

## CHAPTER VII

## PUBLIC UTILITIES

Section 700 - Sewer system

700.01. Definitions. Subdivision 1. For purposes of this section the terms defined in this subsection have the meanings given them:

Subd. 2. "Sewage works" means all facilities for collecting, pumping, treating, and disposing of sewage.

Subd. 3. "Sewage" means a combination of the water carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

Subd. 4. "Sewer" means a pipe or conduit for carrying sewage.

Subd. 5. "Public sewer" means a sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

Subd. 6. "Combined sewer" means a sewer receiving both surface runoff and sewage.

Subd. 7. "Sanitary sewer" means a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

Subd. 8. "Storm sewer" or "storm drain" means a sewer which carries storm and surface waters and drainage but excludes sewage and polluted industrial wastes.

Subd. 9. "Sewage treatment plant" means any arrangement of devices and structures used for treating sewage.

Subd. 10. "Industrial wastes" means the liquid wastes from industrial processes as distinct from sanitary sewage.

Subd. 11. "Garbage" means solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Subd. 12. "Properly shredded garbage" means the wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

Subd. 13. "Building drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning five feet outside the inner face of the building wall.

Subd. 14. "Building sewer" means the extension from the building drain to the public sewer or other place of disposal.

Subd. 15. "B.O.D." (denoting biochemical oxygen demand) means the quantity of oxygen utilized in the bio-chemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Centigrade, expressed in parts per million by weight.

Subd. 16. "pH" means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Subd. 17. "Suspended solids" means solids that either float on the surface of, or are in suspension in water, sewage or other liquids; and which are removable by laboratory filtering.

Subd. 18. "Natural outlet" means any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

Subd. 19. "Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently.

700.03. Public sewage system. Subdivision 1. Unlawful acts. It is unlawful for any person to:

(a) place, deposit or permit to be deposited in an unsanitary manner upon public or private property within the city, or in any area under the jurisdiction of said city, any human or animal excrement garbage, or other objectionable waste;

(b) discharge into any natural outlet within the city, or in any area under the jurisdiction of said city, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this section; or

(c) construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

Subd. 2. Required use of public sewers. Houses, buildings, or properties used for human occupancy, employment, recreation or other purpose, situated within the city, shall connect with and use public sanitary sewers. No private sewage system is lawful within the city.

700.05. Building sewers and connections. Subdivision 1. Unauthorized connections. No person may uncover, make any connections with or openings into, use, alter, cap off, abandon, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the building inspector and otherwise complying with the terms of this section.

Subd. 2. Permits and bond. Permits for building sewers and connections shall be taken out by a master plumber who shall furnish a bond in the amount of \$2,000, conditioned so as to secure compliance by the principal with all of the provisions of this code and so as to further secure performance by the principal of all jobs and projects undertaken by the principal within the city.

Subd. 3. Insurance requirements. Prior to the commencement of construction work such master plumber shall take out and maintain insurance against damages to property or injury or death to persons, which policies shall indemnify and save harmless the city and all of its officers and personnel against any claim, demand, damages, actions or cause of action arising out of or by reason of the doing of the work or activities related or incident thereto, and from any costs, disbursements, or expenses of defending the same. The property damage insurance coverage shall be in the amount of \$25,000 or more, and the public liability insurance for injury or death to persons shall be in the amount of \$50,000 and \$100,000. Proof of such insurance shall be filed with the city prior to commencement of construction work, and such policy shall provide that the city shall be notified immediately of any termination or modification of such insurance.

Subd. 4. Indemnification. If the insurance coverage required by subdivision 3 is inadequate in amount then the master plumber shall personally indemnify and save harmless the city and all of its officers and personnel in like manner.

Subd. 5. Sewer permits: types. There are two classes of building sewer permits: (i) for residential and commercial service, and (ii) for service to establishments producing industrial wastes. In either case the owner or owner's agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information which the director of community services may reasonably require.

Subd. 6. Permit and inspection fees. A permit and inspection fee as provided in appendix D of this code shall be paid to the city finance coordinator at the time the application is filed.

Subd. 7. Indemnification by owner. All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city for any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. The city engineer shall establish rules and regulations for the proper implementation of this part which, when approved by the council by resolution, shall govern the installation of building sewers and connections. (Amended, Bill No. 1997-6, Sec. 1)

Subd. 8. Excavations. Excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the director of community services. Tunneling may be permitted but no tunnel shall exceed six feet in length and the pipe shall be installed so as to permit inspection of all joints. No backfill shall be placed until work has been inspected. 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 director of community services. (Amended, Bill No. 1997-6, Sec. 1)

Subd. 9. Connection to public sewer. The connection of the building sewer into the public sewer shall be made at the "Y" branch, if such branch is available at a suitable location. If the public sewer is 12 inches in diameter or less, and no properly located "Y" branch is available, the owner shall at owner's expense install a "Y" branch in the public sewer at the location specified by the director of community services. Where the public sewer is greater than 12 inches in diameter, and no properly located "Y" branch is available, a neat hole may be cut into the public sewer to receive the building sewer, with entry in the downstream direction at an angle of approximately 45 degrees. A 45 degree ell may be used to make such connection, with the spigot end cut so as not to extend past the inner surface of the public sewer. The invert of the building sewer at the point of connection shall be at the same or at a higher elevation than the invest of the public sewer. A smooth, neat joint shall be made, and the connection made secure and watertight by engagement in concrete. Special fittings may be used for the connection only when approved by the director of community services. (Amended, Bill No. 1997-6, Sec. 1)

Subd. 10. Prior approval. Building sewers and house sewers shall be provided for each separate structure and all connections to the public sanitary sewer shall be made where building sewers and house sewers have been installed. Connection with the public sanitary sewer at any other location must be approved by the director of community services prior to commencement of any construction. In the event the building sewer or house sewer which has been installed cannot be used, then the property owner shall pay the full cost of making the connection elsewhere. The applicant for the building sewer permit shall notify the building official when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the building official. (Amended, Bill No. 1997-6, Sec. 1)

700.07. Regulations governing use of the public sewers. Subdivision 1. Unlawful use. No person may discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.

Subd. 2. Storm waters and unpolluted drainage. Storm water and all other unpolluted drainage shall be discharged into sewers specifically designed as storm sewers, or to a natural outlet approved by the council. Industrial cooling water or unpolluted industrial process waters may be discharged, upon council approval to any storm sewer or natural outlet.

Subd. 3. Prohibited discharge. Except as hereinafter provided no person may discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- (a) liquid or vapor having a temperature higher than 150 degrees F;
- (b) water or waste which may contain more than 100 parts per million, by weight, of fat, oil, or grease;
- (c) gasoline, benzine, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas;
- (d) garbage that has not been properly shredded;
- (e) ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or fiscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works;
- (f) waters or wastes having a pH lower than 5.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works;
- (g) waters or wastes containing a toxic or poisonous substance in sufficient quantity to inquire or interfere with any sewage treatment process, which constitute a hazard to humans or animals, or create any hazard in the receiving waters of the sewage treatment plant;
- (h) waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;
- (i) noxious or malodorous gases or substances capable of creating a public nuisance.

Subd. 4. Grease, oil and sand interceptors. Grease, oil and sand interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand, and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All such interceptors shall be of a type and capacity approved by the director of community services, and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which when bolted in place shall be gastight and watertight. Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

Subd. 5. Certain types of uses: approval. The admission into the public sewers of any water or wastes having (i) a five-day Biochemical Oxygen Demand greater than 300 parts per million by weight, or (ii) containing more than 350 parts per million by weight of suspended solids, or (iii) containing any quantity of substances having characteristics described in subdivision 3 or (iv) having an average daily flow greater than 2% of the average daily sewage flow of the city is subject to the review and approval of the director of community services.

Subd. 6. Preliminary treatment: when required. The owner shall provide, at his expense, such preliminary treatment as may be necessary to (i) reduce the biochemical oxygen demand to 300 parts per million and the suspended solids to 350 parts per million by weight, or (ii) reduce objectionable characteristics of constituents to within the maximum limits provided for in subdivision 3, or (iii) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the director of community services and the Minnesota Pollution Control Agency, and no construction of such facilities may be commenced until approvals are obtained in writing.

Subd. 7. Maintenance of preliminary treatment facilities. Where preliminary treatment facilities are provided for waters or wastes, they shall be maintained continuously in satisfactory and effective operation, by the owner at the owner's expense.

Subd. 8. Manholes. The owner of property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. The manhole, when required, shall be accessibly and safely located, and constructed in accordance with plans approved by the director of community services. The manhole shall be installed by the owner, at his expense, and maintained by him so as to be safe and accessible at all times.

Subd. 9. Tests and analysis. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in subdivisions 3 and 5 of this subsection shall be determined in accordance with methods employed by the Minnesota Department of Health, and shall be determined at the control manhole provided for in subdivision 8 of this subsection, or upon suitable samples taken at said control manhole. If no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

Subd. 10. Special provisions: industrial waste. This subsection shall not 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.

700.09. Miscellaneous sewage regulatory provisions. Subdivision 1. Protection from damage. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the city sewage system.

Subd. 2. Powers and authority of inspectors. The director of community services and other duly authorized employees of the city, bearing proper credentials and identification, shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling, and testing, in accordance with the provisions of this party.

Subd. 3. Liability to city for damage. A person violating any of the provisions of this section is liable to the city for any expense, loss, or damage occasioned the city by reason of the violation.

Section 705 - Sewer system: rates and charges

705.01. Sanitary sewer services. Subdivision 1. Definitions. For purposes of this section the terms defined in this subsection have the meanings given them.

Subd. 2. "Normal sewage" means water-carried waste products from residences, public buildings, business or industrial establishments, schools, or any other buildings or structures, including the excrementitious or other discharge from human beings or animals, together with ground water infiltration that may be present.

Subd. 3. "Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing, trade, business, the development of any natural resource or any similar activity.

705.03. Rates and charges for sanitary sewer services. Subdivision 1. Established. Rates and charges for use and service of the sanitary sewer system shall be established, from time to time, by resolution of the city council. Such rates and charges shall be made against each lot, parcel of land, unit or premises which may have a connection directly or indirectly into the city sanitary sewer system.

Subd. 2. Flat charges. Where the rate is not based upon the metered use of water the council may establish quarterly flat charges. Such flat charges shall be made effective with the winter quarter of each year for each customer billing district. Flat charges may vary among the various classes of customers as established by the resolution establishing the rates and charges. In addition to flat rates, there may be a customer charge on each invoice as determined in such resolution and a certification charge as provided in subsection 705.19.

Subd. 3. Metered flow charge. Where there are one or more water meters measuring water usage on the premises, sanitary sewer service rates and charges shall be based upon the metered use of water except to the extent otherwise provided in this subdivision. The rates and charges shall be based upon the actual use of water on the premises for the last preceding winter quarter for each billing district is as follows:

city water district #1 - three month use period beginning in October, billed in February of current year;

city water district #2 - three month use period beginning in November, billed in March of current year;

city water district #3 - three month use period beginning in December, billed in April of current year;

(Amended, Bill No. 2009-20)

Subd. 4. Abnormal use. Where it appears that metered water use for the winter quarter is not normal, by reason of the fact that for some or all of the winter quarter the premises have not been occupied or there have been other interruptions in the normal use of water, the volume of water to be used for the

purposes of establishing sewer charges may be based upon water usage at comparable occupied premises elsewhere in the city. Sewer charges so established shall be determined by the manager.

Subd. 5. Redetermination. Any customer who believes that his or her sewer charges have been determined in an inequitable manner may petition for and shall receive a redetermination of such charges by the manager. The redetermination of the manager is subject to appeal to and final determination by the city council.

Subd. 6. Invoice charge. In addition to the rates and charges established on the basis of the metered use of water, as hereinbefore provided, there shall be a customer charge for each invoice rendered by the city.

705.05. Metering water supply in lieu of flat charge. When a meter recording the use of water is installed on any non-residential lot, parcel, premises or unit enumerated in this section, the rate shall be based upon such use of water. The council may, by resolution, require and order the installation of such meter on any such lot, parcel, premises or unit or class thereof where it shall determine that the aforementioned flat charges are impractical to apply, or result in inequitable charges because insufficient or excessive; and thereafter the rate shall be based upon such use of water.

705.07. Installation of meter. Any water meter installed for use or used as a basis for the computation of sewer rates shall be installed and maintained in good operating condition at all times, the installation and maintenance to be without expense to the city. Meters shall be of a type approved by the council, and shall accurately measure all water received on the premises. Installation of and maintenance of meters shall be made in accordance with the plumbing regulations of in this code.

705.09. Water used not entering sewer system. If the lot, parcel of land, or premises discharges normal sewage or industrial waste into the sanitary sewage system, then the council may permit or require the installation of other or additional meters in such a manner that the quantity of water which actually could enter the sewer system may be determined. In such case the charges or rates shall be based upon the amount of water which can enter the sanitary sewer system.

705.11. Required information. The owner, occupant, or person in charge of any premises shall supply the city with such information as the city may reasonably require related to use of water, use of sewer, or sewer rates. Willful failure to provide information or willful falsification of information shall constitute a violation of this section, as shall willful failure to comply with any requirement or order issued pursuant to this section.

705.13. Estimated bills. If the owner, occupant or person in charge of any premises fails or refuses to provide information as provided in subsection 705.11 hereof, or fails or refuses to comply with any requirement of this section, the proper charge for the premises shall be estimated and billed in accordance with the estimate.

705.15. Beginning service. For a fraction of a quarter the charges and rates for non-metered units shall be based upon the per diem pro rata amount of the established flat charge.

705.17. Billings. Bills for charges for the use and service of the sewage system shall be made out by the finance department in accordance with the usual and customary practice. Bills shall be payable at the office of the city finance coordinator. Bills are rendered quarterly.

705.19. Collections. Charges of sewer and water service are due on the quarterly due date specified by the city for the respective account and shall be delinquent 15 days thereafter. It is the duty of the city to endeavor to promptly collect delinquent accounts, and in all cases where satisfactory arrangements for payment have not been made, all delinquent accounts shall be certified to the city clerk who shall prepare an assessment of the delinquent amounts against the properties served. To each account there shall be added a certification charge (preparation for certification of taxes of delinquent accounts) in the amount provided for in appendix D. The assessment roll shall be delivered to the council for adoption on or before October 1st of each year. The action may be optional or subsequent to taking legal action to collect delinquent accounts. The certification charge, when collected, shall be allocated equally between the city's water fund and its sewer fund.

705.21. Revenues. All revenues derived from the rates and charges shall be credited to the sewer operating fund. The revenues may be used only for the purpose of paying the cost of operating and maintaining the sewage system, paying charges made by the city of Minneapolis, providing an adequate depreciation fund, paying costs of meter-reading, billing, collection and other similar or related sewer operating expense.

705.23. Sewer service availability charges: new construction. Subdivision 1. Charge imposed. There is imposed on each new building constructed within the city a sewer service availability charge. This charge is imposed to assist the city in meeting its obligations to the Metropolitan Waste Control Commission pursuant to Minnesota Statutes, chapter 473. All funds collected under this subsection shall be used by the city for that purpose.

Subd. 2. Amount of charge. The amount of the sewer service availability charge shall be fixed from time to time by resolution of the city council. The charge shall be equal to the sewer service availability charge established by the Metropolitan Waste Control Commission and used as a basis for payments made to the board by the city.

Subd. 3. Administration: building permits. An applicant for a permit for new building construction shall pay the sewer service availability charge to the city treasurer together with other fees required for the issuance of a building permit. The building official may not issue a building permit for such new construction unless the charge is paid.

Subd. 4. Building official: reports. The building official shall, prior to the first day of each month, submit a report to the manager showing the number and type of building permits issued and the number and type of building units demolished in the preceding month.

705.25. Industrial user extra strength charges. Subdivision 1. Recitals. The Metropolitan Waste Control Commission, a metropolitan commission organized and existing under the laws of the State of Minnesota (the "commission"), in order to receive and retain grants in compliance with the Federal Water Pollution Control Act Amendments of 1972 and regulations thereunder (the "act"), has determined to impose an industrial user sewer strength charge upon users of the metropolitan disposal system (as defined in Minnesota Statutes, section 473.121, subdivision 24) to recover operation and maintenance costs of treatment works attributable to the strength of the discharge of industrial waste, the sewer strength charge being in addition to the charge based upon the volume of discharge. In order for the city to pay such costs based upon strength of industrial discharge and allocated to it each year by the commission, it is necessary to establish sewer strength charges and a formula for the computation thereof for all industrial users receiving waste treatment services within or served by the city, as provided by Minnesota Statutes, section 444.075, subdivision 3.

Subd. 2. Establishment of strength charges. For the purpose of paying the costs allocated to the city each year by the commission that are based upon the strength of discharge of all industrial users receiving waste treatment services within or served by the city shall pay, in addition to the sewer charge based upon the volume of discharge, a sewer charge upon each company or corporation receiving waste treatment services within or served by the city, based upon strength of industrial waste discharged into the sewer system of the city (the "strength charge").

Subd. 3. Establishment of strength charge formula. For the purpose of computation of the strength charge established by subdivision 2 hereof, there is hereby established, the same strength charge formula designated in resolution No. 76-172 adopted by the governing body of the commission on June 15, 1976, which resolution is hereby adopted by specific reference, such formula being based upon pollution qualities and difficulty of disposal of the sewage produced through an evaluation of pollution qualities and quantities in excess of an annual average base and the proportionate costs of operation and maintenance of waste treatment services provided by the commission.

Subd. 4. Strength charge payment. The strength charge established by subdivision 2 hereof shall be paid by each industrial user receiving waste treatment services and subject thereto before the 20th day next succeeding the date of billing thereof to the user by or on behalf of the city, and payment shall be deemed to be delinquent if not so paid to the billing entity before such date. If such payment is not paid before such date an industrial user shall pay interest compounded monthly at the rate of two-thirds of one percent per month on the unpaid balance due.

Subd. 5. Establishment of tax lien. As provided by Minnesota Statutes, section 444.075, subdivision 3, if payment of the strength charge established by subdivision 2 hereof is not paid before the 60th day next succeeding the date of billing thereof to the industrial user by or on behalf of the city, the delinquent sewer strength charge, plus accrued interest established pursuant to subdivision 4 shall be deemed to be a charge against the owner, lessee and occupant of the property served, and the city shall certify such unpaid delinquent balance to the county auditor with taxes against the property served for collection as other taxes are collected; provided, however, that such certification shall not preclude the city or its agent from recovery of the delinquent sewer strength charge and interest thereon under any other available remedy.

Section 710 - Water system

710.01. Use of water restricted to authorized persons. No person may make, construct or install any water service installation or make use of any water service, or cap off or abandon any water service connected to the municipal water system except pursuant to application and permit as provided in this section, nor may any person, otherwise make, construct, install or make use of any installation connected to the water system contrary to the regulatory provisions of this section.

710.03. Applications for service: city water system. Subdivision 1. Procedure. Applications for service installations and for water service shall be made at the inspections division on printed forms furnished by the city. The application shall contain the name of the owner, the name of the street upon which the property fronts, the official street number assigned to the premises as shown by the records of the city, and the signature of the applicant agreeing to conform to the rules and regulations that may be established by the city as conditions for the use of water. (Amended, Bill No. 1997-6, Sec. 2)

Subd. 2. Fees or deposit. Applications for service installation shall be made by the owner of the property to be served, or by owner's duly authorized agent, and shall state the size of service connection required, and the applicant shall at the time of making application pay to the city the amount of the fees or deposit required for the installation of the service connection as provided in section 715. When service connections have been installed application for water service may be made either by the owner, or his duly authorized agent, or by the tenant or occupant of the premises.

710.05. Discontinuance of service. Water service may be shut off at any stop box connection if:

(a) the owner or occupant of the premises served, or any person working on any pipes or equipment thereon which are connected with the water supply system, has intentionally violated any of the requirements of this code relative to the water supply system;

(b) the owner or occupant of the premises served threatens to violate or cause to be violated, any of the provisions of this section;

(c) any charge for water, service, meter, or any other financial obligation imposed on the present or former owner or occupant of the premises served by the provisions of section 705 is unpaid; or

(d) there is fraud or misrepresentation by the owner or occupant in connection with an application for service.

710.07. Deficiency of water and shutting off water. The city is not liable for any deficiency or failure in the supply of water to consumers, whether occasioned by shutting the water off for the purpose of making repairs or connections, or from any other cause whatever. In case of fire, or alarm of fire, water may be shut off to insure a supply for fire fighting; or in making repairs or construction of new works, water may be shut off at any time and kept shut off so long as necessary.

710.09. Turning on water. No person may turn on any water supply at the stop box without a permit from the community services department. No permit will be issued unless the house number, as given by the community services department, is prominently displayed, and no such permit shall be given anyone but a licensed plumber. The city reserves the right to turn off any water supply if said number is not displayed after a written notice has been sent to the owner as appearing on its books.

710.11. Supply from one service. No more than one house or building may be supplied from one service connection except by special permission of the council. Whenever two or more parties are supplied from one pipe connecting with the distribution main, each building or part of building must have a separate stop box and a separate meter.

710.13. Tapping of mains prohibited. No person may tap any distributing main or pipe of the water supply system, or insert stop-cocks or ferrules therein.

710.15. Repair of leaks. It is the responsibility of the consumer or owner to maintain the service pipe from the curb box into the house or building. In case of failure upon the part of any consumer or owner to repair any leak occurring in their service pipe within 24 hours after verbal or written notice has been given the owner or occupant of the premises, the water will be shut off and will not be turned on until the sum of \$5.00 has been paid. When the waste of water is great, or when damage is likely to result from the leak, the water will be turned off if repair is not commenced immediately upon the giving of the notice.

710.17. Service pipes. The service pipe must be placed not less than seven and one-half feet below the surface and in all cases so arranged as to prevent rupture by freezing. Service pipes must extend from the curb box to the inside of the building; or if not taken into a building then to the hydrant or other fixtures which it is intended to supply. A full way valve, of the size and strength required, shall be placed close to the inside wall of the building, well protected from freezing. Copper tubing shall be used up to and including two inch services. Joints on copper tubing shall be kept to a minimum, with not more than one joint used for a service up to 70 feet in length. Joints shall be left uncovered until inspected. All services over two inches shall be cast iron. Connections with the mains for domestic supply shall be at least 3/4 of an inch. (Amended, Bill No. 1997-6, Sec. 3)

710.19. Water meters. Subdivision 1. Position. The service pipe from the water main to the meter where the meter enters the building shall be brought through the floor in a vertical position. The stop and waste valve shall be installed approximately 12 inches above the floor.

Subd. 2. Location. The meter shall be located so that the bottom is from six to 12 inches above the finished floor line. The meter shall be set not more than 12 inches measured horizontally from the inside line of the basement wall, unless an alternate method is approved by the public works department. A suitable bracket to support the meter in a proper vertical position and to prevent noise from vibration shall be provided.

Subd. 3. Valves. Meter installations shall have a full way valve on the street side of the meter. In no case shall there be more than 12 inches of pipe exposed between the point of entrance through the basement floor and the full way valve. A full way valve shall also be installed on the house side of the meter. (Amended, Bill No. 1997-6, Sec. 4)

Subd. 4. In basements. The water pipe connecting with the main shall not be run under any basement floor for a distance of more than two feet, measured from the inside of the basement wall, before being connected to the water meter.

Subd. 5. Setting devices. Meter setting devices for 5/8 inch, 3/4 inch and one inch meters shall be of copper pipe or tubing from the terminus of the service pipe up to and including the house side stop and waste valve.

710.21. Use of fire hydrants. No person may operate fire hydrants or interfere in any way with the city water system without first obtaining authority to do so from the director of community services.

710.23. Private water supplies. No water pipe of the city water supply system may be connected with any pump, well or tank that is connected with any other source of water supply and when such are found the community services department shall notify the owner to disconnect the same, and if not done immediately, the water supply shall be turned off forthwith. Before any new connection to the city system is permitted, the director of community services shall ascertain that no cross connections will exist when the new connection is made.

710.25. Use confined to premises. No person may permit water from the city water supply system to be used for any purpose except upon their own premises.

710.27. Connections beyond city boundaries. In any and all cases where water mains of the city have been or shall be extended to or constructed in any road, street, alley or public highway adjacent to, or accessible to, water mains to tap and make proper water service pipe connections with water mains of the city in conformity with and subject to all the terms, conditions and provisions of this code relating to the tapping of the city water mains and making water service pipe connections therewith, and to furnish and supply water from the water works system of the city to owners and occupants of properties adjacent or accessible to water mains of the city through and by means of water meters duly installed. Water service rendered to such persons shall be subject to all provisions of this subsection, and persons accepting service shall thereby agree to be bound and obligated by this subsection.

710.29. Restricted hours for use of water supply. Whenever the council determines that a shortage of water supply threatens the city, it may, by resolution, limit the times and hours during which water may be used from the city water supply system for lawn and garden sprinkling, irrigation, car washing, air conditioning or other uses specified therein; a copy of said resolution shall thereupon be mailed to each water customer. Two days after the mailing of the resolution any water customer who causes or permits water to be used in violation of the provisions of said resolution shall be charged \$5.00 for each day of a violation, which charge shall be added to his next water bill; continued violation is hereby prohibited and cause for discontinuance of water service.

710.31. Sources of contamination of public wells. Subdivision 1. 50 foot rule. The following possible sources of contamination may not be installed within 50 feet of any public well:

- (a) building plumbing;
- (b) building drains;
- (c) septic tanks;
- (d) storm sewers;
- (e) sanitary sewers.

Subd. 2. 75 foot rule. The following possible sources of contamination may not be installed within 75 feet of a public well:

- (a) cesspools;
- (b) leaching pits;
- (c) drain fields.

710.33. Private wells. Private wells may be maintained and continued in use after connection is made to the municipal water system, provided there is no means of cross-connection between the private well and municipal supply at any time. Hose bibbs, that will enable the cross-connection of the two systems will not be permitted on internal piping of the well supply system. The threads of the boiler drain of the well volume tank shall be removed or the boiler drain hose bibb replaced with a sink faucet. Outside hose bibbs may not be installed on the municipal system where dual water systems are in use.

710.35. Permitting use by others. No person may permit water from the municipal water system to be used for any purpose except upon his own premises except in emergency and then only if written permission is first obtained from the director of community services. Contractors or others desiring to obtain water from hydrants for construction purposes shall make applications to the director of community services for such service.

710.37. Location of stop boxes. Subdivision 1. Curb stop boxes. Curb stop boxes will be installed generally where desired by the owners of occupied properties. One will be installed on each vacant platted lot and at 100 foot intervals on unplatted properties. Curb stop boxes will be installed at an approximate depth of seven and one-half feet below the grade established by the water division.

Subd. 2. Materials. Type K copper tubing shall be used up to and including two inch for installation of water services.

710.39. Abandoned services: penalties. Subdivision 1. Abandonment of installations. Service installations connected to the water system, that have been abandoned or have not been used for three years or, for any reason, have become useless for further service, shall be disconnected at the main by the city, and all pipe and appurtenances removed shall be the property of the city.

Subd. 2. Erection of new buildings. When new buildings are erected on the site of old ones, and it is desired to increase or change the old water service, no connections with the main may be made until all the old service appurtenances have been removed and the main plugged. If any contractor, workman or employee upon such building causes or allows any service pipe to be hammered together at the ends to stop the flow of water, or to save expense in removing such pipe from the main, the owner of the building, the workman and contractor, upon conviction thereof, will be subject to the penalties set forth in this code, and will remove said service pipe from the main. If the workman or contractor fails to do so on 24 hours notice the workman or contractor shall pay the city the cost incurred by it for such removal.

Section 715 - Water system: rates and charges

715.01. Curb box connection. Subdivision 1. Permit. A permit must be obtained to connect to existing water service leads at the curb box. The fee for each permit shall be as provided in appendix D. No permit may be issued except to a plumber registered with the city.

Subd. 2. Service installation. Additional charges shall be made and collected for tapping and making connections with the water mains where a curb box and service lead is not installed. This charge is to be paid at the time of making application.

Subd. 3. Schedule of charges. The charge for all service installations is the actual cost of materials and the estimated cost of the labor to be expended in the installation.

Subd. 4. Turning on water. For turning on water where service has been turned off for nonpayment of water bill, failure to repair a leak, discontinuance of service or any other cause, a service charge as provided in appendix D will be made.

Subd. 5. Adjustment of curb box. For raising or lowering stop-box tops to correspond with ground level change made by the property owner, a service charge as provided in appendix D will be made.

Subd. 6. Time for connection. If, from any cause, the plumber laying the service pipe should fail to have the connection made at the time specified in his application, notice must be given the director of community services fixing another day on which he wishes to make the connection. The notice must be given at least two days previous to the excavation for laying of the service pipe, and the connection must be made before 5 p.m., except in special cases, and then the work may be done only upon a written order from the director of community services.

715.03. Property assessments. Subdivision 1. Additional fee. Fee for permit for water main tapping shall be paid for each connection in the amount specified in subsection 715.01. In addition thereto, before any permit may be issued, there shall be paid any sum required under subdivisions 2 and 3 of this subsection.

Subd. 2. Assessment procedure: certification by finance department. When the director of community services is in doubt as to whether the property proposed to be served has been assessed or will be assessed for the water main and appurtenant facilities from which service is proposed, the director may refer to the director of administrative services the question of whether provision has been or will be made to assess the property proposed to be served. No permit may then be issued to tap or connect with any water main of the city either directly or indirectly from any lot or tract of land unless the director of administrative services has certified:

(a) that such lot or tract of land to be served by such connection or tap has been assessed for the cost of construction of the water main with which the connection is made; or

(b) if no assessment has been levied for such construction cost, the proceedings for levying such assessment have been or will be commenced in due course; or

(c) if no assessment has been levied, and no assessment proceedings will be completed in due course, but a sum equal to the portion of cost of constructing said water main which would be assessable, against said lot or tract has been paid to the city.

Subd. 3. Assessment without certification. If no certificate can be issued by the director of administrative services, no permit to tap or connect to any water main may be issued unless the applicant pays an additional connection fee which shall be equal to the portion of the cost of construction of the main which would be assessable against the lot or tract to be determined by the director of administrative services upon the same basis as any assessment previously levied against other property for the main. If no assessment has been levied, the assessable cost will be determined upon the basis of the uniform charge which may have been or which shall be charged for similar tapping or connection with the main, determined on the basis of the total assessable cost of the main, allocated on a frontage basis. Where the assessable cost cannot be determined, the charge shall be fixed at \$5.00 per front foot of the property to be served.

715.05. Accounts, how maintained. All accounts shall be kept on the books of the city by the house and street number and under the account number assigned thereto and the name of the owner or of the person signing the application for services. All bills and notices sent out by the city shall be sent to the house or street number of the property. If non-resident owners or agents desire personal notice sent to a different address, they shall file an application therefor with the city.

715.07. Water rates. Subdivision 1. Basic rates. The rates due and payable to the city for use of city water shall be established, from time to time, by resolution of the city council. Billings to water customers shall be rendered quarterly.

Subd. 2. Minimum charges. In case the meter is found to have stopped or to be operating in a faulty manner, the amount of water used will be estimated in accordance with the amount used previously. The council may, from time to time, by resolution establish minimum rates for water services. The council may also, from time to time, establish reduced rates, below the prevailing minimum rates, for senior citizens or disabled persons who qualify for reduced rates under the standards established by council resolution. Where service is for less than a quarterly period, this charge will be prorated on a daily basis.

Subd. 3. Temporary uses: application for service. When water is desired for construction purposes or other temporary uses, the owner shall make application in the regular way and on the regular form.

Subd. 4. Water bills. Water bills shall be mailed to the customers quarterly and shall specify the water consumed and the charge in accordance with the established rates.

715.09. Installation of meters. Meters or detector check valves must be installed on such services as required by the director of community services. Should it be found that water not metered is used through a fire connection for any purpose other than the extinguishing of fire upon the premises, the owner and occupant will be notified, and if the improper conditions are not corrected within ten days, the water will be shut off until proper adjustments are made, and the owner shall be subject to the penalties provided in this section.

715.11. Inspections. The director of community services shall make regular inspections of all fire service connections with all piping, fire gates, and other attached appurtenances who shall have access to the premises for inspections and shall keep a record of all inspections made.

715.13. Special charges. The city may charge for special services rendered to a water customer such as making a final reading when a customer is discontinuing water service. The amount of the charge may be determined, from time to time, by resolution of the council.

715.15. Delinquent water accounts. Charges of water shall be due on the quarterly due date specified by the city for the respective account, and shall be delinquent 15 days thereafter. The city shall endeavor to promptly collect delinquent accounts, and in all cases where satisfactory arrangements for payments have not then been made, instructions shall be given to discontinue service by shutting off the water at the stop box. All delinquent accounts shall be certified to the city clerk who shall prepare an assessment roll each year providing for assessment of the delinquent amounts against the respective properties served. This assessment roll shall be delivered to the council for adoption on or before October 1 of each year. Such action may be optional or subsequent to taking legal action to collect delinquent accounts.

715.17. Water meters. Subdivision 1. Use of water supply. Except for extinguishment of fires, no person may use water from the water supply system of the city or permit water to be drawn therefrom, unless the same be metered by passing through a meter supplied or approved by the city. No person may connect, disconnect, take apart, or in any manner change, or cause to be changed, or interfere with any meter or the action thereof.

Subd. 2. Water meter fee. A water meter fee shall be paid by customers for the furnishing of water meters by the city. The customer shall pay the fee before the water meter is installed. The fee required by this subdivision is not a customer service deposit and is not computed with reference to or based upon service supplied; the fee is required to insure the safekeeping and proper maintenance of the meter only, and for no other purpose. The fee shall be equal to the actual cost to the city of obtaining the meter. The fee shall stand to the credit of the property where the meter is installed, rather than to the credit of the owner of the property at the time of the original fee payment. The water meter fee is non-refundable. (Amended, Bill No. 1988-17)

Subd. 3. Maintenance of meters. The city shall maintain and repair all meters when rendered unserviceable through ordinary wear and tear and shall replace them if necessary. However, where replacement, repair or adjustment of any meter is rendered necessary by the act, neglect or carelessness of the owner or occupant of any premises, any expense caused the city thereby shall be charged against and collected from the water consumer, and water service may be discontinued until the cause is corrected and amount charged collected.

Subd. 4. Complaints on billing. When a consumer makes a complaint that the bill for any past service period has been excessive, the city shall upon written request have such meter reread. If the consumer remains dissatisfied and desires that the meter be tested, said consumer shall then make a deposit with the finance department as prescribed in subdivision 5 of this subsection, and the city shall test the meter. The consumer may be present when such test is made. In case a test shows an error of over five percent of the water consumed in favor of the city, the deposit will be refunded to the consumer, a correctly registering meter will be installed and the bill will be adjusted accordingly. The adjustment may not extend back more than one service period plus one month from the date of the written request and the minimum charge may not be affected. In case the test shows an accurate measurement of water or an error in favor of the consumer, the amount deposited shall be retained by the city to cover part of the expense of making the test.

Subd. 5. Deposit. Before making a test of any meter, the person requesting the test shall, at the time of filing his request with the city, make a deposit with the director of administrative services of the amount charged for the test, subject to the conditions stated above, which charges are as follows:

for testing 1/2 inch to 2 inch meters	\$ 5.00;
for testing 3 inch meters	10.00;
for testing 4 inch meters	20.00;
for testing 6 inch meters	30.00.

Subd. 6. Meters property of city. Water meters shall be and remain the property of the city and may be removed or replaced or changed as to size and type by the city whenever deemed necessary.

Subd. 7. Meter reading and inspection. City employees responsible for meter reading shall have free access at reasonable hours of the day to buildings and premises connected with the city water supply system for reading of meters and inspections.

715.19. Adjustments in water charges. The manager is authorized to make adjustments in water charges if the amount billed is erroneous due to meter deficiency or other mistake.

715.21. Entry of premises. Subdivision 1. Permission. The application for or acceptance of water services by the owner or occupants of premises constitutes permission upon their part for the city, its employees or agents to enter upon the premises served for the purpose of reading of meters, inspection of facilities or any other purpose reasonably necessary for the proper administration of the service rendered.

Subd. 2. Failure to provide access. If the city requests access and the owner or occupant of any premises fails to provide access to the premises, whether for the reading, inspection, repair or replacement of a meter or for some other purpose reasonably necessary for the proper administration of service, the city may take one or more of the following actions:

(a) impose and collect, along with and in addition to other charges for service, a quarterly penalty charged as established by resolution of the city council;

(b) terminate service to the premises;

(c) bill and collect for service to the premises on an estimated consumption basis whether or not meter readings are being obtained.

Subd. 3. Exception. Access will not be deemed to have been provided if it is restricted to times other than 7:30 a.m. and 4:00 p.m. on weekdays. For good cause shown, however, the owner or occupant may designate another reasonable time or times when prompt access will be made available.

Subd. 4. Cancellation of penalty. Upon good cause shown in writing the manager may cancel a penalty imposed under this subsection provided that access to the premises has been provided.

715.23. Charges for the availability of municipal water. Subdivision 1. Purpose of subsection. The purpose of this subsection is to establish a system of charges for the availability of municipal water in order to provide for an equitable sharing of the cost of the municipal water system.

Subd. 2. Authority. This subsection is adopted pursuant to Minnesota Statutes, section 444.075.

Subd. 3. Properties subject to charges. All properties in the city which are improved and have water-consuming plumbing facilities and which abut upon streets or other places where water mains are located shall be subject to the charges provided for in this subsection.

Subd. 4. Schedule of charges.

(a) The quarterly charges to be made against all properties not connected to the municipal water system are as follows:

Single & double residences (each unit)	\$ 3.00
Service stations	3.00
Restaurants, cafes and churches	6.00
Commercial properties having a floor area of less than 1,000 sq. ft.	3.00
Commercial properties having a floor area of from 1,000 to 5,000 sq. ft.	6.00
Commercial properties having a floor area of over 5,000 sq. ft.	10.00
Multiple residences - 3 to 7 units	6.00
Multiple residences - 8 to 11 units	10.00
Multiple residences - 12 to 50 units	15.00
Schools - Elementary, each	15.00
Schools - Junior and Senior High - each	25.00

- (b) Charges against properties not connected to the municipal water systems and not listed above shall be made on the basis of the meter size which would be needed if the property were connected to the municipal water system, based upon sizes of meters installed on similar properties elsewhere in the city.

Subd. 5. Accounts and procedures. Accounts shall be kept, bills shall be rendered and collected, and assessments shall be made for delinquent accounts in accordance with the procedures applicable to charges for municipal water.

Subd. 6. Disposition of proceeds. The proceeds of all charges provided for in this section shall be applied in accordance with the resolution authorizing bonds issued by the city to finance the construction of its municipal water system.

Section 720 - Storm sewer system

720.01. Storm sewer system: statutory authority. Minnesota Statutes, section 444.075, authorizes cities to impose just and reasonable charges for the use and availability of storm sewer facilities ("charges"). By this section, the city elects to exercise such authority.

720.03. Findings and determinations. In providing for such charges, the findings and determinations set out in this subsection are made.

(a) In the exercise of its governmental authority and in order to promote the public health, safety, convenience and general welfare, the city has constructed, operated and maintained a storm sewer system ("the system"). This section is adopted in the further exercise of such authority and for the same purposes.

(b) The system, as constructed, heretofore has been financed and paid for through the imposition of special assessments and ad valorem taxes. Such financing methods were appropriate to the circumstances at the time they were used. It is now necessary and desirable to provide an alternative method of recovering some or all of the future costs of improving, maintaining and operating the system through the imposition of charges as provided in this section.

(c) In imposing charges, it is necessary to establish a methodology that undertakes to make them just and equitable. Taking into account the status of completion of the system, past methods of recovering system costs, the topography of the city and other relevant factors, it is determined that it would be just and equitable to assign responsibility for some or all of the future costs of operating, maintaining and improving the system on the basis of the expected storm water runoff from the various parcels of land within the city during a standard one-year rainfall event.

(d) Assigning costs and making charges based upon expected typical storm water runoff cannot be done with mathematical precision but can only be accomplished within reasonable and practical limits. The provisions of this section undertake to establish a reasonable and practical methodology for making such charges.

720.05. Rates and charges. Subdivision 1. Residential equivalent factor. Rates and charges for the use and availability of the system shall be determined through the use of a "Residential Equivalent Factor" ("REF"). For the purposes of this section, one REF is defined as the ratio of the average volume of surface water runoff coming from one acre of land and subjected to a particular use, to the average volume of runoff coming from one acre of land subjected to typical single-family residential use within the city during a standard one-year rainfall event.

Subd. 2. Determination of REF's for land uses. The REF's for the following land uses within the city and the billing classifications for such land uses are as follows:

<u>Land Uses</u>	<u>REF</u>	<u>Classification</u>
Cemeteries	.25	1
Parks and Railroads	.75	2
Two-family residential	1.00	3
Single-family residential	1.00	4
Public and private schools and institutional uses	1.25	5
Multiple-family residential uses and churches	3.00	6
Commercial, industrial and warehouse uses	5.00	7

Subd. 3. Other land uses. Other land uses not listed in the foregoing table shall be classified by the city manager by assigning them to the classes most nearly like the listed uses, from the standpoint of probably hydrologic response. Appeals from the city manager's determination of the proper classifications may be made to the city council in the same manner as other appeals from administrative determinations under section 320.

720.07. Establishing basic rate. In determining charges, the council shall, from time to time, by resolution establish a basic system rate to be charged against one acre of land having an REF of one. The charge to be made against each parcel of land shall then be determined by multiplying the REF for the parcel's land use classification times the parcel's acreage times the basic system rate.

720.09. Standardized acreage. For the purpose of simplifying and equalizing charges against property used for single-family and two-family residential purposes, each of such properties shall be considered to have an acreage of one-fifth acre.

720.11. Adjustments of charges. The city council may by resolution, from time to time, adopt policies providing for the adjustment of charges for parcels or groups of parcels, based upon hydrologic data supplied by affected property owners, demonstrating an actual hydrologic response substantially different from the REF being used for the parcel or parcels. Such adjustment shall be made only after receiving the recommendation of the city manager and shall not be made effective retroactively. If the adjustment would have the effect of changing the REF for all or substantially all of the land uses in a particular classification, however, such adjustment shall be accomplished by amending the REF table in subsection 720.05, subdivision 2.

720.13. Excluded lands. No charge for system availability or service shall be made against land which is either (i) public street right-of-way or (ii) vacant and unimproved with substantially all of its surface having vegetation as ground cover.

720.15. Supplying information. The owner, occupant or person in charge of any premises shall supply the city with such information as the city may reasonably request related to the use, development and area of the premises. Willful failure to provide such information or to falsify it is a violation of this subsection.

720.17. Estimated charges. If the owner, occupant or person in charge of any premises fails or refuses to provide the information requested, as provided in subsection 720.15, the charge for such premises shall be estimated and billed in accordance with such estimate, based upon information then available to the city.

720.19. Drainage and erosion control. Subdivision 1. Drainage plan. In the development, improvement or alteration of land, the direction, quantity or quality of drainage shall not be changed unless plans for the development are submitted to the city engineer, and are found to be in compliance with the city's comprehensive surface water management plan or have received a variance from the appropriate water management organization as necessary. Run-off shall be properly channeled into a storm drain, watercourse, ponding area or other public facility. (Amended, Bill No. 1998-2)

Subd. 2. Erosion and sediment control plan. Prior to the issuance of a building or grading permit for any development, improvement or alteration of land, a plan for erosion and sedimentation control shall be presented with the site plan. The erosion and sedimentation control plan shall specify the measures to be used before, during and after construction until the soil and slope are stabilized by permanent cover. These control measures shall be maintained in good working order until site stabilization occurs.

Subd. 3. Plan approval. In areas which are susceptible to erosion hazard or sedimentation damage, the city may require the erosion and sedimentation control plan to be approved by the appropriate water management organization prior to the issuance of a permit.

Subd. 4. Approval. Plans and provisions required for compliance with this subsection must be submitted to the director of community development for approval.

Section 721 – Connections and Discharges to the Stormwater System  
(Added, Bill No. 2006-18)

721.01 Objectives. The objectives of Section 721 are to regulate the introduction of pollutants into the stormwater system by any person; to prohibit illicit connections and discharges to the stormwater system; to establish authority to carry out all inspections, surveillance, and monitoring procedures necessary to ensure compliance with this ordinance; and to establish enforcement mechanisms for violations of this Section.

721.03. Definitions. Subdivision 1. For the purposes of this section, the following shall mean:

Subd. 2. “Authorized Enforcement Officer” means the Public Works Director or the Public Works Director’s designee, who is authorized to enforce this section.

Subd. 3. “Best Management Practices (BMPs)” means schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Subd. 4. “Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Subd. 5. “Construction Activity” means activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Subd. 6. “Hazardous Materials” means any material, including any substance, waste, or combination thereof, that, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Subd. 7. “Illegal Discharge” means any direct or indirect non-storm water discharge to the storm drain system, except as exempted in subdivision 6 of this section.

Subd. 8. An “illicit connection” is defined as either of the following:

- a. any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Authorized Enforcement Officer; or

- b. any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by the Authorized Enforcement Officer.

Subd. 9. “Industrial Activity” means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Subd. 10. “MS4” means the municipal separate storm sewer system.

Subd. 11. “National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” is a permit issued by the Environmental Protection Agency (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Subd. 12. “Non-Storm Water Discharge” is any discharge to the storm drain system that is not composed entirely of storm water.

Subd. 13. “Person” is any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Subd. 14. “Pollutant” is anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Subd. 15. “Premises” is any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Subd. 16. “Storm Drainage System” is a publicly-owned facility by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures. A storm drainage system can also be known as a storm water system.

Subd. 17. “Storm Water” is any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Subd. 18. “Stormwater Pollution Prevention Plan” is a document that describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Subd. 19. "Wastewater" means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

721.05. Applicability. This section shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an Authorized Enforcement Officer.

721.07. Responsibility for Administration. The Public Works Director or the Public Works Director's designee shall administer, implement, and enforce the provisions of this section.

721.09. Severability. The provisions of this section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this section.

721.11. Ultimate Responsibility. The standards set forth herein and promulgated pursuant to this section are minimum standards. Therefore this section does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

721.13. Discharge Prohibitions. Subdivision 1. Prohibition of Illegal Discharges.

- a. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.
- b. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as follows: The following discharges are exempt from discharge prohibitions established by this section: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
- c. Discharges specified in writing by the Authorized Enforcement Officer as being necessary to protect public health and safety are allowed.
- d. Dye testing is an allowable discharge, but requires a verbal notification to the Authorized Enforcement Officer prior to the time of the test.

- e. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, the Minnesota Pollution Control Agency, or other agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Subd. 2. Prohibition of Illicit Connections.

- a. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- b. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- c. A person is considered to be in violation of this section if the person connects a line conveying wastewater to the MS4, or allows such a connection to continue.

721.15. Suspension of MS4 Access. Subdivision 1. Suspension due to Illicit Discharges in Emergency Situations. The Authorized Enforcement Officer may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Officer may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Subd. 2. Suspension due to the Detection of Illicit Discharge.

- a. Any person discharging to the MS4 in violation of this section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Authorized Enforcement Officer will notify a violator of the proposed termination of its MS4 access. The violator may petition the Authorized Enforcement Officer for a reconsideration and hearing.
- b. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this subsection, without the prior approval of the Authorized Enforcement Officer.

721.17. Industrial or Construction Activity Discharges. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Authorized Enforcement Officer prior to the allowing of discharges to the MS4.

721.19. Monitoring of Discharges. Subdivision 1. Applicability. This subdivision applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

Subd. 2. Access to Facilities.

- a. The Authorized Enforcement Officer shall be permitted to enter and inspect facilities subject to regulation under this section as often as may be necessary to determine compliance with this section. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Authorized Enforcement Officer.
- b. Facility operators shall allow the Authorized Enforcement Officer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- c. The Authorized Enforcement Officer shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Authorized Enforcement Officer to conduct monitoring and/or sampling of the facility's storm water discharge.
- d. The Authorized Enforcement Officer has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- e. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Authorized Enforcement Officer and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- f. Unreasonable delays in allowing the Authorized Enforcement Officer access to a permitted facility is a violation of a storm water discharge permit and of this section. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Authorized Enforcement Officer reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this section.

- g. If the Authorized Enforcement Officer has been refused access to any part of the premises from which stormwater is discharged, and he or she is able to demonstrate probable cause to believe that there may be a violation of this section, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this section or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Authorized Enforcement Officer may seek issuance of a search warrant from any court of competent jurisdiction.

721.21. Requirement to Prevent, Control, and Reduce Storm Water Pollutants By the Use of Best Management Practices. The Authorized Enforcement Officer will adopt requirements identifying Best Management Practices for any activity, operation, or facility that may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of 721.11. These BMPs are listed in the stormwater pollution prevention plan (SWPP) and the Minnesota Pollution Control Agency's current BMPs, and are necessary for compliance with requirements of the NPDES permit and Appendix J of the City's Comprehensive Water Resource Management Plan.

721.23. Watercourse Protection. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly impact the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

721.25. Notification of Spills.

- a. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- b. In the event of such a release of hazardous materials said person shall immediately notify the Public Works Director and other emergency response agencies of the occurrence via emergency dispatch services.

- c. In the event of a release of non-hazardous materials, said person shall notify the Authorized Enforcement Officer in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Authorized Enforcement Officer within three business days of the phone notice.
- d. If the discharge of prohibited materials emanates from a commercial or industrial establishment or vehicle, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

721.27. Enforcement. Subdivision 1. Notice of Violation. Whenever the Authorized Enforcement Officer finds that a person has violated a prohibition or failed to meet a requirement of this section, the Authorized Enforcement Officer may order compliance by written notice of violation to the responsible person. Such notice may require without limitation: (1) the performance of monitoring, analyses, and reporting; (2) the elimination of illicit connections or discharges; (3) that violating discharges, practices, or operations shall cease and desist; (4) the abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and (5) the implementation of source control or treatment BMPs.

Subd. 2. Notice when Abatement Required. If abatement of a violation and/or restoration of affected property is required, the notice shall set a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

721.29. Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the Authorized Enforcement Officer. The notice of appeal must be received within ten days from the date of the Notice of Violation. Hearing on the appeal before the City Council shall take place within thirty (30) days from the date of receipt of the notice of appeal. The decision of the City Council shall be final.

721.31. Enforcement Measures After Appeal. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten days of the decision of the municipal authority upholding the decision of the Authorized Enforcement Officer, then representatives of the Authorized Enforcement Officer may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

721.33. Cost of Abatement of the Violation. Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this section shall become liable to the City by reason of such violation.

721.35. Injunctive Relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this section. If a person has violated or continues to violate the provisions of this section, the Authorized Enforcement Officer may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

721.37. Violations Deemed a Public Nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

721.39. Criminal Prosecution. Any person that has violated or continues to violate this section shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty as a misdemeanor.

721.41. Remedies Not Exclusive. The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Authorized Enforcement Officer to seek cumulative remedies.

Section 725 - Franchises

725.01. Various utility franchises. Chapter VIII, Part V, of the Ordinance Code of the City of Richfield, Minnesota, as it existed on the effective date of this code, is hereby made a part of this code as if fully set forth herein. That chapter, consisting of franchises to various public and private utilities, was unaffected by the adoption of this code. The franchises contained therein are on file, as originally adopted and subsequently amended by the city council, in the office of the city clerk as appendix E to this code. Nothing in this code is to be construed as modifying, amending or abridging any term or condition of the franchises contained in that chapter.

Section 726 - Cable regulatory franchise  
(Added, Bill No. 1996-26, Sec. 1)

726.01. Statement of intent and purpose. The city, pursuant to applicable federal and state law, is authorized to grant one or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.

The city council finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of Richfield. Because of the complex and rapidly changing technology associated with cable television, the city council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this section and subsequent amendments to establish minimum requirements regarding the granting of cable television franchises consistent with Minnesota and federal law recognizing that these laws and the requirements of local government are continuously changing, and to provide for and specify the means to attain the best possible cable television service to the public. Any franchises issued pursuant to this section shall be deemed to include this intent as an integral part thereof.

726.03. Title. This section shall be entitled, "Cable Regulatory Franchise."

726.05. Definitions. Subdivision 1. For the purpose of this section, the following terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

Subd. 2. "Access channels" shall mean those channels which, by the terms of this section or the franchise agreement, are required to be kept available by the Minnesota Cable Communications Act for partial or total dedication to public access, educational access, or local government access.

Subd. 3. "Affiliate" shall mean any person controlling, controlled by or under common control of a grantee of a franchise issued pursuant to this section.

Subd. 4. "Applicant" means any person that applies for a franchise under this section.

Subd. 5. "Application" or "proposal" are synonymous for the purposes of this section. An application or proposal means the process by which the applicant submits a request and indicates a desire to be granted a franchise for all, or a part, of the city. An application or proposal includes all written documentation, including official city council minutes concerning the construction, detailed description of services to be provided, the area to be served within the city, the portion of street to be used, rendering of services and the manner thereof, rates and charges, maintenance, or any other matter pertaining to the proposed cable communications system.

Subd. 6. "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals. This definition shall be deemed to change pursuant to any changes in applicable federal law and shall be interpreted in a manner consistent with the rules of the Federal Communications Commission.

Subd. 7. "Cable communications system," "cable television system," "cable system," "CATV" or "system", shall mean a system of coaxial cables or other electrical conductors and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable or fiber optics to subscribers for a fixed or variable fee, including the origination, receipt, transmission, and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical impulses, whether or not directed to originating signals or receiving signals off the air.

Subd. 8. "Cable service" shall mean (a) the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and, "other programming service" is information that a cable operator makes available to all subscribers generally.

Subd. 9. "City" shall mean the city of Richfield, a municipal corporation in the state of Minnesota.

Subd. 10. "Connection" means the attachment of the drop to the first radio or television set of the subscriber.

Subd. 11. "Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals included in the basic service delivered at designated converter dial locations.

Subd. 12. "Council" shall mean the governing body of the city.

Subd. 13. "Drop" shall mean the cable that connects the subscriber terminal to the nearest feeder cable of the cable.

Subd. 14. "FCC" means the Federal Communications Commission, or a designated representative.

Subd. 15. "Franchise" means the non-exclusive right and authority granted to an applicant by a franchise agreement ordinance to construct, maintain and operate any part of a cable communications system described in the application, through use of the public streets, public utility easements or other public rights-of-way or public places in the city. The franchise shall describe in detail all requirements applicable to the franchise including all applicable requirements of federal, state and local laws.

Subd. 16. "Franchise agreement ordinance" or "franchise agreement" means the ordinance adopted by city granting a franchise to an applicant.

Subd. 17. "Grantee" shall mean any person to whom a franchise is granted pursuant to this section and any lawful successor or assignee of the original grantee.

Subd. 18. "Gross revenues" shall mean all revenues received directly or indirectly by the grantee, arising from or in connection with the provision of cable service in the city and consistent with local, state and federal law, including, but not limited to, subscriber revenues (including pay TV), advertising income, home shopping programs, rentals of equipment, antenna or signal space, and any and all other gross revenues received by the grantee from the provision of cable service in the area under the jurisdiction of the city. Grantee is not required to include revenues recorded as received but which are "bad debt," but it must include any recoveries of bad debt. This definition of gross revenues also does not include any sales, excise or other taxes collected by grantee on behalf of federal, state, county, city or other governmental unit. Funds collected by grantee to support public, educational and governmental access programming are also excluded from the definition of gross revenues.

Subd. 19. "Minnesota Cable Communications Act" means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minnesota Statutes, section 238, et. seq., as amended.

Subd. 20. "Ordinance" means this ordinance concerning the granting of franchises in and by the city for cable communications systems.

Subd. 21. "Person" means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

Subd. 22. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by city which shall, within its proper use and meaning in the sole opinion of city, entitle grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, man-holes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a system.

Subd. 23. "Subscriber" shall mean any person or entity receiving service provided by a grantee pursuant to the authority of a franchise.

Subd. 24. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in applicable state or federal law shall apply.

726.07. Authority to grant franchises. Subdivision 1. The council is empowered and authority to issue, in accordance with the city charter, non-exclusive franchises to install, construct, operate and maintain cable communications systems in the city's streets, as well as to regulate these activities.

Subd. 2. The council has determined that the granting of franchises for cable communications systems in the city will promote the public interest, enhance the health welfare and safety of the public and stimulate commerce by assuring that: (1) cable communications systems are responsive to the needs and interests of the city and its residents; (2) cable communications systems provide, and are encouraged to provide the widest diversity of information and service to the public; and (3) there is an orderly process for the granting or renewal of franchises, and oversight of the services provided pursuant to franchises.

Subd. 3. No person shall construct, operate, maintain, or continue to operate or maintain a cable communications system which occupies any part of the city's streets, without the authority of a franchise granted by the city pursuant to this section.

Subd. 4. No provision of this section shall be deemed or construed to require the granting of a franchise by the city.

Subd. 5. Any franchise granted must comply with the Minnesota Cable Communications Act standards.

Subd. 6. Grantee's rights are subject to the police power of city to adopt and enforce ordinances necessary to the health, safety and welfare of the public of general applicability.

Subd. 7. Both the city and the grantee expressly reserve any and all rights that either may have under applicable state and federal law including but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended, and the rules and regulations of the FCC. Neither adoption of this franchise by the city nor acceptance by the grantee shall be construed as a waiver, modification, termination or discharge of any right that either the city or the grantee may now or hereafter have.

Subd. 8. Except as may be based upon public health, safety and welfare requirements of general applicability or where required by federal or state law or rules, no modification or amendment to the regulatory ordinance or the franchise agreement ordinance shall be effective unless in writing and signed by both the city and grantee.

726.09. Application for franchise. Subdivision 1. Each applicant for a franchise, including the renewal of a franchise consistent with state and federal law, requesting permission to construct, operate or maintain any cable communications system in the city shall file an application with the city in a form and containing such information as is requested by the city. The contents of such application may vary, according to the nature of the proposed cable communications systems. However, an initial application shall contain, at a minimum, the following information.

(a) The name, address and telephone number of the applicant. If the applicant is a partnership, the home and business address of each partner shall also be set forth. If the applicant is a corporation, the application shall state the names and addresses of its directors, main officers, major stockholders and associates and the names and addresses of parent or subsidiary companies.

(b) A statement setting forth in its entirety any and all agreements and understandings, whether formal or informal, written, oral or implied, existing or proposed to exist between the applicant and any person who proposes to have an ownership interest with respect to the proposed franchise or to the proposed cable communications system. If a franchise is granted to a person acting as a representative of another person and such information is not disclosed in the original application, the franchise shall be deemed void and of no force and effect.

(c) Financial statements, as determined by the council, prepared by a certified public accountant, or person otherwise satisfactory to the council, showing applicant's financial status and financial ability to complete the construction and installation of the proposed cable communications system and/or continue the operation of the existing cable communications system.

(d) A statement describing the cable communications system and specifying the type and capacity of the cable communications system proposed to be construed, installed, maintained or operated by the applicant and the proposed or existing location of the cable communications system.

(e) A description of all previous experience of the applicant in providing cable communications system service and in related or similar fields.

(f) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the council, or by any provision of any other ordinance of the city.

The city reserves the right to modify the application in a renewal process to accommodate information regarding the applicant that is already in the possession of the city. Any renewal of a franchise shall comply with applicable federal, state or local law.

Subd. 2. Prior to the issuance of a franchise, the city shall hold a public hearing, following reasonable notice to the public, at which applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. The city reserves the right to seek reimbursement of its costs to the extent permitted by applicable state and federal law. The preceding statement does not constitute an agreement by any applicant to reimburse the city for the cost of the application process.

Subd. 3. In making any determination hereunder as to any application, the city shall consider the impact on the streets with the addition of the proposed cable communications system, the needs of the city and the legal, technical and financial qualifications of the applicant. For initial franchises, the city shall give due consideration to the quality of the service proposed; experience, character, background and the financial responsibility of any applicant and its management and owners; willingness and ability to abide by policy conditions; franchise limitations and requirements; and any other considerations deemed pertinent to the council for safeguarding the interest of the city and the public. For a renewal of a franchise, the city shall also consider the factors identified in the Cable Communications Policy Act of 1984, as amended.

Subd. 4. The city may require the applicant for an initial franchise to reimburse the city for its reasonable costs to review the application including costs for technical assistance to aid the city in understanding the nature and effect of the application.

726.11. Acceptance and duration of franchise. Subdivision 1. Any franchise granted pursuant to this section shall be in the form of a franchise agreement ordinance between the city and the grantee which shall comply with all specifications of this section.

Subd. 2. Any franchise granted pursuant to this section shall become effective in accordance with the terms and conditions approved by the council, provided that a grantee has filed with the city clerk a written instrument addressed to the council accepting the franchise, within the time specified by the city council, and agreeing to comply with all provisions of this section and the franchise.

Subd. 3. The term of a franchise shall be stated in the franchise agreement ordinance, but shall in no event exceed 15 years.

726.13. Franchise territory. Any franchise shall be valid within all territorial limits of the city, and within any area added to city during the term of a franchise, unless otherwise specified in the franchise agreement ordinance.

726.15. Franchise administration. Subdivision 1. Administrator. The city manager or the city manager's designee shall be responsible for the continuing administration of a franchise. The administrator may be changed by city from time to time by written notice given to a grantee.

Subd. 2. Advisory body. The city may appoint an advisory body to monitor the performance of a grantee in executing the provisions of a franchise. The advisory body shall perform all functions required of it by the city and applicable laws, ordinances, rules and regulations.

Subd. 3. Delegation of authority by the city.

- (a) The city reserves the right to delegate and redelegate from time to time any of its rights or obligations under a franchise to any body or organization.
- (b) Any delegation by city shall be effective upon written notice by city to a grantee of such delegation.
- (c) Upon receipt of notice by a grantee of city's delegation, a grantee shall be bound by all terms and conditions of the delegation not in conflict with a franchise.
- (d) Any such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to a franchise or require any consent of a grantee.

Subd. 4. Nonenforcement by city. A grantee shall not be relieved of its obligation to comply with any of the provisions of a franchise by reason of any failure of the city or to enforce prompt compliance.

Subd. 5. Administration of franchise.

(a) The city shall have continuing regulatory jurisdiction and supervision over the system and a grantee's operation under a franchise. The city may issue such reasonable rules and regulations concerning the construction, operation and maintenance of a system as are consistent with the provisions of a franchise.

(b) A grantee shall construct, operate and maintain a system subject to the supervision of all the authorities of the city who have jurisdiction in such matters and in strict compliance with all laws, ordinances, departmental rules and regulations affecting the system.

(c) A system and all parts thereof shall be subject to the right of periodic inspection by the city where reasonably necessary to the enforcement of a franchise and provided that such inspection shall not interfere with the operation of a system and such inspections take place during normal business hours.

Subd. 6. Emergency use. In the case of any emergency or disaster, a grantee shall, upon request of the city or emergency management personnel, make available to the city its emergency alert system and related facilities for use during an emergency or disaster period in accordance with section 47 C.F.R., section 11.

Subd. 7. Controlling law. A franchise shall be construed and enforced in accordance with the substantive laws of the state of Minnesota except to the extent the supremacy clause of the United States Constitution requires application of federal law.

Subd. 8. Captions. The paragraph captions and headings in a franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of a franchise.

Subd. 9. 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 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 and the next business day shall be the last day of the period.

726.17. Construction of system. Subdivision 1. A grantee shall, at least 60 days prior to any construction regarding the system in the city, provide notice to representatives of the city of the following: (1) The nature of the work to be undertaken; (2) the estimated schedule for said work; (3) steps to be taken to minimize disruption to public; and (4) steps to be taken to notify the residents and others of said work.

Subd. 2. A grantee shall not open or disturb the surface of any streets without first obtaining a permit from city for which permit city may impose a reasonable fee to be paid by a grantee. The lines, conduits, cables and other property placed in the streets shall be located in such part of the street as shall be reasonably determined by the city. In so determining the location in such part of the street, the parties shall take into account the health, safety and welfare considerations together with the technical parameters of the system design. A grantee shall, upon completion of any work requiring the opening of any streets, restore the same, including the pavement and its grounds to as good a condition as formerly and in a manner and quality approved by city, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with diligence and due care, and if grantee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street back into the condition required hereby, city shall have the right to give written notice to grantee regarding the condition of the street. Grantee shall have 30 days from the receipt of written notice from the city to put the street into the condition required hereby or reach an agreement with the city. Such work shall be performed with diligence and due care, and if grantee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street back into the condition required hereby, the city shall have the right following 30 days written notice to a grantee to put the street back into good condition at the expense of the grantee. A grantee, upon demand, shall pay to the city the cost of such work done or performed including its administrative and overhead plus an additional ten percent as liquidated damages.

Subd. 3. All wires, conduits, cable and other property and facilities of a grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of, the streets of city. A grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any person. A grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the city.

Subd. 4. All wires, conduits, cables and other property and facilities of a grantee, shall be constructed and installed in an orderly and workmanlike manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

Subd. 5. A grantee shall at all times comply with all applicable laws, ordinances, rules, regulations and codes, federal, state and local. In any event, the installation, operation or maintenance of system shall not endanger or interfere with the safety of persons or property in the city.

Subd. 6. Whenever city shall undertake any public improvement which affects a grantee's equipment or facilities, city shall, with due regard to reasonable working conditions and with reasonable notice, direct a grantee to remove its wires, conduits, cables and other property located in street. A grantee shall relocate or protect its wires, conduits, cables and other property at its own expense. If the city, from its own funds, reimburses any non-municipally owned utility for relocating its property at the city's request, the city shall reimburse grantee in a substantially similar manner.

Subd. 7. To the extent a grantee plans to construct or rebuild its system, it shall comply with the following minimum requirements:

(a) A grantee shall construct underground in any area where both electrical and telephone has been installed underground.

(b) A grantee shall change from aerial to underground, at its own expense, in any area where both electrical and telephone are hereafter changed from aerial to underground. If the city, from its own funds, reimburses any nonmunicipally owned utility for relocating its property at the city's request, the city shall reimburse grantee in a substantially similar manner.

(c) A grantee shall change from aerial to underground, when both electrical and telephone are similarly required, without cost to city, whenever requested by city, which request can be made for a certain area or areas or for the entire system. If the city, from its own funds, reimburses any non-municipally owned utility for relocating its property at the city's request, the city shall reimburse grantee in a substantially similar manner.

(d) To enable a grantee reasonable opportunity to change its wiring from aerial to underground, and also to allow it to prewire all new subdivisions or new development areas, city shall arrange for the grantee to receive timely notice of a new franchise granted for cable services, but in no event shall city have any liability for failure to arrange for notice of the following:

(e) Any changes of which city has knowledge of, or which city may order, regarding a change from aerial to underground of any line (telephone or electrical) within its boundaries.

(1) Any underground trenching that may be pending.

(2) New subdivisions and development. All of such subdividers or developers shall be notified of a franchise and a system.

726.19. Work performed by others. Subdivision 1. A grantee shall give notice to city specifying the names and addresses of any entity, other than a grantee, which performs construction services pursuant to a franchise, provided, however, that all provisions of a franchise remain the responsibility of a grantee.

Subd. 2. All provisions of a franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of a franchise.

726.21. Conditions on use. Subdivision 1. A grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main.

Subd. 2. A grantee, at the request of any person holding a building moving permit and with not less than five business days advance notice, shall temporarily remove, raise or lower its wires, conduits and cables. The expense of such temporary removal, raising or lowering of wires, conduits and cables shall be paid by person requesting the same, and grantee shall have the authority to require such payment in advance of any required work taking place.

Subd. 3. A grantee shall have the authority, to the extent the city has authority to grant the same, to trim trees upon or overhanging any street so as to prevent the branches of such trees from coming in contact with the wires, conduits and cables of a grantee. All trimming shall be done under the supervision and direction of city and at the expense of a grantee.

Subd. 4. Nothing contained in a franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring a grantee'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.

726.23. Use of grantee's facilities. A grantee is authorized to use streets to construct, operate and maintain a cable television system and to provide cable services in the city. All uses by grantee or others authorized by grantee shall be subject to applicable permits, licenses, certificates or franchises as may be required by the city, state or federal law or rules.

726.25. Failure to complete work. Upon the failure, refusal or neglect of a grantee to cause any work or other act required by law, this section or a franchise to be properly completed or performed, after notice to a grantee the city may cause work or other activity to be completed or performed, in whole or in part, to the satisfaction of the city. Upon so doing, the city shall submit to a grantee an itemized statement of the cost thereof. A grantee shall, within 30 days after receipt of the statement, pay to the city the entire amount thereof.

726.27. Technical standards. Subdivision 1. A cable system shall be designed, constructed and operated so as to meet those technical standards promulgated by the Federal Communications Commission relating to cable television systems contained in part 76 of the Federal Communications Commission's rules and regulations relating to cable television systems and found in Code of Federal Regulations, Title 47, Sections 76.601 to 76.630. The city shall be able to enforce these standards to the extent allowable under local, state or federal law. Any tests required by the Federal Communications Commission pursuant to these rules must be filed with the city upon request.

Subd. 2. A grantee shall perform additional tests if requested by city. The tests may be done at such times as is determined by city, with notice to a grantee. All expenses for all such tests shall be paid by city, unless otherwise agreed upon.

726.29. Interconnection. Subdivision 1. A system shall be designed to be interconnected with other adjacent systems. At a minimum, a system shall be capable of interconnecting the access channel programming to other adjacent systems. Grantee shall not be required to provide more access channels as a result of interconnecting with another system than the number of channels required by the franchise agreement ordinance.

Subd. 2. The city may request a grantee to negotiate interconnecting the subscriber network with other adjacent systems in the general area. A grantee shall use its good faith to negotiate such interconnection and shall keep the city informed of the progress of any negotiations.

726.31. Removal or abandonment of a system. Subdivision 1. In the event that: (1) the use of any system is discontinued for any reason for a continuous period of 12 months; or (2) any system has been installed in a street without complying with the requirements of this section and a franchise, a grantee, at its expense shall, at the demand of the city remove promptly from the streets all of a system other than any which the city may permit to be abandoned in place. In the event of any such removal grantee shall promptly restore to a condition as nearly as possible to its prior condition the street or other public places in the city from which a system has been removed.

Subd. 2. A system to be abandoned in place shall be abandoned in the manner prescribed by the city. A grantee may not abandon any portion of a system without having first given three months written notice to the city. A grantee may not abandon any portion of a system without compensating the city for damages resulting from the abandonment.

Subd. 3. At the termination or expiration of the term for which a franchise is granted and following a denial of renewal, or upon its revocation, as provided for, the city shall have the right to require a grantee to remove within two years, at a grantee's expense, all or any portion of a system from all streets within the city. In so removing a system, a grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all streets and private property in as good a condition as that prevailing prior to a grantee's removal of a system, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The city, or its delegation, shall have the right to inspect and approve the condition of such streets after removal. The security fund, insurance, indemnity and penalty provision of a franchise shall remain in full force and effect during the entire term of removal. The insurance and indemnity provisions of sections 726.63 and 726.67 shall survive any termination or revocation.

Subd. 4. If a grantee has failed to complete such removal within the time given 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 a system to be in the city or its designee with all rights of ownership including, but not limited to, the right to operate a system or transfer a system to another for operation by it; or

(b) Declare a system abandoned and cause a 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 security fund, indemnity and penalty section provided for in the franchise, or from a grantee directly.

Subd. 5. Upon termination of service to any subscriber, a grantee shall promptly remove all its facilities and equipment from a dwelling of a subscriber who owns such dwelling upon his or her written request, except as provided by applicable state and federal law. Such subscribers shall be responsible for any costs incurred by a grantee in removing the facilities and equipment.

726.33. Customer service standards. Subdivision 1. At all times, a grantee shall meet the requirements of the Federal Communications Commission regulations on consumer service obligations. A grantee shall comply with the customer service obligations of the Federal Communications Commission as such standards may from time to time be amended.

Subd. 2. A grantee shall begin actions to correct service or maintenance problems no later than 24 hours after it is notified of a system outage for 95% of subscribers. A grantee shall bear the costs of making any repairs, adjustments, or installations, unless the subscriber caused the damage necessitating the repairs or maintenance. A grantee may charge for service.

- (a) Subscriber complaints to the city.
- (b) Subscribers shall direct all complaints regarding service to a grantee.
- (c) If such complaints are not rectified within seven days from the date the complaint is made, the subscriber may file a complaint with the city.
- (d) The city shall maintain a record of all complaints it receives.
- (e) If, at any time after receipt of a complaint, the city believes that the complaint may constitute a violation of a franchise, or local, state or federal law, the city may notify a grantee regarding the complaint.
- (f) If the city and a grantee cannot resolve the complaint within seven days after the date that the subscriber files a complaint with the city, the city may issue a written notice specifying the nature of the complaint and ordering a grantee to appear at the next regularly scheduled meeting or other appropriate public forum, as determined by city.
- (g) If the city and grantee fail to rectify the complaint, the city may begin default procedures as specified in section 726.69.

726.35. Programming provisions. A grantee shall identify its initial services in an exhibit attached to a franchise agreement ordinance.

726.37. Subscriber practices. Subdivision 1. There shall be no charge for disconnection of any installation or outlet. If any subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, a grantee may disconnect the subscriber's service outlet, provided, however, that such disconnection shall not be effected until after the later of: (i) 45 days after the original due date of said delinquent fee or charge; or (ii) ten days after delivery to subscriber of written notice of the intent to disconnect. If a subscriber pays before expiration of the later of (i) or (ii), a grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, a grantee shall promptly reinstate the subscriber's cable service.

Subd. 2. Refunds to subscribers shall be made or determined in the following manner:

(a) If a grantee fails, upon request by a subscriber, to provide any service then being offered, a grantee shall promptly refund all deposits or advance charges paid for the service in question by said subscriber. This provision does not alter a grantee's responsibility to subscribers under any separate contractual agreement or relieve a grantee of any other liability.

(b) If any subscriber terminates any monthly service because of failure of a grantee to render the service in accordance with a franchise, a grantee shall refund to such subscriber the proportionate share of the charges paid by the subscriber for the services not received. This provision does not relieve a grantee of liability established in other provisions of a franchise.

(c) If any subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate amount of any prepaid subscriber service fee, using the number of days as a basis, shall be refunded to the subscriber by a grantee.

Subd. 3. Continued failure by a grantee to provide services required by a franchise may, in the discretion of city, be cause for imposition of a penalty or termination of a franchise.

726.39. Local office. Each franchise shall require that a grantee maintain a local business office, as described in a franchise, or agent, which subscribers may access by telephone 24 hours a day, seven days a week, without incurring long distance toll charges, so that complaints, questions or requests regarding the service provided pursuant to a franchise may be promptly reported to a grantee.

726.41. Subscriber charges. Current subscriber charges, the length and terms of residential subscriber contracts, and the procedure by which subscriber charges are established shall be available during normal business hours for public inspection.

726.43. Rate regulations. The city reserves the right to regulate rates for services offered over the cable system, to the extent not expressly preempted by federal and state law. A grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76.900, Subpart N.

726.45. Right of individuals. Subdivision 1. Discriminatory practices prohibited. In the performance of a franchise, a grantee shall not discriminate against any person on the ground of or because of race, creed, color, national origin or ancestry, sex, religion, sexual preference, or political opinion or affiliation or age. A grantee shall comply at all times with all other applicable federal, state and city laws, and all executive and administrative orders relating to non-discrimination.

Subd. 2. Subscriber privacy.

(a) No signals, including signals of a class IV channel, shall be transmitted from a subscriber terminal except as required to provide a service authorized by a franchise and the subscriber. A grantee and any other person shall neither initiate nor use any procedure or device for procuring or storing information or data from a subscriber's terminals or terminal by any means, without the prior authorization of the affected subscriber which shall not have been obtained from the subscriber as a condition of service. The request for such authorization shall be contained in a separate document and identify the purpose for which the data or information is being gathered or stored. After the first year of the authorization's initial signing, a grantee shall for each year said authorization is in effect without revocation, mail a notice to each authorizing subscriber informing him or her of the right to revoke said authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. A separate authorization shall be required for each type or classification of data or information sought from a subscriber terminal.

(b) A grantee shall not, without the written authorization of the affected subscriber, provide to anyone data identifying or designating any subscriber other than where that third-party is performing a service or task in furtherance of the grantee's business including, but not necessarily limited to, billing or telemarketing functions. Any data authorized shall be made available upon request by and without charge to the authorizing subscriber in understandable fashion, including specification of the purpose for which the information is being gathered and to whom and for what fee the information is to be sold.

Subd. 3. A grantee shall not tap or monitor, arrange for the tapping, or monitoring, or permit any other person to tap or monitor, any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, without the prior written authorization of the affected subscriber as required by subdivision 2 of this section.

Subd. 4. Nothing herein contained shall prohibit a grantee from verifying system operation and the transmission of signals to an affected subscriber or from monitoring for the purpose of billing.

726.47. Public, educational and governmental access. Each franchise shall include a requirement for public, educational and governmental access programming and facilities consistent with state and federal law.

726.49. Grantee records and books. Subdivision 1. Throughout the term of a franchise, a grantee shall maintain books and records in accordance with normal and accepted bookkeeping and accounting practices for the cable communications industry, and allow for inspection of them at reasonable times at its designated office where necessary to enforcement of a franchise. The books and records to be maintained by a grantee shall include the following:

- (a) A record of all requests for service;
- (b) A record of all subscriber or other complaints, and the action taken;
- (c) A file of all subscriber contracts;
- (d) Grantee policies, procedures and company rules; and
- (e) Financial records.

Subd. 2. A grantee shall file with city, at the time of its annual payment of a franchise fee, as described in a franchise, the following:

- (a) A copy of the most recent performance review for a grantee utilizing the annual performance review form attached hereto as exhibit B.
- (b) A statement certified by an officer of grantee showing, in such detail as acceptable to city, the gross revenues of a grantee for the preceding fiscal year.
- (c) Current list of names and addresses of each officer and director and other management personnel, and if a corporation, each shareholder having stock ownership of three percent or more, and if a partnership, all general partners, and if a general partner is a corporation, the foregoing information shall be given as to the corporate general partner.
- (d) If requested by city, a copy of each document filed with all federal, state and local agencies during the preceding fiscal year not previously filed with city.
- (e) A statement of its current billing practices.
- (f) A current copy of its rules governing use of equipment and facilities and public, educational and government access and leased access programming.
- (g) A current copy of its subscriber service contract.
- (h) A copy of any subscriber surveys conducted during the last calendar year.

Subd. 3. City, its agents and representatives shall have authority where necessary to enforcement of a franchise to arrange for and conduct an inspection or audit of the books and records of a grantee. A grantee shall first be given five days notice of the inspection or audit request, the description of and purpose for the inspection or audit, and description, to the best of city's ability, of the books, records and documents it wants to review.

726.51. Transfer of ownership. Subdivision 1. A franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged 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 other than an affiliate of grantee without the prior written consent of city, which consent shall not be unreasonably withheld. Further, grantee shall not sell or transfer any stock or ownership interest so as to create a new controlling interest except with the consent of city, which consent shall not be unreasonably withheld.

Subd. 2. Any sale or transfer of franchise, including a sale or transfer by means of a fundamental corporate change, requires the written approval of city. The parties to the sale or transfer of franchise shall make a written request to city for its consent. City shall reply in writing within 30 days of actual receipt of the request and shall indicate its approval of the request or its determination that a public hearing is necessary. City shall conduct a public hearing on the request within 30 days of such determination if it determines that a sale or transfer of franchise may adversely affect the grantee's subscribers.

Subd. 3. Unless otherwise already provided for by local law, notice of any such hearing shall be given 14 days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the city. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by city. Within 30 days after the public hearing, city shall approve or deny in writing the sale or transfer request.

Subd. 4. In a sale or transfer of only a franchise, without the inclusion of the system in which at least substantial initial construction has commenced, a grantee shall be required to establish to the sole satisfaction of city that the sale or transfer of a franchise is in the public interest.

Subd. 5. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.

Subd. 6. The word "control", as used herein, shall apply to the sale or transfer of all or a majority of grantee's assets or shares of stock, merger (including any parent and its subsidiary corporation), consolidation, creation of a subsidiary corporation of the parent company, or sale or transfer of stock in grantee 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, including the creation or transfer of decision-making authority to a new or different board of directors. Every change, transfer or acquisition of control of a grantee shall make the franchise subject to cancellation unless and until city shall have consented in writing thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, city may inquire into the qualifications of the prospective controlling party. The city reserves the right to seek reimbursement of its costs for conducting an inquiry to the extent permitted by applicable state and federal law. The preceding statement does not constitute an agreement by any party to reimburse the city.

Subd. 7. In no event shall a transfer or assignment of ownership or control be approved without transferee becoming a signatory to a franchise.

Subd. 8. Any transferee of a franchise shall be subordinate to any right, title or interest of city.

Subd. 9. For information on the right of the city to purchase the cable system during a transfer of ownership, see section 726.53.

Subd. 10. Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any person controlling, controlled by or under the same common control as the grantee.

726.53. Right to purchase. Subdivision 1. Transfer of ownership. If at any time a grantee receives a bona fide purchase offer for an asset sale of a system which a grantee is willing to accept, a complete copy of such offer shall promptly be given to city and city shall have the right to purchase a system according to the terms of that offer. City shall exercise such right by submitting to a grantee, within 60 days after city's actual receipt of the bona fide offer, notice that city desires to purchase a system pursuant to said offer. If city does not exercise such right a system may be sold, but only on terms substantially similar to those terms submitted to city. If any substantive changes are made in the purchase offer given to city, such purchase offer, as so changed, shall again be given to city and city shall have 60 days from actual receipt by city of the offer, as changed, within which to exercise its right to purchase a system pursuant to the offer, as changed, all as above provided. If city does not exercise its right to purchase a system pursuant to any offer given to city pursuant to this paragraph, and a system is not sold to the buyer and on the terms set out in the offer given to city, then the right of city to purchase a system shall continue, and all subsequent purchase offers shall be given to city pursuant to this paragraph. Also, the city's right to purchase pursuant to this paragraph shall survive every sale to a buyer and shall continue and be binding upon every buyer of the system.

Subd. 2. Upon forfeiture, revocation or expiration:

(a) Upon forfeiture, revocation or termination of a franchise, or at the normal expiration and denial of any renewal of a franchise term, city shall have the right to purchase the system. Such right shall be exercised upon written notice to grantee given within 120 days after the occurrence of any such event.

(b) In the event city elects to exercise its right to purchase the system as provided in this subdivision 2, the following shall then apply:

(1) If a franchise expires and the renewal of the franchise is denied and the city acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, or

(2) If a franchise held by a grantee is revoked for cause and the city acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at an equitable price.

(3) A grantee expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

(4) The date of valuation shall be no earlier than the day following the date of revocation, forfeiture, expiration or termination of a franchise and no later than the date city makes a written offer for a system.

726.55. Mediation. It either a grantee or city asserts that the other is in default in the performance of any obligation of a franchise or in the event of a dispute relating to a right to purchase or terms and conditions of it as described in section 726.53 of this section, the complaining party shall notify the other of the default or claim and the desired remedy. The notification shall be written. Representatives of city and a grantee must promptly meet and attempt in good faith to negotiate a resolution. If the dispute is not resolved within 30 days of the written notice, the city and a grantee may jointly select a mediator to facilitate further discussion. The city and a grantee will equally share the fees and expenses of this mediator. If a mediator is not used, or if the city and a grantee are unable to resolve the matter within 30 days after first meeting with the selected mediator, either may commence an action in any court of competent jurisdiction in Minnesota to interpret and enforce a franchise or for such other relief as may be permitted by law or equity, or either grantee or city may take any other action permitted by law.

726.57. Special provisions. Subdivision 1. As permitted by state and federal law, and specified in a franchise agreement ordinance, each franchise may require a grantee to provide facilities and services to public schools and community colleges within the city, and to fire and police stations and other buildings owned and controlled by the city used for public non-residential purposes.

Subd. 2. System-Maps and Layout - A grantee shall have, at all times, up-to-date route maps showing the location of the cable communications system adjacent to the streets. A grantee shall make all maps available for review by the appropriate city personnel.

Subd. 3. System construction and equipment standards - The cable communications system shall be installed and maintained in accordance with standard good engineering practices and shall conform, when applicable, with the National Electrical Safety Code and the FCC's Rules and Regulations.

726.59. Franchise fee. Subdivision 1. As permitted by state and federal law, a grantee may be required to pay to the city a franchise fee as set forth in a franchise, in compensation for the use of the city's streets pursuant to a franchise.

Subd. 2. If a franchise requires payment of a franchise fee, each such franchise shall authorize the city to audit a grantee's financial records and accountings relating to a franchise fee. A grantee shall make available at its local business office, upon reasonable request, such data as needed to conduct such audit in accordance with generally accepted accounting principles.

Subd. 3. The city and its representatives shall have the right to inspect a grantee's financial records during normal business hours to determine whether a grantee has properly paid all sums due to the city pursuant to the terms of a franchise.

Subd. 4. Any neglect, omission or refusal of a grantee to cooperate with the city in reviewing its financial information for the purpose of auditing payment of a franchise fee, or to pay a grantee fee in full, at the time and in the manner provided in the franchise, which neglect, omission or refusal shall continue for more than 30 days following written notice thereof to a grantee from the city, shall be grounds for default of a franchise as provided for in section 726.69 hereof.

726.61. Liability. Subdivision 1. A grantee shall pay all damages and penalties which the city may legally be required to pay as a result of granting a grantee's franchise.

Subd. 2. A grantee shall pay all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned above. The expenses shall include all costs, such as attorney's fees.

726.63. Indemnification. Subdivision 1. Grantee shall indemnify, defend, and hold harmless the city for all damages and penalties, at all times during the term of this franchise, as a result of the procedures for granting this franchise, the granting of this franchise, or grantee's conduct or performance under this franchise. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of grantee's exercise of this franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise.

Subd. 2. In order for the city to assert its rights to be indemnified, defended, or held harmless, the city must:

- (a) Notify grantee of any claim or legal proceeding which gives rise to such right;
- (b) Afford grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding, unless, however, the city, in its sole discretion, determines that its interests cannot be represented in good faith by grantee; and
- (c) Fully cooperate with the reasonable requests of grantee in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subdivision 1 above.
- (d) Act reasonably under all circumstances so as to protect the indemnitor against liability and refrain from compromising any of indemnitor's rights.

Subd. 3. In the event the city, in its sole discretion, determines that its interests cannot be represented in good faith by grantee, grantee shall pay, upon receipt of written demand from city, all reasonable expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subdivision 1 above. These expenses shall include, but not be limited to, all out-of-pocket expenses, such as attorney's fees and costs and the reasonable value of services (as determined by city, rendered by city or any employees, agents or representatives of city; provided, however, the attorney fees shall not exceed (on an hourly basis) those customarily charged for similar work in the Twin Cities Metropolitan Area of Minnesota. City reserves the right to cooperate with a grantee and participate in the defense of any litigation either through intervention or otherwise.

726.65. Security funds. Subdivision 1. The city may require a grantee to file with the city clerk, concurrently with its acceptance of a franchise and at a grantee's sole expense, a corporate surety bond, construction bond or letter of credit. Such bond or letter of credit shall be in an amount specified in the franchise agreement ordinance, issued by a responsible company licensed to do business in Minnesota and conditioned upon the faithful performance of the grantee to meet its obligations under this section and the franchise agreement ordinance. The bond or letter of credit may be reduced at the sole discretion of the franchising authority.

Subd. 2. The provisions of this section shall not be construed to excuse unfaithful performance by a grantee or limit the liability of a franchise under this section or a franchise for damages.

726.67. Insurance. Subdivision 1. A grantee shall maintain liability insurance covering its obligations of indemnification provided for in or as a result of the exercise of a franchise covering both the city and a grantee (and shall maintain said insurance during the entire term of a franchise) in the minimum amount of:

- (a) \$500,000 for property damage to any one person;
- (b) \$2,000,000 for property damage in any one act or occurrence;
- (c) \$1,000,000 for personal injury to any one person; and
- (d) \$2,000,000 for personal injury in any one act or occurrence.

Subd. 2. During the term of this franchise, the grantee shall maintain insurance, as required by subdivision 1 above, issued by a carrier or carriers with an A.M. Best rating of "A-" or better. The grantee shall maintain on file with the city certificates of insurance together with written evidence of payment of required premiums throughout the term of this franchise. The above minimum amounts may be changed from time to time by grantee as requested by the city; provided, however, the grantee shall not be required to provide insurance in excess of what is customarily provided by other cable television operators in the Twin Cities Metropolitan area.

Subd. 3. A grantee shall immediately give notice to city of any threatened or pending litigation likely to affect this insurance.

Subd. 4. Neither the provisions of this section nor any damages recovered by city shall be construed to, or shall, excuse unfaithful performance by a grantee or limit the liability of a grantee.

Subd. 5. No recovery by city of any sum by reason of the letter of credit or bond required in a franchise shall be any limitation upon the liability of a grantee to city under the terms of this section, except that the sum so received by city from such letter of credit or Bond shall be deducted from a recovery under this section, if for the same act or occurrence.

Subd. 6. All insurance policies maintained pursuant to a franchise shall contain the following endorsement:

It is hereby understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until 30 days after receipt by the city, by registered mail, of written notice of such intention to cancel or not to renew.

Subd. 7. A grantee shall provide worker's compensation insurance as required by state law.

Subd. 8. All such insurance coverage shall provide a 30 day notice to the city manager in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

726.69. Default. Subdivision 1. City shall give written notice of default to a grantee if city, in its sole discretion, determines that a grantee has:

- (a) Violated any provision of a franchise or the acceptance hereof, or any rule, order, regulation or determination of the city, state or federal government, not in conflict with a franchise;
- (b) Attempted to evade any provision of a franchise or the acceptance hereof;
- (c) Practiced any fraud or deceit upon city or subscribers;
- (d) Made a material misrepresentation of fact in the application for or negotiation of a franchise; or
- (e) Incurred a 12 month or more delay in the construction schedule.

Subd. 2. If a grantee fails to cure such default within 30 days after the giving of such notice (or if such default is of such a character as to require more than 30 days within which to cure the same, and a grantee fails to commence to cure the same within said 30 day period and thereafter fails to use reasonable diligence, in city's sole opinion, to cure such default as soon as possible), then, and in any event, such default shall be a substantial breach and city may elect to terminate the franchise. The city may place the issue of revocation and termination of a franchise before the governing body of city at a regular meeting. If city decides there is cause or reason to terminate, the following procedure shall be followed:

- (a) City shall provide a grantee with a written notice of the reason or cause for proposed termination and shall allow a grantee a minimum of 30 days subsequent to receipt of the notice in which to correct the default.
- (b) A grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate a franchise.
- (c) If, after notice is given and an opportunity to cure, at a grantee's option, a public hearing is held, and the city determines there was a violation, breach, failure, refusal or neglect, the city may declare by resolution the franchise revoked and of no further force and effect unless there is compliance within such period as the city may fix, such period may not be less than 30 days provided no opportunity for compliance need be granted for fraud or misrepresentation.

726.71. Continuity of service. Subdivision 1. It shall be the right of all subscribers to continue receiving services insofar as their financial and other obligations to a grantee are honored. In the event that a grantee elects to rebuild, modify or sell the system, or the city gives notice of intent to terminate or fails to renew a franchise, a grantee shall act so as to insure that all subscribers receive reliable service.

Subd. 2. In the event of a change of a grantee, or in the event a new operator acquires a system, a grantee shall cooperate with the city's new grantee or operator in maintaining continuity of service to all subscribers. During such period, a grantee shall be entitled to the revenues for any period during which it operates a system and shall be entitled to reasonable cost for its services when it no longer operates the system.

Subd. 3. In the event a grantee fails to operate the system for three consecutive days without approval of the city or without just cause, the city may, at its option, operate the system or designate an operator until such time as a grantee restores service under conditions acceptable to the city or a permanent operator is selected. This section shall not apply if the cable operator is unable to operate the system due to force majeure as defined in section 726.77. If the city is required to fulfill this obligation for a grantee, a grantee shall reimburse the city for all reasonable cost or damages in excess of revenue from the system received by the city that are a result of a grantee's failure to perform.

Subd. 4. A grantee shall not allow its cable or other operations to interfere with the television reception of persons not served by a grantee, nor shall a system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the city, as the facilities of such utilities exist at the time of construction or extension-of a grantee's system.

726.73. Foreclosure and receivership. Subdivision 1. Foreclosure. Upon the foreclosure or other judicial sale of a system, a grantee shall notify the city of such fact and such notification shall be treated as a notification that a change in control of a grantee has taken place, and the provisions of a franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

Subd. 2. Receivership. The city shall have the right to cancel a franchise subject to any applicable provisions of state law, including the Bankruptcy Act, 120 days after the appointment of a receiver or trustee to take over and conduct the business of a grantee, 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 120 days, or unless:

(a) Within 120 days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of a franchise and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said 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 a franchise.

726.75. Compliance with laws, rules and regulations. Any of the provisions or terms of this section may be amended by the city in order to be made consistent with any new or amended local, state or federal law, rule, or regulation of governmental authorities with jurisdiction to regulate cable communications systems. The city and a grantee shall conform to federal and state laws and regulations as soon as they become effective. Where amendment to laws, rules or other regulatory standards requires modification of any franchise granted pursuant to this section, the modifications necessary to effect compliance with such laws, rules or regulations shall be made within one year of the effective date of such change, or at the time of renewal of a franchise, whichever occurs first.

726.77. Force majeure. Subdivision 1. In the event a grantee's performance of any of the terms, conditions or obligations required by this section or a franchise granted hereunder is prevented by a cause or event not within a grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof.

Subd. 2. For the purpose of this section, causes or events not within the control of a grantee shall include but not be limited to acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies and natural disasters such as floods, earthquakes, storms, landslides, and fires.

726.79. Severability. Subdivision 1. This section shall be construed in a manner consistent with all applicable federal and Minnesota laws.

Subd. 2. If any section, subsection, sentence, clause, phrase or portion of this section or any franchise granted hereunder is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof or thereof.