they are controlled by the city's load management system and are not receiving the dual fuel rate.

#### **H. Distributed Generation Interconnection for Co-generation and Small Power Production.**

1. The Distributed Generation Workbook is part of this ordinance and requires that:

a. All "Qualifying Facilities" must comply with the Distributed Generation Workbook. The Distributed Generation Workbook is available at City Hall.

b. All "Qualifying Facilities" must maintain insurance and submit proof of insurance certificates to City Hall annually.

c. All "Qualifying Facilities" will be charged an Application Fee of \$50.00 for a small Qualifying Facility and a \$250.00 to \$1,500.00 Application Fee for a large Qualifying Facility based on interconnection type and loan (kw) size as detailed in the Generation Interconnection Application Fees in Section 9, Page 10 of the Distributed Generation Workbook.

d. Any changes to the generation or interconnection of a Qualifying Facility must be submitted to City Hall in writing 60 days before the proposed changes are to take effect.

## **I. Electric Trenching Rebate.**

1. This rebate is available to all home builders or contractors to help defray the costs of trenching associated with the installation with the installation of the underground electric service drop for new homes.

2. One \$250.00 rebate will be paid out to the general contractor per new home constructed within the Barnesville Municipal Utility service area provided the followign conditions are met:

a. Contractor must submit an “Electric Trenching Rebate” invoice for \$250.00 to the City of Barnesville.

b. Submission must include proof of closing, including the address of the home and name of home owner.

c. Submission must be made to the City within 6 months of closing.

## **Subd. 4. Transfers to General Fund.**

### **A. Operating Transfer Calculation.**

1. The operating transfer to the City of Barnesville’s General Fund is determined annually during the budget process. To meet the financial goals of the electric fund and provide a reasonable transfer to the General Fund to meet its revenue resource requirements, a transfer rate of \$0.0095 per kwh sold to the Residential, General Service, Large Power, Dual Fuel, and Off-Peak classes of service.

2. Additional transfers may be authorized by the City Council provided that an unplanned, or emergency, expenditure out of the general fund budget occurs and it is necessary to fund said expenditure out of additional transfers from the utility provided that a majority vote of all members of the City Council is required to authorize an additional transfer.

## **SEC. 2-0112. SUMP PUMP DRAIN REGULATIONS AND UNLAWFUL ACTS.**

**Subd. 1. Purpose.** The Council finds that the City sanitary sewerage collection and treatment facilities are unable to receive and dispose of the present volume of unpolluted water including, but not limited to, cooling water, ground water and natural precipitation now being intentionally pumped or directed into such facilities; that, if allowed to continue, a potential danger to the health of persons and the safety of property exists in such collection of such waters thereby causing raw sewage to back up into basements and onto property of customers; that, if allowed to continue, the potential danger exists of exceeding the capacity of the treatment facilities thereby impairing the proper operation thereof and complete treatment of other sewage; and, that the restricted and regulated installation, use and operation of sump pumps is therefore necessary to protect the health, safety and welfare of customers and residents.

**Subd. 2. Sump Pump Drainage.** All premises upon which sump pumps are, presently or in the future, installed or in use shall have permanently installed thereon a drain for the discharge of water from such pump directly into the storm sewer system or into a natural waterway. Property owners shall maintain their sump pump discharge so as to avoid unnecessary build-up of ice near the sump pump discharge point. In the event that sump pump

water discharge is causing ice build-up in the streets, on the sidewalks and/or gutters, the property owner shall divert the water into their back yards until such time that ice build-up no longer occurs. Dumping the sump pump discharge water into the sanitary sewer is still not allowed under these conditions. The type, size and placement of materials used, and the manner of construction of the drain from the discharge on the pump to the discharge end of the drain, shall be incorporated into written standards proposed by the Wastewater Superintendent, and adopted by resolution of the Council. All underground drain construction hereafter performed shall be inspected by the Wastewater Superintendent before it is covered.

**Subd. 3. Seasonal Waivers.** While sump pump discharge into the sanitary sewer is strictly prohibited from April 1 to October 31, residents may apply for a seasonal waiver. Any person granted a seasonal waiver shall be charged a \$50 up-front fee to cover the cost of City staff and the additional cost in treating the extra water during the period of the waiver. If a seasonal waiver is granted, the owner of the property may place a pipe connecting the sump pump to the sanitary sewer, which must have a shut-off valve. City staff, on or around April 1 each year, will close the valve so that no water can reach the sanitary sewer line and place a seal on that valve. City staff, on or about November 1 of each year, will remove the seal and open the valve to allow discharge into the sanitary sewer system if the owner desires. No person other than City staff may remove the seal and change the valve. If upon inspection by City staff the seal has been tampered with, the owner of the property will be charged a \$100 per month surcharge for each month between the discovery of the tampering and the last inspection by City staff. By applying for the waiver, the owner has also granted permission to City staff to inspect the connection and seal anytime between April 1 and November 1 to determine whether or not the seal has been tampered with. Such inspections must be made between 8:00 a.m. and 8:00 p.m. and only when a resident of the premises is on site. Failure to allow such an inspection or to allow the City staff entry around November 1 and April 1 to switch the valves and place on or remove the seal shall result in automatic revocation of the seasonal waiver. In addition, if at any time City staff determines that the seal has been tampered with, this will result not only in the surcharge set forth above, but also automatic revocation of the seasonal waiver.

**Subd. 4. Unlawful Acts.** On and after the effective date of this Section, it is unlawful for any customer or other person:

**A.** To fail or refuse to have permanently installed on premises owned by him/her a sump pump drain constructed in accordance with written standards prescribed by the City.

**B.** To pump or direct such waters into the sanitary sewerage system, except by-pass permit holders so pumping during a by-pass time.

**C.** To hinder, delay or deny a representative of the City access at any and all reasonable times to premises served by the City sanitary sewerage system for the purpose of inspection to determine compliance with this Section.

**Subd. 5. Additional Remedy.** In any case where access for inspection of premises by a representative of the City to verify compliance with this Section is denied, or in any case of failure or refusal to comply with any other provision of this Section, the City may discontinue water service to such premises along with a \$100.00 per month penalty.

**SEC. 2-0113. ESTABLISHMENT OF CERTAIN TELEPHONE, CABLE TV, DSL AND HIGH SPEED INTERNET SERVICE RATES, MINIMUM REQUIREMENTS, AND ADOPTION OF TELECOMMUNICATIONS TARIFFS.**

**Subd. 1.** The Barnesville Municipal Telephone Company's Telecommunications Tariff Book, on file with the Minnesota Public Service Commission, is hereby adopted. All of the provisions of said Tariff Book, including but not limited to, the business practices section and the definitions, are hereby incorporated herein by reference. The definitions as set forth in said Tariff Book apply to the terminology contained in this Section.

**Subd. 2.** The City of Barnesville is a member of the DSL Regulatory Association and The National Exchange Carrier Association (NECK). The DSL tariffs are filed with the Federal Communications Commission by NECK.

**Subd. 3.** Rates for telephone service and DSL service, not regulated or included in the Telecommunications Tariff Book or NECK-filed tariffs referenced above, shall be set by consolidated ordinance of the Council:

**(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

## CHAPTER 2-02

### FRANCHISES

#### SECTIONS:

- 2-0201. Regulation of Cable Communications.  
2-0202. Regulation of Non-Exclusive Gas Franchise. (Source: Ord. 2014-04, Sec. 1 - 2014)
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**SEC. 2-0201. REGULATION OF CABLE COMMUNICATIONS.** Barnesville Cable is hereby granted a nonexclusive franchise to install, construct, operate and maintain a cable television system within the corporate limits of the City, effective upon their acceptance and entering into a franchise agreement consistent with this Chapter governing the relationship between the City and Barnesville, Cable.

**Sub. 1. Statement of Intent and Purpose:** The City intends, by the adoption of this Chapter, to bring about the continued development and operation of a cable communications system. Such a development can contribute significantly to the communication needs and desires of citizens of the City. Further, by the continued development and operation of a system, City may help achieve better utilization and improvement of public services. No person or company shall operate a cable communications system within the City without being granted a franchise by the City

**Sub. 2. Short Title:** This Chapter shall be known and cited as the *CITY OF BARNESVILLE CABLE COMMUNICATIONS ORDINANCE*, hereinafter in this document referred to as "Chapter".

**Subd. 3. Definitions:** For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meanings.

**APPROVED:** Approval by the City under the requirements of this Chapter as applied to a location, condition, technical standard, or method of construction or approval by other authorities designated by law, ordinance, or this Chapter to give approval to the matter in question.

**BASIC SERVICE:** A group of cable services distributed over the subscriber network, consisting of that service tier which, at a minimum, includes the retransmission of local television broadcast signals.

**CABLE ACT:** The Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385; the Telecommunications Act of 1996, Pub. L. No. and any amendments thereto.

<b>CABLE PROGRAMMING SERVICE:</b>	All video programming provided over a cable system except that provided on basic service or pay television.
<b>CABLE SERVICE</b>	a) The one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
<b>CABLE TELEVISION SYSTEM OR CABLE SYSTEM OR SYSTEM</b>	A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide service which is designed to provide service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; b) a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right of way; c) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or d) any facilities of any electric utility used solely for operating its electric utility system.
<b>CHANNEL:</b>	A band of frequencies in the electromagnetic spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video signal, an audio signal, a voice signal, or a data signal.
<b>CITY:</b>	The City of Barnesville, Minnesota, or, as appropriate in the case of specific provisions of this Chapter, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the City of Barnesville, or any officer, official, employee, or agent thereof, the designee of any of the foregoing, or any successor thereto.
<b>CITY COUNCIL:</b>	The governing body of the City.
<b>COMPLAINT:</b>	Any verbal or written inquiry, allegation or assertion made by a person which requires subsequent corrective action to

the system or any portion thereof, or raises an objection to the programming or business practices of a cable operator. The term "complaint" does not include an inquiry which is immediately answered by an operator.

- CONVERTER:** An electronic device with an appropriate channel selector which permits a subscriber to view all signals purchased.
- DROP:** The cable that connects the subscriber terminal at a point in the subscriber's home, designated by the subscriber, to the nearest feeder cable of the system.
- FCC:** The Federal Communications Commission, its designee, or any successor thereto.
- FRANCHISE AREA:** The territory within the City throughout which an operator shall be authorized to construct, maintain and operate its system and shall include any enlargements thereof and additions thereto.
- GROSS REVENUES:** Any and all revenue in any way derived and collected directly or indirectly by operator, its affiliates, subsidiaries, parents, or any person in which operator has a financial interest, from or in connection with the operation, of all or any part of a cable television system franchised pursuant to this Chapter, including, but not limited to, revenue from all cable service fees including user fees, regular subscriber service fees, installation and reconnection fees, leased channel fees, converter and other equipment rentals, and advertising revenues (advertising revenues attributable to the City shall be determined by apportioning the total advertising revenue of the operator's system among those governmental units entitled to a portion of those revenues based on the number of subscribers in each such unit as a percentage of the total number subscribers in all such units); provided, however, that this shall not include any taxes imposed directly upon any subscriber or user by a State, local or other governmental unit and collected by such operator on behalf of such governmental unit. It does include money collected from subscribers that is allocated by operator to pay the franchise fee.
- INSTALLATION:** The act of connecting the system from the feeder cable to the subscriber terminal so that cable service may be received by the subscriber.
- NONCABLE SERVICE:** Any service which is distributed over the system other than a cable service.
- NORMAL BUSINESS** Those hours during which most similar businesses in the

<b>HOURS:</b>	community are open to serve customers. In all cases "normal business hours" shall include at least the hours from eight o'clock (8:00) a.m. to five o'clock (5:00) p.m.
<b>OPERATOR:</b>	Any person, persons, partnership, firm, company, corporation or association, or the assignee, affiliate, parent, subsidiary, or successor of the operator, operating a cable system within the corporate limits of the City.
<b>PAY TELEVISION:</b>	The delivery over the system of per channel, per channel group or per program audio-visual signals to subscribers for a fee or charge, in excess of the charge for basic service or cable programming services.
<b>PERSON:</b>	Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not for profit.
<b>PUBLIC PROPERTY:</b>	Any real property, other than a street, owned by any governmental unit.
<b>SIGNAL:</b>	Any transmission of radio frequency energy or of optical information.
<b>STREET:</b>	The surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, utility easement or any public easement or right of way now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the City, entitle an operator to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a system.
<b>SUBSCRIBER:</b>	Any person or entity who lawfully subscribes to a cable service provided by an operator by means of or in connection with the system.
<b>SYSTEM UPGRADE:</b>	The process by which the system shall be upgraded pursuant to subdivision 5-6C of this Chapter.
<b>TWO-WAY OPERATIONAL SYSTEM</b>	Means that the headend, trunk cables, distribution plant, amplifiers, and other technical components of the system have the requisite equipment in place to pass video, audio, voice, and/or data signals in both directions simultaneously.

#### **Subd. 4. Grant of Authority and General Provisions:**

##### **A. Authority for Use of Streets:**

1. For the purpose of constructing, operating, and maintaining a system in the City, an operator may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the system, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

2. Prior to any construction, reconstruction, or rebuild of the system, the operator shall, in each case, file plans with the City and receive written approval of such plans.

3. The operator shall submit to the City all requests for the construction of new poles and/or new underground cable construction, and their proposed locations. Approval of the new location of new poles and/or new underground cable construction shall be granted by the City after such locations have been approved by the appropriate City authority. This provision shall not apply to existing poles or to underground cable construction which utilizes existing Municipal or utility easements.

4. The operator shall construct and maintain the system so as not to interfere with other uses of streets. Absent specific approval from the City to do otherwise, the operator shall make use of existing poles and other facilities available to the operator. The operator shall individually notify in writing all residents whose property or property access shall be directly affected by proposed underground work not less than forty eight (48) hours prior to commencement of that work. Such notice shall include the operator's telephone number and the responsible employee of the operator.

5. Notwithstanding the above grant to use the streets, no street shall be used by the operator if the City's Public Works Director, in the City's sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used. In addition, the City's Public Works Director may designate a reasonable alternate location or route in a street to be used by the operator so as not to interfere with existing or future utilities in the street.

**B. Nature of Chapter:** This Chapter and any franchise granted hereunder shall authorize an operator to provide only cable services on the system. This Chapter and any franchise granted hereunder do not authorize an operator to provide any noncable services (including telecommunications or other voice or data information) on the system, provided, however, that an operator may provide such noncable services on the system in accordance with Minnesota Statutes 1996, sections 237.162 - 237.163.

**C. City's Rights Reserved:** The City expressly reserves the following rights which shall not be deemed to be waived or abridged by this Chapter: 1) to exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City; 2) to adopt, in addition to the provisions contained in this Chapter, or any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; and 3) to modify this Chapter upon mutual agreement of the City and operator so as to require additional or greater standards of construction, operation,

maintenance or otherwise, on the part of operator to reflect technical, economic or jurisdictional changes occurring during the franchise term and to enable the City and the operator to take advantage of new developments in the cable television industry so as to more effectively, efficiently and economically serve the public.

**D. Use of the Operator Facilities:** The City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of the operator, any wires and fixtures desired by the City of noncompetitive services to the extent that such installation and maintenance does not interfere with existing and future operations of the operator. City shall indemnify and hold harmless operator for any losses or causes of action resulting from City's negligent use of operator's facilities.

**Subd. 5. Design Provisions:**

**A. System Design:**

1. The operator shall, within an agreed upon time period as more specifically defined in any franchise granted pursuant to this Chapter, immediately undertake all necessary steps to construct and thereafter operate and maintain the system to a minimum of 550 MHz having the capability of delivering at least seventy (70) downstream channels and 25 MHz of upstream capacity with a minimum of fifty (50) downstream channels initially activated.

2. The operator shall provide the City a full description of the system proposed for construction and shall, upon completion of the system upgrade, submit to the City, in computer form, "as-built" maps for the entire system, as upgraded, to the extent such maps have not been previously provided to the City.

**B. Construction Terms:**

1. The operator shall comply with all applicable Federal, State, and City laws, rules, regulations, codes, and other requirements in connection with the construction of the system.

2. The installation of all cables, wires, or other component parts of the system in any structure shall be undertaken in a manner which does not unreasonably interfere with the operation of any existing MATV, SMATV, MDS, MMDS, DBS, cable television or other distribution system in said structure, including any conduit used in connection with such other system. Operators of MATV, SMATV, MDS, MMDS, DBS, cable television or other distribution systems shall install their equipment so as not to unreasonably interfere with the operations of any cable television system.

3. The operator must comply with, and shall ensure that its subcontractors comply with, all rules, regulations, and standards of the City. If the installation, construction, or operation of the system does not comply with such rules, regulations, and standards, the operator must, at its sole cost, remove and reinstall such cables, wires, or other component parts of the system to ensure compliance with such rules, regulations, and standards.

4. The operator shall use its best efforts to minimize cable service interruptions during the rebuild period.

### **C. Construction of System or System Upgrade:**

1. Any operator planning construction or upgrade of a cable television system in the City must submit to the City a construction schedule and specific construction sequencing plans for the construction or system upgrade accompanied by a separate map showing: a) the location of the master headend, all subheadends/hubs, headend to hub interconnect network, fiber backbone, and all studio facilities within the system; and b) the proposed distribution of all principal trunk lines throughout the system (including termination points of all lines). All such construction schedules shall be fully justified on the basis of factors which will affect construction in the City, and the operator should set out any factors which may adversely affect its ability to meet the schedules. The operator must submit an updated construction schedule to the director on a quarterly basis until the completion of the construction or system upgrade.

2. Subject to written request of the City, no less than thirty (30) days prior to completion of system construction or upgrade, the operator shall notify the City that construction or system upgrade is substantially complete. The City and the operator shall arrange for such inspections, as the City shall deem appropriate, to enable the City to ascertain whether the construction or system upgrade has been completed as scheduled. The City shall accept the completion of the construction or system upgrade upon the City's satisfaction that the obligations of the operator to complete the construction or system upgrade have been fulfilled in all respects.

**D. Two-Way System:** The operator shall provide a cable television system capable of (including, but not limited to, return amplifier housings) nonvoice return communications. The City and the operator will continue to review, during the term of any franchise granted pursuant to this Chapter, the need and economic feasibility for implementation of a two-way operational system.

**E. Interconnection:** Whenever it is technically and practically feasible, an operator may so construct, operate and modify its system so as to tie the same into all other cable systems within and adjacent to the City.

### **F. Provision of Service:**

1. After cable service has been established by activating trunk and distribution cable for any area, the operator shall provide cable service to any requesting person, subject to lawful installation policies of the operator, ninety five percent (95%) of the time within that area seven (7) days from the date of request, provided the installation request is one hundred fifty feet (150') or less from the feeder cable.

2. The operator shall install and provide its most complete (highest) cable service, excluding pay television, to all nonresidential public buildings designated by the City at no charge for either the initial installation or for monthly cable service provided at each location. Each of these installations should include a signal drop, one outlet, and a converter if necessary to receive such services. The public buildings to be provided this service shall include the following:

- a. All public and parochial schools;
- b. The City fire station;
- c. The City Hall;

- d. The City police station;
- e. The Library
- f. The city ambulance garage/ electric building
- g. Old city hall

3. There should be no limit on the number of television receivers an institution, other than a college or university, may operate from the connection referenced in subsection F2 of this Section, but the expenses of installing and maintaining an internal distribution system shall be the responsibility of the institution.

4. Any internal distribution system installed by an institution listed in this Section shall conform to all applicable Federal, State, and City rules, regulations, and ordinances and shall be operated in such a manner so as not to interfere with the operator's system if such free cable service is to be maintained.

**G. Technical Standards:** The system shall be designed, constructed and operated so as to meet those technical standards promulgated by the FCC relating to cable systems contained in part 76 of the FCC's rules and regulations relating to cable communications systems and found in Code of Federal Regulations, title 47, sections 76.601 to 76.617, as amended, or as may, from time to time, be amended. The results of tests required by the FCC must be filed with the City within ten (10) days of the receipt of a request for such results. The City shall also have the right to request a written list of FCC test result reports prepared by operator.

#### **H. Special Testing:**

1. At any time after commencement of cable service to subscribers, the City may require operator to perform additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's drop. Such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. Operator shall bear the expense for such special testing.

2. The City shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to the operator or to the subscriber.

**I. Semiannual Testing:** The operator shall conduct semiannual technical performance tests and provide, upon request, copies of the test results to the City. These monthly tests shall be conducted at six (6) widely scattered system extremity test points and shall include: summation sweep response across the entire band; signal-to-noise ratio measurements on at least two (2) channels; hum-to-carrier level measurements on one channel; and subjective picture quality evaluations on all active channels.

**J. Operational Status Reports:** Upon request, the operator shall provide to the City the following statistical information: 1) number of repair service requests; 2) breakdown by type of complaints received; 3) breakdown by cause of problems experienced on the system; 4) resolution of complaints received or problems experienced with the system.

### **K. Test and Compliance Procedures:**

1. The operator shall perform all tests required by the FCC to verify compliance with all applicable technical standards.
2. The tests may, upon request of the City, be witnessed by representatives of the City.
3. If one or more of the locations tested fails to meet the performance standards, the operator shall immediately, normally no longer than seven (7) days from the date of testing, complete corrective measures and report, if requested, to the City the corrective measures so taken. The entire test shall then be repeated for all locations which failed initial testing. The operator shall bear the expense of all such testing.

### **L. Construction Timetable:**

1. The operator shall give notice to the City at least thirty (30) days prior to the anticipated completion date of system construction or upgrade and again at such time as the operator has, in fact, completed all construction.
2. Upon receipt of notice that all construction has been completed, the City shall have sixty (60) days to obtain a written report from an independent engineer confirming the completion of construction; provided, however, that if the City fails to obtain such a written report within said sixty (60) days, the construction shall be deemed completed, unless the failure to obtain such a report is due to unforeseen events, acts of God, or events beyond the reasonable control of the City.
3. Notwithstanding anything contained herein to the contrary, the City may condition completion of construction upon receipt of a written report from an independent engineer, which report confirms the following:
  - a. That all construction has been completed or otherwise satisfactorily resolved.
  - b. Satisfactory test results using the technical standards set forth within this Chapter at up to ten (10) widely separated subscriber drops selected by the independent engineer and using the following tests:
    - (1) Signal level.
    - (2) Hum.
    - (3) Bandpass response of system.
    - (4) Carrier to noise.
  - c. Compliance with all applicable codes and standards.
  - d. Installation and the proper working of the emergency alert system.
  - e. Carriage of the basic service.

**M. Construction Delay:** The operator shall notify the City of any delay in the construction. Any and all modifications or delays in the construction schedule shall be subject to approval of the City.

**N. Construction Standards:**

1. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all State and local codes where applicable.

2. All installation of electronic equipment shall be of a nature consistent with industry practices, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and the ordinances and regulations of the FCC, State of Minnesota, and the City that are in effect now or in the future.

3. Antennas and their supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State or local laws, codes and regulations.

4. All of the operator's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with known and contemplated improvements the City may deem appropriate to make or to interfere in any manner with the legal rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

5. The operator shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

**O. Construction Codes and Permits:**

1. The operator shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the City. The operator shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in the City.

2. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Chapter and to make such tests as it shall find necessary to ensure compliance with the terms of this Chapter and applicable provisions of local, State and Federal law.

3. Nothing contained in this Chapter shall be construed to give the operator the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner.

**P. Repair of Streets and Property:** Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly repaired by the operator, at its expense, to a condition as good as that prevailing prior to the operator's construction and in a manner consistent with the provisions of the Excavation Ordinance of the City.

**Q. Undergrounding of Cable:**

1. Cable shall be installed underground at the operator's expense where both the existing telephone and electrical utilities are already underground. The operator shall place cable underground in newly platted areas within sixty (60) days of installation of all utilities (water, sewer, telephone and electrical), unless this requirement is waived by the City.

2. In the event an underground installation is required and the ground is frozen, saturated, or otherwise unable to immediately facilitate underground installation, such installation may be performed on a temporary basis in compliance with all State and Federal rules, regulations, codes, or other generally applicable standards. As soon as conditions change to permit proper underground installation of the cable, the operator shall immediately, and in no event later than thirty (30) days after such conditions have changed to allow underground installation, undertake all necessary steps to install the cable underground pursuant to the terms and conditions of this Chapter.

**R. Reservation of Street Rights:**

1. Nothing in this Chapter shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

2. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the operator.

3. The operator shall promptly, and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right of way when it is necessary to prevent interference, and not merely for convenience of the local government unit, in connection with: a) a present or future City use of the right of way for a public project; b) the public health or safety; or c) the safety and convenience of travel over the right of way. Provided, however, the operator is not required to remove or relocate its facilities from a right of way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the operator.

4. Nothing contained in this Chapter shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the operator's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

**S. Trimming of Trees:** The operator shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the operator. Operator shall be solely responsible for its actions pursuant to this Section.

**T. Vacation of Streets and Abandoned Facilities:** If the City vacates a right of way that contains the facilities of the operator, and the right-of-way vacation does not require the relocation of the operator's facilities, the City shall, except when it would not be in the public interest, reserve to and for itself and all right-of-way users having facilities in the vacated right of way, the right to install, maintain and operate any facilities in the vacated right of way, and to enter upon the right of way at any time to reconstruct, inspect, maintain, or repair the facilities.

If the City vacates a right of way that contains the facilities of the operator, and the right-of-way vacation requires the relocation of operator's facilities, payment of the relocation costs must be determined as follows: 1) if vacation proceedings are initiated by the operator, the operator must pay the relocation costs; 2) if the vacation proceedings are initiated by the City for a public project, the operator must pay the relocation costs, unless otherwise agreed to by the City and the operator; or 3) if the vacation proceedings are initiated for the purpose of benefitting a person other than the operator, the benefitted person must pay the relocation costs.

Operator shall notify the local government unit when facilities are to be abandoned. The operator shall remove them from the right of way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

**U. Movement of Facilities:** In the event it is necessary temporarily to move or remove any of the operator's wires, cables, poles, or other facilities placed pursuant to this Chapter, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks' notice by the City to the operator, or such lesser time as required by Section 3-0105 of this Code relating to moving buildings, the operator shall, at the expense of the person requesting the temporary removal of such facilities, comply with City's request. Any service disruption provisions of this Chapter shall not apply in the event that the removal of the operator's wires, cables, poles or other facilities results in temporary service disruptions.

#### **V. Enlargement of Franchise Area:**

**1.** In the event any new territory shall become annexed to the City, such new territory shall become, by operation of law, a part of said franchise area immediately upon the date such annexation becomes final, and said franchise area shall thereafter be deemed enlarged to include the addition of such new territory.

**2.** The operator shall make cable service available to any new territory within a reasonable time, as determined by the City after the annexation thereof becomes final

#### **Subd. 6. Service Provisions:**

##### **A. Franchises to Operate Cable Communications Systems in the City:**

**1.** No operator shall offer cable service to subscribers by means of a cable television system within the City unless it holds a franchise granted by ordinance

authorizing such a system within the City and in, under, and over the streets, highways, and other public grounds of the City, as provided in this Chapter.

2. Any operator holding a franchise shall provide cable service to all residents within the City limits where a density equivalent of forty (40) or more residential dwelling units per cable mile exists.

3. Except upon approval of the City Council, all franchises or renewal of franchises granted by ordinance pursuant to this Section shall be nonexclusive; the City Council reserves the right to issue as many such franchises as it deems advisable in the public interest, and shall not unreasonably refuse to award an additional competitive franchise.

4. Any franchise granted pursuant to this Chapter shall not authorize an additional operator to operate within the franchise area of an existing operator on terms or conditions more favorable or less burdensome to such new operator than those applied to any existing operator.

5. The term of each franchise shall be for a period of no more than ten (10) years, the effective date to be pursuant to any franchise granted hereunder, with the right of renewal, consistent with State and Federal law (in particular, section 626 of the Cable Act), at the option of the City Council, for a term of no more than fifteen (15) years. To the extent section 626 of the Cable Act is no longer applicable to franchise renewals, the City and operator shall conduct the franchise renewal process pursuant to the terms and provisions of section 626 of the Cable Act as it existed at the time the franchise was granted or last renewed.

**B. Applications for Franchise:** All applications to construct, operate or maintain any cable television system in the City or to traverse any portion of the City for transmitting or conveying of such service elsewhere, shall be filed with the City Clerk, and each such application shall be set forth, contain, or be accompanied by the following:

1. The name, address and telephone number of the applicant.

2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:

a. The names, residence addresses and business addresses of all officers, directors and associates of the applicant.

b. The names, residence addresses and business addresses of all persons and entities having, controlling, or being entitled to have or control five percent (5%) or more of the ownership of the applicant, and the respective ownership share of each such person or entity.

c. The names and addresses of any parent or subsidiary of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including, but not limited to, all cable systems or similar systems owned or controlled by the applicant, its parent or subsidiary and the areas served thereby.

d. A detailed description of all previous experience of the applicant in providing cable service or related or similar services.

e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the City, setting forth the basis for a study performed by such lending institution or funding source, and its clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the City, or a statement from a certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in the City.

f. A statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiary; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.

3. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:

a. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.

b. A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of any said classifications, including installation charges, service charges, and special, extraordinary, or other charges. The purchase price, terms, and nature of any optional or required equipment, device, or other item to be offered for sale to any subscriber shall be described and explained in detail.

c. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those contained in title 47, subpart K (section 76.601 et seq.) Rules and Regulations, Federal Communications Commission, as the same may be amended from time to time.

4. A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber.

5. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral or implied, existing or proposed to exist between the offerer/applicant and any person, firm or corporation which shall in any manner, directly or indirectly relate or pertain to or depend upon the application, proposed franchise, or any operation or proposed operation thereunder or with respect thereto.

6. A copy of any agreement covering the franchise area, if existing, between the applicant and any public utility providing for the use of any facilities of any public utility, including, but not limited to, poles, lines, or conduits.

7. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the City.

8. The application fee in a sum established by the City which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part; provided, that any applicant who shall deliver to the City Clerk a written withdrawal of or cancellation of any application hereunder, not later than the seventh day next following the day such application is received by the City Clerk, shall be entitled to have returned and refunded an applicable portion of the application fee.

### **C. Application Procedure:**

1. The City may, by advertisement or any other means, solicit and call for applications for cable system franchises, and may determine and fix any date upon or after which the same shall be received by the City or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such offers and applications; provided, that the City shall not be required to solicit or call for such offers or applications and may receive or refuse to receive any of the same, solicited, called for, or otherwise, as the City may elect.

2. Upon receipt of any application for a franchise, the City Clerk or such individual or committee as may be designated by the City, shall cause such application to be investigated, shall prepare a report of such investigation, shall make recommendations respecting such application, and shall cause said report and recommendations to be placed upon the agenda of the regular session of the City next following the completion thereof, or as otherwise directed by the City. A copy of such report and recommendations and notice of the date it will be presented to the City shall be mailed to the applicant at the address listed in the application. Any existing operator may provide the City a written request to receive a copy of said report and City shall provide a copy of said report as soon as reasonably possible.

3. The City shall receive such report and recommendations of the City Clerk or such individual or committee as may be designated by the City; shall consider the same together with such application; and shall make its determination either that such application should be accepted upon such terms and conditions as the City shall determine, and as herein provided, or that such application should be rejected. In making any determination hereunder as to any application, the City shall give due consideration to the quality of the service proposed; rates to subscribers; income to the City; experience, character background, and financial responsibility of the applicant and its management and owners; the technical and performance quality of the equipment to be used; the willingness and ability of the applicant to meet construction and physical requirements, policy conditions, permit limitations, and requirements imposed by this Chapter or pursuant hereto; and any other considerations deemed pertinent by the City for safeguarding the interest of the City and the public. The City may determine that the award of any franchise shall be made on the basis of such considerations with or without competitive bidding, or otherwise in its discretion.

4. If the City shall determine that such application should be rejected, such determination shall be final and conclusive, and the same shall be deemed

rejected. If the City shall determine such application should be accepted, the following shall be done and caused to be done:

a. The City shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided.

b. The City shall pass its resolution of intention to grant such franchise, stating the name of the proposed operator, the character of franchise, the terms and conditions upon which such franchise is proposed to be granted, fixing and setting forth the date, hour and place certain when and where any persons having any interest therein or objection to the granting thereof may appear before the City and be heard, and directing the City Clerk to publish said resolution at least once, within fifteen (15) days of the passage thereof; such publication shall also specify a time and date for a hearing on said resolution. Such hearing shall be not less than ten (10) days nor more than thirty (30) days after the date of publication.

5. At the time set for such hearing, or at any adjournment thereof, the City shall proceed to hearing and pass upon all protests, and its decision thereon shall be final and conclusive. Thereafter, the City shall make one of the following determinations:

a. That such franchise be denied; or

b. That such franchise be granted upon the terms and conditions as specified in the resolution of intention to grant the same; or

c. That such franchise be granted, but upon the terms and conditions different from those specified in the resolution of intention to grant the same.

6. If the City shall determine that such franchise be denied, such determination shall be by resolution and shall be final and conclusive. If the City shall determine that such franchise be granted, such determination shall be by ordinance, granting such franchise upon such terms and conditions as specified therein.

#### **D. Acceptance of Franchise:**

1. No franchise granted hereunder shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the City Clerk; and such written acceptance shall be in form and substance as shall be prescribed and approved by the City Attorney and shall be and operate as an acceptance of each and every term and condition and limitation contained in this Chapter, in such franchise, or otherwise specified.

2. Such written acceptance shall be filed by operator no later than one minute past twelve o'clock (12:01) p.m. of the thirtieth day next following the final adoption of the Franchise Ordinance and franchise agreement by the City; and in default of the filing of such written acceptance as herein required, operator shall be deemed to have rejected and repudiated the same; and thereafter, the acceptance of any such operator shall not be received nor filed by the City Clerk, and such operator shall have no rights, remedies or redress in the premises unless and until the City shall determine that such acceptance be received or filed, and then upon such terms and conditions as the City may impose.

**E. Programming:** The operator shall initially provide programming, consisting of the services identified in its franchise agreement. If an operator provides a premium

channel without charge to subscribers who do not subscribe to such premium channel, the operator shall endeavor to provide reasonable advance notice to all such subscribers.

**F. Programming Decisions:** All programming decisions shall be at the sole discretion of the operator; provided, however, the City reserves all of its rights pursuant to section 625 of the Cable Act regarding any change in the mix, quality, or level of service and any other rights pursuant to section 625 of the Cable Act.

**G. Emergency Alert System:** The operator shall install and thereafter maintain use by the City an Emergency Alert System (EAS). The EAS will operate pursuant to standards set forth by the FCC EAS rules and regulations.

#### **H. Access Channels:**

##### **1. Minimum Required Access Channels:**

a. Operator shall, at a minimum, provide to each of its subscribers who receives some or all of the total services offered on system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first-come, first-served, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this subsection.

b. The operator shall not charge for channel time or playback of prerecorded programming, of one hour or less, on the specially designated channels referenced in this Section. Charges for playback of prerecorded program of more than one hour shall not exceed an operator's direct labor costs.

##### **2. Additional Access Channels:**

a. Whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in this Section is in use during eighty percent (80%) of the weekdays (Monday-Friday), for eighty percent (80%) of the time during any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, operator shall then have six (6) months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require operator to install converters.

b. Nothing in this Section shall be construed so as to preclude the installation of converters by operator on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

**3. Operating Rules:** Operator shall be subject to rules governing the use of any access channels to be enacted by the City pursuant to section 47 U.S.C. section 531(d).

**4. Special Service Subscriber:** In the event subscribers are offered the option of receiving programs on one or more special service channels without also receiving the regular subscriber services, operator may comply with the requirements of this Section by providing the subscribers who receive the special service only, at least one specially designated composite access channel composed of the programming on the specially designated education access channel, and the specially designated local government access channel required in this Section.

**5. Channel Capacity Limitations:**

**a.** In the event operator does not have sufficient available channel capacity to allow for activation of all the specially designated access channels required above, or where demand for use of the channels does not warrant activation of all the specially designated access channels required above, public, educational, governmental and leased access channel programming may be combined on one or more cable channels. Such reduction is only allowed if set out in the franchise agreement between the City and operator.

**b.** To the extent time is available therefor, access channels may also be used for other broadcast and nonbroadcast services, provided, that such services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. Operator shall, in any case, provide at least one full channel on the VHF spectrum for shared access programming.

**6. Alarm Service/Data Transmission Services:** To the extent operator provides only alarm services or only data transmission services for computer operated functions, operator need not provide access channel reception to alarm and data service subscribers.

**7. Access Equipment:** Operator shall make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel(s). Operator shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Section shall be determined by subscriber petition. The petition must contain the signatures of at least ten percent (10%) of the subscribers of system, but in no case, more than five hundred (500) nor fewer than one hundred (100) signatures

**Subd. 7. Operation and Reporting Provisions:**

**A. Open Books and Records:** The City shall have the right to inspect, upon twenty four (24) hours' written notice, at any time during normal business hours at the operator's local office all books, records, maps, plans, financial statements, service complaint logs, performance test results, record of requests for service and other like materials of the operator maintained locally which are reasonably necessary to monitor compliance with the terms of this Chapter.

**B. Communications with Regulatory Agencies:** Copies of all petitions, applications, communications and reports submitted by the operator or on behalf of or relating to the operator to the FCC or any other Federal or State regulatory commission or agency having jurisdiction with respect to any matters affecting the system authorized pursuant to this Chapter shall also, upon request, be provided to the City. Copies of responses from the regulatory

agencies to the operator shall, upon request, likewise be provided to the City within fifteen (15) days of receipt of the response.

**C. Annual Report:** On or before April 1 of each year, the operator shall, upon request, file with the City a copy of any of the following reports regarding the system:

1. A description of the basic service then being offered at the end of the fiscal year together with a description of any changes made in the basic service during the reported year.

2. A compilation setting forth the results of any subscriber survey.

3. A current copy of the subscriber service information required in accordance with subdivision 8-9H of this Chapter.

4. A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any person, firm, corporation, partnership or joint venture, or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture of the operator).

5. A compilation summarizing the complaints received during the reported year, by category, and a discussion of any unresolved complaints.

6. A description of how pay-per-view programming is made available.

7. Reasons why certain areas within the City are not served and plans to extend cable service to these areas.

**D. Additional Reports:** The operator shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, which are reasonably necessary for the administration and enforcement of this Chapter.

**E. Maps:** The operator shall provide City, upon request, a current map or set of maps drawn to scale showing: the system and all equipment installed or in place in streets and other public places, the areas where the operator's cable system is now available to subscribers, and the areas where the system is not available.

**F. Audit:** The City and its agents and representatives shall have the authority, during normal business hours, to arrange for and conduct an audit of the books and records of the operator and its equipment. The operator shall first be given seven (7) days' advance written notice of the audit request, a description of and purpose for the audit and description, to the best of the City's ability, of the books, records, documents and equipment it wishes to inspect. The operator shall have the right to make its applicable books and records available at its headquarters, to the extent necessary, but shall be solely responsible for all costs and expenses necessary for a City representative to travel to said headquarters for the conduct of an audit.

**G. Periodic Evaluation and Renegotiation Sessions:** The City recognizes that the field of cable communications is a relatively new and rapidly changing

industry which may undergo many regulatory, technical, financial, marketing and legal changes over the next decade. Therefore, in order to provide for a maximum degree of flexibility in this Chapter, and to help achieve a continued advanced and modern system, the following evaluation provisions will apply:

**1.** The City may require, at its sole discretion, evaluation sessions at any time during the term of this Chapter; provided, however, there shall not be more than one evaluation session during any twelve (12) month period.

**2.** Topics which may be discussed at any evaluation and session include, but are not limited to, rates, channel capacity, system performance, programming, access, Municipal uses of cable, subscriber complaints, judicial rulings, FCC rulings, franchise fee adjustment in light of competition utilizing right of way at a lesser fee and any other topics the City or the operator deem relevant.

**3.** During an evaluation session, the operator shall fully cooperate with the City and shall provide without cost such information and documents as the City may reasonably request to perform the evaluation.

**4.** If at any time during its evaluation, the City determines that reasonable evidence exists of inadequate system performance, the City may require the operator to perform tests and analyses is directed toward such suspected inadequacies at the operator's expense. The operator shall fully cooperate with the City in performing such testing and any report prepared by the operator shall include at least:

**a.** A description of the problem which precipitated the special tests.

**b.** The system component tested.

**c.** The equipment used and procedures employed in testing.

**d.** The method, if any, by which the problem was resolved.

**e.** Any other information pertinent to said tests and analyses is which may be required by the City, or determined when the test is performed.

**5.** If after receiving the operator's report the City determines that reasonable evidence still exists of inadequate system performance, the City may enlist an independent engineer, to perform tests and analyses is directed toward such suspected inadequacies. If the engineer determines that system is performing inadequately, the operator shall bear all costs and expenses associated with the services of the engineer. If the engineer determines that the system is performing adequately, the City shall bear all costs and expenses associated with the services of the engineer.

**6.** As a result of an evaluation and renegotiation session, the City and the operator may determine that changes in the terms and provision of a franchisee may be required, that the system, ordinance requirements, or franchise should be updated, changed, revised, or that additional services should be provided. If the changes are consistent with the terms of this Chapter and the needs of the City and implementation of such changes would not

unreasonably add to the cost of providing cable service, the operator and the City will, in good faith, negotiate the terms of any changes to which the parties agree

**Subd. 8. Consumer Protection Provisions:**

**A. Approval of Changes:** The initial rates and charges for programming services shall be set forth within each franchise granted. The City reserves the right to regulate rates for basic service and any other services offered over the system, pursuant to Federal or State law. The operator shall maintain on file with the City at all times a current schedule of all rates and charges. The operator shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission at 47 CFR, part 76, subpart N. The City shall follow all applicable rules relating to cable rate regulation promulgated by the FCC at 47 CFR, part 76, subpart N.

**B. Notification:** Not less than thirty (30) days prior to the effective date of any change in any fee, charge, deposit, term or condition set forth in a franchise or permit (or such shorter period as may, upon a showing of good cause, be approved by the City), the operator shall: 1) submit a revised schedule of rates and charges to the City, and 2) provide notice of the proposed change to each affected subscriber. The operator shall provide written notice to affected subscribers prior to the imposition of a rate or fee change. The operator shall not make any change in any rate unless it has provided the notice required in this Section.

**C. Consumer Protection and Customer Service:** The City expressly reserves the right to enforce FCC rules and regulations promulgated pursuant to section 632 of the Cable Act or any other applicable section of the Cable Act. The City also reserves the right to establish and enforce any law or regulation concerning customer service that may impose requirements exceeding standards set by the FCC pursuant to applicable sections of the Cable Act, or which would address matters not addressed by the standards set by the FCC pursuant to the Cable Act.

**D. Charges for Disconnection or Downgrading of Service:**

1. The operator may impose a charge reasonably related to the cost incurred for a downgrade of service, except that no separate charge may be imposed when:

a. A subscriber requests total disconnection from the system; or

b. A subscriber requests the downgrade within a thirty (30) day period following any rate increase relative to the service in question.

2. If a subscriber requests disconnection from cable service prior to the effective date of an increase in rates, the subscriber shall not be charged the increased rate if the operator fails to disconnect cable service prior to the effective date. Any subscriber who has paid in advance for the next billing period and who requests disconnection from cable service shall receive a prorated refund of any amounts paid in advance.

**E. Preferential Treatment Prohibited:** The operator shall not, as to rates, charges, service, service facilities, repairs, maintenance, rules, regulations, or in any other respect, make or grant undue preference or advantage to any person or business, nor subject any person or business to any prejudice or disfavor. This Section shall not preclude the operator from

establishing and implementing bulk subscriber rates or discounts or rate classifications based upon reasonable criteria.

#### **F. Subscriber Complaint Practices:**

1. The operator shall maintain an office in Barnesville, Minnesota, which shall be open during normal business hours. The operator shall have a publicly listed toll-free telephone number and be so operated as to receive subscriber complaints and requests on a twenty four (24) hour a day, seven (7) days a week basis. At a minimum, the operator shall endeavor to connect a telephone caller to a live service representative within thirty (30) seconds, seven (7) days per week, at least during the hours of seven o'clock (7:00) a.m. to eleven o'clock (11:00) p.m. The operator shall maintain written or computer-generated records demonstrating, to the satisfaction of the City, its ability to meet these standards. A written or computer-generated log available for City inspection shall be maintained listing all complaints and their dispositions.

2. The operator shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during periods of minimum use of the system. A written log available for City inspection shall be maintained for all service interruptions.

3. Subscriber requests for maintenance or repairs received prior to two o'clock (2:00) p.m., Monday through Friday, shall, whenever possible, be performed the same day.

4. Subscriber requests for maintenance or repairs received after two o'clock (2:00) p.m., Monday through Friday, shall, whenever possible be performed within twenty four (24) hours of the request.

5. Subscriber requests for repairs received on Saturdays or Sundays shall, whenever possible, be performed within twenty four (24) hours of the request.

6. The operator shall respond within two (2) hours to all outage reports affecting at least one channel for five percent (5%) or more of the system's subscribers.

7. If the operator fails to correct a system outage (i.e., 10 percent or more of the channels provided to a subscriber are not able to be received) problem within twenty four (24) hours, the operator shall, upon request from a subscriber, credit one-thirtieth (1/30) of the monthly charge to the subscriber for each twenty four (24) hours or fraction thereof after the first twenty four (24) hours during which a subscriber is with reduced service.

8. All money owed to a subscriber, or potential subscriber, shall be refunded within twenty (20) working days of the operator's knowledge of the obligation. Credit may be issued to the subscriber's account by mutual agreement.

9. The operator shall provide the City with the name of its chief management employee for the referral of complaints made to the City.

**G. Installation:** Subscribers who request installation or repairs shall be given the schedule option of morning, afternoon, evening or Saturday appointments. Persons requesting installation of cable service shall be afforded a right of rescission between the time cable service is requested and the time cable service is actually installed. When possible, all new

installations, reconnects, service upgrades or downgrades shall be performed within seven (7) working days of the date the order was placed by the subscriber.

**H. Subscriber Information:** Upon installation, the operator shall provide to all subscribers (and operator shall initially provide to the City) written subscriber service information which shall include, but not be limited to, the following:

1. The procedure for investigation and resolution of subscriber service complaints, including the telephone number and contact person at the City who may assist in the resolution of complaints;

2. Programming services, rates, and charges for all services, including public access related charges;

3. Billing practices as required by subsection I of this Section;

4. Service termination procedures;

5. Change in service procedures;

6. Refund policy;

7. Office hours; and

8. Converter/VCR hook-up information and use instructions. Operator will, within a reasonable period of time, notify all subscribers and the City of any material changes in the above referenced service information.

**I. Subscriber Billing Practices:**

1. The operator shall notify each of its subscribers, through the written service information, of its billing practices. The service information shall describe the operator's billing practices including, but not limited to, the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payments or returned checks, payments necessary to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions including the notice period a subscriber must give to avoid liability for such services and procedures to be followed in the event of a billing dispute.

2. The operator shall notify all affected subscribers not less than thirty (30) days prior to any change in the billing practices and such notice shall include a description of the changed practice.

3. The subscriber bill shall contain the following information presented in plain language and format:

a. Name and address of the operator;

b. The period of time over which each chargeable service is billed including prorated periods as a result of the establishment and termination of cable service;

- c. Each rate or charge levied;
- d. The amount of the bill for the current billing period, separate from any balance;
- e. The operator's telephone number;
- f. The date on which payment is due from the subscriber.

**J. Parental Control Option:** The operator shall, for a lawful fee, furnish parental control devices to all subscribers who wish to be able to black out any objectionable programming from the cable service entering the subscriber's home.

**K. Periodic Subscriber Survey:** Operator will notify City of subscriber surveys being conducted and shall allow the City, upon request, the opportunity to review all survey results at the office of the operator.

**Subd. 9. General Financial and Insurance Provisions:**

**A. Payment to City:**

1. The operator shall pay to the City, an annual amount equal to five percent (5%) of its gross revenues. The foregoing payment shall be compensation for use of streets and other public property, as well as payment for the right to operate a cable television system in the City.

2. Payments due the City under this provision shall be known as "franchise fees", shall be computed monthly and shall be paid on or before the thirtieth calendar day following the last day of the previous month to the City during regular business hours. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the City.

3. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Chapter, or for the performance of any other obligation hereunder. All amounts paid shall be subject to audit and recomputation by the City.

4. On or before April 1 of each year, the operator shall provide the City with a certification of the gross revenues for the preceding year prepared by an independent certified public accountant in accordance with generally accepted auditing standards, and that fairly and accurately presents the gross revenues of the operator for the year. The calculation of the five percent (5%) fee shall be clearly shown as part of this certification in a form approved by the City. This certification shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by the operator.

5. All payments to the City shall be by check, made payable to the City of Barnesville, and delivered or sent by mail to the City Clerk.

6. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate permitted by Minnesota Statutes Annotated, section 334.01 and set out in the franchise agreement.

**B. Future Costs:** The operator shall pay to the City an amount, not to exceed ten thousand dollars (\$10,000.00), equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any transfer, as more clearly referenced in subdivision 11-12B of this Chapter, of any franchise granted pursuant to this Chapter at such time and in such manner as the City shall specify. Payments of such costs and expenses shall not be deemed to be "franchise fees" within the meaning of section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be deemed to be: 1) "payments-in-kind" or any involuntary payments chargeable against the compensation to be paid to the City by the operator pursuant to subsection A of this Section, or 2) part of the compensation to be paid to the City by the operator pursuant to subsection A of this Section.

**C. Not Franchise Fees:**

1. The operator expressly acknowledges and agrees that except for the payments expressly required by subsection A of this Section, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by the operator at the direction of the City or otherwise pursuant to this Chapter, or otherwise in connection with the construction, operation, maintenance, or upgrade of the system (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Chapter and the exhibits hereto) are franchise fees chargeable against the compensation payments to be paid to the City by the operator pursuant to subsection A of this Section.

2. The operator expressly acknowledges and agrees that, as applicable, except for the compensation payments expressly required by subsection A of this Section, each of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided by the operator, are within the exclusions from the term "franchise fee", set forth in section 622(g)(2) of the Cable Act (47 U.S.C. §§ 542(g)(2)).

3. The operator expressly acknowledges and agrees that the compensation payments due from the operator to the City pursuant to subsection A of this Section, shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be paid or supplied by the operator pursuant to this Chapter and the compensation and other payments to be made pursuant to subsection A of this Section shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the operator shall be required to pay to the City or to any State or Federal agency or authority, all of which shall be separate and distinct obligations of the operator.

4. The operator shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Chapter from or against any City or other governmental taxes of general applicability or other fees or charges, including permit fees for excavation, which the operator is required to pay to the City or other governmental agencies.

5. The operator shall not apply or seek to apply all or any part of the amount of the compensation or other payments to be made pursuant to this Chapter as a deduction or other credit from or against any City or other government taxes of general applicability which shall be deemed to be separate and distinct obligations of the operator.

6. The operator shall not apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges, including permit fees for excavation, of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made pursuant to this Chapter, each of which shall be deemed to be separate and distinct obligations of the operator.

7. In the event the operator applies or seeks to apply all or any part of the amount of said compensation payments as a deduction or other credit from or against such City or other governmental taxes of general applicability or other fees or charges, or in the event that the operator applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against said compensation obligations, the City may terminate operator's franchise for cause due to a material breach, pursuant to subsection K of this Section, without any liability or compensation to the operator.

#### **D. Performance Bond:**

1. The City may, in its sole reasonable discretion, require an operator to furnish and file with the City a performance bond to ensure the faithful performance by operator of all construction requirements contained in this Chapter and any franchise granted hereunder. The bond shall run to the City in the penal sum of at least one hundred thousand dollars (\$100,000.00). The rights reserved to the City with respect to the bond are in addition to all other rights the City may have under the ordinance or any other law. The company providing such bond must be licensed to do business in the State.

2. Following the completion of any construction as determined by the City in accordance with subdivision 5-6C of this Chapter, the requirement to maintain said bond referred to above shall be eliminated.

3. The bond shall be subject to the approval of the City and shall contain the following endorsement:

*It is hereby understood and agreed that this bond may not be canceled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew.*

#### **E. Security Fund:**

1. Within thirty (30) days after the effective date of the franchise agreement, operator shall establish a "security fund" by establishing with a financial institution, approved by the City, either a letter of credit or escrow account in the amount of twenty thousand dollars (\$20,000.00). Any written instrument evidencing the Security Fund shall be subject to the approval of the City.

2. In the event the operator fails to perform any obligation under this Chapter or any franchise granted hereunder, the City shall provide thirty (30) days' written notice to the operator of such failure. If, after such thirty (30) days the failure remains uncured, and the City has been compelled to pay any damages, costs or expenses, or has not received a payment from the operator as required by this Chapter, the City shall provide written notice of the amount of such payment to the operator. If within ten (10) days after operator's receipt of

written notice of such payment, the operator fails to reimburse the City, then the City may withdraw the amount of such payment from the Security Fund.

3. Within ten (10) days after such withdrawal, the City shall provide operator with written notice of the date and amount of such withdrawal. Within ten (10) days from receipt of such notice that any amount has been withdrawn, the operator shall deposit a sum of money sufficient to restore such Security Fund to the required amount.

4. At a minimum, the letter of credit or escrow account shall: a) provide that it shall not be canceled without the prior written consent of the City, and b) not require the consent of operator prior to the collection by the City of any amounts covered by the said Security Fund. The Security Fund shall be maintained, at operator's sole expense, through the term of the franchise.

5. Interest on the amount in the Security Fund shall accrue to the benefit of the operator and may be withdrawn by operator.

6. The City reserves the right, in its sole discretion, to reduce the required amount of the Security Fund. Upon any termination of the franchise, operator shall be entitled to the return of the Security Fund, or portion thereof as remains on deposit at such termination. In the event operator continues to operate the system following any termination, then operator shall not be entitled to a return of the Security Fund until the end of such continued operation.

#### **F. Damages and Defense:**

1. As between the City and the operator, the operator shall be responsible for any liability of the City, including, without limitation, any officer, employee, or agent of the City, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of the system by the operator or its subcontractors, or the distribution of any service over the system. The operator shall, at its own cost and expense, replace, repair, or restore any damaged property to its prior condition and shall pay appropriate compensation in the event of any wrongful injury to or death of any individual person occasioned by any negligent act or failure to act of the operator, or any officer, employee, agent, or subcontractor thereof, in connection with the construction, operation, maintenance, repair, upgrade or removal of the system.

2. The City, its officers, employees, agents, attorneys, consultants and independent contractors, shall not be liable for any liability of the operator, or any other person, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of, or other action or event with respect to, the system, or the distribution of any service over the system.

3. The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the system, in which event the City shall not incur any liability to the operator or any other person. When possible, the operator shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances, or other parts of the system shall be borne by the operator unless State law provides otherwise.

4. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall have no liability to the operator or any other person for any special, incidental, consequential, punitive, or other damages as a result of the lawful exercise of any right of the City pursuant to this Chapter, or any franchise granted pursuant to this Chapter or applicable law, including the rights of the City to grant, terminate, amend, or otherwise modify all or any part of this Chapter, or any franchise granted pursuant to this Chapter.

5. The operator shall:

a. Defend, indemnify, and hold harmless the City, its officers, employees, agents, attorneys, consultants and independent contractors from and against all liabilities, special, incidental, consequential, punitive, and all other damage, cost, and expense (including reasonable attorney fees) arising out of or in connection with any and all negligent acts of the operator in:

(1) The award or renewal of a franchise;

(2) The construction, operation, maintenance, repair, upgrade or removal of the system; or

(3) The distribution of any service over the system.

b. Cooperate with the City, by providing nonfinancial assistance in connection with any claim arising out of or in connection with the adoption of this Chapter or the granting of a franchise.

6. As between the City and the operator, the foregoing liability and indemnity obligations of the operator pursuant to this Section shall not apply to:

a. Any willful misconduct or gross negligence of any City officer, employee, agent, attorney, consultant or independent contractor;

b. Any liability arising out of the distribution of services over the governmental channels to the extent that the operator has not performed or failed to perform any act forming the basis of such claim;

c. Any liability arising out of the distribution of services over public channels to the extent that the operator has not performed or failed to perform any other act forming the basis of such claim; or

d. Any liability arising out of the City's use of the Emergency Alert System.

#### **G. Liability Insurance:**

1. The operator shall, at its own cost and expense, obtain a liability insurance policy or policies, together with evidence in the form of a certificate of insurance, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take effect and be furnished at or before the granting of a franchise. Such companies must carry a rating by best of not less than "A". Such policy or policies shall be issued by companies duly licensed to do business in the State. Such policy or policies shall insure the company and the City and its officers, boards, commissions, elected officials, agents,

and employees (through appropriate endorsements if necessary) against each and every form of liability of the company referred to in subsection F of this Section in the minimum combined amount of three million dollars (\$3,000,000.00) for bodily injury and property damage. The foregoing minimum limitation shall not prohibit the operator from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, elected officials, agents, and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by the operator.

2. The liability insurance policies required by this Section shall be maintained by the operator throughout the term of any franchise and such other period of time during which the operator operates or is engaged in the removal of the system. Each such liability insurance policy shall contain the following endorsement:

*It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew.*

Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the operator shall obtain and furnish to the City, replacement insurance policies.

3. The legal liability of the operator to the City and any person for any of the matters which are the subject of the liability insurance policies required by this Section, including, without limitation, the operator's indemnification obligation set forth in subsection F of this Section, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the operator.

#### **H. Limitation of Liability:**

1. In any court proceeding involving any claim against the City or any official, member, employee, or agent of the City, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a permit, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

2. The limitation contained in subsection H1 of this Section shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of an operator's rights.

3. Nothing in this Section shall be construed as limiting the relief authorized with respect to any claim against the City or any official, member, employee, or agent of the City, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

4. Nothing in this Section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by the City, or any official, member, employee, or agent of the City.

**I. City's Right to Revoke:** In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel any franchise granted pursuant to this Chapter, and all rights and privileges pertaining thereto, in the event that, through willful failure, refusal or neglect:

1. The operator substantially violates any material provision of this Chapter; or

2. The operator attempts to evade any of the provisions of the provisions of this Chapter and refuses to cure it; or

3. The operator is found guilty of practicing any fraud or deceit upon the City or any subscriber; or

4. The operator becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt; or

5. The operator knowingly misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, any franchise granted pursuant to this Chapter.

**J. Enforcement of Franchise Provisions:** In addition to any other remedies provided herein, the City may require operator to appear before the City to address any alleged violations of the terms and conditions of this Chapter, or any franchise granted hereunder. The City shall provide operator fourteen (14) days' advance written notice of such a meeting, which notice shall include a detailed description of any alleged violation. Operator shall be prepared to explain the circumstances regarding such alleged violation, including any actions taken by operator to cure such alleged violations or other relevant facts. If City is dissatisfied with the responses received from operator, it may exercise any other rights available to it under the terms and provisions of this Chapter, any franchise granted hereunder, or applicable local, State and Federal law.

**K. Revocation Procedures:** In the event that the City determines that the operator has violated any provision of this Chapter, or any franchise granted pursuant to this Chapter, the City may make a written demand on the operator that it remedy such violation and that continued violation may be cause for revocation of said operator's franchise. If the violation, breach, failure, refusal, or neglect is not remedied or commenced to be remedied to the reasonable satisfaction of the City within thirty (30) days following such demand, the City shall determine whether or not such violation, breach, failure, refusal or neglect by the operator is due to acts of God or other causes which result from circumstances beyond the operator's control.

1. A public hearing shall be held and the operator shall be provided with an opportunity to be heard upon fourteen (14) days' written notice to the operator of the time and the place of the hearing. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need to be shown by the City to support a revocation.

2. If notice is given and, at the operator's option, after a full public proceeding is held, the City determines there is a violation, breach, failure, refusal or neglect by the operator, the City shall direct the operator to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as City may direct.

3. If after a public hearing it is determined that the operator's performance of any of the terms, conditions, obligations of the franchise or this Chapter, or any requirements of law, was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the operator has notified City in writing within a reasonable period of time of its discovery of the occurrence of such an event and the realization of the event's impact on franchise performance. Such causes beyond the operator's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God and civil emergencies.

4. If, after notice is given and, at the operator's option, a full public proceeding is held, the City determines there was a violation, breach, failure, refusal or neglect, then the City may declare, by resolution, the franchise revoked and canceled and of no further force and effect unless there is compliance within such period as City may fix, such period not to be less than thirty (30) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

5. The issue of revocation shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City then may terminate the operator's franchise forthwith upon finding that the operator has failed to achieve compliance or may further extend the period, in its discretion.

6. If the City, after notice is given and, at the operator's option, a full public proceeding is held and appeal is exhausted, declares the franchise breached, the parties may pursue their remedies pursuant to this Chapter or any other remedy, legal or equitable.

7. Within one hundred eighty (180) days after the City declares an operator's franchise terminated, and regardless of the exercise of any right of the City hereunder, the operator may sell, remove or (by means divesting operator of all right, title, and interest) transfer the entire system of operator, subject to the provisions of subdivision 11-12B of this Chapter, and upon any such sale or transfer in addition to any of the rights hereunder or otherwise, City shall have a lien (next in order of preference to any liens or encumbrances existing of record on the date of such termination) against any and all proceeds thereof, and against the system of operator, in the full amount of any loss, cost, expense or other financial detriment incurred by the City in the exercise of any right hereunder, or by reason of such termination.

8. In the event operator shall fail or refuse to sell, remove or transfer the entire system of operator, as herein above provided, and regardless of the exercise of any other right of City hereunder, then by operation of law, all of the properties, facilities, records, files, rights, privileges, powers, authorities and immunities of operator, which are part of the system of operator, shall become the property of the City, subject to any and all valid liens or encumbrances of record, and the system shall belong to the City; and operator shall cause to be executed, acknowledged and delivered to the City, upon demand therefor, such instruments as the City Attorney shall prescribe and approve, evidencing or affecting the ownership or control of any of the same in the City.

9. In the event the system shall become the property of the City, as herein provided, then City may solicit and call for offers to purchase such system, by bid process; providing, that City may, in the manner provided in subdivision 6-7C of this Chapter,

solicit and call for offers and applications for a franchise, and may specify, as a term and condition thereof, that any such offer and application shall include the purchase of such system from City.

**10.** Nothing herein shall be construed to obligate or require City to exercise any right of City hereunder, and City shall at no time be obligated or required to undertake or assume the ownership or operation of any system, or to provide any services.

**Subd. 10. Foreclosure, Receivership and Abandonment:**

**A. Foreclosure:** Upon the foreclosure or other judicial sale of the system, the operator shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the operator has taken place, and the provisions of this Chapter governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

**B. Receivership:** The City shall have the right to cancel any franchise granted pursuant to this Chapter subject to any applicable provisions of State law, including the Bankruptcy Act, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the operator, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

**1.** Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Chapter, and remedied all defaults thereunder; and

**2.** Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Chapter.

**C. Abandonment:** The operator may not abandon any portion of the system without having first given three (3) months' written notice to the City. The operator may not abandon any portion of the system without compensating the City for reasonable, actual damages resulting from the abandonment.

**Subd. 11. Removal, Transfer and Purchase:**

**A. Removal After Revocation, Expiration, or Non-renewal:**

**1.** If an operator's request for renewal is denied or at the expiration of the term for which any franchise is granted, or upon its revocation, as provided for in subdivision 9-10K of this Chapter, the City shall have the right to require the operator to remove, at the operator's expense, all or any portion of the system from all streets and public property within the City. In so removing the system, the operator shall refill and compact at its own expense, any excavation that shall be made and shall leave all streets, public property and private property in as good a condition as that prevailing prior to the operator's removal of the system. In so removing the system, operator shall use its best efforts not to affect, alter or disturb in any way electric, telephone or utility cables, wires or attachments. Operator shall be responsible for any damage which occurs during said removal. The City, or its designee, shall have the right to inspect and approve the condition of such streets and public property after removal. The Security

Fund, insurance, indemnity and penalty provisions of this Chapter shall remain in full force and effect during the entire term of removal.

2. If, in the sole discretion of the City, the operator has failed to commence removal of the system, or such part thereof as was designated within thirty (30) days after written notice of the City's demand for removal is given, or if the operator has failed to complete such removal within one year after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

a. Declare all right, title and interest to the system to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate the system or transfer the system to another for operation by it; or

b. Declare the system abandoned and cause the system, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the operator.

### **B. Sale or Transfer:**

1. The right of an operator under this Chapter or any franchise granted pursuant to this Chapter, shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without full compliance with the procedure set forth in this Section.

2. The provisions of this Section shall apply to the sale or transfer of all or a majority of the operator's assets, merger (excluding any parent or subsidiary corporation), consolidation, creation of a subsidiary corporation or sale or transfer of stock in the operator so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

a. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer. The written request shall include or be accompanied by all information required by the City or required in accordance with FCC rules and regulations.

b. The City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the operator's subscribers.

c. If a public hearing is deemed necessary, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.

d. Within thirty (30) days after the closing of the public hearing, the City shall approve or deny in writing the sale or transfer request.

e. Within thirty (30) days of any transfer, the operator shall file with the City a copy of the deed, agreement, mortgage, lease or other written instrument

evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the operator. The operator may label documents proprietary and confidential when necessary and legally appropriate.

3. In reviewing a request for sale or transfer pursuant to this Section, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, and the operator shall assist the City in so inquiring. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to the franchise. In no event shall the City exceed one hundred twenty (120) days in approving or denying an operator's written request, or such request shall be deemed granted unless there is a mutual agreement for extension of time.

#### **C. Purchase by City Upon Revocation or Non-renewal:**

1. Upon non-renewal of a franchise, the City may, in lawful manner and upon the payment of fair-market value, determined on the basis of the system valued as a going concern but with no value allocated to the franchise itself, lawfully acquire the system or affect a transfer consistent with the provisions of this Chapter.

2. Upon the revocation of a franchise, the City may, in lawful manner and upon the payment of an equitable price, lawfully acquire the system or affect a transfer of ownership of system to another person.

#### **Subd. 12. Rights of Individuals Protected:**

**A. Discriminatory Practices Prohibited:** The operator shall not deny service, deny access, or otherwise discriminate against subscribers, or general citizens on the basis of race, color, religion, national origin, sex, or age. The operator shall comply at all times with all other applicable Federal, State and City laws, and all executive and administrative orders relating to nondiscrimination.

**B. Subscriber Privacy:** The operator, the City, and any other person or organization utilizing the cable system, shall strictly observe and comply with the privacy provisions of the Cable Act and State and Federal law.

#### **Subd. 13. Miscellaneous Provisions:**

**A. Compliance with Laws:** The operator and the City shall conform to all State and Federal laws and rules regarding cable television as they become effective, unless otherwise stated. The operator shall also conform with all the City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of this Chapter.

**B. Continuity of Service Mandatory:** Upon expiration or the termination of a franchise, the City may require the operator to continue to operate the system for an extended period of time not to exceed six (6) months. The operator shall, as trustee for its successor in interest, continue to operate the system under the terms and conditions of this Chapter. In the event the operator does not so operate the system, the City may take such steps as it, in its sole discretion, deems necessary to assure continued service to subscribers.

### **C. Work Performed by Others:**

1. The operator shall, upon request, give notice to the City specifying the names and addresses of any other entity, other than the operator, which performs services pursuant to this Chapter, provided, however, that all provisions of this Chapter shall remain the responsibility of the operator, and the operator shall be responsible for and hold the City harmless for any claims or liability arising out of work performed by persons other than the operator pursuant to subdivision 9-10F of this Chapter.

2. All provisions of this Chapter shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Chapter.

### **D. Compliance with Federal, State and Local Laws:**

1. If any Federal or State law or regulation requires or permits the operator to perform any service or act or shall prohibit the operator from performing any service or act which may be in conflict with the terms of this Chapter, then as soon as possible following knowledge thereof, the operator or City shall notify the other of the point of conflict believed to exist between such law or regulation. The operator shall at all times comply with all applicable laws and ordinances enacted by the City.

2. If any term, condition or provision of this Chapter or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Chapter and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the operator and the City.

**E. Nonenforcement by City:** The operator shall not be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of the City to enforce prompt compliance.

**F. Force Majeure:** Whenever a period of time is provided for in this Chapter for either the City or an operator to do or perform any act or obligation, neither party shall be liable through causes beyond the control of such party, such as unavoidable delays in the issuance of utility company permits, licenses, authorizations and approvals; delays caused by utility company work required to be completed prior to activation; war; riot; insurrection; rebellion; strike; lockout; unavoidable casualty or damage to personnel, materials or equipment; fire; flood; storm; earthquake; tornado; orders of a court of competent jurisdiction; or any act of God, and upon the occurrence of any such event, that time period shall be extended for the amount of time said party is so delayed.

### **G. Miscellaneous Violations:**

1. From and after the acceptance of this Chapter, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the City any television signals or radio signals by means of a system using public rights of way unless a permit therefor has first been obtained pursuant to the provisions of this Chapter, and unless such permit is in full force and effect.

2. From and after the acceptance of this Chapter, it shall be unlawful for any person to construct, install or maintain within any street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, or the City's Official Map or the City's major thoroughfare plan, any equipment or facilities for distributing any television signals or radio signals through a system, unless a permit authorizing such use of such street or property or areas has first been obtained.

**H. Emergency Use:** In the case of any emergency or disaster, the operator shall, upon request of the City, make available its system and related facilities to the City for emergency use during the emergency or disaster period.

**I. Controlling Law:** This Chapter shall be construed and enforced in accordance with the substantive laws of the State.

**J. Captions:** The catch-lines and headings in this Chapter are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Chapter.

**K. Calculation of Time:** Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

**SEC. 2-0202. REGULATION OF NON-EXCLUSIVE GAS FRANCHISE.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and Assigns, is hereby granted permission to erect a gas distribution system for the purposes of constructing, operating, repairing and maintaining in the City of Barnesville, Minnesota, the necessary gas pipes, mains and appurtenances for the transmission or distribution of gas to the City and its inhabitants and others and transmitting gas into and through the City and to use the public grounds and public ways of the City for such purposes. Nothing in this Ordinance shall be deemed to prohibit the operation or maintenance of existing or future propane tanks or heating systems within the City of Barnesville.

**Sub. 1. Short Title:** This Ordinance shall be known and cited as the *CITY OF BARNESVILLE GAS FRANCHISE ORDINANCE*, hereinafter referred to as the "Ordinance".

**Subd. 2. Definitions:** For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meanings.

**CITY:** The City of Barnesville, Minnesota, or, as appropriate in the case of specific provisions of this Ordinance, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the City of Barnesville, or any officer, official, employee, or agent thereof, the designee of any of the foregoing, or any successor thereto.

**CITY UTILITY SYSTEM:**

Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

**COMMISSION:**

The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.

**COMPANY:**

Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.

**GAS:**

“Gas” as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

**GAS FACILITIES:**

Pipes, mains, regulators, and other facilities owned or operated by Company for the purpose of providing gas service for public use.

**GROSS REVENUE:**

Means all revenue derived by the Company from the operation of the Gas Facilities in the franchise area to provide Gas, and from any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the Gas furnished or sold to the City and its inhabitants and all other customers. Gross Revenue does not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

**NOTICE:**

A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, P.O. Box 550, Barnesville, MN 56514. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

**PUBLIC GROUND:**

Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

**PUBLIC WAY:**

Any street, alley, walkway or other public right-of-way within the City.

**Subd. 3. Adoption of Franchise.**

A. Grant of Franchise. The City hereby grants Company, for a period of 20 years from the effective date of a separate franchise agreement passed and approved by the City, the right to transmit and furnish Gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as

they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of the City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to provisions of a separate franchise agreement. (Source: Ord. 2015-02)

**B. Effective Date; Written Acceptance.** A separate franchise agreement may become effective from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke the franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

**C. Service and Rates.** The service to be provided and the rates to be charged by Company for Gas service in the City are subject to the jurisdiction of the Commission.

**D. Publication Expense.** The expense of publication of this Ordinance will be paid by the City and the City will be reimbursed by the Company.

**E. Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation of a franchise agreement or in violation of the Ordinance, the complaining party shall notify the other party of the default and the desired remedy. The notification must be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

#### **Subd. 4. Location, Other Regulations.**

**A. Location of Facilities.** Gas Facilities will be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities will be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities will be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent consistent with the terms of a separate franchise agreement. Company may abandon underground gas facilities in place. Upon request by the City, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.

**B. Field Locations.** Company will provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

**C. Street Openings.** Company will not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company will not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or

Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event, Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

**D. Restoration.** After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work must be completed as promptly as weather permits, and if Company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and materials, and put the Public Ground or Public Way in the said condition, the City has, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy will be in addition to any other remedy available to the City for noncompliance with this subsection D, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

**E. Avoid Damage to Gas Facilities.** Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

**F. Notice of Improvements.** The City must give Company notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain (1) the nature and character of the improvements, (2) the Public Grounds and Public Ways upon which the improvements are to be made, (3) the extent of the improvements, (4) the time when the City will start the work, and (5) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

#### **Subd. 5. Relocations.**

**A. Relocation of Gas Facilities in Public Ways.** If the City determines to vacate a Public Way for a City improvement project, or at the City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in subsection C, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment Costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and its not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

**B. Relocation of Gas Facilities in Public Ground.** The City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by the City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

**C. Projects with Federal Funding.** The City will not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which the City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of a federally-aided highway project will be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

**D. No Waiver.** The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

**Subd. 6: Tree Trimming.** Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of the City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that Company shall save the City harmless from any liability in the premises.

**Subd. 7. Indemnification.**

**A. Indemnity of City.** Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. The City will not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City will not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by the City after notice of Company's determination.

**B. Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This subsection is not, as to third parties, a waiver of any defense or immunity

otherwise available to the City, and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

**Subd. 8. Vacation of Public Ways.** The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

**Subd. 9. Change in Form of Government.** Any change in the form of government of the City will not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

**Sub. 10. Franchise Fee.** (Source: Ord. 2015-02)

**A. Fee.** Company shall pay an annual Franchise Fee, of five percent (5%) of Company's Gross Revenues. The franchise fee will not become effective until the beginning of a Company billing month at least ninety (90) days after a separate franchise agreement has been fully executed or after publication of the Ordinance, whichever occurs later. Subd. 3(E) will constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the franchise fee. No action by the City to implement a revised franchise fee will commence until this Ordinance is effective. In the event a future revision of the fee imposes fees based on class of user and imposes a lesser franchise fee on the residential class of customers, such fee will not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

**B. Collection of the Fee.** The franchise fee will be payable quarterly and will be based on the amount collected by Company during complete billing month during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee in all customer billings for gas service. The payment will be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change must meet the same notice requirements and not occur more often than annually and no change will require a collection from any customer for gas service in excess of the amounts specifically permitted by this Sub. 10. No franchise fee will be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers for gas service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by an identifiable customer or customers or any other information regarding identified customers. The City and the Company shall enter into an agreement prior to Company commencing operation of the gas facilities.

**C. Equivalent Fee Requirement.** The franchise fee imposed will not be

effective against Company unless the City lawfully imposes and the City quarterly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or impose a tax. The “same or greater equivalent amount” will be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax will be applicable to energy sales for any energy use related to heating, cooling, or lighting, or to run machinery and appliances, but will not apply to energy sales for the purpose of providing fuel to vehicles. If Company specifically consents in writing to a franchise collecting or failing to collect a fee from another energy supplier in contravention of this Sub. 10(C), the foregoing conditions will be waived to the extent of such written consent. This Sub. 10 will not apply to existing propane suppliers within the City of Barnesville.

**Subd. 11. Provisions of Ordinance.**

A. Severability. Every section, provision, or part of this Ordinance is declared separate from every other section or part, and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance will prevail.

**Subd. 12. Amendment Procedure.** This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company’s written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

**Subd. 13. Previous Franchises Superseded.** This franchise supersedes any pervious Gas franchise granted to Company or its predecessor.

Source: Ord. 2014-04, Sec. 1 (2014)