CITY OF BIGFORK

Code of Ordinances

TITLE I: GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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§ 10.01 TITLE OF CODE.

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

(B) All references to codes, titles, chapters, and sections are to the components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the Traffic Code. Sections may be referred to and cited by the designation A followed by the number, such as A 10.01. Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.02 RULES OF INTERPRETATION.

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

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

(1) ***AND*** *or* ***OR.*** Either conjunction shall include the other as if written and/or, whenever the context requires.

(2) *Acts by assistants.* When a statute, code provisions or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(3) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

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

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

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

§ 10.04 CAPTIONS.

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

§ 10.05 DEFINITIONS.

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and

appropriate meaning in law shall be understood according to their technical import.

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

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

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

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

MAY. The act referred to is permissive.

MONTH. A calendar month.

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

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

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

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

SHALL. The act referred to is mandatory.

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

STATE. The State of Minnesota.

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

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

YEAR. A calendar year, unless otherwise expressed.

§ 10.06 SEVERABILITY.

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

§ 10.07 REFERENCE TO OTHER SECTIONS.

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

§ 10.08 REFERENCE TO OFFICES.

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

§ 10.09 ERRORS AND OMISSIONS.

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

§ 10.10 OFFICIAL TIME.

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

§ 10.11 REASONABLE TIME.

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

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

§ 10.12 ORDINANCES REPEALED.

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

§ 10.13 ORDINANCES UNAFFECTED.

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

§ 10.14 EFFECTIVE DATE OF ORDINANCES.

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

§ 10.15 REPEAL OR MODIFICATION OF ORDINANCE.

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

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

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

§ 10.16 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

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

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

§ 10.17 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.

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

§ 10.18 COPIES OF CODE.

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

§ 10.19 ADOPTION OF STATUTES AND RULES BY REFERENCE.

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

§ 10.99 GENERAL PENALTY.

(A) Any person, firm, or corporation who violates any provision of this code for which another penalty is not specifically provided, shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than $1,000, or both.

(B) Any person, firm or corporation who violates any provision of this code, including Minnesota Statutes specifically adopted by reference, which is designated to be a petty misdemeanor shall, upon conviction be guilty of a petty misdemeanor. The penalty which may be imposed for any petty offense which is a petty misdemeanor shall be a sentence of a fine of not more than $300.

(C) In either the case of a misdemeanor or a petty misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(D) The failure of any officer or employee of the city to perform any official duty imposed by this code shall not subject the officer or employee to the penalty imposed for a violation.

TITLE III: ADMINISTRATION

30. GENERAL PROVISIONS

31. DEPARTMENTS, BOARDS AND COMMISSIONS

32. EMERGENCY MANAGEMENT

CHAPTER 30: GENERAL PROVISIONS

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§ 30.01 CITY COUNCIL MEETINGS.

(A) *Regular meetings.* Regular meetings of the City Council shall be held at least once each month, on the second Tuesday. Any regular meeting falling upon a holiday, or other day and time during which public meetings are restricted, shall be held on the next following business day at the same time and place. All meetings, including special and adjourned meetings, shall be held in the city hall unless the City Council decides otherwise at a prior meeting, or meeting in the city hall is impossible.

(B) *Special meetings.* The Mayor or any two members of the City Council may call a special meeting of the City Council upon at least 24 hours written notice to each member of the City Council, and must notify the City Clerk who will notify the other members of the City Council. This notice shall be delivered personally to each member or shall be left at the member's usual place of residence with some responsible person. Pursuant to M.S. 471.705, as it may be amended from time to time, written notice of any special meeting shall be posted giving the date, time, place and purpose of the meeting at least three days before the meeting. Written notice shall be mailed at least three days before the meeting to anyone who has filed a written request for notice of special meetings. In calculating the three days, if the last day falls on a Saturday, Sunday or legal holiday, the next regular business day shall be counted as the third day.

(C) *Emergency meetings.* Notice of emergency meetings shall be given as required by M.S. Ch. 13D, as it may be amended from time to time. An emergency meeting is a meeting defined by M.S. Ch. 13D as it may be amended from time to time.

(D) *Initial meeting.* At the first regular City council meeting in January of each year, the City Council shall:

(1) Designate the depositories of city funds

(2) Designate the official newspaper

(3) Choose one of the Council Members as Acting Mayor, who shall perform the duties of the Mayor during the disability or absence of the Mayor from the city or, in case of a vacancy in the office of Mayor, until a successor has been appointed and qualifies;

(4) Appoint officers, commissioners, employees and members of departments, boards, commissions and committees as may be necessary;

(5) Establish and appoint Council Members to those City Council committees as are deemed appropriate for the efficient and orderly management of the city.

(E) *Public meetings.* All City Council meetings, including special, emergency and adjourned meetings and meetings of City Council committees, as well as meetings of City Commissions and Boards, shall be conducted in accordance with the Minnesota Open Meeting Law, M.S. Ch. 13D, as it may be amended from time to time.

§ 30.02 PRESIDING OFFICER.

(A) *Who presides.* The Mayor shall preside at all meetings of the City Council. In the absence of the Mayor, the Acting Mayor shall preside. In the absence of both, the City Clerk shall call the meeting to order and shall preside until the Council Members present at the meeting choose one of their number to act temporarily as presiding officer.

(B) *Procedure.* The presiding officer shall preserve order, enforce any rules of procedure adopted by the City Council, and determine without debate, subject to the final decision of the City Council on appeal, all questions of procedure and order.

(C) *Appeal procedure.* Any member of the City Council may appeal a ruling of the presiding officer. If the appeal is seconded, the Council Member making the original motion may speak once solely on the question involved and the presiding officer may explain the ruling, but no other Council Member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present, including the presiding officer.

§ 30.03 MINUTES.

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

(1) Call to order

(2) Approval of agenda

(3) Public forum – including petitions and communications from audience

(4) Reports of officers, boards, and committees

(5) Unfinished Business

(6) New Business

(7) Other Business

(8) Adjournment

(B) *Petitions and agenda.* Petitions and other papers addressed to the City Council shall be read by the City Clerk upon presentation of the same to the City Council. All persons desiring to present new business before the City Council shall request the necessary forms from the City Clerk. The forms must be completed and returned to the City Clerk's office by the Wednesday of the week prior to the Council meeting.

§ 30.05 VOTING

The votes of the Council Members on any question may be taken in any manner which signifies the intention of the individual members, and the votes of the Council Members on any action taken shall be recorded in the minutes. The vote of each Council Member shall be recorded on each appropriation of money, except for payments of judgments, claims and amounts fixed by statute. If any Council Member does not clearly indicate their vote, it shall be recorded as an "aye" vote in favor of the motion.

§ 30.06 ORDINANCES, RESOLUTIONS, MOTIONS, PETITIONS AND COMMUNICATIONS.

(A) *Signing and publication proof.* Every ordinance and resolution passed by the City Council shall be signed by the Mayor, attested by the City Clerk, and filed by the City Clerk in the ordinance or resolution book. Proof of publication of every ordinance shall be attached and filed with the ordinance

(B) *Repeals and amendments.* Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision thereof shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution amending an existing ordinance or resolution or part thereof shall set forth in full each amended section or subdivision as it will read with the amendment.

§ 30.07 SUSPENSION OR AMENDMENT OF RULES.

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

§ 30.08 COMPENSATION OF MAYOR AND COUNCIL MEMBERS

The compensation of the Mayor and the compensation of each Council Member shall be established from time to time by City Council ordinance pursuant to M.S. 415.11, as it may be amended from time to time.

§ 30.09 COMPENSATION OF OFFICERS AND EMPLOYEES

Officers and employees of the city shall be compensated at a rate as established form time to time by the City Council.

§ 30.10 QUORUM FOR CONDUCTING BUSINESS

(A) A quorum shall consist of a majority of the entire City Council, including the Mayor. A quorum shall be necessary to transact the business of the City Council.

(B) If no quorum is present, the City Council shall not thereby stand adjourned, but the members present shall adjourn or recess the City Council by a majority vote of those present.

§ 30.11 FEES AND CHARGES

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

§ 30.12 APPLICATION OF STATE LAW

The provisions of the Government Data Practices Act, M.S. Ch. 13, the Open Meeting Law, M.S. Ch. 13D, and the laws relating to Gifts to Local Officials, M.S. §471.895, as these laws may be amended from time to time, apply to the City Council and all boards and commissions of this city and their members.

30.13 BACKGROUND INFORMATION.

(A) *Applicants for City employment.*

(1) *Purpose*. The purpose and intent of this section is to establish regulations that will allow law enforcement access to Minnesota's Computerized Criminal History information for specified non-criminal purposes of employment background checks for the positions described in division (2) below.

(2) *Criminal history employment background investigations.* Pursuant to M.S. 364.021 as it may be amended from time to time, with the exception of the applicants for employment listed in M.S. 364.09, the city shall not inquire into or consider the criminal record or history of an applicant for public employment until the applicant has been selected for an interview by the city or, if there is not an interview, before a conditional offer of employment is made to the applicant.

The City Police Department or County Sheriff's Department is hereby required, as the exclusive entity within the City, to do a criminal history background investigation on the applicants for the following positions within the city, unless the city's hiring authority concludes that a background investigation is not needed:

(a) Employment positions. All regular part-time or full-time employees of the City and other positions that work with children or vulnerable adults.

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

(3) Before the investigation is undertaken, the applicant must authorize the Police Department or County Sheriff's Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. 364.09, the city will not reject an applicant for employment on the basis of the applicant's prior conviction unless the crime is directly related to the position of employment sought and the conviction is for a felony, gross misdemeanor, or misdemeanor with a jail sentence. If the City rejects the applicant's request on this basis, the City shall notify the applicant in writing of the following:

(a) The grounds and reasons for the denial.

(b) The applicant complaint and grievance procedure set forth in M.S. 364.06

(c) The earliest date the applicant may reapply for employment.

(d) That all competent evidence of rehabilitation will be considered upon reapplication.

(B) *Applicants for City licenses.*

(1) *Purpose*. The purpose and intent of this section is to establish regulations that will allow law enforcement access to Minnesota's Computerized Criminal History information for specified non-criminal purposes of licensing background checks.

(2) Criminal history license background investigations. The Police Department or County Sheriff's Department is hereby required, as the exclusive entity within the City, to do a criminal history background investigation on the applicants and their employees for the following licenses or permits within the city:

City Licenses: Liquor Licenses, under Chapter 112 of this code, and any applicants under Chapters 113, 114, 116, 118, or 119 of this code.

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

(4) Before the investigation is undertaken, the applicant must authorize the Police Department or Sheriff's Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13 as it may be amended from time to time regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. 364.09 as it may be amended from time to time, the city will not reject an applicant for a license on the basis of the applicant's prior conviction unless the crime is directly related to the license sought and the conviction is for a felony, gross misdemeanor, or misdemeanor with a jail sentence. If the City rejects the applicant's request on this basis, the City shall notify the applicant in writing of the following:

(a) The grounds and reasons for the denial.

(b) The applicant complaint and grievance procedure set forth in M.S. 364.06.

(c) The earliest date the applicant may reapply for the license.

(d) That all competent evidence of rehabilitation will be considered upon reapplication.

CHAPTER 31: DEPARTMENTS, BOARDS AND COMMISSIONS

Section

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POLICE DEPARTMENT

§ 31.10 POLICE DEPARTMENT CONTINUED.

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

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

§ 31.02 CHIEF OF POLICE.

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

§ 31.03 DUTIES OF POLICE

Members of the Police Department shall enforce the laws of the State of Minnesota and Ordinances of the City of Bigfork, bring violators before the court, and make complaints for offenses coming to their knowledge. Members of the Police Department shall serve processes on behalf of the city and shall serve those notices as may be required by the City Council or other authority. When the city is not a party to the proceedings involved in the process or notice, the officer shall collect the same fees as provided by law. All fees shall be paid into the city treasury.

§ 31.04 UNIFORM AND BADGE.

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

§ 31.05 RESERVE OFFICERS.

(A) The Chief of Police may appoint, for a specified time, as many reserve officers as may be necessary. Reserve officers shall be subordinate to the Chief of Police. Under the provisions of M.S. 626.84, Subd. 1(e), as it may be amended from time to time, a ***RESERVE OFFICER*** is an individual whose services are utilized by a law enforcement agency to provide supplementary assistance at special events, traffic or crowd control, and administrative or clerical assistance. A reserve officer's duties shall not include enforcement of the general criminal laws of the state, and the reserve officer does not have full powers of arrest or authorization to carry a firearm on duty.

(B) The Chief of Police, or City Council if there is no Police Chief, may appoint, for a specified time, as many parking enforcement officers pursuant to M.S. 168B.035 Subd. 2, as it may be amended from time to time, as may be necessary. The parking enforcement officers shall be subordinate to the Chief of Police, if there is one, or the City Clerk. A ***PARKING ENFORCEMENT OFFICER*** is an individual whose services are utilized by a law enforcement agency to provide parking enforcement and administrative or clerical assistance. A parking enforcement officer's duties shall not include enforcement of the general criminal laws of the state, and the parking enforcement officer does not have full powers of arrest or authorization to carry a firearm on duty.

VOLUNTEER FIRE DEPARTMENT

§ 31.20 VOLUNTEER FIRE DEPARTMENT CONTINUED; APPOINTMENT OF OFFICERS.

(A) If, at the time of the adoption of this code, the city has a Volunteer Fire Department, there is continued in this city a Volunteer Fire Department. If the city, at the time of the adoption of this code, does not have a Volunteer Fire Department, the City Council may by resolution create a Volunteer Fire Department subject to the provisions of this code. All Volunteer Fire

Departments are established under the authority of state law, M.S. 412.221, Subd. 17, as it may be amended from time to time.

(B) All officers of the Volunteer Fire Department shall be appointed by the City Council. These officers may be removed by the City Council for cause and after a public hearing. If one of the officers duly appointed shall resign his or her office, be removed from office by the City Council, or is deceased during his or her term of office, the successor shall be duly appointed by the City Council as soon as is practical and no later than two weeks from the time the position becomes open. The officer so appointed is so appointed for any period of the unexpired term of the vacated office.

Firefighters and probationary firefighters shall be appointed by the City Council upon recommendation by the Chief of the Volunteer Fire Department. The process of recruitment, selection, appointment and termination of firefighters and probationary firefighters shall, as required by state law, follow all of the provisions of the Veteran's Preference Act, M.S. '' 43A.11 and 197.46, as they may be amended from time to time, and, as required by state law, there shall be no discrimination on the basis of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, sexual orientation or disability (except based on a bona fide occupational qualification) as provided by the Minnesota Human Rights Act, M.S. Ch. 363A, as it may be amended from time to time. Firefighters shall continue as members of the Volunteer Fire Department during good behavior until retirement, but may be removed by the City Council for cause after a public hearing.(D)As required by state law, M.S. ' 412.241, as it may be amended from time to time, the City Council shall have full authority over the financial affairs of the Volunteer Fire Department, and shall provide for the collection of all revenues and other assets, the auditing and settlement of accounts, and the safekeeping and disbursement of public money. This division does not apply to the funds of any Fire Relief Association.

§ 31.21 DUTIES OF CHIEF.

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

prevention including, if authorized by the City Council, the Uniform Fire Code, Minn. Rules Ch. 7510, as it may be amended from time to time. The Fire Marshal shall have full authority to inspect all premises and to cause the removal or abatement of all fire hazards.

§ 31.23 RECORDS.

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

§ 31.24 PRACTICE DRILLS

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

§ 31.25 FIRST ASSISTANT CHIEF.

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

§ 31.26 FIREFIGHTERS.

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

§ 31.27 MEMBERSHIP.

Membership in the Volunteer Fire Department shall be governed as stated in the bylaws of the department. Those bylaws are hereby adopted by reference into this Ordinance.

§ 31.28 COMPENSATION.

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

§ 31.29 INTERFERENCE WITH VOLUNTEER FIRE DEPARTMENT.

It shall be unlawful for any person to give or make, or cause to be given or made, an alarm of fire without probably cause, or to neglect or refuse to obey any reasonable order of the Chief or other firefighter at a fire, or to interfere with the Volunteer fire Department in the discharge of its duties. Penalty, see 10.99

§ 31.30 FIRE CONTRACTS OUTSIDE MUNICIPAL BOUNDARIES.

(A) When any property owner, association of property owners, insurance company or society, or political subdivision enters into a contract with the City for fire protection on property owned, leased or represented by such person, persons, organization or political subdivision, and agrees to pay for such services at the rates prescribed, the City Clerk shall inform the Chief of the Fire Department of such agreement, and thereafter the Department shall go outside the city limits to answer calls, but in no case shall the Fire Department send apparatus to such property if the Fire Chief or other individual in charge of the Fire Department at the time determines it is needed for local service, and in no case shall the Chief send more equipment or men than is anticipated in the agreement.

(B) The rates to be charged for such service shall be those fixed annually by the Fire Department and approved by the City Council.

§ 31.31 POLICIES AND PROCEDURES.

The Volunteer Fire Department may adopt policies and procedures for the operation of the department, which shall be effective upon approval by the City Council. Any provision of these policies and procedures, which may be called a Constitution and Bylaws, which is inconsistent with state and federal law, including the Veterans Preference Act, Minnesota Human Rights Act, and state laws requiring the City Council to control Fire Department Finances, shall be unenforceable and void.

PLANNING & ZONING COMMISSION

§ 31.45 ESTABLISHMENT OF THE PLANNING & ZONING COMMISSION.

If, at the time this code is adopted, the city has a Planning Commission, the Planning Commission for the city is hereby continued. If the city did not have a Planning Commission at the time of the adoption of this code, the City Council may at any time determine to

establish a Planning Commission by appointing members to the Planning Commission as provided in 31.46 of this code. To the extent that any provisions of 31.45 to 31.48 of this code are inconsistent with any provisions of Titles XV or XVII, the provisions of those titles shall prevail. The Planning Commission shall be the city planning agency authorized by M.S. 462.354(1), as it may be amended from time to time.

§ 31.46 COMPOSITION

(A) The Planning & Zoning Commission shall consist of five members from the resident population or landowners of the City to be appointed by the Mayor with the approval of the City Council. The appointees shall be appointed to serve staggered terms of three years, except as noted blow, commencing on the first day of January in the year of appointment. Upon expiration of a term, the appointee shall continue until reappointed or a successor is appointed. Absence from any three meetings in a year, unless excused in advance by the Chair, constitutes a vacancy. In the event of any vacancy, the Mayor, with the approval of the City Council, shall appoint a person to complete the unexpired term.

(B) Other persons may serve in an ex officio capacity as the City Council may, in its discretion, deem appropriate.

(C) Each of the five regular Planning & Zoning Commission members shall have equal voting privileges. Any member may be removed for cause by majority vote of the City Council upon written charge and after a public hearing.

§ 31.47 ORGANIZATION, MEETINGS, MINUTES AND EXPENDITURES.

(A) At the first regular meeting in January, the Planning & Zoning Commission shall elect a Chairperson and a Vice-Chairperson from among its appointed members, each for a term of one year. The Planning & Zoning Commission may create and fill other offices as it may determine.

(B) The Planning & Zoning Commission shall hold at least one meeting each month at the time and place as they may fix by resolution. Special meetings may be called at any time by the Chairperson, or in the case of the Chairpersons absence, by the Vice-Chairperson.

(C) Written minutes of meetings shall be kept by the City Clerk and shall be subject to the approval at the next Planning & Zoning Commission meetings.

(D) No expenditures by the Planning & Zoning Commission shall be made unless and until authorized for the purpose by the City Council.

§ 31.48 POWERS AND DUTIES; COMPREHENSIVE PLAN.

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

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

(C) *Zoning Ordinance.* Pursuant to M.S. 462.357(3), as it may be amended from time to time, the Planning & Zoning Commission shall review al proposed amendments to the zoning ordinance, take part in public hearings, and make recommendations to the City Council as may be prescribed by the zoning ordinance.

(D) *Conditional permits.* The Planning & Zoning Commission may make determinations on all requests for a conditional use permit under the terms of the zoning ordinance and may conduct public hearings as directed by the City Council or city policy. The Planning & Zoning Commission shall report its recommendations to the City Council for action.

(E) *Interim Use Permits.* The Planning & Zoning Commission may make recommendations on all requests for an interim use permit under the terms of the zoning ordinance and conduct public hearings as directed by the City Council or city policy. The Planning & Zoning Commission shall report its recommendations to the City Council for action.

(F) *Subdivision regulations.* The Planning & Zoning Commission may make determinations in relation to the subdividing of land as prescribed by the ordinance and may conduct public hearings as directed by the City Council or city policy. The Planning & Zoning Commission shall report its recommendations to the City Council for action.

(G) *Variances.* All applications for variances may be referred to the Planning Commission which may conduct public hearings as directed by the City Council or city policy, and forwarded with or without recommendations directly to the City Council, which shall have the powers of a Board of Appeals and Adjustments as provided for in M.S. 462.357, Subd. 6, as it may be amended from time to time for its decision..

(H) *Official Map.* Pursuant to M.S. 462.359 subd. 2, as it may be amended from time to time, after adoption of a major thoroughfare plan and community facilities plan (which may be contained in the city comprehensive plan or adopted separately), the Planning Commission, for the purpose of carrying out the policies of the major thoroughfare plan and community facilities plan, may prepare and recommend to the governing body a proposed official map covering the entire municipality or any portion thereof. The official map or maps shall be prepared in sufficient detail to permit establishment of the future acquisition lines on the ground. In unplatted areas, a minimum of a centerline survey shall have been made prior to the preparation of the final draft of the official map. The accuracy of the future acquisition lines shown on the official map shall be attested to by a licensed surveyor.

(I) *Appeals to denials of zoning, land use or building permits based on the official map.* All appeals to denials of zoning, land use or building permits based on the official map may be referred to the Planning Commission, and forwarded with or without recommendations directly to the City Council. The City Council shall have the powers of a Board of Appeals and Adjustments as provided for in M.S. 462.359, Subd. 4, as it may be amended from time to time for its decision.

(J) *Purchase and sale of real property.* Pursuant to M.S. 462.356, Subd. 2, as it may be amended from time to time, after adoption of a comprehensive plan, if any, the Planning Commission shall review all proposed acquisitions or disposals of publically owned interests in real property within the city by the municipality, or any special district or any agency thereof, or any other political subdivision having jurisdiction within the municipality, and make findings as to the compliance of the proposed acquisition or disposal of real property with the comprehensive municipal plan. The City Council may by resolution adopted by two-thirds vote dispense with the requirements of this section when in its judgement it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.

(K) *Capital improvements.* Pursuant to M.S. 462.356, Subd. 2, as it may be amended from time to time, after adoption of a comprehensive plan, if any, the Planning Commission shall review all proposed capital improvements within the city by the municipality, or any special district or any agency thereof, or any other political subdivision having jurisdiction within the municipality, and make findings, as to the compliance of the proposed capital improvement with the comprehensive municipal plan. The City Council may by resolution adopted by two-thirds vote dispense with the requirements of this section when in its judgment it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.

(L) *Comprehensive Plan amendments.* Pursuant to M.S. 462.355, Subd. 2 and 3, as it may be amended from time to time, after adoption of a comprehensive plan, if any, the Planning Commission shall review all proposed amendments to the comprehensive plan, hold at least one public hearing, and make recommendations to the City Council on comprehensive plan amendments and their relation to the city comprehensive plan and other land use controls. The Planning Commission shall report its recommendations to the City Council for action.

§ 31.49 COMPENSATION

The members of the Planning and Zoning Commission shall serve without compensation.

CHAPTER 32: EMERGENCY MANAGEMENT

Section

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32.02 Definitions
32.03 Establishment of emergency management organization
32.04 Powers and duties of Director
32.05 Local emergencies
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§ 32.01 POLICY AND PURPOSE.

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

(A) To establish a City Emergency Management Organization responsible for City planning and preparation for emergency government operations in time of disasters.

(B) To provide for the exercise of necessary powers during emergencies and disasters.

(C) To provide for the rendering of mutual aid between this City and other political subdivisions of this state and of other states with respect to the carrying out of emergency-preparedness functions.

(D) To comply with the provisions of M.S. 12.25, as it may be amended from time to time, which requires that each political subdivision of the state shall establish a local organization for emergency management.

§ 32.02 DEFINITIONS.

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

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

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

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

and other functions related to civil protection, together will all other activities necessary or incidental for carrying out the foregoing function. Emergency management includes those activities sometimes referred to as civil defense functions.

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

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

§ 32.03 ESTABLISHMENT OF EMERGENCY MANAGEMENT ORGANIZATION.

There is hereby created within the city government an emergency management organization which shall be under the supervision and control of the City Emergency Management Director, called the Director. The Director shall be appointed by the City Council for an indefinite term and may be removed by the Council at any time. The Director shall serve with a salary as established by the City Council and shall be paid his or her necessary expenses. The Director shall have direct responsibility for the organization, administration and operation of the emergency preparedness organization, subject to the direction and control of the Council. The emergency management organization shall conform to and be consistent with, where applicable, all state and federal requirements, including the National Incident Management System framework found at 44 CFR part 201, as it may be amended from time to time.

§ 32.04 POWERS AND DUTIES OF Director.

(A) The Director shall represent the City on any regional or state conference for emergency management. The Director shall develop proposed mutual aid agreements with other political subdivisions of the state for reciprocal emergency management aid and assistance in an emergency too great to be dealt with unassisted, and shall present these agreements to the Council for its action. These arrangements shall be consistent with the State Emergency Plan.

(B) The Director shall make studies and surveys of the human resources, industries, resources, and facilities of the City as deemed necessary to determine their adequacy for emergency management and to plan for their most efficient use in time of an emergency or disaster. The Director shall establish the economic stabilization systems and measures, service staffs, boards, and sub-boards required, in accordance with state and federal plans and directions.

(C) The Director shall prepare a comprehensive emergency plan for the emergency preparedness of the City and shall present the plan to the Council for its approval. When the Council has approved the plan, it shall be the duty of all City agencies and all emergency preparedness forces of the City to perform the duties and functions assigned by the plan as approved. The plan may be modified in like manner from time to time. The Director shall coordinate the emergency management activities of the City to the end that they shall be consistent an fully integrated with the emergency plans of the federal government and the state and correlated with emergency plans of the county and other political subdivisions within the state.

(D) In accordance with the State and City Emergency Plan, the Director shall institute training programs, public information programs and conduct practice warning alters and emergency exercises as may be necessary to assure prompt and effective operation of the City Emergency Plan when a disaster occurs.

(E) The Director shall utilize the personnel, services, equipment, supplies, and facilities of existing departments and agencies of the City to the maximum extent practicable. The officers and personnel of all City departments and agencies shall, to the maximum extent practicable, cooperate with and extend services and facilities to the City's emergency Management Organization and to the Governor upon request. The head of each department or agency in cooperation with the Director shall be responsible for the planning and programming of those emergency activities as will involve the utilization of the facilities of the department or agency.

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

(G) Consistent with the state emergency services law, the Director shall coordinate the activity of municipal emergency management organizations within the City and assist in establishing and conducting training programs as required to assure emergency operational capability in the several services as provided by M.S. 12.25, as it may be amended from time to time.

(H) The Director shall carry out all orders, rules, and regulations issued by the Governor with reference to emergency management.

(I) The Director shall prepare and submit reports on emergency preparedness activities when requested by the City Council.

§ 32.05 LOCAL EMERGENCIES.

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

(B) A declaration of a local emergency shall invoke necessary portions of the response and recovery aspects of applicable local or inter-jurisdictional disaster plans, and may authorized aid and assistance thereunder.

(C) No jurisdictional agency or official may declare a local emergency unless expressly authorized by the agreement under which the agency functions. However, an inter-jurisdictional disaster agency shall provide aid and services in accordance with the agreement under which it functions. Penalty, see 32.99

§ 32.06 EMERGENCY REGULATIONS.

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

(B) Every resolution of emergency regulations shall be in writing; shall be dated; shall refer to the particular emergency to which it pertains, if so limited, and shall be filed in the office of the City Clerk. A copy shall be kept posted and available for public inspection during business hours. Notice of the existence of these regulations and their availability for inspection at the City Clerk's Office shall be conspicuously posted at the front of the city hall or other headquarters of the City or at other places in the affected area as the Council shall designate in the resolution. By resolutions, the Council may modify or rescind a regulation.

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

(D) During a declared emergency, the City is, under the provisions of M.S. 12.37, as it may be amended from time to time and notwithstanding any statutory or Charter provision to the contrary, empowered, through its Council, acting within or without the corporate limits of the City, to enter into contracts and incur obligations necessary to combat the disaster by protecting the health and safety of persons and property and providing emergency assistance to the victims of a disaster. The City may exercise these powers in the light of the exigencies of the disaster without compliance with the time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering rental equipment agreements, purchase of supplies and materials, limitations upon tax levies, and the appropriation and expenditure of public funds, including, but not limited to, publication of resolutions, publication of calls for bids, provisions of personnel laws and rules, provisions relating to low bids, and requirement for bids. Penalty, see § 32.99

§ 32.07 EMERGENCY MANAGEMENT A GOVERNMENT FUNCTION.

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

§ 32.08 PARTICIPATION IN LABOR DISPUTES OR POLITICS.

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

§ 32.99 PENALTY.

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

TITLE V: PUBLIC WORKS

CHAPTER 50: GARBAGE AND RUBBISH
CHAPTER 51: SEWER REGULATIONS
CHAPTER 52: WATER REGULATIONS
CHAPTER 53: STREET LIGHTING
CHAPTER 54: RIGHT OF WAY

TITLE V - PUBLIC WORKS
CHAPTER 50: GARBAGE AND RUBBISH

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§ 50.01 DEFINITIONS

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

SOLID WASTE as used herein shall mean all refuse generated by residences, businesses, or any other source within the City of Bigfork, excepting those items which are recyclable material as defined in this ordinance.

RECYCLABLE MATERIAL as used herein means inorganic solids such as, but not limited to, tin cans, glass, paper, aluminum, plastic, and other materials which are intended for transportation, processing, and remanufacturing or reuse.

RESIDENCES as used herein mean all single or multiple family dwellings within the City of Bigfork.

BUSINESSES as used herein mean all business establishments with the City of Bigfork not used for residential purposes.

§ 50.02 GENERAL REQUIREMENTS OF SOLID WASTE DISPOSAL

All businesses and residences within the City of Bigfork shall remove, or arrange for the removal of, all solid waste from the premises of said residence or business a minimum of one time per week. Failure to remove such solid waste a minimum of once per week shall constitute a violation of this ordinance. Nothing in this ordinance shall prevent any person from personally disposing of the solid waste accumulating on his or her own residential or business premises in any sanitary manner.

§ 50.03 GARBAGE CONTAINERS

Every residence or business having solid waste to dispose of shall provide one or more fly and water tight garbage containers sufficient to receive all solid waste which may accumulate between the times of collection. In no event shall such containers be placed in the street or on the sidewalk or in any manner placed where the containers will interfere with vehicular or pedestrian traffic.

§ 50.04 THEFT OF GARBAGE SERVICES

(A) It shall be unlawful for any person to deposit any residential, commercial, or large amount of garbage, rubbish, offal or any other type of waste in any City of Bigfork waste receptacle.

(B) It shall be unlawful for any person to deposit any garbage, rubbish, offal or any other type of waste into a private waste receptacle which is not owned by them.

§ 50.05 PENALTY

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss or damage occasioned by the City by reason of that violation. In addition, any person found to be violating any provisions of this chapter shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations. Any person who shall continue any violation beyond the specified time limit shall be punished as provided in §10.99. Each day in which any violation occurs shall be deemed as a separate offense.

CITY OF BIGFORK
ITASCA COUNTY, MINNESOTA
ORDINANCE NO. 170

AN ORDINANCE AMENDING TITLE V: PUBLIC WORKS CHAPTER 51: SEWER REGULATIONS, CHAPTER 52: WATER REGULATIONS, CHAPTER 53: STREET LIGHTING OF THE CITY OF BIGFORK CODE OF ORDINANCES

THE CITY COUNCIL OF BIGFORK DOES HEREBY ORDAIN THAT THE BIGFORK CITY CODE OF ORDINANCES TITLE V: PUBLIC WORKS CHAPTER 51: SEWER REGULATIONS, CHAPTER 52: WATER REGULATIONS, CHAPTER 53: STREET LIGHTING BE AMENDED TO READ AS FOLLOWS:

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ADMINISTRATION AND ENFORCEMENT

§ 51.01 ESTABLISHMENT

The City does hereby make provision for the establishment of a municipal sanitary sewer and wastewater treatment system (hereinafter called the Sanitary Sewer System) to be operated as a public utility.

§ 51.02 LIABILITY

The City shall not be liable for any deficiency or failure in the collection of wastewater from users, whether occasioned by suspending service for the purpose of making repairs or connections or from any other cause whatsoever. In case of fire, or alarm of fire, or in making repairs or construction of new works, the Sanitary Sewer System may be suspended without notice at any time and be unavailable as long as necessary. In addition, the City Council shall have the right to impose reasonable restrictions on the use of the Sanitary Sewer System in emergency situations.

§ 51.03 APPLICATION

No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by the MPCA or the Minnesota Department of Health. In addition, no statement in this chapter shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore by the industrial concern; provided, that National Categorical Pretreatment Standards and the City's National Pollutant Discharge Elimination System / State Disposal System (NPDES/SDS) Permit limitations are not violated.

§ 51.04 DEFINITIONS

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

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

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

ASTM. American Society for Testing Materials.

BIOCHEMICAL OXYGEN DEMAND (BOD_5). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C, expressed in terms of milligrams per liter (mg/l).

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

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

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

COMPATIBLE POLLUTANT. Biochemical oxygen demand, suspended solids, pH, and bacteria, plus additional pollutants identified in the NPDES/SDS permit if the treatment facility treats such pollutants to a degree which complies effluent concentration limits imposed upon them.

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

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

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

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

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

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

INDUSTRIAL USERS or INDUSTRIES. Entities that discharge into a publicly owned wastewater treatment works (POTW) liquid wastes resulting from the processes employed in industrial or manufacturing processes, or from the development of any natural resources. These are identified in the Standard Industrial Classification Manual, latest edition, Office of Management and Budget, as amended and supplemental under one of the following divisions:

Division A	Agriculture, forestry and fishing
Division B	Mining
Division D	Manufacturing
Division E	Transportation, communications, electric, gas, and sanitary sewers
Division I	Services

For the purpose of this definition, domestic waste shall be considered to have the following characteristics: BOD_5 – less than 287 mg/l; Suspended solids – less than 287 mg/l.

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

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

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

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

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

MAY. The term is permissive.

MPCA. The Minnesota Pollution Control Agency.

NATIONAL CATEGORICAL PRETREATMENT STANDARDS. Federal regulations establishing pretreatment standards for introduction of pollutants in

publicly-owned wastewater treatment facilities which are determined to be not susceptible to treatment by those treatment facilities or would interfere with the operation of those treatment facilities, pursuant to Section 307(b) of the Act (33 USC 1317(b)).

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

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

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

NORMAL DOMESTIC STRENGTH WASTE. Wastewater that is primarily introduced by residential users with a BOD_5 concentration not greater than 287 mg/l and a total suspended solids (TSS) concentration not greater than 287 mg/l.

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

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

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

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

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

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

PUBLIC WORKS SUPERINTENDENT. The person appointed by the City Council to supervise the sanitary sewer and water systems of the City.

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

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

REPLACEMENT COSTS. Expenditures for replacement.

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

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

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

(1) COLLECTION SEWER. A sewer whose primary purpose is to collect wastewaters from individual point source discharges and connections.

(2) INTERCEPTOR SEWER. A sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.

(3) PRIVATE SEWER. A sewer which is not owned and maintained by a public authority.

(4) PUBLIC SEWER. A sewer which is owned maintained and controlled by a public authority.

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

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

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

SHALL. The term is mandatory.

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

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

TOXIC POLLUTANT. The concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Act (33 USC 1317(a)).

TREATMENT WORKS. See Publicly Owned Wastewater Treatment Works.

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

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

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

WPCF. The Water Pollution Control Federation.

§ 51.05 SUPERVISION BY PUBLIC WORKS SUPERINTENDENT

The Public Works Superintendent, or other official designated by the City Council, shall have control and general supervision of the Sanitary Sewer System including service connections in the City. The Public Works Superintendent shall be responsible for administering the provisions of this chapter to the end such that a proper and efficient Sanitary Sewer System is maintained.

§ 51.06 AUTHORITY

(A) Access. The Public Works Superintendent, or other duly authorized employees of the City bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of, but not limited to, inspection, observations, measurement, sampling, repair and maintenance of any portion of the City's sewer system in accordance with the provisions of this chapter.

(B) Tampering. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the Sanitary Sewer System.

(C) Industrial Use. The Public Works Superintendent, or other duly authorized employees of the City bearing proper credentials and identification, shall be authorized to obtain information concerning industrial processes which have a direct bearing on the type and source of discharge to the wastewater collection system. An industry may withhold information considered confidential; however, the industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

(D) Safety. While performing necessary work on the Sanitary Sewer System the Public Works Superintendent, or duly authorized employees of the City, shall observe all safety rules applicable to the premises. While performing necessary work on private properties, the property owner shall be held harmless for injury or death to City employees and the City shall indemnify the property owner against loss or damage to their property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the property owner to maintain safe conditions as required in § 51.18.

§ 51.07 PENALTY

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss or damage occasioned by the City by reason of that violation. In addition, any person found to be violating any provisions of this chapter shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations. Any person who shall continue any violation beyond the specified time limit shall be punished as provided in §10.99. Each day in which any violation occurs shall be deemed as a separate offense.

USE OF SANITARY SEWER SYSTEM

§ 51.08 PERMITTING SUBSTANCE OR MATTER TO FLOW OR PASS INTO PUBLIC SEWERS

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

§ 51.09 PROTECTION FROM ACCIDENTAL DISCHARGE OF PROHIBITED MATERIALS

Where required by the City, the owner of any property serviced by the Sanitary Sewer System shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this chapter. The protection facilities shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Public Works Superintendent for review and approval prior to construction of the facility. Review and approval of the plans and operating procedures shall not relieve any user from the responsibility to modify the facilities as necessary to meet the requirements of this chapter. Users shall notify the Public Works Superintendent immediately upon having a slug or accidental discharge of substances of wastewater in violation of this chapter to enable countermeasures to be taken by the Public Works Superintendent to minimize damage to the Sanitary Sewer System. The notification will not relieve any user of any liability for any expense, loss or damage to the Sanitary Sewer System, or for any fines imposed on the City on account thereof under any state and federal law. Employers shall insure that all employees who may cause or discover a discharge are advised of the emergency notification procedure.

§ 51.10 MEASUREMENTS, TESTS AND ANALYSES OF WATERS AND WASTES

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

DISCHARGES

§ 51.11 DEPOSITS OF WASTE IN AN UNSANITARY MANNER

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

§ 51.12 DISCHARGE OF WASTEWATER OR OTHER POLLUTED WATERS

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

§ 51.13 DISCHARGE OF WATERS OR WASTES

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

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

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

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

(D) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater disposal system. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act (33 USC 1317(a)).

§ 51.14 LIMITED DISCHARGES

The following described substances, materials, water or wastes shall be limited in discharges to concentrations or quantities which will not harm either sewers, the wastewater treatment works, treatment process or equipment, will not have an adverse effect on the receiving stream and soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Public Works Superintendent may set limitations lower than limitations established in the regulations below if, in his or her opinion, the more severe limitations are necessary to meet the above objectives. In forming his or her opinion as to the acceptability of wastes, the Public Works Superintendent will give consideration to factors as the quantity of subject waste in reaction to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, the City's NPDES/SDS permit, capacity of the wastewater treatment facility, degree of treatability of wastes in the wastewater treatment facility, and other pertinent factors.

The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the Sanitary Sewer System which shall not be violated without approval of the Public Works Superintendent are as follows:

(A) Any wastewater having a temperature greater than 150° F (65.6° C), or causing, individually or in combination with other wastewater, the influent at the wastewater treatment plant to have a temperature exceeding 104° F (40° C), or having heat in amounts which will inhibit biological activity in the wastewater treatment works resulting in interference therein.

(B) Any wastewater containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32° F and 150° F (0° C and 65.6° C); and any wastewater containing oil and grease concentrations of mineral origin of greater than 100 mg/l, whether emulsified or not.

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

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

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

(F) Non-contact cooling water or unpolluted storm, drainage or ground water.

(G) Wastewater containing inert suspended-solids such as, but not limited to, fullers earth, lime slurries, and lime residues, or of dissolved solids such as but not limited to sodium chloride and sodium sulfate, in quantities that would cause disruption with the Sanitary Sewer System.

(H) Any radioactive wastes or isotopes of half-life or concentration as may exceed limits established by the Public Works Superintendent in compliance with applicable state or federal regulations.

(I) Any waters or wastes containing the following substances to the degree that any material received in the composite wastewater at the wastewater treatment works is detrimental to treatment process, adversely impacts land application, adversely effects receiving waters, or is in violation of standards pursuant to Section 307(b) of the Act (33 USC 1317(b)): Arsenic, Cadmium, Copper, Cyanide, Lead, Mercury, Nickel, Silver, total Chromium, Zinc and Phenolic compounds which cannot be removed by the City's wastewater treatment system.

(J) Any wastewater which creates conditions at or near the wastewater disposal system which violates any statute, rule, regulation or ordinance of any regulatory agency, or state or federal regulatory body.

(K) Any waters or wastes containing BOD_5 or suspended solids of character and quantity that unusual attention or expense is required to handle the materials at the wastewater treatment works, except as may be permitted by specific written agreement.

§ 51.15 UNPOLLUTED WATER

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

§ 51.16 MOTOR VEHICLE WASHING OR SERVICING FACILITIES

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

§ 51.17 DISCHARGES HAZARDOUS TO LIFE

If any waters or wastes are discharged or are proposed to be discharged to the Sanitary Sewer System which contain substances or possess the characteristics enumerated in § 51.14, or which in the judgment of the Public Works Superintendent may have a deleterious effect upon the wastewater treatment facilities, processes, or equipment, receiving waters or soil, vegetation, and ground water, or which otherwise create a hazard to life or constitute a public nuisance, the City may:

(A) Reject the wastes.

(B) Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307(b) of the Act (33 USC 1317(b)) and all amendments thereof.

(C) Require control over the quantities and rates of discharge.

(D) Require payment to cover the added costs of handling, treating and disposing of wastes not covered by existing taxes or sewer service charges.

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

INDUSTRIAL USE

§ 51.18 INSTALLATION OF SAMPLING FACILITIES

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

§ 51.19 ADDITIONAL MONITORING REQUIREMENTS

The owner of any property serviced by a building sewer carrying industrial wastes may, at the discretion of the City, be required to provide laboratory measurements, tests or analyses of waters or wastes to illustrate compliance with this chapter and any special condition for discharge established by the City or regulatory agencies having jurisdiction over the discharge. The number, type and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the City. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with federal, state and local standards are being

met. The owner shall report the results of measurements and laboratory analyses to the City at times and in the manner as prescribed by the City. The owner shall bear the expense of all measurements, analyses and reporting required by the City. At those times as deemed necessary, the City reserves the right to take measurements and supplies for analysis by an independent laboratory.

§ 51.20 INCREASING USE OF PROCESS WATER

No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in § 51.13 and § 51.14 or contained in the National Categorical Pretreatment Standards or any state requirements.

§ 51.21 PRETREATMENT OR FLOW-EQUALIZING FACILITIES

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

§ 51.22 GREASE, OIL AND SAND INTERCEPTORS

Grease, oil, and sand interceptors shall be provided when, in the opinion of the Public Works Superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in § 51.14(B) any flammable wastes as specified in § 51.13(A), sand or other harmful ingredients; except that interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured materials by appropriate means, and shall maintain a record of dates and means of disposal which are subject to review by the Public Works Superintendent. Any removal and hauling of the collecting materials not performed by the owner's personnel must be performed by a currently licensed waste disposal firm.

CONNECTIONS

§ 51.23 REQUIRED CONNECTION

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes from which wastewater is discharged, and which is situated within the City and within 300 feet of any street, alley or right-of-way in which there is located City sanitary sewer shall be required at the owner's expense to install a suitable service connection to the Sanitary Sewer System in accordance with provisions of this code within 365 days. All future buildings constructed on property adjacent to the public sewer shall be required to immediately connect to the Sanitary Sewer System. A connection fee for sanitary sewer

connections pursuant to this section shall established by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

At the time as the Sanitary Sewer System becomes available, as described by above, to a property serviced by a private wastewater disposal system, a direct connection shall be made to the public sewer within 365 days in compliance with this chapter, and within 180 days of the connection to public sewer, any septic tanks, cesspools and similar private wastewater disposal systems shall be cleaned of sludge, the bottom shall be broken to permit drainage, the tank or pit filled with suitable material, and properly abandoned.

§ 51.24 BEYOND CITY BOUNDARIES

Connections to the municipal sewer system by properties located outside the corporate limits of the City will not be allowed. Any property not located within the corporate limits of the City will be required to annex into the City before connection to the sewer system will be allowed.

§ 51.25 FAILURE TO CONNECT

In the event an owner fails to connect to the Sanitary Sewer System in compliance with a notice given under § 51.23, the City shall undertake to have the connection made and shall assess the cost thereof against the benefited property. The assessment, when levied, shall bear interest at the rate determined by the City Council and shall be certified to the County Auditor and shall be collected and remitted to the City in the same manner as assessments for local improvements. The rights of the City shall be in addition to any remedial or enforcement provisions of this chapter.

§ 51.26 CAPACITY RESTRICTIONS

New connections to the Sanitary Sewer System shall be prohibited unless sufficient capacity is available in all downstream facilities, including but not limited to capacity for flow, BOD_5 and suspended solids, as determined by the Public Works Superintendent.

§ 51.27 SEPARATE BUILDING SEWERS REQUIRED

A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no separate sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway. The building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The City does not and will not assume any obligation or responsibility for damage caused by or resulting from any connection. Any costs associated with damage or repair to either building will be the responsibility of the users. A written agreement will be required between each of the users and the City stating the responsibilities and liabilities of each.

§ 51.28 COSTS AND EXPENSES

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

§ 51.29 OLD BUILDING SEWERS

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

§ 51.30 SHARED SEWERS

Where there exists more than one building on a service connection without a written agreement between the users and the City, the City shall arrange for the replacement of the shared service connection with separate service connections to each building at the time as the budget allows.

§ 51.31 SURFACE RUNOFF OR GROUNDWATER CONNECTIONS

No person shall make connection of roof downspouts, sump pumps, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or indirectly to the wastewater disposal system. Every person owning improved real estate that discharges into the Sanitary Sewer System shall allow an employee of the City, or their designated representative, to enter the building to confirm that there is no sump pump or other prohibited discharging into the Sanitary Sewer System.

REPAIRS

§ 51.32 RESPONSIBILITY

The City shall maintain ownership of the sanitary sewer main and any structures on the main. The property owner is responsible for the building sewer. As defined in § 51.04, the building sewer, or service connection, includes all sewer and appurtenances between the sanitary sewer main and the building drain.

§ 51.33 DETERMINATION OF NEED FOR REPAIR

Upon notification or discovery that a problem exists, the City will arrange for the investigation to determine the location of the problem. Based on the information supplied by the property owner and the results of any investigation, the City will make a determination of the cause and location of the problem. If the City determines the problem is the responsibility of the property owner, any costs incurred during the determination shall be the responsibility of the property owner.

§ 51.34 REPAIR OF SERVICE

(A) City Responsibility. If the City determines that the problem exists within its area of responsibility, the City shall make the repair.

(B) User Responsibility. If the City determines that the problem is not the responsibility of the City, the property owner or user shall obtain a permit from the City to repair or replace the service. It is not necessary to use a licensed person for completion of the repair or replacement; however the permit must be approved and the work inspected by the City. The property owner shall notify the City when the repair or replacement is ready for inspection. The inspection shall be made under the supervision of the Public Works superintendent or authorized representative thereof. No part of the service shall be backfilled until the inspection has been completed.

§ 51.35 FAILURE TO REPAIR

If a user neglects to repair a service that has been determined to be needed by the City, each day after 30 days that a person neglects or fails to so act shall constitute a separate violation of this chapter. Based on the urgency of the needed repair, the Public Works Superintendent may then cause the work to be done, and recover from the owner or agent the expense thereof by an action in the name of the City.

§ 51.36 COST OF REPAIRING OR RESTORING SANITARY SEWER SYSTEM

In addition to any penalties that may be imposed for violation of any provision of this chapter, the City may assess against any person the cost of repairing or restoring the Sanitary Sewer System if it has been damaged as a result of the discharge of prohibited wastes by that person, and may collect the assessment as an additional charge for the use of the Sanitary Sewer System in accordance with § 51.47(D).

SERVICE PIPE AND CONSTRUCTION REQUIREMENTS

§ 51.37 CONFORMANCE TO STATE BUILDING AND PLUMBING CODES

Building sewer construction shall meet the pertinent requirements of the Minnesota State Building Code, which is those chapters of Minnesota Rules referenced in Minnesota Rules part 1300.2400, subpart 6, as they may be amended from time to time, and the Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time.

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

The connection of the building sewer into the public sewer shall conform to the requirements of the State Building and Plumbing Code or other applicable rules and regulations of the City. All connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of infiltration/inflow. Any deviation from the prescribed procedures and materials must be approved by the City prior to installation.

§ 51.38 EXCAVATIONS

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City. No backfill shall be placed until the work has been inspected and approved, or until the certification has been received.

§ 51.39 BUILDING SEWER ELEVATION

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

PRIVATE WASTEWATER DISPOSAL

§ 51.40 AREAS WHERE SANITARY SEWER SYSTEM IS AVAILABLE

Where the Sanitary Sewer System is available under the provisions of § 51.23, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater, except as otherwise provided in this chapter.

§ 51.41 SANITARY SEWER SYSTEM CONNECTION REQUIRED

At the time as the Sanitary Sewer System becomes available, as described in § 51.23, to a property serviced by a private wastewater disposal system, a direct connection shall be made to the public sewer in accordance with § 51.23.

§ 51.42 AREAS WHERE SANITARY SEWER SYSTEM IS NOT AVAILABLE

Where the Sanitary Sewer System is not available under the provisions of § 51.23, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this subchapter and Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time.

(A) Type, Capacities, Location And Layout. The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of Minn. Rules Ch. 7080, Individual Sewage Treatment

Systems Program, as they may be amended from time to time. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(B) Operation And Maintenance. The owner shall operate and maintain the private wastewater disposal facilities in accordance with the requirements of Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, at no expense to the City.

(C) Permit. Prior to commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the City. The application for the permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary to the City. The fee for this permit shall be as established in the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time. The permit shall not become effective until the installation is completed to the satisfaction of the City or its authorized representative. The owner shall be responsible to arrange for the inspection of the system by a licensed inspector and will bear the cost of such inspection. A copy of the inspection report must be submitted to the City as soon as possible after completion of the inspection.

PERMITS AND LICENSES

§ 51.43 BUILDING SEWER PERMITS

(A) Requirement. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.

(B) Application. Applications for permits shall be made by the owner or authorized agent and the party employed to do the work on a form provided by the City. No person shall extend any private building drain beyond the limits of the building for which the service connection permit has not been given.

(C) Public Buildings. Additions or extensions, or alterations to existing buildings, that serve the public, including all commercial or industrial facilities or residential buildings having five or more units, the applicant must have the project plans reviewed and approved by the Minnesota Department of Labor and Industry (DLI) Plumbing and Engineering Program. The DLI Standards Representative in the Duluth District Office can be contacted at 218-733-7839. Additional information on the DLI Plumbing and Engineering Program can be found at www.doli.state.mn.us.

(D) Inspection and connection. The applicant for the building sewer permit shall notify the City when the building sewer is ready for inspection and connection to the public sewer. For projects serving the public, a copy of the DLI approved plan review must be submitted to the City at the time of inspection. The connection and inspection shall be made under the supervision of the Public Works Superintendent or authorized representative thereof. A permit for a connection shall not become fully effective until the installation is completed to the satisfaction of the City or its authorized representative. No backfill shall be placed until the work has been inspected and approved, or until certification has been received.

(E) Fee. The fee for this permit shall be as established in the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time. The fee will be due at the time of the application submittal to the City.

§ 51.44 PRIVATE WASTEWATER DISPOSAL SYSTEM PERMITS

No unauthorized person shall install a private wastewater disposal system without first obtaining a written permit from the City.

§ 51.45 LICENSES

(A) Requirement. No person shall make a service connection to the Sanitary Sewer System unless regularly licensed under this chapter to perform the work.

(B) Application. Any person desiring a license to perform work on public sewers, or perform connections of private sewers to the public system, shall apply in writing to the City with satisfactory evidence that the applicant or employer is trained or skilled in the business and qualified to receive a license. All applications shall be reviewed by the Public Works Superintendent, and if approved by the Council, the license shall be issued by the City Clerk.

(C) Issuance. No license shall be issued to any person until a policy of insurance to the City, approved by the Public Works Superintendent, is filed with the City Clerk conditioned that the licensee will indemnify and hold harmless the City from all suits, accidents and damage that may arise by reason of any opening in any street, alley or public ground made by the licensee or by those in the licensees employment for any purpose whatever, and that the licensee will replace and restore the street and alley over that opening to the condition existing prior to installation, adequately guard with barricades and lights, and will keep and maintain the same to the satisfaction of the Public Works Superintendent, and shall conform in all respects to any rules and regulations of the Council relative thereto, and pay all fines that may be imposed on the licensee by law.

(D) Validity. Continued validity of licenses issued under this section will be contingent upon submittal of updated documentation for each project.

(E) Fee. The license fee for making service connections shall be as established by the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time. All licenses are valid unless the license is suspended or revoked by the Council for cause or the license holder neglects to provide updated information as required in (D) above.

(F) Suspension or revocation. The Council may suspend or revoke any license issued under this subchapter for any of the following causes:

(1) Giving false information in connection with the application for a license.

(2) Incompetence of the licensee.

(3) Willful violation of any provisions of this chapter or any rule or regulation pertaining to the making of service connections.

SEWER SERVICE CHARGE SYSTEM AND SEWER FUND

§ 51.46 ESTABLISHMENT

(A) The City hereby establishes a Sewer Service Charge System to recover costs associated with operation, maintenance and replacement to ensure effective functioning of the City's Sanitary Sewer System, and local capital costs incurred in the construction of the City's Sanitary Sewer System. The Sewer Service Charge System will be administered in accordance with the provisions of § 51.47.

(B) The City hereby establishes a Sewer Fund as an income fund to receive all revenues generated by the Sewer Service Charge System, and all other income dedicated to the operation, maintenance, replacement and construction of the Sanitary Sewer System, including taxes, special charges, fees and assessments intended to retire construction debt. The Sewer Fund will be administered in accordance with the provisions of § 51.47.

§ 51.47 ADMINISTRATION

(A) In accordance with federal and state requirements, the City Clerk shall maintain records necessary to document compliance with the Sewer Service Charge System. The Sewer Service Charge System shall be the system enacted prior to the adoption of this code. The City Clerk shall be responsible for maintaining a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the Sanitary Sewer System.

(B) All revenue collected from users of the Sanitary Sewer System will be used to off-set all expenditures incurred for annual operation, maintenance and replacement, and for debt service on capital expenditures incurred in constructing improvements or repairs to the Sanitary Sewer System.

(C) All revenue generated by the Sewer Service Charge System, and all other income pertinent to the Sanitary Sewer System, including taxes and special assessments dedicated to retire construction debt, shall be deposited in a separate fund known as the Sewer Fund.

(D) The City Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the Sanitary Sewer System, and whether sufficient revenue is being generated for debt retirement. The Council shall also determine whether the user charges are distributed proportionately to each user in accordance with § 51.48. The City shall thereafter, but not later than the end of the year, reassess and as necessary revise the Sewer Service Charge System then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the City and performance to which the facilities were constructed, and to retire the construction debt.

§ 51.48 RATES AND CHARGES

(A) Sewer service rates and charges to users of the Sanitary Sewer System shall be determined and fixed according to the provisions of this chapter and established in the Ordinance Establishing Fees and Charges. The Ordinance Establishing Fees and Charges may be amended from time to time to include subsequent changes in sewer service rates and charges.

(B) Connection fees as set forth in the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time, shall be charged to each user connecting a new service to the Sanitary Sewer System. The connection fee shall be due and payable at the time of the application. Fees collected according to this section will be deposited into the Sewer Fund.

(C) Permit fees for repairs as set forth in the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time, shall be charged to each user or refurbishing, repairing or replacing an existing service.

(D) The owner of the premises shall be liable to pay for the service connection to their premises, and the service connection is furnished to the premises by the City only upon the condition that the owner of the premises is liable therefore to the City.

(E) Each user shall pay debt service charges to retire local capital costs as determined and fixed in the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(F) Any additional costs caused by discharges to the Sanitary Sewer System of toxic pollutants or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger of the wastes, at no expense to the City.

(G) Each user shall pay its proportionate share of operation, maintenance, and replacement costs of the Sanitary Sewer System, based on the user's proportionate contribution to the total wastewater loading from all users.

(H) Unless deemed an emergency, a service charge, as established in the Ordinance Establishing Fees and Charges, as it may be amended from time to time, shall apply to requests for City Public Works services after the hours of normal City operation, as posted at City Hall.

§ 51.49 BILLING

(A) Bills for sewer service charges shall be rendered on a monthly basis. Sewer service charges will be based on metered water usage. Water meters will be read at least four times per year (January, April, July, and October). Bills will be due by approximately the 24th day of the month following the billing.

(B) A late payment penalty of ten percent (10%) of the current month's charges for water and sewer services will be applied to any account for which the payment is received after the due date. Any prepayment or overpayment of charges may be retained by the City and applied on subsequent monthly charges.

(C) In accordance with federal and state requirements, each user will be notified annually in conjunction with a regular billing of that portion of the sewer service charge attributable to operation, maintenance and replacement.

(D) The City's form for application for sanitary sewer service shall contain, in addition to the title, address, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

(1) That all bills are due and payable on or before the date set forth on the bill;

(2) That if any bill is not paid by or before that date, a second bill will be mailed containing the amount of the late fee and notice that any charges left unpaid by November 30 of each year shall be certified to the Itasca County Auditor as taxes or assessments on the real estate; and

(3) That any user disputing the correctness of his or her bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his or her choosing and may present orally or in writing his or her complaint and contentions to the City Council. The City Council shall be authorized to order that the user's service not be discontinued and shall have the authority to make a final determination of the user's complaint.

§ 51.50 CREDIT FOR WATER LEAKS

The City may choose to credit an account for all or a portion of the sewer charges incurred due to a water leak at the premises. Any user seeking such a credit must notify the City immediately upon discovery of the leak. The Public Works Superintendent will investigate the leak and determine the amount of a credit, if any.

§ 51.51 NON PAYMENT

(A) Collection of Unpaid Charges

(1) All sewer utility charges which have not been paid by the due date indicated on the billing statement are considered past due and delinquent.

(2) City staff may utilize traditional methods of collection to secure payment of unpaid charges on past due and delinquent accounts, including utilizing the services of a collection agency.

(B) Certification of Unpaid Charges

(1) All sewer utility charges which are on November 30 of each year at least 60 days past due and delinquent may be added to a preliminary roll by the City Clerk for assessment against the property on which the charges have incurred.

(2) Those sewer utility charges shall not be certified to the Itasca County Auditor until notice and an opportunity for a hearing have been provided to the owner of the property in question. The notice shall state that if payment is not made before the date of certification, the entire unpaid amount will be certified to the Itasca County Auditor for assessment against the property on which the charges have incurred**.** The notice shall also state that the occupant may, before such certification date, attend a hearing on the matter to object to certification of unpaid sewer utility charges.

(3) A hearing shall be held on the matter by the City Council at their regular session in December or as soon as feasible. Property owners with unpaid sewer utility charges shall have the opportunity to object to their certification against the property on which the charges have incurred. If,

after the hearing, the City Council finds the that the amounts claimed as delinquent are actually due and unpaid and that there is no legal reason why the unpaid charges should not be certified for collection in accordance with this ordinance, the City may certify the unpaid sewer utility charges to the Itasca County Auditor by December 31 for assessment to the property in question and collection.

(4) The owner of the property shall have the option of paying the balance due on the account for up to 10 days following the certification of unpaid sewer utility charges to the Itasca County Auditor. Once that period has expired, the owner of the property must forward payment to the Itasca County Auditor for application to the certified property assessment.

(C) Disconnection of Water Services for Unpaid Sewer Charges

(1) Any customer whose account is at least sixty (60) days past due shall have their water utility services disconnected thirty (30) days or later after that date.

(2) Water utility service shall not be disconnected until notice and an opportunity for a hearing before the City Council has been provided to the occupant and owner of the property in question.

(3) The notice shall state that the occupant or owner is subject to disconnection of his or her water utility service and has the right to a hearing at the next regular monthly City Council meeting before the water utility service is disconnected. The owner or occupant may be represented in person and by counsel or any other person of his or her choosing. The owner or occupant may present orally or in writing his or her complaint to the City Council. The Council shall be authorized to order continuation of the customer's water utility service.

(4) Water utility service shall not be disconnected until the hearing process is complete.

(5) If the customer fails to pay and/or is denied his or her request for continuation of water utility service at the next regular City Council meeting, then their water utility service shall be disconnected. Disconnections shall occur Monday through Thursday from 8:00 a.m. until 2:00 p.m.

TITLE V: PUBLIC WORKS
CHAPTER 52: WATER REGULATIONS

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ADMINISTRATION AND ENFORCEMENT

§ 52.01 ESTABLISHMENT

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

§ 52.02 LIABILITY

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

§ 52.03 APPLICATION

No statement contained in this Chapter shall be construed to interfere with any additional requirements that may be imposed by the Minnesota Department of Health. In addition, no statement in this chapter shall be construed as preventing any special agreement or arrangement between the City and an individual user.

§ 52.04 DEFINITIONS

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

BACK FLOW DEVICE. A device designated to restrict water flow into the water system.

CURB STOP. A device designed to control the flow of water within a service line from a water main.

CURB STOP BOX. A device designed to provide access to a curb stop.

METER. A device that records gallons of water used.

USER. Any person who receives water through a connection to the Water System.

WATER MAIN. A pipe, or a system of pipes and fittings, designed and used to distribute water to the service of any user.

§ 52.05 SUPERVISION BY PUBLIC WORKS SUPERINTENDENT

The Public Works Superintendent, or other official designated by the City Council, shall have control and general supervision of the Water System including service connections in the City. The Public Works Superintendent shall be responsible for administering the provisions of this chapter to the end such that a proper and efficient Water System is maintained.

§ 52.06 AUTHORITY

(A) Access. The Public Works Superintendent, or other duly authorized employees of the City bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of, but not limited to, inspection, observations, measurement, sampling, repair and maintenance of any portion of the City's Water System in accordance with the provisions of this chapter.

(B) Tampering. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the Water System. In addition, no person, unless authorized by the City, shall perform any of the following:

(1) Tapping any distributing main or pipe of the water system, or inserting corporation stops or similar connections therein.

(2) Turning on or off any water supply at the curb stop box.

(3) Moving, removing or damaging any structure, appurtenance, or part of the water system.

(4) Filling, or partially filling, any excavation used in the water system.

(C) Safety. While performing necessary work on the Water System the Public Works Superintendent, or duly authorized employees of the City, shall observe all safety rules applicable to the premises. While performing necessary work on private properties, the property owner shall be held harmless for injury or death to City employees and the City shall indemnify the property owner against loss or damage to their property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the property owner to maintain safe conditions.

§ 52.07 PENALTY

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss or damage occasioned by the City by reason of that violation. In addition, any person found to be violating any provisions of this chapter

shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations. Any person who shall continue any violation beyond the specified time limit shall be punished as provided in §10.99. Each day in which any violation occurs shall be deemed as a separate offense.

USE OF WATER SYSTEM

§ 52.08 ABILITY TO USE WATER SYSTEM

Except for extinguishment of fires, or with authorization from the Public Works Superintendent, no person shall use water from the Water System or permit water to be drawn there from unless it is metered by passing through a meter supplied or approved by the City. In addition, no person shall make a new connection to the Water System in a manner contrary to the regulatory provisions in this chapter or permit water from the Water System to be used for any purpose to circumvent this chapter.

§ 52.09 CONNECTION TO OTHER WATER SUPPLIES

No water pipe of the Water System shall be connected with any pump, well, tank, or piping that is connected with any other source of water supply except to service municipal systems.

§ 52.10 FIRE HYDRANTS

Except for extinguishment of fires, no person, unless authorized by the Public Works Superintendent shall operate fire hydrants or interfere in any way with the Water System without first obtaining a permit.

§ 52.11 AIR CONDITIONERS

Notification to the City shall be required for the installation of all air conditioning systems to the Water System. All air conditioning systems which are connected directly or indirectly with the Water System must be equipped with water conserving and water regulating devices as approved by the City Engineer or City Public Works Superintendent.

CONNECTIONS AND DISCONNECTIONS

§ 52.12 REQUIRED CONNECTION

All residences and businesses located within 300 feet of any street, alley or right-of-way in which there is located a public water main of the City shall be required at the owner's expense to install a suitable service connection to the water system in accordance with provisions of this chapter within 365 days. All future buildings constructed on property adjacent to the Water System shall be required to immediately connect to the Water System. A connection fee for water service connections pursuant to this section shall established by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

§ 52.13 BEYOND CITY BOUNDARIES

Connections to the municipal water system by properties located outside the corporate limits of the City will not be allowed. Any property not located within the corporate limits of the City will be required to annex into the City before connection to the water system will be allowed.

§ 52.14 FAILURE TO CONNECT

In the event an owner fails to connect to the Water System in compliance with a notice given under § 52.12, the City shall undertake to have the connection made and shall assess the cost thereof against the benefited property. The assessment, when levied, shall bear interest at the rate determined by the City Council and shall be certified to the County Auditor and shall be collected and remitted to the City in the same manner as assessments for local improvements. The rights of the City shall be in addition to any remedial or enforcement provisions of this chapter.

§ 52.15 LOCATION OF CURB STOP AND BOX

Curb stops and boxes shall be installed on the right-of-way line or easement limits at a location as determined by the City Engineer to be best suitable to the property and shall be left in a vertical position when backfilling is completed. Curb stops will be installed at an approximate depth of eight feet below the finished ground elevation and the top of the curb stop box shall be adjusted to be flush with the finished ground elevation. Curb stop boxes must be firmly supported by a masonry block. No person shall erect any fence or plant any tree or other landscaping that would obstruct the use of the curb stop box, or cause damage to the same. If an existing curb stop is not located at the right-of-way line, the City shall either relocate it or add an additional curb stop in the proper location at the time of any repair to the water service line.

§ 52.16 MULTIPLE SERVICE CONNECTION

No more than one residence or business shall be supplied from one service connection, except by permission of City Council. If permitted by Council, a written agreement shall be established between the users and the City and each building served shall have a separate water meter. Where there exists more than one building on a service connection without a written agreement between the users and the City,

the City shall arrange for the replacement of the multiple service connection with separate service connections to each building at the time a repair to either service is performed.

§ 52.17 REPLACEMENT OF EXISTING SERVICE

When new buildings are erected on the site of an old building and it is desired to increase or change the old water service, no connections with the mains shall be made until all the old service has been removed and the main taps plugged. Disconnection of the old service must be in accordance with § 52.38. New connections are subject to the provisions of § 52.32.

§ 52.18 WATER METERS

(A) No person not authorized by the Public Works Superintendent shall connect, disconnect, take apart, or in any manner change or cause to be changed or interfere with any meter or the action thereof, or break any meter or valve seal.

(B) The City shall provide a five-eighths (5/8) inch meter as part of the connection fee. If a larger meter is required, the user shall pay the cost of the meter in addition to the connection fee. The user shall be responsible for installation of the meter.

(C) When replacement, repair, or adjustment of any meter is needed as a result of user negligence, any expense incurred by the City for the replacement, repair, or adjustment, shall be charged against and collected from the user, as established in the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(D) At any time that the City feels the meter is not functioning properly, the City may repair or replace the meter at no cost to the user. If it is determined that the repair or replacement was due to user negligence, the City may choose to collect a fee for the meter replacement.

(E) Where a user has need for a larger service in addition to the regular service, as in the case of a commercial user who needs a one-inch line for normal use and a six-inch or larger line for a fire sprinkler system, they will be permitted to run one line into the premises and split it into two lines at the building. When this is done, the meter will be attached to the small line and a check valve, as well as one-inch detection meter, shall be put on the large line.

(F) At the time that the water service line is connected to the Water System, a meter shall be installed on the water valve in the house and a remote reader outside regardless of whether inside piping is connected.

(G) A user may, by written request, have his or her meter tested by paying a fee as established pursuant to the Ordinance Establishing Fees and Charges, as it

may be amended from time to time. In case a test should show an error of over 5% of the water consumed, a correctly registering meter shall be installed in accordance with (D) above, and the bill will be adjusted accordingly. This adjustment shall not extend back more than one billing period from the date of the written request.

(H) Authorized City employees shall have free access at reasonable hours of the day to all parts of every home and building connected to the water system for reading of meters and inspections.

(I) All water meters hereafter installed shall be in accordance with the Minnesota Plumbing Code and any standards established in this chapter.

(J) One meter shall be allowed per user. Additional meters for the purpose of obtaining a credit on sewer charges for watering lawns and gardens shall not be allowed.

§ 52.19 DISCONNECTIONS

No user shall be allowed to permanently disconnect from the Water System.

§ 52.20 TEMPORARY DISCONTINUANCE

(A) By User. A user may make a request to the City to temporarily discontinue use of an existing water service. The base rate for water service shall continue to be charged during the shut-off period. For repair or replacement of a water service connection, a permit shall be required.

(B) By City. The City may temporarily discontinue water service for any connection. The base rate for water service shall continue to be charged during the shut-off period. A reconnection fee, as established pursuant to the Ordinance Establishing Fees and Charges, as it may be amended from time to time, shall be required to turn on the water service. The City may temporarily discontinue water service if:

(1) The user, or any person hired by the user, has violated, or threatens to violate, any of the provisions of this chapter.

(2) Any charge for water, service, meter, or any other financial obligation imposed on the present or former user served is unpaid.

(3) Fraud or misrepresentation by the user in connection with an application for service.

(4) The residence or business being served by water has been abandoned.

(5) The water service at the residence or business has not been used for one year.

REPAIRS

§ 52.21 RESPONSIBILITY

The City shall be responsible for the water main, the hydrants and valves, the corporations, the curb stops and curb boxes. The user or property owner shall be responsible for service connection beginning at, but not including, the curb stop and ending with their home water pipes.

§ 52.22 DETERMINATION OF NEED FOR REPAIRS

Upon notification or discovery that a problem exists, the City will arrange for the investigation to determine the location of the problem. Based on the information supplied by the property owner and the results of any investigation, the City will make a determination of the cause and location of the problem. If the City determines the problem is the responsibility of the property owner, any costs incurred during the determination shall be the responsibility of the property owner.

§ 52.23 REPAIR OF SERVICE

(A) City Responsibility. If the City determines the problem exists within its area of responsibility, the City will make the repair.

(B) User Responsibility. If the City determines that the problem is not the responsibility of the City, the property owner or user shall obtain a permit from the City to repair or replace the service. It is not necessary to use a licensed person for completion of the repair or replacement; however the permit must be approved and the work inspected by the City. The property owner shall notify the City when the repair or replacement is ready for inspection. The inspection shall be made under the supervision of the Public Works superintendent or authorized representative thereof. No part of the service shall be backfilled until the inspection has been completed.

§ 52.24 FAILURE TO REPAIR

In case of failure upon the part of any user or owner to repair any leak occurring in his or her service pipe within 24 hours after verbal or written notice thereof, the water may be turned off by the City and shall not be turned on until the leak has been repaired and a reconnection fee pursuant to the Ordinance Establishing Fees and Charges has been paid to the City. If turning off the water poses a health risk to the City's public water system, the City reserves the right to arrange for immediate repair of the problem at the property owner's expense. The matter of whether the repair is done by City forces or contracted would depend on the urgency of need of repair and the availability of City forces to do the work. The property owner shall reimburse the City for expenses of the repair. If payment is not made within 30 days, the cost of the repair will be specially assessed to the property.

§ 52.25 THAWING FROZEN PIPES

No person shall make any connection of an electrical welder to the Water System or use an electric welder for the purpose of thawing frozen water mains, appurtenances or services without prior notification to the City.

SERVICE PIPE AND CONSTRUCTION REQUIREMENTS

§ 52.26 INSTALLATION REQUIREMENTS

All piping connections from the Water System to the house supply piping shall be made under the supervision of a licensed plumber and are subject to inspection by the Public Works Superintendent. The piping connection made to the curb stop box on the house side shall be inspected by the Public Works Superintendent. The water meter installation shall be inspected by the Public Works Superintendent.

§ 52.27 SERVICE PIPE REQUIREMENTS

Every service pipe shall be laid so as to allow at least one foot of extra length in order to prevent rupture by settlement. The service pipe must be placed no less than eight feet below the ground and in a manner as to prevent rupture by freezing. Service pipes must extend from the curb stop box to the inside of the building, or if not taken into the building, then to the hydrant or fixtures which it is intended to supply. All joints and connections shall be left uncovered until inspected by the Public Works Superintendent and tested at normal water line pressure. All services over two inches shall be ductile iron. Connections with the mains for domestic supply shall be at least one inch in diameter between the main and the curb stop.

§ 52.28 EXCAVATION AND CONSTRUCTION REQUIREMENTS

(A) No excavation for a new or repaired water service shall be made until a permit for the connection has been issued by the City pursuant to § 52.32.

(B) No water service pipe or water connection shall be installed in the same trench or closer than ten feet horizontally to a sanitary sewer trench or drain laid, or to be laid, either in the street or in private property, except that the water pipe on private property may be in a common trench with a sewer drain which is of a material that is in conformance with the current Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time.

(C) On private property, if it is desired to lay the water service line and the building sewer pipe in the same trench, or in separate trenches less than ten feet apart, the water service line shall be above the sewer pipe unless approved by the City Engineer. It shall be placed at least one foot above the sewer and on a solid shelf excavated at one side of the trench. The sewer pipe shall be of a material that is in conformance with the Minnesota

Plumbing Code with tested watertight joints. The water service pipe shall be watertight and corrosion resistant. In all cases, precautions shall be taken to assure a firm foundation for the pipes. The intervening space between the pipes shall be backfilled with compacted earth.

(D) In case the installation is on a bituminous surfaced street, the following shall apply

(1) All backfill materials and compacting operations shall be approved by the City Engineer.

(2) Complete street surface and right-of-way restoration shall be made.

PRIVATE WATER USE

§ 52.29 AREAS WHERE THE WATER SYSTEM IS AVAILABLE

Except where the Water System is not available, as described in § 52.12, it shall be unlawful to construct, reconstruct, or repair any private water system which is designed or intended to provide water for human consumption. Private wells, to provide water for other than human consumption, may be constructed, maintained and continued in use after connection is made to the water system; provided, there is no means of cross-connection between the private well and the water system supply at any time. Hose 41ibs that will enable the cross-connection of the two systems are prohibited on internal piping of the well system supply. Where both private and City systems are in use, outside hose 41ibs shall not be installed on both systems.

§ 52.30 AREAS WHERE THE WATER SYSTEM IS NOT AVAILABLE

Where residences and businesses do not have water available to the property, as described in § 52.12, the City shall determine whether, and under what conditions, the Water System will be extended to serve the property. If the Water System is not extended to serve the property, any private wells approved by the City shall have a water meter installed if the property is serviced by the City's Sanitary Sewer System, so that the usage for billing purposes will be known.

§ 52.31 WATER SYSTEM CONNECTION REQUIRED

At the time that the Water System becomes available, as described by § 52.12, to a property serviced by a private well, a direct connection shall be made to the Water System in compliance with this chapter within 365 days. Within 180 days of the connection to the Water System, any private well shall either be abandoned in accordance with (A), or re-plumbed in accordance with § 52.29.

(A) If the well is to be abandoned, the following shall be completed:

(1) The well pump and tank shall be disconnected from all internal piping;

(2) The casing shall be filled with sandy soil from the bottom to a point eight feet from the top;

(3) The remaining eight feet shall be filled with concrete to the floor level and the well casing cut off as close to the floor level as possible;

(4) Within 30 days after the abandonment, the owner or occupant must advise the City that the well has been sealed.

(5) Notwithstanding the foregoing, all well abandonment shall be done in accordance with M.S. 103I.301 to 103I.345 and Minn. Rules Ch. 4725, Wells and Borings, as it may be amended from time to time.

PERMITS AND LICENSES

§ 52.32 PERMITS

(A) Requirement. No unauthorized person shall make, or repair, any connection to the Water System without first obtaining a written permit from the City.

(B) Application. The permit application shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary to the City.

(C) Public Buildings. Additions or extensions, or alterations to existing buildings, that serve the public, including all commercial or industrial facilities or residential buildings having five or more units, the applicant must have the project plans reviewed and approved by the Minnesota Department of Labor and Industry (DLI) Plumbing and Engineering Program. The DLI Standards Representative in the Duluth District Office can be contacted at 218-733-7839. Additional information on the DLI Plumbing and Engineering Program can be found at www.doli.state.mn.us.

(D) Inspection and connection. The applicant for the water service connection permit shall notify the City when the water service line is ready for inspection and connection to the Water System. For projects serving the public, a copy of the DLI approved plan review must be submitted to the City at the time of inspection. The connection and inspection shall be made under the supervision of the Public Works Superintendent or authorized representative thereof. A permit for a connection shall not become fully effective until the installation is completed to the satisfaction of the City or its authorized representative. No backfill shall be placed until the work has been inspected and approved, or until certification has been received.

(E) Fee. The fees permits shall be as established in the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time. Fees shall be due at the time of the application submittal to the City.

(F) Fire Hydrants

(1) A permit to use a fire hydrant shall be issued for each individual job or contract for a set number of days as determined by the Public Works Superintendent. The permit shall state the location of the hydrant and shall be for the use of that hydrant and none other.

(2) The method of connection to the hydrant and the type of meter used shall meet the approval of the Public Works Superintendent.

(3) The user shall relinquish the use of the hydrant to authorized City employees in emergency situations.

(4) The user shall pay a meter rental fee and water usage charges as established pursuant to the Ordinance Establishing Fees and Charges, as it may be amended from time to time, for each connection made to the hydrant during the permit period.

(5) An owner of a private water system may make a temporary, metered, above-ground connection to a fire hydrant, subject to the time periods and conditions set forth in the permit, and payment specified in the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

§ 52.33 LICENSES

(A) License. No person shall make a service connection with the Water System unless regularly licensed under this chapter to perform the work.

(B) Application. Any person desiring a license to make a service connection with the Water System shall apply in writing to the City with satisfactory evidence that the applicant or employer is trained or skilled in the business and qualified to receive a license. All applications shall be reviewed by the Public Works Superintendent, and if approved, the license shall be issued by the City Clerk upon the filing of a performance bond as hereinafter provided.

(C) Issuance. No license shall be issued to any person until a policy of insurance to the City, approved by the Public Works Superintendent, is filed with the City Clerk conditioned that the licensee will indemnify and save harmless the City from all suits, accidents and damage that may arise by reason of any opening in any street, alley or public ground made by the licensee or by those in the licensees employment for any purpose whatever, and that the licensee will replace and restore the street and alley over that opening to the condition existing prior to installation, adequately guard with barricades and lights, and will keep and maintain the same to the satisfaction of the Public Works Superintendent, and shall conform in all respects to any rules and regulations of the Council relative thereto, and pay all fines that may be imposed on the licensee by law.

(D) Validity. Continued validity of licenses issued under this section will be contingent upon submittal of updated documentation for each project.

(E) Fee. The license fee for making service connections shall be as established by the Ordinance Establishing Fees and Charges, as it may be amended from time to time. All licenses are valid unless the license is suspended or revoked by the City for cause or the license holder neglects to provide updated information as required in (D) above.

(F) Suspension or revocation. The City may suspend or revoke any license issued under this section for any of the following causes:

(1) Giving false information in connection with the application for a license.

(2) Incompetence of the licensee.

(3) Willful violation of any provisions of this chapter or any rule or regulation pertaining to the making of service connections.

WATER SERVICE CHARGE SYSTEM AND WATER FUND

§ 52.34 ESTABLISHMENT

(A) The City hereby establishes a Water Service Charge System to recover costs associated with operation, maintenance and replacement to ensure effective functioning of the City's Water System, and local capital costs incurred in the construction of the City's Water System. The Water Service Charge System will be administered in accordance with the provisions of§ 52.35

(B) The City hereby establishes a Water Fund as an income fund to receive all revenues generated by the Water Service Charge System, and all other income dedicated to the operation, maintenance, replacement and construction of the Water System, including taxes, special charges, fees and assessments intended to retire construction debt. The Water Fund will be administered in accordance with the provisions of § 52.35.

§ 52.35 ADMINISTRATION

(A) In accordance with federal and state requirements, the City Clerk shall maintain records necessary to document compliance with the Water Service Charge System. The Water Service Charge System shall be the system enacted prior to the adoption of this code. The City Clerk shall be responsible for maintaining a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the Water System.

(B) All revenue collected from users of the Water System will be used to off-set all expenditures incurred for annual operation, maintenance and replacement, and for debt service on capital expenditures incurred in constructing improvements or repairs to the Water System.

(C) All revenue generated by the Water Service Charge System, and all other income pertinent to the Water System, including taxes and special assessments dedicated to retire construction debt, shall be deposited in a separate fund known as the Water Fund.

(D) The City Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the Water System, and whether sufficient revenue is being generated for debt retirement. The Council shall also determine whether the user charges are distributed proportionately to each user in accordance with § 51.47(D). The City shall thereafter, but not later than the end of the year, reassess and as necessary revise the Water Service Charge System then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the City and performance to which the facilities were constructed, and to retire the construction debt.

§ 52.36 RATES AND CHARGES

(A) Water service rates and charges to users of the Water System shall be determined and fixed according to the provisions of this chapter and established in the Ordinance Establishing Fees and Charges. The Ordinance Establishing Fees and Charges may be amended from time to time to include subsequent changes in sewer service rates and charges.

(B) Connection fees as set forth in the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time, shall be charged to each user connecting a new service to the Water System. The connection fee shall be due and payable at the time of the application. Fees collected according to this section will be deposited into the Water Fund.

(C) Permit fees for water service repair work as set forth in the Ordinance Establishing Fees and Charges, as it may be amended from time to time, shall be charged to each user or refurbishing, repairing or replacing an existing service.

(D) The owner of the premises shall be liable to pay for the service connection to their premises, and the service connection is furnished to the premises by the City only upon the condition that the owner of the premises is liable therefore to the City.

(E) Each user shall pay debt service charges to retire local capital costs as determined and fixed in the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(F) Any additional costs caused by intentional, willful, or malicious damage to the Water System, shall be borne by the offender, at no expense to the City.

(G) Each user shall pay its proportionate share of operation, maintenance, and replacement costs of the Water System, based on the user's proportionate contribution to the total water use from all users.

(H) Rates due and payable by each water user located beyond the territorial boundaries of the City shall be determined by special contract.

(I) Unless deemed an emergency, a service charge, as established in the Ordinance Establishing Fees and Charges, as it may be amended from time to time, shall apply to requests for City Public Works services after the hours of normal City operation, as posted at City Hall.

§ 52.37 BILLING

(A) Bills for water service charges shall be rendered on a monthly basis. Water service charges will be based on metered water usage. Water meters will be read a minimum of four times per year (January, April, July, and October). Bills will be due by approximately the 24th day of the month following the billing.

(B) A late payment penalty of ten percent (10%) of the current month's charges for water and sewer services will be applied to any account for which the payment is received after the due date. Any prepayment or overpayment of charges may be retained by the City and applied on subsequent monthly charges.

(C) In accordance with federal and state requirements, each user will be notified annually in conjunction with a regular billing of that portion of the water service charge attributable to operation, maintenance and replacement.

(D) The City's form for application for utility service shall contain, in addition to the title, address, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

(1) That all bills are due and payable on or before the date set forth on the bill;

(2) That if any bill is not paid by or before that date, a second bill will be mailed containing the amount of the late fee and notice that any charges left unpaid by November 30 of each year may be certified to the Itasca County Auditor as taxes or assessments on the real estate; and

(3) That any user disputing the correctness of his or her bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his or her choosing and may present orally

or in writing his or her complaint and contentions to the City Council. The City Council shall be authorized to order that the user's service not be discontinued and shall have the authority to make a final determination of the user's complaint.

(E) All bills and notices shall be mailed or delivered to the address of the property owner. If non-owner residents desire to receive bills and notices at the address where service is provided, the property owner shall so note on the "Water Service Permit Application". In addition, the property owner shall complete the "Water and Sewer Account Property Owner/Renter Agreement" form.

(F) Any change or error in address shall be promptly reported to the City Clerk.

(G) It shall be the responsibility of the user to notify the City to request a final reading at the time of the user's billing change.

(H) In case the meter is found to have stopped, or to be operating in a faulty manner, the amount of water billed for the current billing period will be estimated using 125% of the average usage over the past year.

(I) Water usage billing shall start at the time of installation of the water meter.

(J) If an individual or corporation owns an unused property and elects to have the water meter removed from that property, they shall incur a charge of $300 for water meter removal. If an individual or corporation owns an unused property and elects to reinstall the water meter on that property, they shall incur a charge of $300 for water meter reinstallation.

§ 52.38 NON PAYMENT

(A) Collection of Unpaid Charges

(1) All water utility charges which have not been paid by the due date indicated on the billing statement are considered past due and delinquent.

(2) City staff may utilize traditional methods of collection to secure payment of unpaid charges on past due and delinquent accounts, including utilizing the services of a collection agency.

(B) Certification of Unpaid Charges

(1) All water utility charges which are on November 30 of each year at least 60 days past due and delinquent may be added to a preliminary roll by the City Clerk for assessment against the property on which the charges have incurred.

(2) Those water utility charges shall not be certified to the Itasca County Auditor until notice and an opportunity for a hearing have been provided to the owner of the property in question. The notice shall state that if payment is not made before the date of certification, the entire unpaid amount will be certified to the Itasca County Auditor for assessment against the property on which the charges have incurred**.** The notice shall also state that the occupant may, before such certification date, attend a hearing on the matter to object to certification of unpaid water utility charges.

(3) A hearing shall be held on the matter by the City Council at their regular session in December or as soon as feasible. Property owners with unpaid water utility charges shall have the opportunity to object to their certification against the property on which the charges have incurred. If, after the hearing, the City Council finds the that the amounts claimed as delinquent are actually due and unpaid and that there is no legal reason why the unpaid charges should not be certified for collection in accordance with this ordinance, the City may certify the unpaid water utility charges to the Itasca County Auditor by December 31 for assessment to the property in question and collection.

(4) The owner of the property shall have the option of paying the balance due on the account for up to 10 days following the certification of unpaid water utility charges to the Itasca County Auditor. Once that period has expired, the owner of the property must forward payment to the Itasca County Auditor for application to the certified property assessment.

(C) Disconnection of Service

(1) Any customer whose account is at least sixty (60) days past due shall have their water utility service disconnected thirty (30) days or later after that date.

(2) Water utility service shall not be disconnected until notice and an opportunity for a hearing before the City Council has been provided to the occupant and owner of the property in question.

(3) The notice shall state that the occupant or owner is subject to disconnection of his or her water utility service and has the right to a hearing at the next regular monthly City Council meeting before the water utility service is disconnected. The owner or occupant may be represented in person and by counsel or any other person of his or her choosing. The owner or occupant may present orally or in writing his or her complaint to the City Council. The Council shall be authorized to order continuation of the customer’s water utility service.

(4) Water utility service shall not be disconnected until the hearing process is complete.

(5) If the customer fails to pay and/or is denied his or her request for continuation of water utility service at the next regular City Council meeting, then their water utility service shall be disconnected. Disconnections shall occur Monday through Thursday from 8:00 a.m. until 2:00 p.m.

TITLE V: PUBLIC WORKS
CHAPTER 53: STREET LIGHTING

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ADMINISTRATION AND ENFORCEMENT

§ 53.01 ESTABLISHMENT

Pursuant to Minnesota Statues, Section 429.101, the City does hereby make provision for the establishment of a municipal street lighting system (hereinafter called the Street Lighting System) to be operated as a public utility.

§ 53.02 LIABILITY

The City shall not be liable for injury or damage to persons or property caused by any deficiency or failure in supply of electricity for the street lighting system whether occasioned by shutting off the system for the purpose of making repairs or connections, weather-related incidents, or from any other cause whatsoever.

§ 53.03 APPLICATION

No statement contained in this Chapter shall be construed to interfere with any additional requirements that may be imposed by any other entity. In addition, no statement in this chapter shall be construed as preventing any special agreement or arrangement between the City and an individual user.

§ 53.04 DEFINITIONS

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

BENEFITING PROPERTY. Any property located within the corporate limits of the City of Bigfork

STREET LIGHTING SYSTEM. All systems, works, instrumentalities, equipment, materials, supplies, lights, poles, wires, cables, conduits and all other parts and appurtenances of the foregoing which are useful or used in connection with the operation and maintenance of street lights.

USER. The owner and occupant of any benefiting property.

§ 53.05 SUPERVISION BY PUBLIC WORKS SUPERINTENDENT

The Public Works Superintendent, or other official designated by the City Council, shall have control and general supervision of the Street Lighting System including service connections in the City. The Public Works Superintendent shall be responsible for administering the provisions of this chapter to the end such that a proper and efficient Street Lighting System is maintained.

§ 53.06 AUTHORITY

(A) Access. The Public Works Superintendent, or other duly authorized employees of the City bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of, but not limited to, inspection, observations,

measurement, sampling, repair and maintenance of any portion of the City's Street Lighting System in accordance with the provisions of this chapter.

(1) Tampering. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the Street Lighting System.

(B) Safety. While performing necessary work on the Street Lighting System the Public Works Superintendent, or duly authorized employees of the City, shall observe all safety rules applicable to the premises. While performing necessary work on private properties, the property owner shall be held harmless for injury or death to City employees and the City shall indemnify the property owner against loss or damage to their property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the property owner to maintain safe conditions.

§ 53.07 PENALTY

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss or damage occasioned by the City by reason of that violation. In addition, any person found to be violating any provisions of this chapter shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations. Any person who shall continue any violation beyond the specified time limit shall be punished as provided in §10.99. Each day in which any violation occurs shall be deemed as a separate offense.

STREET LIGHTING CHARGE SYSTEM AND STREET LIGHT UTILITY FUND

§ 53.08 ESTABLISHMENT

(A) The City hereby establishes a Street Lighting Charge System to recover costs association with the operation, maintenance and replacement of the Street Lighting System. The Street Lighting Charge System will be administered in accordance with the provisions of § 5309.

(B) The City hereby establishes a Street Light Utility Fund as an income fund to receive all revenues generated by the Street Lighting Charge System, and all other income dedicated to the operation, maintenance and replacement of the Street Lighting System. The Street Light Utility Fund will be administered in accordance with the provisions of § 53.09.

§ 53.09 ADMINISTRATION

(A) In accordance with federal and state requirements, the City Clerk shall maintain records necessary to document compliance with the Street Lighting Charge System. The City Clerk shall be responsible for maintaining a proper system of accounts suitable for determining the operation, maintenance and replacement costs of the Street Lighting System.

(B) All revenue collected from users of the Street Lighting System will be used to off-set all expenditures incurred for annual operation, maintenance and replacement to the Street Lighting System.

(C) All revenue generated by the Street Lighting Charge System, and all other income pertinent to the Street Lighting System, shall be deposited in a separate fund known as the Street Light Utility Fund.

(D) The City Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the Street Lighting System. The Council shall also determine whether the user charges are distributed proportionately to each user in accordance with§ 53.10. The City shall thereafter, but not later than the end of the year, reassess and as necessary revise the Street Lighting Charge System then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the City and performance to which the facilities were constructed.

§ 53.10 RATES AND CHARGES

(A) Street lighting charges to users of the Street Lighting System shall be determined and fixed according to the provisions of this chapter and established in the Ordinance Establishing Fees and Charges. The Ordinance Establishing Fees and Charges may be amended from time to time to include subsequent changes in street lighting rates and charges.

(B) Any additional costs caused by intentional, willful, or malicious damage to the Street Lighting System, shall be borne by the offender, at no expense to the City.

(C) Each user shall pay its proportionate share of operation, maintenance, and replacement costs of the Street Lighting System.

(D) Rates due and payable by each user located beyond the territorial boundaries of the City shall be determined by special contract.

§ 53.11 BILLING

(A) Bills for street lighting charges shall be rendered on a monthly basis, in conjunction with water and sewer billings, to all benefiting properties.

(B) Bills are due and payable on or before approximately the 24th day of the month following the month in which the bill is sent.

(C) A late payment penalty of ten percent (10%) of the current month's charges for street lighting will be applied to any account for which the payment is received after the due date. Any prepayment or overpayment of charges may be retained by the City and applied on subsequent monthly charges.

(D) All bills and notices shall be mailed or delivered to the address of the property owner. If a non-owner occupant desires to receive bills and notices at the address where service is provided, the property owner shall complete the "Street Lighting Account Property Owner/Renter Agreement" form.

(E) Any change or error in address shall be promptly reported to the City Clerk.

§ 53.12 NON PAYMENT

(A) Collection of Unpaid Charges

(1) All street lighting charges which have not been paid by the due date indicated on the billing statement are considered past due and delinquent.

(2) City staff may utilize traditional methods of collection to secure payment of unpaid charges on past due and delinquent accounts, including utilizing the services of a collection agency.

(B) Certification of Unpaid Charges

(1) All streetlight utility charges which are on November 30 of each year at least 60 days past due and delinquent may be added to a preliminary roll by the City Clerk for assessment against the property on which the charges have incurred.

(2) Those streetlight utility charges shall not be certified to the Itasca County Auditor until notice and an opportunity for a hearing have been provided to the owner of the property in question. The notice shall state that if payment is not made before the date of certification, the entire unpaid amount will be certified to the Itasca County Auditor for assessment against the property on which the charges have incurred**.** The notice shall also state that the occupant may, before such certification date, attend a hearing on the matter to object to certification of unpaid streetlight utility charges.

(3) A hearing shall be held on the matter by the City Council at their regular session in December or as soon as feasible. Property owners with unpaid streetlight utility charges shall have the opportunity to object to their certification against the property on which the charges have incurred. If, after the hearing, the City Council finds the that the amounts claimed as delinquent are actually due and unpaid and that there is no legal reason why the unpaid charges should not be certified for collection in accordance with this ordinance, the City may certify the unpaid streetlight utility charges to the Itasca County Auditor by December 31 for assessment to the property in question and collection.

(4) The owner of the property shall have the option of paying the balance due on the account for up to 10 days following the certification of unpaid streetlight utility charges to the Itasca County Auditor. Once that period has expired, the owner of the property must forward payment to the Itasca County Auditor for application to the certified property assessment.

TITLE V: PUBLIC WORKS
CHAPTER 54: RIGHT-OF-WAY

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§ 54.01 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY

In accordance with the authority granted to the City under State and Federal statutory, administrative and common law, the City hereby elects pursuant to this chapter to manage rights-of-way within its jurisdiction.

§ 54.02 DEFINITIONS

The definitions included in Minnesota Statue Section 237.162, Minnesota Rules 7819.0100 subps. 1 through 23, and Minnesota Rules 7560.0100 subps. 1 through 12 are hereby adopted by reference and are incorporated into this Chapter as if set out in full.

§ 54.03 PERMIT REQUIRED

(A) Permit Required. Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the City.

(1) Excavation Permit. An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) Obstruction Permit. An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

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

(C) Delay Permit. In accordance with Minnesota Rule 7819.1000 subp. 3, and notwithstanding subd. 2 of this section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

(D) Permit Display. Permits issued under this Chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the director.

§ 54.04 PERMIT APPLICATIONS

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

(1) Each permittee's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) A certificate of insurance or self-insurance:

a. Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the director;

b. Verifying that the permittee is insured against all claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including , but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

c. Naming the City as additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

d. Requiring that the director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the director in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Chapter.

f. The City may require a copy of the actual insurance policies

g. If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statute 300.06 as recorded and certified to by the Secretary of State.

h. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable State or Federal agency, where the person is lawfully required to have such certificate from said commission or other State or Federal agency.

(B) Payment of money due to the City for

(1) Permit fees, estimate restoration costs and other management costs,

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;

(4) Franchise fees or other charges, if applicable

§ 54.05 ISSUANCE OF PERMIT; CONDITIONS

(A) Permit Issuance. If the applicant has satisfied the requirements of this Chapter, the director shall issue a permit.

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

use. In addition, a permittee shall comply with all requirements of local, State and Federal laws, including but not limited to Minnesota Statues, Section 216D.01-09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

(C) Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statues, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

§ 54.06 PERMIT FEES

(A) The City shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

(1) The City management costs;

(2) Degradation costs, if applicable.

(B) Obstruction Permit Fee. The City shall establish the obstruction permit fee and shall be in an amount sufficient to recover the City management costs.

(C) Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The City may allow applicant to pay such fees within thirty (30) days of billing.

(D) Non refundable. Permit fees that were paid for a permit that the director has revoked for a breach as stated in § 54.14 are not refundable.

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

(F) All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.100

§ 54.07 RIGHT-OF-WAY PATCHING AND RESTORATION

(A) Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under § 54.15.

(B) Patch and Restoration. Permittee shall patch its own work. The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(1) City Restoration. If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay

to the City, within thirty (30) days of billing, all costs associated with having to correct the work.

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

(3) Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(C) Standards. The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rules 7819.1100.

(D) Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the director, correct all restoration work to the extent necessary, using the method required by the director. Said work shall be completed within five(5) calendar days of the receipt of the notice from the director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under § 54.15.

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

§ 54.08 SUPPLEMENTARY APPLICATIONS

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

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

§ 54.09 DENIAL OF PERMIT

The City may deny a permit for failure to meet the requirements and conditions of the Chapter or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

§ 54.10 INSTALLATION REQUIREMENTS

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statues Secs. 237.162 and 237.163.

§ 54.11 INSPECTION

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

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

(C) Authority of Director.

(1) At the time of inspection the director may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public.

(2) The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within then (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to § 54.21

§ 54.12 WORK DONE WITHOUT A PERMIT

(A) Emergency Situations. Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the emergency. If the City becomes aware of an emergency regarding facilities, the City will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

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

§ 54.13 SUPPLEMENTARY NOTIFICATION

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

§ 54.14 REVOCATION OF PERMITS

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

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

(3) Any material misrepresentation of fact in the application for a right-of-way permit;

(4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or

(5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 54.18

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

(C) Response to Notice of Breach. Within twnety0four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, which will cure the breach. Permittee's failure to so contact the City, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

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

§ 54.15 MAPPING DATA

(A) Information Required. Each permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100.

(B) Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the City reasonably requires it. Permittees or their subcontractors shall submit to the City evidence of the installed service lateral locations. Compliance with this and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005 shall be a condition of any City approval necessary for (1) payments to contractors working on a public improvement project including those under Minnesota Statues, Chapter 429 and (2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statues, Chapter 462. The City shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

§ 54.16 LOCATION OF FACILITIES

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

(B) Corridors. The City may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

(C) Limitation of Space. To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the director shall have the power to prohibit or director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

§ 54.17 DAMAGE TO OTHER FACILITIES

When the City does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the director shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.

§ 54.18 RIGHT-OF-WAY VACATION

(A) Reservation of Right. If the City vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200

§ 54.19 INDEMNIFICATION AND LIABILITY

By applying for and accepting a permit under this Chapter, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

§ 54.20 ABANDONED FACILITIES

(A) Removal of Abandoned Facilities. Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the director waives this requirement.

§ 54.21 APPEAL

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the City regarding § 54.23 (B) of this ordinance, may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 54.22 RESERVATION OF REGULATORY AND POLICE POWERS

A permittee's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

TITLE VII: TRAFFIC CODE

70. TRAFFIC REGULATIONS

71. PARKING REGULATIONS

72. SNOWMOBILES

73. ALL-TERRAIN VEHICLES (ATVS)

CHAPTER 70: TRAFFIC REGULATIONS

Section

General Provisions

70.01 State highway traffic regulations adopted by reference
70.02 Trucks prohibited on certain streets
70.03 Stop intersections
70.04 Through streets and one-way streets
70.05 Turning restrictions
70.06 Excessive noise
70.07 Exhibition driving prohibited
70.08 Parades

GENERAL PROVISIONS

§ 70.01 STATE HIGHWAY TRAFFIC REGULATIONS ADOPTED BY REFERENCE.

(A) The Highway Traffic Regulations Act is hereby adopted by reference. The regulatory provisions of M.S. Chapter 169, as it may be amended from time to time, are hereby adopted as a traffic ordinance regulating the use of highways, streets and alleys within the city and are hereby incorporated in and made a part of this section as completely as if set out in full herein.

(B) The penalty for violation of the provisions of state statutes adopted by reference in this section shall be identical with the penalty provided for in the statues for the same offense.

§ 70.02 TRUCKS PROHIBITED ON CERTAIN STREETS.

(A) The City Council by resolution may designate streets on which travel by commercial vehicles in excess of 10,000 pounds axle weight is prohibited. The Chief of Police shall cause appropriate signs to be erected on those streets. No person shall operate a commercial vehicle on posted streets in violation of the restrictions posted.

(B) The weight restrictions established in division (A) shall not apply to city or emergency vehicles, public school buses or to garbage and refuse trucks making regular collections and are under contract with the city, nor shall the weight restrictions in division (A) apply if a commercial vehicle must use the particular street in question for the purpose of local pick-up or delivery.
Penalty, see 10.99

§ 70.03 STOP INTERSECTIONS.

The city may designate intersections as a stop intersection and require all vehicles to stop at one or more entrances to those intersections. The city shall post signs at those designated intersections, giving notice of the designation as a stop intersection. It shall be unlawful for any person to fail to obey the markings or signs posted under this section.
Penalty, see 10.99

§ 70.04 THROUGH STREETS AND ONE-WAY STREETS.

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

Penalty, see 10.99

§ 70.05 TURNING RESTRICTIONS.

(A) The City Council by resolution may, whenever necessary to preserve a free flow of traffic or to prevent accidents, designate any intersection as one where turning of vehicles to the left or to the right, or both, is to be restricted at all times or during specified hours. No intersection on a trunk highway shall be so designated until the consent of the Commissioner of Transportation to the designation is first obtained.

(B) The city shall mark by appropriate signs any intersection so designated.

(C) No person shall turn a vehicle at any intersection contrary to the direction on those signs.
Penalty, see 10.99

§ 70.06 EXCESSIVE NOISE.

(A) As used in this section, ***LIGHT-MOTOR VEHICLES*** means any automobile, van, motorcycle, motor-driven cycle, motorscooter, go cart, minibike, trail bike, or truck with a gross vehicular weight of less than 10,000 pounds.

(B) It shall be unlawful for any person to operate, or cause to operate, or use a light-motor vehicle in a manner as to cause, or allow to be caused, excessive noise levels as a result of unreasonable rapid accelerations, deceleration, revving of engine, squealing of tires, honking of horns, or as a result of the operation of audio devices including but not limited to radios, phonograph, tape players, compact disc players or any other sound-amplifying device on or from the light-motor vehicle.

(C) No person shall operate, or cause to operate, or use a light-motor vehicle in violation of the noise standards contained in Minn. Rules parts 7030.1050 and 7030.1060, as it may be amended from time to time.

(D) No person shall operate, or cause to operate, or use a light-motor vehicle that discharges its exhaust other than through a muffler or other device that effectively prevents loud or explosive noises. No person shall operate, or cause to operate, or use a light-motor vehicle whose exhaust system has been modified, altered, or repaired in any way, including the use of a muffler cut-out or by-pass, that amplifies or otherwise increases noise above that emitted by the light-motor vehicle as originally equipped.

(E) The following are exempted from the provisions of this section:

(1) Sound emitted from sirens of authorized emergency vehicles;

(2) Burglar alarms on light-motor vehicles of the electronic signaling type which also transmit an audible signal to a receiver which can be carried by the owner or operator of the vehicle; and

(3) Celebrations on Halloween and other legal holidays and celebrations in connection with duly authorized parades.
Penalty, see 10.99

§ 70.07 EXHIBITION DRIVING PROHIBITED.

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

§ 70.08 PARADES

No parade shall be allowed unless permission has been granted by the City Council. All parades will be under the supervision of the Police Chief.

CHAPTER 71: PARKING REGULATIONS

Section

71.01 No parking where posted
71.02 Limited parking
71.03 Other parking restrictions
71.04 Declaration of snow emergency; parking prohibited
71.05 Impoundment
71.06 Prima facie violation
71.07 Parking on school grounds

§ 71.01 NO PARKING WHERE POSTED.

No person shall stop, stand or park a vehicle upon the public streets of the city at any place where official signs or where appropriate devices, marks, or painting, either upon the surface of the street or the curb immediately adjacent thereto, prohibit these acts.
Penalty, see 10.99

§ 71.02 LIMITED PARKING.

No person shall stop, stand or park a vehicle upon the public streets of the city where official signs are erected limiting the parking time thereon, for a period of time in excess of the time as designated by the official signs.
Penalty, see 10.99

§ 71.03 OTHER PARKING RESTRICTIONS.

The City Council may by resolution order the placing of signs, devices or marks, or the painting of streets or curbs prohibiting or restricting the stopping, standing or parking of vehicles on any street where, in its opinion, as evidenced by a finding in its official minutes, the stopping, standing or parking is dangerous to those using the highway, or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic. The signs, devices, marks or painting shall be official signs, devices, marks or painting, and no person shall stop, stand or park any vehicle in violation of the restrictions thereon or as indicated thereby.
Penalty, see 10.99

§ 71.04 DECLARATION OF SNOW EMERGENCY; PARKING PROHIBITED.

(A) The Mayor, Police Chief or other designated official may declare a snow emergency in the city. The emergency shall continue in effect for a period of 24 hours or until the snow has been removed from the city's streets or until the snow emergency has been rescinded by action of the Mayor, Police Chief or other designated officer.

(B) Notice of the declaration of a snow emergency shall be given by notifying the local news media; however, the notification shall be a service aid only and not a duty on the part of the officials.

(C) During a declared snow emergency, no motor vehicle shall be left parked on any street or public way in the city.

(D) During a declared snow emergency, any police officer who finds a motor vehicle in violation of this section shall attempt to contact the owner of the motor vehicle and require the owner to immediately move the motor vehicle so as not to be in violation of this section. If the owner does not immediately remove the motor vehicle or the owner cannot be located, the police officer is authorized to have the motor vehicle removed at the owners expense.
Penalty, see 10.99

§ 71.05 IMPOUNDMENT.

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

§ 71.06 PRIMA FACIE VIOLATIONS.

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

§ 71.07 PARKING ON SCHOOL GROUNDS

It shall be unlawful for any person to park a motor vehicle anywhere on Bigfork School property in a manner that would violate Bigfork School policy/rules.

CHAPTER 72: SNOWMOBILES

Section

72.01 Prohibited Operation
72.02 Method of Operation
72.03 Speed Limit on Waterways
72.04 Operation on Private Property

§ 72.01 PROHIBITED OPERATION

No snowmobile shall be operated in the City upon any public sidewalk, or in close proximity to any church while it is in session. Furthermore, no snowmobile shall be operated on school or other public property unless the operator has permission from the school administration or other authorized personnel.

Snowmobile operators are strongly encouraged to stay on designated trails within the limits of the City of Bigfork.

§ 72.02 METHOD OF OPERATION

A snowmobile may be operated on the streets, avenues, and alleyways of this City provided:

(A) That the snowmobile is operated as far to the right as is reasonable and prudent.

(B) That the operator stops his or her snowmobile upon entering every street and at all stop signs.

(C) That the operator yields to the right of way of all motor vehicles and pedestrians.

(D) That the snowmobile is not operated at a speed greater than 10 miles per hour.

(E) That the operator obeys all other traffic laws.

§ 72.03 SPEED LIMIT ON WATERWAYS

The speed limit on waterways within the City of Bigfork shall be 30 miles per hour except for when operation occurs within 100 feet of any fisherman, pedestrian, skating rink or sliding area where the operation would conflict with the use or endanger other persons or operation, in which case the speed limit of 10 miles per hour will apply.

§ 72.04 OPERATION ON PRIVATE PROPERTY

It is unlawful for any person to enter, operate or stop a snowmobile on private property of another without specific permission of the owner or person in control of the property.

CHAPTER 73: ALL-TERRAIN VEHICLES (ATVs)

73.01 Regulations
73.02 Violations

§ 73.01 REGULATIONS

(A) All operators shall observe all traffic rules and regulations pertaining to automobiles, but the speed limit for ATVs on City streets shall be ten (10) miles per hour.

(B) The operation of ATVs shall be strictly prohibited in the following areas:

(1) Upon any public sidewalk in the City;

(2) In close proximity to any school or church while they are in session;

(3) In close proximity to the hospital;

(4) On any airport runway;

(5) Anywhere in the Cemetery;

(6) On private property without the express consent of the property owner or the individual in control of the property;

(7) On any school-owned property at any time without the express consent of the school administration.

(C) All ATVs shall be equipped with a muffler, in good working order, as designated by M.S. 84.871 as it may be amended from time to time.

(D) It is unlawful for any parent, guardian or other person having the legal care and custody of any child under eighteen (18) years of age to allow any such child, ward or other person under such age to violate any provision of this ordinance.

(E) No person shall operate an ATV within the City limits with more persons anywhere on the vehicle that would prohibit safe operation.

(F) The operation of ATVs on City streets shall be as close as practicable to the right-hand edge of the roadway.

§ 73.02 VIOLATIONS

(A) *Petty misdemeanor*. Any person found to be in violation of any provision of this Chapter shall be guilty of a petty misdemeanor.

(B) *Misdemeanor*. Any person found to be in violation of any provision of this Chapter within 12 months of a prior violation of any provision of this Chapter shall be guilty of a misdemeanor.

TITLE IX: GENERAL REGULATIONS

90. ANIMALS

91. HEALTH AND SAFETY; NUISANCES

92. STREETS AND SIDEWALKS

93. SEXUAL OFFENDERS AND SEXUAL PREDATORS

CHAPTER 90: ANIMALS

Section

90.01 Definitions
90.02 Dogs and cats
90.03 Non-domestic animals
90.04 Farm animals
90.05 Impounding
90.06 Kennels
90.07 Nuisances
90.08 Seizure of animals
90.09 Animals presenting a danger to health and safety of city
90.10 Diseased animals
90.11 Potentially Dangerous animals
90.12 Basic care
90.13 Breeding moratorium
90.14 Enforcing officer
90.15 Interference with officers
90.99 Penalty

90.01 DEFINITIONS.

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

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

DOMESTIC ANIMALS. Those animals commonly accepted as domesticated household pets. Unless otherwise defined, domestic animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

FARM ANIMALS. Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, farm animals shall include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, and other animals associated with a farm, ranch, or stable.

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

(a) Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats.

(b) Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.

(c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.

(d) Any member or relative of the rodent family including any skunk (whether or not descented), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.

(e) Any potentially inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators, unless commonly accepted as a domesticated pets.

(f) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.

POTENTIALLY DANGEROUS DOG. Any dog that has been classified as a "Potentially Dangerous Dog" by the City of Bigfork Board of Health in accordance with the definition contained in Minnesota Statutes.

PROPER ENCLOSURE. Securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the animal for escaping and providing protection from the elements for the dog. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the dog to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the dog for exiting.

SECURE CHAIN OR LEASE. One that is of such materials, construction, and condition that would lead a reasonable person to believe that the animal could not free itself.

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

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

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

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

90.02 DOGS AND CATS.

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

(B) *Cats*. Cats shall be included as controlled by this division insofar as running-at-large, pickup, impounding, boarding and proof of anti-rabies vaccine is concerned. All other provisions of this section shall also apply to cats unless otherwise provided.

(C) *Vaccination.*

(1) All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every three years by a licensed veterinarian for:

(a) Rabies - with a live modified vaccine; and

(b) Distemper.

(2) A certificate of vaccination must be kept on which is stated the date of vaccination, owners name and address, the animals name (if applicable), sex, description and weight, the type of vaccine, and the veterinarians signature. Upon demand made by the City Clerk or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven days in which to present the certificate(s) to the City Clerk or officer. Failure to do so shall be deemed a violation of this section.

Penalty, see 90.99

90.03 NON-DOMESTIC ANIMALS.

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

Penalty, see 90.99

90.04 FARM ANIMALS.

Farm animals shall only be kept in an agricultural district of the city, or on a residential lot of at least ten acres in size provided that no animal shelter shall be within 300 feet of an adjoining piece of

property. An exception shall be made to this section for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

90.05 IMPOUNDING.

(A) *Running at large.* Any animal running at large is hereby declared a public nuisance. Any police officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. In case the owner is unknown, the officer shall post notice at the city office that if the dog or other animal is not claimed within the time specified in division (C) of this section, it will be sold or otherwise disposed of. Except as otherwise provided in this section, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats running at large.

(B) *Biting animals.* Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the city pound for a period of not less than ten days, at the expense of the owner. The animal may be released at the end of the time if healthy and free from symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for the confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owners choosing, not outside of the county in which this city is located, and provide immediate proof of confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owners property.

(C) *Reclaiming.* All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a potentially dangerous animal as defined under 90.11 in which case it shall be kept for seven regular business days or the times specified in 90.11, and except if the animal is a cruelly-treated animal in which case it shall be kept for ten regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this code or established from time to time by resolution of the City Council:

(1) Payment of the release fee and receipt of a release permit as established by the Ordinance Establishing Fees and Charges adopted pursuant to 30.11 of this code, as that ordinance may be amended from time to time.

(2) Payment of maintenance costs, as provided by the pound, per day or any part of day while animal is in the pound; and

(D) *Unclaimed animals.* At the expiration of the times established in division (C) of this section, if the animal has not been reclaimed in accordance with the provisions of this section, the officer appointed to enforce this section may let any person claim the animal by complying with all provisions in this section or cause the animal to be destroyed in a

proper and humane manner and shall properly dispose of the remains thereof. Any money collected under this section shall be payable to the City Clerk.

Penalty, see 90.99

90.06 KENNELS.

(A) *Definition of kennel.* The keeping of three or more dogs on the same premises, whether owned by the same person or not and for whatever purpose kept, shall constitute a kennel; except that a fresh litter of pups may be kept for a period of three months before that keeping shall be deemed to be a kennel.

(B) *Kennel as a nuisance.* Because the keeping of three or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of three or more dogs on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the city.

Penalty, see 90.99

90.07 NUISANCES.

(A) *Habitual barking.* It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. The barking must also be audible off of the owners or caretakers premises.

(B) *Damage to property.* It shall be unlawful for any persons dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage.

(C) *Cleaning up litter.* The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner whether on their own property, on the property of others or on public property.

(D) *Other.* Any animals kept contrary to this section are subject to impoundment as provided in 90.05.

Penalty, see 90.99

90.08 SEIZURE OF ANIMALS.

Any police officer may enter upon private property and seize any animal provided that the following exist:

(A) There is an identified complainant other than the police officer making a contemporaneous complaint about the animal;

(B) The officer reasonably believes that the animal meets either the barking dog criteria set out in 90.07(A); the criteria for cruelty set out in 90.12; or the criteria for an at large animal set out in 90.01;

(C) The officer can demonstrate that there has been at least one previous complaint of a barking dog; inhumane treatment of the animal; or that the animal was at large at this address on a prior date;

(D) The officer has made a reasonable attempt to contact the owner of the dog and the property to be entered and those attempts have either failed or have been ignored;

(E) The seizure will not involve the forced entry into a private residence. Use of a pass key obtained from a property manager, landlord, innkeeper, or other authorized person to have that key shall not be considered unauthorized entry; and

(F) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the dog is not possible.

90.09 ANIMALS PRESENTING A DANGER TO HEALTH AND SAFETY OF CITY.

If, in the reasonable belief of any person or police officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person or officer may destroy the animal in a proper and humane manner that does not pose a threat or endanger the welfare of any human or property. Otherwise, the person or officer may apprehend the animal and deliver it to the pound for confinement under 90.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the City for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the City, it may be released to the owner or keeper in accordance with 90.05(C).

90.10 DISEASED ANIMALS.

(A) *Running at large.* No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this section.

(B) *Confinement.* Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any person or a police officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.

(C) *Release.* If the animal, upon examination, is not found to be diseased the animal shall be released to the owner or keeper free of charge.

Penalty, see 90.99

90.11 POTENTIALLY DANGEROUS ANIMALS.

(A) Upon receiving a valid complaint, the City of Bigfork Board of Health shall first investigate this complaint. They shall use MN Statute 347.50 Subd. 3 as a guideline for determining if there is a probable cause to classify the dog as "Potentially Dangerous". If probable cause has been established, they shall service the owner with written notice of the owner's right to a hearing. This hearing shall take place within 10 calendar days of the service of the notice. MN Statute 347.50 Subd 3 shall be the criteria used in classifying the dog as potentially dangerous. In the event that the owner is unwilling to attend the hearing within the guidelines given by this ordinance, the hearing shall take place, and any decisions made shall be valid. The notice shall require the owner to restrain his dog by a proper enclosure, or by a secure chain.

(B) An owner of a potentially dangerous dog shall keep the potentially dangerous dog, while on the owner's property, in a proper enclosure, or confined by a secure chain. While outside the owner's property the potentially dangerous dog shall be confined by a secure chain or leash, and under the restraint of a responsible person.

(C) If a person has been convicted of violating 90.11(B) of this ordinance, any subsequent convictions of 90.11 (B) of this ordinance relating to the same dog shall cause the immediate expulsion of the same dog from the City of Bigfork by order of the City of Bigfork Board of Health.

Penalty, see 90.99

90.12 BASIC CARE.

All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section.

90.13 BREEDING MORATORIUM.

Every female dog or female cat in heat shall be confined in a building or other enclosure in a manner that it cannot come in contact with another dog or cat except for planned breeding. Upon capture and failure to reclaim the animal, every dog or cat shall be neutered or spayed prior to being transferred to a new owner.

90.14 ENFORCING OFFICER.

The City of Bigfork Police Chief is hereby authorized to enforce the provisions of this section. In the Police Chief's duty of enforcing the provisions of this section, he or she may from time to time, with the consent of the City Council, designate assistants.

90.15 INTERFERENCE WITH OFFICERS.

No person shall in any manner molest, hinder, or interfere with any person authorized by the City Council to capture dogs, cats or other animals and convey them to the pound while engaged in that operation. Nor shall any unauthorized person break open the pound, or attempt to do so, or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter, or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.
Penalty, see 90.99

90.99 PENALTY.

(A) *Separate offenses.* Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.

(B) *Petty misdemeanor.* Any person found to be in violation of any provision of this Chapter shall be guilty of a petty misdemeanor.

(C) *Misdemeanor*. Any person found to be in violation of any provision of this Chapter within 12 months of a prior violation of any provision of this Chapter shall be guilty of a misdemeanor.

CHAPTER 91: HEALTH AND SAFETY; NUISANCES

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GENERAL PROVISIONS

§ 91.01 ASSESSABLE CURRENT SERVICES.

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

CURRENT SERVICE. Shall mean one or more of the following: snow, ice, or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private

property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S. 463.15 through 463.26 as they may amended from time to time; installation or repair of water service lines; street sprinkling, street flushing, light street oiling, or other dust treatment of streets; repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.

(B) *Snow, ice, dirt and rubbish.*

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

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

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

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

(E) *Repair of sidewalks and alleys.*

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

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

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

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

(G) *Damage to public property.* Any person driving any vehicle, equipment, object or contrivance upon any street, road, highway or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. 514.67, as it may be amended from time to time.

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

Penalty, see 10.99

§ 91.02 TREE DISEASES.

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

(1) Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus *Ceratocystis Ulmi (Buisman) Moreau* or which harbors any of the elm bark beetles *Scolytus Multistriatus (Eichh.)* or *Hylungopinus Rufipes (Marsh)*;

(2) Any dead elm tree or part thereof, including branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle insecticide;

(3) Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt fungus *Ceratocystis fagacearum*;

(4) Any dead oak tree or part thereof which in the opinion of the designated officer constitutes a hazard, including but not limited to logs, branches, stumps, roots, firewood or other oak material which has not been stripped of its bark and burned or sprayed with an effective fungicide;

(5) Any other shade tree with an epidemic disease.

(B) *Abatement of nuisance.* It is unlawful for any person to permit any public nuisance as defined in division (A) of this section to remain on any premises the person owns or controls within the city. The City Council may by resolution order the nuisance abated. Before action is taken on that resolution, the City Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to the affected property owner and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the street affected, action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or adjournment thereof, the City Council shall hear any property owner with reference to the scope and desirability of the proposed project. The City Council shall thereafter adopt a resolution confirming the original resolution with modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

(C) *Record of costs.* The City Clerk shall keep a record of the costs of abatement done under this section for all work done for which assessments are to be made, stating and certifying the description of the land, lots, parcels involved, and the amount chargeable to each.

(D) *Unpaid charges.* On or before September 1 of each year, the City Clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges or any portion thereof against the property involved as a special assessment as authorized by M.S. 429.101 as it may be amended from time to time and other pertinent statutes for certification to the County Auditor and collection the following year along with the current taxes.

Penalty, see 10.99

NUISANCES

§ 91.15 PUBLIC NUISANCE.

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

(A) Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public;

(B) Interferes with, obstructs or renders dangerous for passage any public highway or right-of-way, or waters used by the public; or

(C) Is guilty of any other act or omission declared by law or 92.16, 92.17 or 92.18, or any other part of this code to be a public nuisance and for which no sentence is specifically provided.

Penalty, see 10.99

§ 91.16 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

(A) Exposed accumulation of decayed or unwholesome food or vegetable matter;

(B) All diseased animals running at large;

(C) All ponds or pools of stagnant water;

(D) Carcasses of animals not buried or destroyed within 24 hours after death;

(E) Accumulations of manure, refuse or other debris;

(F) Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;

(G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances;

(H) All noxious weeds and other rank growths of vegetation upon public or private property;

(I) Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities;

(J) All public exposure of people having a contagious disease; and

(K) Any offensive trade or business as defined by statute not operating under local license.

Penalty, see 10.99

§ 91.17 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be nuisances affecting public peace and safety:

(A) All snow and ice not removed from public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;

(B) All trees, hedges, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;

(C) All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;

(D) All obnoxious noises in violation of Minn. Rules Ch. 7030, as they may be amended from time to time which are hereby incorporated by reference into this code.

(E) The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations.

(F) The using or operation or permitting the using or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet and comfort of any person nearby. Operation of any device referred to above between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of violation of this section. Permission may be granted by the City Council for events, such as street dances, that would otherwise be in violation of this section.

(G) The participation in a party or gathering of people giving rise to noise which disturbs the peace, quiet or repose of the occupants of adjoining or other property.

(H) Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks or public grounds except under conditions as are permitted by this code or other applicable law;

(I) Radio aerials or television antennae erected or maintained in a dangerous manner;

(J) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or sidewalk;

(K) All hanging signs, awnings and other similar structures over streets and sidewalks, so situated so as to endanger public safety, or not constructed and maintained as provided by ordinance;

(L) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;

(M) Any barbed wire fence less than six feet above the ground and within three feet of a public sidewalk or way;

(N) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;

(O) Waste water cast upon or permitted to flow upon streets or other public properties;

(P) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

(Q) Any well, hole or similar excavation which is left uncovered or in another condition as to constitute a hazard to any child or other person coming on the premises where it is located;

(R) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash of other materials;

(S) The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over the substance;

(T) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;

(U) All other conditions or things which are likely to cause injury to the person or property of anyone.

Penalty, see 10.99

§ 91.18 DUTIES OF CITY OFFICERS.

The Police Department or Sheriff, if the city has at the time no Police Department, shall enforce the provisions relating to nuisances. Any peace officer shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.

§ 91.19 ABATEMENT.

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

(1) *Notice of violation.* Written notice of violation shall be served by a peace officer on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.

(2) *Notice of City Council hearing.* Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant

of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of the City Council hearing, notice of City Council hearing shall be served by posting it on the premises.

(3) *Notice of City Council order.* Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in M.S. 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.

(4) *Notice of motion for summary enforcement.* Written notice of any motion for summary enforcement shall be made as provided for in M.S. 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.

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

(C) *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

(D) *Immediate abatement.* Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

Penalty, see 10.99

§ 91.20 RECOVERY OF COST.

(A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

(B) *Assessment.* If the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the City Clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other the charges as well as other charges for current services to be assessed under M.S 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

Penalty, see 10.99

WEEDS

§ 91.35 SHORT TITLE.

This subchapter shall be cited as the Weed Ordinance.

§ 91.36 JURISDICTION.

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

§ 91.37 DEFINITIONS; EXCLUSIONS.

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

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

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

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

(1) Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip

(2) Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated, or otherwise maintained for two consecutive years;

(3) Bushes of the species of tall, common, or European barberry, further known as *berberis vulgaris* or its horticultural varieties;

(4) Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding 12 inches.

(5) Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennial plants.

(6) The term ***WEEDS*** does not include shrubs, trees, cultivated plants or crops.

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

§ 91.38 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

All property owners shall be responsible for the removal, cutting, or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of 12 inches in height.
Penalty, see 10.99

§ 91.39 FILING COMPLAINT.

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

§ 91.40 NOTICE OF VIOLATIONS.

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City Council regarding the condition. The City Council, upon concluding that there is a probable belief that this subchapter has been violated, shall forward

written notification in the form of a Destruction Order to the property owner or the person occupying the property as that information is contained within the records of the City Clerk or any other city agency. The notice shall be served in writing by certified mail. The notice shall provide that within seven regular business days after the receipt of the notice that the designated violation shall be removed by the property owner or person occupying the property.

(1) All notices are to be in writing and all filings are to be with the City Clerk.

(2) Certified mailing to the City Clerk or others is deemed filed on the date of posting to the United States Postal Service.

§ 91.41 APPEALS.

(A) The property owner may appeal by filing written notice of objections with the City Council within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council. It is the property owners responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants or crops or is not otherwise in violation of this subchapter, and should not be subject to destruction under the subchapter.

(B) An appeal by the property owner shall be brought before the City Council and shall be decided by a majority vote of the Council Members in attendance and being at a regularly scheduled or special meeting of the City Council.

§ 91.42 ABATEMENT BY CITY.

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

§ 91.43 LIABILITY.

(A) The property owner is liable for all costs of removal, cutting or destruction of weeds as defined by this subchapter.

(B) The property owner is responsible for all collection costs associated with weed destruction, including but not limited to court costs, attorneys fees and interest on any unpaid amounts incurred by the city. If the city uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals which may be used.

(C) All sums payable by the property owner are to be paid to the City Clerk and to be deposited in a general fund as compensation for expenses and costs incurred by the city.

(D) All sums payable by the property owner may be collected as a special assessment as provided by M.S. 429.101, as it may be amended from time to time.

OPEN BURNING

§ 91.60 DONE IN ACCORDANCE WITH MNDNR RULES.

All burning done within the City limits shall be done in accordance with current Minnesota Department of Natural Recourses guidelines and permits

§ 91.99 PENALTY.

(A) *Petty misdemeanor.* Any person found to be in violation of any provision of this Chapter shall be guilty of a petty misdemeanor.

(B) *Misdemeanor.* Any person found to be in violation of any provision of this Chapter within 12 months of a prior violation of any provision of this Chapter shall be guilty of a misdemeanor.

CHAPTER 92: STREETS AND SIDEWALKS

Section

General Provisions

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GENERAL PROVISIONS

§ 92.01 UNLOADING ON STREET OR SIDEWALK.

No person shall unload any heavy material in the streets of the city by throwing or letting the material fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.
Penalty, see 10.99

§ 92.02 STREET AND SIDEWALK OBSTRUCTION.

No person shall obstruct any street, alley, sidewalk, or other public way within the city by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.
Penalty, see 10.99

§ 92.03 MATERIALS ON STREET OR SIDEWALK.

No person shall encumber any street or sidewalk. No owner, occupant, or person having the care of any building or lot of land, bordering on any street or sidewalk, shall permit it to be encumbered with barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof.
Penalty, see 10.99

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

§ 92.20 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

In accordance with the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects pursuant to this chapter to manage rights-of-ways within its jurisdiction.

§ 92.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in Minn. Rules part 7819.0100 subps. 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this subchapter.

§ 92.22 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.

(1) *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

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

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for

unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the Ordinance Establishing Fees and Charges, adopted pursuant to 30.11 of this code, as it may be amended from time to time.

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

Penalty, see 10.99

§ 92.23 PERMIT APPLICATIONS.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

(1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) A certificate of insurance or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the Director;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;

(d) Requiring that the Director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(4) The city may require a copy of the actual insurance policies.

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

(6) A copy of the persons order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

(B) Payment of money due the city for:

(1) Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to 30.11 of this code, as that ordinance may be amended from time to time, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the city because of the applicants prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or

(4) Franchise fees or other charges as established by the Ordinance Establishing Fees and Charges adopted pursuant to 30.11 of this code, as that ordinance may be amended from time to time, if applicable.

§ 92.24 ISSUANCE OF PERMIT; CONDITIONS.

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

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

§ 92.25 PERMIT FEES.

Permit fees shall be in an amount established in the Ordinance Establishing Fees and Charges, adopted pursuant to 30.11, as it may be amended from time to time.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to 30.11 of this code, as that ordinance may be amended from time to time, in an amount sufficient to recover the following costs:

(1) The city management costs; and

(2) Degradation costs, if applicable.

(B) *Obstruction Permit Fee.* The city shall establish the obstruction permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to 30.11 of this code, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.

(C) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.

(D) *Non-refundable.* Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to 30.11 of this code, as that ordinance may be amended from time to time, that were paid for a permit that the Director has revoked for a breach as stated in 93.33 are not refundable.

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

(F) All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.100, as it may be amended from time to time.

Penalty, see 10.99

§ 92.26 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this subchapter.

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the city restore the right-of-way or to restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittees improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule part 7819.1100, as it may be amended from time to time. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

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

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director,

the Director at its option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to 30.11 of this code, as that ordinance may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

§ 92.27 SUPPLEMENTARY APPLICATIONS.

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

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

§ 92.28 DENIAL OF PERMIT.

The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

§ 92.29 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules part 7819.1100, as it

may be amended from time to time and other applicable local requirements, in so far as they are not inconsistent with M.S. 237.162 and 237.163, as they may be amended from time to time.

§ 92.30 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule part 7819.1300, as it may be amended from time to time.

(B) *Site inspection.* The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of Director.*

(1) At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If proof has not been presented within the required time, the Director may revoke the permit pursuant to 93.33.

§ 92.31 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

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

§ 92.32 SUPPLEMENTARY NOTIFICATION.

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

§ 92.33 REVOCATION OF PERMITS.

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

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

(3) Any material misrepresentation of fact in the application for a right-of-way permit;

(4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or

(5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to 92.30.

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

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittees failure to so contact the city, or the permittees failure to submit an acceptable plan, or the permittee=s failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

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

§ 92.34 MAPPING DATA; INFORMATION REQUIRED.

Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.

§ 92.35 LOCATION OF FACILITIES.

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.* The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or

replacement of facilities shall designate the proper corridor for the facilities at issue.

(C) *Limitation of space.* To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the publics needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

§ 92.36 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the Director shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that owner=s facilities.

§ 92.37 RIGHT-OF-WAY VACATION.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

§ 92.38 INDEMNIFICATION AND LIABILITY.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rule 7819.1250, as it may be amended from time to time.

§ 92.39ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Director.

§ 92.40 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had permit revoked; or believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 92.41 RESERVATION OF REGULATORY AND POLICE POWERS.

A permittee's or registrant's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

CHAPTER 93: SEXUAL OFFENDERS AND SEXUAL PREDATORS

Section

93.01 Findings and Intent
93.02 Definitions
93.03 Sexual Offender and Sexual Predator Residence Prohibition; Penalties; Exceptions
93.04 Property Owners Prohibited From Renting Real Property to Certain Sexual Offenders and Sexual Predators; Penalties
93.05 Severability

§ 93.01 FINDINGS AND INTENT

(A) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(B) It is the intent of this article to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.

§ 93.02 DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

DESIGNATED OFFENDER means any person who has been convicted of a designated sexual offense, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, or has been categorized as a Level III sex offender under Minnesota Statute § 244.052 or successor statute.

DESIGNATED SEXUAL OFFENSE means a conviction, adjudication of delinquency, commitment under Minnesota Statute §§ 253B, or admission of guilt under oath without adjudication involving any of the following offenses: 609.342; 609.343;

609.344; 609.345; 609.352; 609.365; 617.23; 617.246; 617.247; 617.293; successor statutes; or a similar offense from another state.

PERMANENT RESIDENCE means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

TEMPORARY RESIDENCE means a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

§ 93.03 SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENT PROHIBITION; PENALTIES; EXCEPTIONS.

(A) Prohibited location of residence. It is unlawful for any designated offender to establish a permanent residence or temporary residence within 1,000 feet of any school, licensed day care center, park, playground, place of worship which provides regular educational programs (i.e. Sunday school), or other places where children are known to congregate.

(B) Prohibited activity. It is unlawful for any designated offender to participate in a holiday event involving children under 18 years of age. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this paragraph.

(C) Measurement of distance.

(1) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, day care center, park, playground, place of worship, or other place where children regularly congregate.

(2) The City Clerk shall maintain an official map showing prohibited locations as defined by this Ordinance. The Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones.

(D) Penalties. A person who violates this section shall be punished by a fine not exceeding $1,000.00 or by confinement for a term not exceeding 90 days, or by both such fine and confinement. Each day a person maintains a residence in violation of this ordinance constitutes a separate violation.

(E) Exceptions. A designated offender residing within a prohibited area as described in (540.003 Subd. 1) does not commit a violation of this section if any of the following apply:

(1) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statute § 243.166, § 243.167, or successor statute, prior to May 9, 2006.

(2) The person was a minor when he/she committed the offense and was not convicted as an adult.

(3) The person is a minor.

(4) The school or day care center within 1,000 feet of the persons permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statute § 243.166 or § 243.167.

(5) The residence is also the primary residence of the person's parents, grandparents, siblings, spouse, or children.

(6) The residence is a property owned or leased by the Minnesota Department of Corrections.

§ 93.04 PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS; PENALTIES.

(A) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence of temporary residence pursuant to this Chapter, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in Section 93.03(A).

(B) A property owner's failure to comply with provisions of this Section shall constitute a violation of this Section, and shall subject the property owner to the code enforcement provisions and procedures as provided in Chapter 10 of this Code, including the provisions of Chapter 10 that allow the City to seek relief as otherwise provided by law.

(C) If a property owner discovers or is informed that a tenant is a designated offender after signing a lease or otherwise agreeing to let the offender reside on the property, the owner or property manager may evict the offender.

§ 93.05 SEVERABILITY.

Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

TITLE XI: BUSINESS REGULATIONS

CHAPTER 111: LIQUOR REGULATIONS

CHAPTER 112: GAMBLING REGULATIONS

CHAPTER 113: SYNTHETIC DRUG REGULATIONS

CHAPTER 116: NORTH AMERICAN COMMUNICATIONS CABLE FRANCHISE

CHAPTER 117: ADULT ORIENTED BUSINESSES

CHAPTER 118: GORHAM'S INC. GAS FRANCHISE

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CHAPTER 111: LIQUOR REGULATIONS

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GENERAL PROVISIONS

111.01 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Chapter 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. Chapter 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

111.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. 340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Chapter 340A, as it may be amended from time to time.

111.03 DEFINITIONS.

In addition to the definitions contained in M.S. 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

LIQUOR. As used in this chapter, without modification by the words intoxicating or 3.2 percent malt, includes both intoxicating liquor and 3.2 percent malt liquor.

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by M.S. 157.16, as it may be amended from time to time, and meet the definition of either a small establishment, medium establishment or large establishment as defined in M.S. 157.16, Subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this chapter unless it meets the definitions of small establishment, medium establishment or large establishment.

111.04 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this chapter, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted.
Penalty, see 111.99

LICENSING

111.20 NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a city may issue, and as of the date of this Ordinance, the City of Bigfork is allowed three intoxicating liquor licenses pursuant to Minn. Stat §340A.413 Subd 1(8). The Council is not required to issue the full number of licenses that it has available.

111.21 TERM AND EXPIRATION OF LICENSES.

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on December 31 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

111.22 KINDS OF LIQUOR LICENSES.

The Council of a city is authorized to issue the following licenses and permits, up to the number specified in 111.20.

(A) 3.2 percent malt liquor on-sale licenses, which may be issued only to restaurants, hotels, clubs, bowling centers, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

(B) 3.2 percent malt liquor off-sale license.

(C) Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an off-sale intoxicating liquor license established by the Council under 111.23 shall not exceed $100 or a greater amount which may be permitted by M.S. 340A.408, Subd. 3, as it may be amended from time to time.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. 340A.101, as it may be amended from time to time, and this chapter: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under 111.23 shall not exceed the amounts provided for in M.S. 340A.408, Subd. 2b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of

M.S. 340A.404, Subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of M.S. 340A.404, Subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(F) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S. 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in 111.03, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of 111.23, shall not exceed $200, or the maximum amount provided by M.S. 340A.504, Subd. 3c, as it may be amended from time to time.

(G) Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000.

(H) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. 340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in 111.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. 340A.401, Subd. 1, as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of 111.23 shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

(J) One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display

permit under the provisions of 111.23 shall not exceed $300, or the maximum amount permitted by M.S. 340A.14, Subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

111.23 LICENSE FEES; PRO RATA.

(A) No license or other fee established by the city shall exceed any limit established by M.S. Chapter 340A, as it may be amended from time to time, for a liquor license.

(B) The Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.

(D) All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. 340A.408, Subd. 5, as it may be amended from time to time.

111.24 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter.

111.25 APPLICATION FOR LICENSE.

(A) *Form.* Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicants age, representations as to the applicants character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information

required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(B) *Financial responsibility.* Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. 340A.409, as it may be amended from time to time, with regard to liability under M.S. 340A.801, as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S. 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.
Penalty, see 111.99

111.26 DESCRIPTION OF PREMISES.

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

111.27 APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

111.28 TRANSFER OF LICENSE.

No license issued under this chapter may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.
Penalty, see 111.99

111.29 INVESTIGATION.

(A) *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for

renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of $500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than $500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(B) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be $500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and $10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

111.30 HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

111.31 RESTRICTIONS ON ISSUANCE.

(A) Each license shall be issued only to the applicant for the premises described in the application.

(B) Not more than one license shall be directly or indirectly issued within the city to any one person.

(C) No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.

(D) No license shall be issued for any place or any business ineligible for a license under state law.

(E) No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this chapter or to the renewal of an existing license.

(F) No license shall be granted within 300 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.
Penalty, see 111.99

111.32 CONDITIONS OF LICENSE.

The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

(A) Within 90 days after employment, every person selling or serving liquor in an establishment which has an on-sale license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.

(B) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

(C) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.

(D) No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

(E) Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.
Penalty, see 111.99

111.33 HOURS AND DAYS OF SALE.

(A) The hours of operation and days of sale shall be those set by M.S. 340A.504, as it may be amended from time to time.

(B) No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

(C) No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.

(D) No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

(E) Any violation of any condition of this section may be grounds for revocation or suspension of the license.
Penalty, see 111.99

111.34 MINORS ON PREMISES.

The provisions of M.S. 340A.503 are hereby adopted and incorporated in and made a part of this Section as completely as if set out herein in full.

111.35 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.
Penalty, see 111.99

111.36 SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M. S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time:

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of 111.04, the license shall be revoked.

(2) The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:

(a)For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.

(b)For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(c)For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(d)For a fourth violation within any three-year period, the license shall be revoked.

(3) The council shall select the day or days during which the license will be suspended.

(C) Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted within ten days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this chapter have again been met.

(D) The provisions of 111.99 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.
Penalty, see 111.99

CHAPTER 112: GAMBLING REGULATIONS

Section

General Provisions

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GENERAL PROVISIONS

112.01 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of Minnesota Statues, Chapter 349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to Minnesota Statues ,Chapter 349 are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

112.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of Minnesota Statues, Section 349.213, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on lawful gambling within its limits beyond those contained in Minnesota Statues Chapter 349, as it may be amended from time to time.

112.03 PURPOSE.

The purpose of this Chapter is to regulate lawful gambling with the City of Bigfork, to prevent its commercialization, to insure the integrity of operations, and to provide for the use of net profits only for lawful purposes.

112.04 DEFINITIONS.

In addition to the definitions contained in Minnesota Statues, Section 349.12, as it may be amended from time to time, the following terms are defined for purposes of this Chapter:

BOARD. as used in this Chapter, means the State of Minnesota Gambling Control Board.

CITY. as used in this Chapter, means the City of Bigfork.

LICENSED ORGANIZATION. as used in this Chapter, means an organization licensed by the Board.

LOCAL PERMIT. as used in this Chapter, means a permit issued by the City

112.05 APPLICABILITY.

This Chapter shall be construed to regulate all forms of lawful gambling within the City except:

(A) Bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if the prizes for a single bingo game do not exceed $10, total prizes awarded at a single bingo occasion do not exceed $200, no more than two bingo occasions are held by the organization or at the facility each week, only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game, no compensation is paid for any persons who conduct the bingo, and a manager is appointed to supervise the bingo.

(B) Raffles if the value of all prizes awarded by the organization in a calendar year does not exceed $1,500.

112.06 LAWFUL GAMBLING PERMITTED.

Lawful gambling is permitted within the City provided it is conducted in accordance with Minnesota Statues, Sections 609.75-609.763, inclusive, as they may be amended from time to time; Minnesota Statues, Sections 349.11-349.23, inclusive, as they may be amended from time to time; and this Chapter.

112.07 COUNCIL APPROVAL.

Lawful gambling authorized by Minnesota Statues, Section 349.11-349.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provision of this Chapter and state law.

112.08 APPLICATION AND LOCAL APPROVAL OF PREMISES PERMITS.

(A) Any organization seeking to obtain a premises permit or renewal of a premises permit from the Board shall file with the City Clerk an executed, complete duplicate application, together with all exhibits and documents accompanying the application as will be filed with the Board.

(B) Upon receipt of an application for issuance or renewal of a premises permit, the City Clerk shall transmit the application to the Chief of Police for review and recommendation.

(C) The Chief of Police shall investigate the matter and make the review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the City.

(D) The applicant shall be notified in writing of the date on which the Council will consider the recommendation.

(E) The Council shall receive the Police Chief's report and consider the application within 45 days of the date the application was submitted to the City Clerk.

(F) The Council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application.

(G) The Council shall deny an application for issuance or renewal of a premises permit for any of the following reasons:

(1) Violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling within the last three years.

(2) Violation by the on-sale establishment, or organization leasing its premises for gambling, or any state statute, state rule, or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to alcoholic beverages, gambling, control substances, suppression of vice and protection of public safety within the last three years.

(3) Lawful gambling would be conducted at premises other than those for which an on-sale liquor license has been issued.

(4) Lawful gambling would be conducted at more than three premises within the City.

(5) An organization would e permitted to conduct lawful gambling activities at more than one premises in the City.

(6) Operation of gambling at the site would be detrimental to the health, safety, and welfare of the community.

112.09 CONTRIBUTION OF NET PROFITS TO FUND ADMINISTERED BY CITY.

(A) Each organization licensed to conduct lawful gambling within the City pursuant to Minnesota Statues, Section 349.16, as it may be amended from time to time, shall contribute 10 percent of its net profits derived from lawful gambling in the City to a fund administered and regulated by the City without cost to the fund. The City shall disburse the funds for lawfl purposes as defined by Minnesota Statues Section 349.12, Subdivision 25, as it may be amended from time to time.

(B) Payment under this section shall be made on the last day of each month.

(C) The City's use of such finds shall be determined at the time of adoption of the City's annual budget or when the budget is amended.

112.10 RECORDS AND REPORTING.

Organizations conducting lawful gambling shall file with the City Clerk one copy of all records and reports required to be filed with the Board, pursuant to Minnesota Statues, Chapter 349, as it may be amended from time to time. The records and reports shall be filed on or before the day they are required to filed with the Board.

112.11 HOURS OF OPERATION.

Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.

112.12 PENALTY.

Any person who violates any provision of this ordinance or of Minnesota Statues, Sections 609.75-609.763 or 349.11-349.21, inclusive, as they may be amended from time to time, shall be guilty of a misdemeanor and shall be subject to a fine of not more than $1,000 or imprisonment for a term not to exceed 90 days, or both, plus in either case the costs of prosecution. In addition, violations shall be reported to the Board and

recommendation shall be made for suspension, revocation, or cancellation of an organization's license.

CHAPTER 113: SYNTHETIC DRUG REGULATIONS

Section

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113.01 INTENT

It is the intent of the City of Bigfork City Council to protect the health, safety, and welfare of its citizens by regulating the sale of synthetic drugs as defined herein which, when consumed, mimic the effects of marijuana, narcotics, and/or other controlled substances.

113.02 AUTHORITY

This Ordinance is adopted by the City Council pursuant to the authority granted under Minn. Stat. §145A. The provisions of this Ordinance shall be considered minimum requirements and shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by state statutes. It is not intended by this Ordinance to repeal, abrogate, or impair any other existing City ordinance, however, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail.

113.03 DEFINITIONS

For the purposes of this Ordinance, the following words and phrases shall have the meaning hereinafter ascribed to them:

SYNTHETIC DRUG. The term synthetic drug means one or more of the following:

- A substance that a reasonable person would believe is a synthetic drug;
- A substance that a reasonable person would believe is being purchased or sold as a synthetic drug; or

- A substance that a person knows or should have known was intended to be consumed by injection, inhalation, ingestion, or any other immediate means, and consumption was intended to cause or simulate a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance on Schedule 1. Synthetic drug does not mean food and drug ingredients, alcohol, legend drugs, tobacco or dietary supplements;

SYNTHETIC DRUG ESTABLISHMENT. Synthetic drug establishment means any business establishment where any person engages in the sale of synthetic drugs.

113.04 LICENSE REQUIRED

No person shall engage in the business of operating a synthetic drug establishment either exclusively or in connection with any other business enterprise without first obtaining a license for each synthetic drug establishment.

113.05 APPLICATION FOR LICENSE

Application for a synthetic drug establishment license shall be made to the City Council on forms supplied by the City Clerk containing the following information:

(A) A description of the business;

(B) A description of the location of the premises to be licensed;

(C) The full names and addresses of the property owner, business owner, lessee and manager, operator and the date of birth of each;

(D) If applicant is a partnership, the names and residence addresses of each of the partners including limited partners, and the address of the partnership itself, if different from the address of the synthetic drug establishment; and

(E) Whether any of the aforementioned individuals have ever been convicted of any crime or offense other than a traffic offense, and if so, a description of the offense as to time, place, date and disposition.

113.06 LICENSE FEE

The Council may establish from time to time in the ordinance Establishing

Fees and Charges the fee for this license.

113.07 ISSUANCE

No license under this Ordinance shall be issued unless it is approved by the City Council upon advice from the Itasca County Sheriff's Department and the Itasca County Attorney's Office and unless the establishment has passed fire and health inspections. The City Council shall not approve any license if they have reasonable grounds to believe:

(A) That the granting of said license would result in violations of the law;

(B) That the license application contains false and misleading statements; or

(C) That other good cause exists for denying the license;

If the City Council finds that they do not have adequate information to evaluate the license application, they may direct the applicant, manager or agent to appear at any reasonable time and place to give under oath information concerning the application. No license shall be granted to any applicant who refuses to appear and cooperate with the investigation.

113.07 SUSPENSION AND REVOCATION OF LICENSE

The City Council may revoke or suspend any license issued pursuant to this Ordinance, if, after giving the licensee an opportunity to be heard on the matter, such officer finds:

(A) The licensee has violated a provision of this Ordinance or any other law relating to the conduct of its operation including, but not limited to state, federal or local laws; or

(B) The licensee secured the license through misrepresentation or fraud or misstated any material fact in the application; or

(C) Failure of the licensee to cooperate with a licensed peace officer, fire or health officers in any investigation relating to their operations or failure to admit police officers into the establishment at any time when people are present in the establishment; or

(D) The establishment is operated in such a way as to endanger public health or safety; or

(E) The establishment is operated in such a way as to constitute a public nuisance as defined in Minnesota Statutes Section 609.74 or successor statute.

113.09 PROHIBITED ACTS

(A) No synthetic drug establishment or its owner(s), operator(s), manager(s), employee(s), or agent(s) shall:

(1) Remain open between 8:00 p.m. and 8:00 a.m. on any day;

(2) Sell synthetic drug products that do not include the name, phone number and address of the manufacturer, packer and distributer of the product;

(3) Sell synthetic drug products that do not identify all commodities within the package, including organic and non-organic, chemically synthesized substances and compounds;

(4) Sell synthetic drug products to any individual under the age of 21;

(5) Sell synthetic drug products that do not comply with all state and federal laws and regulations, including those related to packaging, labeling and weights and measures; and

(6) Be located less than 500 feet from any residential zoning district boundary or site used for residential purposes, or less than 500 feet from any church site, school site, day care facility, or from any public property, including but not limited to the cemetery, city park and canoe landing. In addition, no synthetic drug establishment may be located within 500 feet of another synthetic drug establishment. For purposes of this Ordinance, this distance shall be a straight line horizontal measurement from the nearest existing residential district boundary or site used for residential purposes, church site, school site, day care site, park site, or another synthetic drug establishment site to the nearest boundary of the proposed synthetic drug establishment site. This restriction shall not apply to a synthetic drug establishment that was conducting business at the location indicated in the application and making sales of synthetic drugs at that location on or before January 1, 2014.

113.10 ENFORCEMENT AND PENALTIES

(A) This ordinance may be enforced by any peace officer.

(B) Any person who violates, neglects, or refuses to comply with the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.00, imprisonment for a term not to exceed 90 days, or any combination

thereof.

(C) Regarding violations of this ordinance that are continuous with respect to time, each day that the violation continues is a separate offense. As to other violations, each act constitutes a separate offense.

(D) This ordinance, in addition to other remedies, may be enforced by injunction, action or compel performance or other appropriate action in District Court to prevent, restrain, correct or abate violations.

113.11 OTHER APPLICABLE LAWS

This Ordinance is intended to complement state and federal laws regulating synthetic drugs.

113.12 SEVERABILITY

If any section, subsection, sentence, clause, phrase, word, or other portion of this ordinance is, for any reason, held to be unconstitutional or invalid, in whole, or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

CHAPTER 116: NORTH AMERICAN COMMUNICATIONS CABLE FRANCHISE

Section

116.01 Statement of Intent and Purpose
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§ 116.01 STATEMENT OF INTENT AND PURPOSE.

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

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

§ 116.02 FINDINGS.

In the review of the Renewal Proposal and application of North American Communications Corporation ("Grantee"), and as a result of a public hearing, the City Board makes the following findings:

(A) The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

(B) Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;

(C) The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and

(D) The Franchise granted to Grantee is nonexclusive.

§ 116.03 SHORT TITLE AND DEFINITIONS.

(A) Short Title. This Franchise Ordinance shall be known and cited as the Cable Communications Ordinance.

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

(1) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any

public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7) (1993).

(2) "City" means the City of Bigfork,, a City in the State of Minnesota, acting by and through its City Board.

(3) "City Council" means the Bigfork City Council of Bigfork., Minnesota.

(4) "Cable Communications System" or "System" means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment, or facilities located in the City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and other forms of electronic signals in the City. System as defined herein shall not be inconsistent with the definition as set forth in Minn. Stat. § 238.02, subd. 3 (1990) and 47 U.S.C. § 522(6) (1993).

(5) "Cable Programming Service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(a) Video programming carried on the Basic Service Tier;

(b) Video programming offered on a pay-per-channel or pay-per-program basis; or

(c) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

(d) consists of commonly-identified video programming; and

(e) is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) (1993) and 47 C.F.R. 76.901(b) (1993).

(6) "Cable Communications Service" means the provision of television reception, communications and/or entertainment services regulated pursuant to Minn. Stat. § 238.01 et seq. As may be amended from

time to time, or as otherwise provided by this Franchise Ordinance, and distributing the same over a Cable Communications System..

(7) "Class IV Cable Communications Channel" means a signaling path provided by a Cable Communications System to transmit signals of any type from a Subscriber terminal to another point in the System.

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

(9) "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.

(10) "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(11) "Grantee" is North American Communications Corporation, its agents and employees, lawful successors, transferees or assignees.

(12) "Installation" means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.

(13) "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communications System.

(14) "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.

(15) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

(16) "Standard Installation" means any residential installation which can be completed using a Drop of one hundred fifty (150) feet or less.

(17) "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by the City.

(18) "Subscriber" means any Person who lawfully receives Cable Television Service. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

§ 116.04 GRANT OF AUTHORITY AND GENERAL PROVISIONS.

(A) Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable Communications System in the City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Television Service in the City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Communications Franchises granted by the City shall contain the same substantive terms and conditions.

(B) Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.

(C) Grant of Nonexclusive Authority.

(1) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable Communications System as herein defined. The Cable Communications System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent it is technically and economically feasible to do so.

(2) Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or with the present use of the Street.

(3) This Franchise shall be nonexclusive, and the City reserves the right to grant a similar use of said Streets, alleys, public ways and places, to any Person at any time during the period of this Franchise,

provided, however, that any additional Cable Franchise grants shall be under the same substantive terms and conditions as this Franchise.

(4) Grantee shall have the authority to use the City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(D) Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided.

(E) Previous Franchises. Upon acceptance by Grantee , this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable Communications System within the City. Ordinance No. 92 is hereby expressly repealed.

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

(G) Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, the City, or any other body having lawful jurisdiction thereof.

(H) Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or the City's Clerk , of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of Bigfork
P.O. Box 196
Bigfork, Minnesota 56628-0196

If to Grantee: North American Communications Corporation
211 Main St
P.O. Box 387
Hector, MN 55342-0387

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

§ 116.05 CONSTRUCTION STANDARDS.

(A) Construction Standards. If the System, or subsequent rebuilds or extensions, proposed for the Franchise area consist of fewer than one hundred (100) plant miles of cable:

(1) Within ninety (90) days of the granting of the Franchise, the Grantee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;

(2) The energized trunk cable must be extended substantially throughout the authorized area within one (1) year after receipt of the necessary governmental permits, licenses, certificates, and authorizations and the Persons along the route of the energized cable shall have individual Drops as desired during the same period of time; and

(3) The above-stated requirements may be waived by the City only upon occurrence of acts beyond the reasonable control of Grantee or acts of God.

(B) Construction Codes and Permits.

(1) Grantee shall obtain all required permits from the City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall substantially comply with all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.

(2) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

(C) Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by City in the case of Streets and other public property. If Grantee shall fail to promptly perform the restoration required herein, the City shall have the right to put the streets, public, or private property back into good condition. The City reserves its rights to pursue reimbursement for such restoration from Grantee.

(D) Conditions on Street Use.

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

(2) All System transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. The Grantee shall furnish to and file with the City Clerk the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

(3) If at any time during the period of this Franchise, the City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of the City. If the City reimburses other occupants of the Street, Grantee shall be likewise reimbursed.

(4) The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such

poles, conduits, or other fixtures placed in any Street shall be so placed as to comply with all requirements of the City.

(5) The Grantee shall, on request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

(6) The Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

(7) Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

(E) Undergrounding of Cable.

(1) In all areas of the City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.

(2) In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(3) Grantee shall by granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by the City or new developments.

(F) Safety Requirements.

(1) The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(2) The Grantee shall install and maintain its System wires, cables, fixtures and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that they will not interfere with any installations of the City or of any public utility serving the City.

(3) All System structures and all System lines, equipment and connections in, over, under and upon the Streets, sidewalks, alleys, and public ways and places of the City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.

§ 116.06 DESIGN PROVISIONS.

(A) Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

(B) Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications systems pursuant to the Federal Communications Commission's rules and regulations and found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

(C) Special Testing. The City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by the City. In the event that

special testing is required by the City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by the City.

(D) FCC Reports. The results of tests required to be filed by Grantee with the FCC shall also be copied to the City.

(E) Non-voice Return Capability. Grantee is required to use cable having the technical capacity for non-voice return communications.

(F) Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

§ 116.07 SERVICES PROVISIONS.

(A) Regulation of Service Rates.

(1) The City may regulate rates for the provision of cable service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). In exercising its jurisdiction to regulate any such rates, the City will adhere to regulations adopted by the Federal Communications Commission at 47 C.F.R., 76.900 et seq. As they may be amended from time to time.

(2) A list of Grantee's current Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the City and Subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change.

(3) In the event that the City elects to exercise its jurisdiction over locally regulatable rates, it shall, after notice, hold a public hearing for the consideration of views of interested parties with respect to initial rates filed and any subsequent proposed changes in rates.

(B) Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its Cable Television Services within the City. Grantee shall have the right to market its cable services door-to-door during reasonable hours consistent with local ordinances and regulation.

(C) Subscriber Inquiry and Complaint Procedures.

(1) Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis.

(2) Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the Federal Communications Commission at 46 C.F.R. § 76.309.

(3) Subscriber requests for repairs shall be performed, to the extent possible, within twenty-four (24) hours of the request unless conditions beyond the control of Grantee prevent such performance.

(4) Subject of the privacy provisions of 47 U.S.C. § 521 et seq. (1993), the City and Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee.

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

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

§ 116.08 OPERATION AND ADMINISTRATION PROVISIONS.

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

(B) Reports to be Filed with City. Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such reports with respect to

the operations, affairs, transactions or property, as they relate to the System, which Grantee and the City may agree upon.

§ 116.09 GENERAL FINANCIAL AND INSURANCE PROVISIONS.

(A) Enforcement.

(1) The time for Grantee to correct any violation or liability, shall be extended by City if the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) days period and thereafter uses reasonable diligence to correct the violation or liability.

(B) Indemnification of the City.

(1) The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System.

(2) Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of the franchise, except claims because of the City's own programming.

(3) Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

(4) In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:

(a) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

(b) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(c) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

(C) Insurance.

(1) As a part of the indemnification provided in Section 8.3, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the City in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured City, and their capacity as such, their officers, agents and employees. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars ($300,000) for personal injury or death of any one Person, and One Million Dollars ($1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars ($300,000) for property damage to any one person and One Million Dollars ($1,000,000) for property damage resulting from any one act or occurrence.

(2) The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after thirty (30) days' advance written notice have been provided to the City.

§116.10 SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE.

(A) City's Right to Revoke.

(1) In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by 8.2B herein, it is determined that:

(a) Grantee has violated any material provision of this Franchise; or

(b) Grantee has attempted to evade any of the material provisions of the Franchise; or

(c) Grantee has practiced fraud or deceit upon the City or Subscriber.

(d) The City may revoke this Franchise without the hearing if Grantee is adjudged a bankrupt.

(B) Procedures for Revocation.

(1) The City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. Together with the notice required herein, the City shall provide Grantee with written findings of fact which are the basis of the revocation.

(2) Grantee shall be provided the right to a public hearing affording due process before the City Board prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (A) above. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(3) After the public hearing and upon written determination by the City to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

(4) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

(5) Upon satisfactory correction by Grantee of the violation upon which said notice was given as determined in the City's sole discretion, the initial notice shall become void.

(C) Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment.

(D) Sale or Transfer of Franchise.

(1) No sale, transfer, or "fundamental corporate change", as defined in Minn. Stat. § 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with the City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(2) The City shall have thirty (30) days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Grantee's Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed by Board Resolution within thirty (30) days of receipt of said request, or the request shall be deemed approved as a matter of law.

(3) If a public hearing is deemed necessary pursuant to (B.) above, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City. Said hearing may be continued only with Grantee's written consent.

(4) Within thirty (30) days after the closing of the public hearing, the City shall approve or deny in writing the sale or transfer request. The City shall set forth in writing with particularity its reason(s) for denying approval. The City shall not unreasonably withhold its approval.

(5) The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

(6) The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(7) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

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

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

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

§ 116.11 PROTECTION OF INDIVIDUAL RIGHTS.

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

(B) Subscriber Privacy.

(1) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

(2) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, or any other means, including but not limited to lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available.

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

§ 116.12 UNAUTHORIZED CONNECTIONS AND MODIFICATIONS.

(A) Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.

(B) Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

(C) Penalty. Any firm, Person, group, company, corporation or government body or agency found guilty of violating this section may be fined not less than Twenty Dollars ($20.00) and the costs of the action nor more than Five Hundred Dollars ($500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

§ 116.13 MISCELLANEOUS PROVISIONS.

(A) Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.

(B) Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. The City shall act pursuant to local law pertaining to the ordinance amendment process.

(C) Compliance with Federal, State and Local Laws.

(1) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit the City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

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

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

(E) Administration of Franchise. The City of Bigfork, Minnesota, Cable Committee shall have continuing regulatory jurisdiction and supervision

over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

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

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

§ 116.14 PUBLIC ACCESS PROVISIONS.

(A) Public, Educational and Government Access.

(1) City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter "PEG access") to the cable system established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in this Section 6.

(2) Grantee shall dedicate one (1) channel for PEG access use as follows: public access, educational access, and government access. All residential Subscribers who receive all or any part of the total services offered on the System shall be eligible to receive the access channel at no additional charge. With the PEG channel to be activated upon City request. However, nothing herein shall be construed to diminish the City's rights pursuant to Minn. Stat. § 238.084, incorporated herein by reference. City shall provide one hundred and eighty days (180) prior written notice to Grantee of City's intent to activate the access channel and shall allow Grantee a reasonable time to vacate

said channel and/or rearrange program services to accommodate City's request.

(3) The VHF spectrum must be used for the specially designated access channel required in the section.

(B) Charges for Use. Channel time an playback of prerecorded programming on the specially designated access channel must be provided without charge to the general public, except that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for production costs must be consistent with the goal of affording the public a low-cost means of television access.

(C) Access Rules.

(1) City shall implement rules for use of any specially designated access channels. The initial access rules and any amendments thereto shall be maintained on file with City and available for public inspection during normal business hours.

(2) Prior to the cablecast of any program on any PEG access channel established herein, City shall require any Person who requests access (public, education, and government) to the System to provide written certification in a form and substance acceptable to Grantee and City which releases, indemnifies, and holds harmless City, Grantee and their respective employees, offices, agents, and assigns from any liability, cost, damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program.

§ 116.15 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS.

(A) Publication; Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee.

(B) Acceptance.

(1) Grantee shall accept this Franchise by executing the same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes.

(2) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(3) Grantee shall accept this Franchise in the following manner:

(a) This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.

(b) Grantee shall have continuing responsibility for this Franchise, and if Grantee be a subsidiary or wholly-owned corporate entity of a parent corporation, performance of this Franchise shall be secured by a written guarantee of the parent corporation in a form and substance acceptable to City, which shall be delivered with the executed Franchise.

(c) With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

CHAPTER 117: ADULT ORIENTED BUSINESSES

Section

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§ 117.01 PURPOSE AND INTENT.

(A) Findings. It is the purpose of this Ordinance to regulate adult oriented businesses to promote the health, safety, morals and general welfare of the citizens of the City and to establish reasonable and uniform regulations to:

(1) Prevent additional criminal activity within the City;

(2) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;

(3) To locate adult oriented businesses away from residential areas, school, and places of worship.

(4) Prevent concentration of adult oriented businesses within certain areas of the City.

The Findings of Fact relating to adult uses as adopted by the Planning Commission and contained in their recommendations to the City Council are also adopted by the City Council and hereby incorporated into this Ordinance by reference.

(B) The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative material, including adult oriented materials. Similarly, it is not the intent nor effect of this Ordinance to restrict or deny access by adults to adult oriented materials protected by the First Amendment to the Constitution of the United States, or to deny access by distributors and exhibitors of adult oriented entertainment to their intended market.

§ 117.02 DEFINITIONS.

(A) For purposes of this section the terms defined in this section have the meanings given them.

(B) Adult Use. Any of the activities and businesses described below constitute “adult oriented businesses” which are subject to the regulation of this Ordinance.

(C) Adult Book and/or Media Store. An establishment which excludes minors and which has a substantial portion of its stock in trade or stock on display books, magazines, films, videotapes, or other media which are characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(D) Adult Cabaret. An establishment which provides dancing or other live entertainment, if such establishment excludes minors by virtue of age from all or part of the establishment and if such dancing or other live entertainment in distinguished or characterized by an emphasis on the performance, depiction or description of specified sexual activities or specified anatomical areas.

(E) Adult Establishments. Any business which offers its patrons services, entertainment, or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussing, or relating to specified sexual activities or specified anatomical areas. Specifically included in the term, but without limitation, are adult book and media stores, adult cabarets, adult hotels or motels, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades, adult motion picture theaters, adult novelty businesses, and other adult establishments.

(F) Adult Hotel or Motel. Adult Hotel or Motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(G) Adult Mini-Motion Picture Theater.

(1) A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for less than 50 persons used for presenting motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(2) Any business which present motion pictures, from which minors are excluded from all or part of the establishment, including films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, for viewing on the premises, including but not limited to private booths, viewing by means of coin operated or other mechanical devices, and the viewing of excerpt of motion pictures offered for sale or rent.

(H) Adult Modeling Studio. An establishment, which excludes minors from all or part of the establishment, whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation to sexual gratification to such customers and

who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

(I) Adult Motion Picture Arcade. Any place which excludes minors from all or part of the establishment wherein coin or token operated or electronically, electrically, or mechanically controlled or operated still or motor picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(J) Adult Motion Picture Theater. A theater is an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity of 50 or more persons used regularly and routinely for presenting live entertainment of motion pictures, including but not limited to film and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons herein.

(K) Adult Novelty Business. A business, from which minors are excluded from all or part of the establishment, which sells, offers to sell, or displays devices which stimulate human genitals or devices which are designed for sexual stimulation.

(L) Specified Anatomical Areas are any of the following conditions:

(1) Less than completely and opaquely covered;

(a) human genitals, pubic region, or pubic hair,
(b) buttock; and
(c) Female breast below a point immediately above the top of the areola; and

(2) Human male genitals in a discernible turgid state, even if opaquely covered.

(M) Specified Sexual Activities are any of the following conditions:

(1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.

(3) Masturbation or lewd exhibitions of the genitals including any explicit close-up representation of a human genital organ clothed or unclothed.

(4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of a female, whether alone or between numbers of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

§ 117.03 APPLICATION OF THIS ORDINANCE.

Except as in this Ordinance specifically provided, not structure shall be erected, converted, enlarged, reconstructed, or altered, and not structure or land shall be used, for any purpose nor in any manner which is not in conformity with this Ordinance.

No Adult Oriented Business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by an ordinance of the City of BIGFORK, the laws of the State of Minnesota, or the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct which is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale, or distribution of obscene material generally, or the exhibition, sale or distribution of specified materials to minors.

§ 117.04 LOCATION.

During the term of this Ordinance, no Adult Oriented Businesses shall be located less than 500 feet from any residential zoning district boundary or site used for residential purposes, and less than 500 feet from any church site, from any school site, from any day care facility, or from any public property, including but not limited to the cemetery, city park and canoe landing. In addition, no adult oriented business may be located within 500 feet of another adult oriented business. For purposes of this Ordinance, this distance shall be a straight line horizontal measurement from the nearest existing residential district boundary or site used for residential purposes, church site, school site, day care site, park site, or another adult oriented business site to the nearest boundary of the proposed adult oriented business site.

§ 117.05 HOURS OF OPERATION.

No Adult Oriented Business site shall be open to the public from the hours of 11:00 p.m. to 10:00 a.m.

§ 117.06 OPERATION.

(A) Nudity Prohibited. It shall be unlawful for any licensee to permit or allow any person or persons to be on the licensed premises when such person does not have his or her buttocks, anus, breast, and genitals covered with a non-transparent material.

(B) Liquor Prohibited. It shall be unlawful for any licensee to sell or otherwise dispense any alcoholic beverage, or to permit or allow any person or persons on the licensed premises to consume or be in possession of any alcoholic beverage, including liquor, wine or beer, or any derivative thereof.

(C) Off-site viewing. An establishment operating as an Adult Oriented Business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of Minnesota Statutes chapter 617 or other applicable Federal or State Statutes or local ordinances.

(D) Entrances. All entrances to the business, with the exception of emergency fire exits which are not useable by patrons to enter the business, shall be visible from a public right-of-way.

(E) Layout. The layout of the display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing, including but not limited to books, magazines, photographs, video tapes or any other similar material.

(F) Illumination. Illumination of the premises exterior shall be adequate to observe the location and activities of all person on the exterior premises.

(F) Signs. Signs for Adult Oriented Businesses shall comply with the City's Ordinance for signs, and in addition signs for Adult Oriented Businesses shall not contain representational depiction of an adult nature of graphic descriptions of the adult theme of the operation.

§ 117.07 LICENSES.

(A) Licenses Required. All establishments, including any business operating at the time this Ordinance become effective, operating or intending to operate Adult Oriented Business, shall apply for and obtain a license from the City of Bigfork. A person is in violation of the City Code if he or she operates an Adult Oriented Business without a valid license, issued by the City. No establishment in possession of any form of liquor license shall be eligible to obtain an adult use license.

(B) Applications. An Application for a license must be made on a form provided by the City.

(1) The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(2) The application must be qualified according to the provisions of this section and the premises must be inspected and found to be in compliance with the appropriate state, county, and local law and codes by the health official, fire marshal, and building official.

(3) Application for license shall contain the address and legal description of the property to be used; the names, addresses, phone numbers, dates of birth of the owners, lessee, if any, the operator or manager, and all employees; the names, address, and phone number of two persons, who shall be residents of the State of Minnesota, and who maybe called upon to attest to the applicant's, manager's, or operator's character; whether the applicant, manager, or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information the disposition thereof; the names and addresses of all creditors of the application, owner, lessee, or manager insofar as the regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating, or furnishing or acquiring the premises, personal effects, equipment, or anything incident to the establishment, maintenance and operation of the business.

(4) If the application is made on behalf of the corporation, joint business venture, partnership, or any legally constituted business association, it shall submit along with its application, accurate and complete business records showing the names, addresses, and dates of birth of all individuals having an interest in the business, including partners,

officers, owners, and creditor furnishing credit for the establishment, acquisition, maintenance, and furnishings of said business, in the case of a corporation, the names, addresses, and dates of birth of all officers, general managers, members of the board of directors as well as nay creditors who have extended credit for the acquisition, maintenance, operation, or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in said operation.

(5) All applicants shall furnish to the City, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof, or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements, and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise.

(C) Disqualification. The license may not be issued if:

(1) The license fee required by this ordinance has not been paid.

(2) An applicant has been convicted of a crime involving any of the following offenses:

(a) Any sex crimes as defined by Minn. Stat. 609-29 through 609-352 inclusive or as defined by any ordinance or statute in conformity therewith;

(b) An obscenity crime as defined by Minn. Stat. 617.23 through 617.299 inclusive, or as defined by any ordinance or statute in conformity therewith, for which;

(i) Less than two years have elapsed since the date of conviction or the date of releases from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense.

(ii) Less than five years have elapsed since date of the last conviction or the date of release from confinement for the conviction, whichever is the late date, if the conviction is a felony offense; or

(iii) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the conviction is two or more misdemeanor offenses or combination of misdemeanor offenses occurring within an 24 hour period.

(c) The fact that a conviction is being appealed shall have not effect on disqualification of the applicant or applicant's spouse.

(D) Requalification. An applicant who has been convicted of an offense listed in Section 7, Subdivision 4(b), may qualify for an Adult Oriented business license only when the time period required by Section 7, Subdivision 4(b) has elapsed.

(E) Posting. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the Adult Oriented Business. The license shall be posted in a conspicuous place at or near the entrance to the Adult Oriented Business so that it may be easily read at any time.

(F) Council Action. The City Council shall act to approve or disapprove the license application within 30 days from the date the application was submitted, provided that the application contains all of the information required by this ordinance. If the application is deficient, the Council shall act on the application within 30 days from the date that the deficiency has been corrected.

(G) Appeals. Within 30 days after the decision by the Council, the applicant may appeal to the District Court by serving a notice upon the Mayor or Clerk of the Municipality.

§ 117.08 FEES.

The license fee shall be as fixed in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this Code, as that ordinance may be amended from time to time.

§ 117.09 INPECTION

(A) Access. An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building

inspection division, to inspect the premises of an Adult Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(B) Refusal to Permit Inspections. A person who operates an Adult Oriented Business or his agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives or the police department, fire department, and building inspection division at anytime it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in Section 11.

(C) Exceptions. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for uses as a permanent or temporary habitation.

§ 117.10 EXPIRATION AND RENEWAL.

(A) Expiration. Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in Section 7, Subdivision 1. Application for renewal must be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

(B) Denial of Renewal. When the City denies renewal of a license, the applicant shall not be issued a license of one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license have been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

§ 117.11 SUSPENSION.

(A) Causes of Suspension. The City may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a license has:

(1) Violated or is not in compliance with any provision of this City Ordinance.

(2) Allowed the use by any party of alcoholic beverages while on the Adult Oriented Business premises other than at an Adult Hotel or Motel.

(3) Refused to allow an inspection of the Adult Oriented business Premises as authorized by this City Ordinance.

(4) Knowingly permitted gambling by any person on the Adult Oriented Business premises.

(5) Demonstrated inability to operate or mange an Adult Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(B) Notice. A suspension by the City shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensees business premises with the person in charge thereof.

§ 117.12 REVOCATION

(A) Suspended Licenses. The City may revoke a license if a cause of suspension in Section 11 occurs and the license has been suspended within the preceding 12 months.

(B) Causes of Revocation. The City shall revoke a license if it determines that:

(1) A licensee gave false or misleading information in the material submitted to City during the application process;

(2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances or alcohol on the premises;

(3) A licensee or an employee has knowingly allowed nudity or prostitution on the premises;

(4) A licensee or an employee knowingly operated the Adult Oriented Business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in Section 7, Subdivision 3(g), for which the time period required in Section 7, Subdivision 3(g), has not elapsed;

(6) A person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 7, Subdivision 3(g), for

which a conviction has been obtained, and the person or persons were employees of the Adult Oriented Business at the time the offenses were committed.

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

(C) Appeals. The fact that conviction is being appealed shall have no effect on the revocation of the license.

(D) Exceptions. Section 12, Subdivision 2(g), does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(E) Granting a License After Revocation. When the City revokes a license, the revocation shall continue for one year and the licensee shall not be issued an Adult Oriented Business license for one year from the date of revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Section 12, Subdivision 2(e), an applicant may not be granted another license until the appropriate number of years required under Section 7, Subdivision 3(g), has elapsed.

(F) Notice. A revocation by the City shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 day's notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premised with the person in charge thereof.

§ 117.13 TRANSFER OF LICENSE.

A licensee shall not transfer this license to another, nor shall a licensee operate an Adult Oriented business under the authority of a license at any place other than the address designated in the application.

§ 117.14 SEVERABILITY.

Every section, provision, or part of this Ordinance or any permit issued to this Ordinance is declared severable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this Ordinance or any permit issued pursuant to this Ordinance shall be held invalid by a court of competent jurisdiction it shall not invalidate any other section, provision, or part thereof.

§ 117.15 PENALTY.

A violation of this Ordinance shall constitute a misdemeanor. In addition, the City may enforce any provision of this Ordinance by mandamus, injunction or any other appropriate civil remedy in any Court of competent jurisdiction.

CHAPTER 118: GORHAM'S INC. FRANCHISE

Section

118.01 Definitions
118.02 Adoption of Franchise
118.03 Location, Other Regulations
118.04 Relocations
118.05 Indemnification
118.06 Vacation of Public Ways
118.07 Change in Form of Government
118.08 Franchise Fee
118.09 Abandoned Facilities
118.10 Provisions of Ordinance
118.11 Amendment Procedure

§ 118.01 DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

City. The City of Bigfork, County of Itasca, State of Minnesota.

City Utility System. Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

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

Company. Gorham's Inc, a Minnesota Corporation, d/b/a Northwest Gas, its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this franchise.

Gas Facilities. Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing gas energy for public or private use.

Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to: Northwest Gas, 1608 NW 4th Street, Grand Rapids, Minnesota.

Notice to the City shall be mailed to the Bigfork City Clerk, City Hall, Bigfork, Minnesota. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

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

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

§ 118.02 ADOPTION OF FRANCHISE.

Grant of Franchise. City hereby grants Company, for a period of ten (10) years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell gas for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

Effective Date; Written Acceptance. This franchise shall be in force and effect from and after its passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance within the City within 60 days after the date the City Council adopts this ordinance, or otherwise informs the City, at any time, that the Company does not accept this franchise, the City Council by resolution may revoke this franchise or seek its enforcement in a court of competent jurisdiction.

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

Publication Expense. Company shall pay the expense of publication of this Ordinance.

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

Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, the franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after the expiration of the ten-year term set forth in § 118.02.

§ 118.03 LOCATION, OTHER REGULATIONS.

Location of Facilities. Gas Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to other reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise.

Street Openings. Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

Restoration. After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ground at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this § 118.03. The Company shall also post a construction performance bond consistent with the provisions of Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6.

Avoid Damage to Gas Facilities. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable notice by the City of such work prior to its commencement.

Notice of Improvements to Streets. The City will give Company reasonable written Notice of plans for improvements to Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

Mapping Information. The Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

§ 118.04 RELOCATIONS.

Relocation in Public Ways. The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.

Relocation in Public Grounds. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by the City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Relocation shall comply with applicable city ordinances consistent with law.

Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the Minnesota Statutes Section 161.46.

§ 118.05 INDEMNIFICATION.

Indemnity of City. Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for

losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to t he City. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

§ 118.06 VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law. Where necessary, City shall retain utility rights of way in any public way so vacated in accord with Minn. Stat. §161.45, Subd. 3.

§ 118.07 CHANGE IN FORM OF GOVERNMENT.

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

§ 118.08 FRANCHISE FEE.

Form. During the term of the franchise hereby granted, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee. The fee may be (i) a percentage of gross revenues received by the Company for its operations within the City, or (ii) a flat fee per customer based on metered service to retail customers within the City or on some other similar basis, or (iii) a fee based on units of energy delivered to any class of retail customers within the corporate limits of the City. The method of imposing the franchise fee, the percentage of revenue rate, or the flat rate based on metered service may differ for each customer class or combine the methods described in (i) – (iii) above in assessing the fee. The City shall seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially

similar fee amount to the City and reimburse the City's reasonable fees and costs in reviewing and implementing the formula. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and each review will not delay the implementation of the City-imposed fee.

Separate Ordinance. The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least thirty (30) days after written notice enclosing such proposed ordinance has been served upon the Company. The fee shall become effective ten (10) days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail.

Condition of Fee. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of gas energy within the City by any other gas energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through a previously agreed upon franchise.

Collection of Fee. The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed form time to time, however, the change shall meet the same notice requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectables and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

Continuation of Franchise Fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon.

§ 118.09 ABANDONED FACILITIES.

The Company shall comply with City ordinances, Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules Part 7819.3300, as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such record as the City's request and comply with the location requirements of Section 216D.04 with respect to all Facilities, including abandoned and retired Facilities.

§ 118.10 PROVISIONS OF ORDINANCE.

Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a

provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

Limitations on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such persona as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

§ 118.11 AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance.

CHAPTER 119: MINNESOTA POWER FRANCHISE

Section

119.01 Adoption of Franchise
119.02 Operations, Regulations
119.03 Indemnification
119.04 Franchise Fee
119.05 Previous Franchises Superseded
119.06 Mediation

§ 119.01 ADOPTION OF FRANCHISE.

Grant of Franchise. The City of Big Fork hereby grants to Minnesota Power, its successors and assigns, (hereinafter referred to as "Company") the right to enter upon and construct, operate and maintain upon the streets, alleys, highways and public grounds of the City, poles, wires, conductors, lines, cables, insulators, communication lines, bases, crossarms, braces, lamps, conduits, underground cables, transformers, and other usual appurtenances and appliances for transmitting and distributing electric power and energy, and for other compatible uses and applications, including but not limited to transmission of data and other information, telecommunications, and electric load dispatch and control. This Ordinance shall remain in effect for a period of twenty (20) years from and after passage of this Ordinance.

Extension of Franchise. The term of this franchise will automatically extend for successive one (1) year periods unless written notice of termination is provided by either party to the other at least ninety (90) days before the end of the then-current term.

§ 119.02 OPERATIONS, REGULATIONS.

Provision of Service. In consideration for the right to use the streets, alleys, highways and public grounds, the Company shall be prepared to and shall furnish twenty-four (24) hour, continuous electric service to consumers in that part of the Company's service territory that is located within the City, including the City, unless prevented by causes not within the Company's reasonable control.

Regulations. The services to be provided and the rates to be charged by the Company are subject to the laws of the State of Minnesota; and the rates, rules and regulations established from time to time by the Company, federal laws and regulations, and/or the Minnesota Public Utilities Commission (the "Commission").

Standard of Care. All poles, wires and other appliances shall be constructed and maintained by Company in as safe and secure a manner as reasonably possible; in such a manner so as not to unnecessarily interfere with the public use of the said streets, alleys, highways and public grounds; and subject to reasonable regulation by the City. The

Company shall not cause any pollution and shall not violate any Environmental laws, rules or regulations.

Tree Trimming. The Company may trim, remove, or apply herbicides to, any trees, shrubs and other vegetation in the streets, alleys, highways and public grounds of the City that interfere with the proper construction, operation, repair or maintenance of any of the Company's facilities.

Notice of Improvements. The City will give the Company reasonable advance written notice of plans for improvements to streets, alleys, highways or public grounds of the City where the City has reason to believe that the Company's facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the streets, alleys, highways and public grounds of the City upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) the order in which the work is to proceed.

Vacation of Public Ways. The City must give the Company at least two (2) weeks notice, or such other notice as required by Minnesota law, of the proposed vacation of a public street, alley, or highway. The vacation of a public street, alley, or highway does not deprive the Company of its rights to operate and maintain the Company's facilities until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company by City or some other party. The City has the option, but not the obligation to specifically preserve a right-of-way in the manner permitted by Minnesota Statutes Section 160.29 in lieu of such payment.

Other Property Rights of Company. The provisions of this Ordinance apply only to Company facilities constructed in reliance on this franchise and the Company does not waive or modify its rights under any easement, prescriptive right, state or county permit, or other real property interests that Company may have in any public way or in any public ground.

§ 119.03 INDEMNIFICATION.

Liability of the City. The City shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation and maintenance by the Company of its lines and appurtenances hereunder, except to the extent caused by the City's negligence.

Indemnification by Company. The acceptance of this Ordinance shall be deemed an agreement on the part of the Company to indemnify the City and hold it harmless against any and all liability, loss, damage or expense which may accrue to the City by reason of the neglect, default or misconduct of the Company in the construction, operation or maintenance of its facilities hereunder.

§ 119.04 FRANCHISE FEE.

Separate Ordinance. During the term of the franchise hereby granted the City may require a franchise fee to be paid by the Company on its retail operations within the City in accordance with Minn. Stat. Section 216B.36. In the event the City determines that it wishes to proceed to implement such a fee, the City shall notify the Company and arrange to meet with representatives of the Company to discuss its plans for doing so and shall provide such representatives an opportunity to explain the impacts that such a fee would have on each rate class within the City. Any franchise fee must be imposed by a separate ordinance adopted by the City Council, which ordinance may not become effective until at least thirty (30) days after the issuance of a written order from the Commission authorizing the Company to incorporate such fee within its rate schedule and thereby pass along the costs of such fee to Company's customers located within the City. The Company agrees to use its commercially reasonable efforts to obtain such Commission authorization.

Calculation of Fee. The City may impose the franchise fee as a flat fee per customer per premise based on metered service to retail customers within the corporate limits of the City.

Collection of Fee. The franchise fee will be payable not less often than quarterly during complete billing months of the period for which payment is to be made. The total amount of the franchise fee may not exceed the total amount that the Company may legally collect from its customers in relation thereto. The amount and origin of the fee will be separately identified on the Company's bills to its customers. The Company shall pay the City the franchise fee based upon the surcharge billed, subject to subsequent reductions to account for uncollectibles or customer refunds. The time and manner of collecting the franchise fee are subject to the approval of the Commission. The Company agrees to make available for inspection by the City at reasonable times, upon fifteen (15) business days' prior notice from the City, all records necessary to audit the Company's determination of the franchise fee payments.

Change in Fee. The franchise fee formula may be changed by ordinance from time to time; however, each change must meet the procedural requirements of Section 4.1 and may not be made more often than once every five (5) years.

Continuation and Discontinuation of Franchise Fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any, being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon.

§ 119.05 PREVIOUS FRANCHISES SUPERSEDED.

This Ordinance supersedes and cancels the City of Big Fork Ordinance No. 84, dated September 13, 1988, granting a permit to Company, which Ordinance was entitled "An Ordinance granting to Minnesota Power & Light Company, its successors and assigns, the right to construct and maintain an electric distribution and transmission

system within the City of Big Fork, Minnesota." In the event that a provision of any other city ordinance conflicts with the provision of this Ordinance, the provisions of this Ordinance shall not prevail unless the City specifically acts to overrule the other city ordinance.

§ 119.06 MEDIATION.

The parties agree to promptly submit to arbitration in Bigfork, Minnesota under the then current rules of the National Arbitration Forum (within ten (10) working days of reaching an impasse) any dispute or controversy arising under this agreement that cannot be resolved by the parties through direct communication. The parties further agree to first mediate in good faith and, if mediation fails, then submit the matter to arbitration before a single arbitrator. The arbitrator shall be listed on the Minnesota Roster of Neutrals and shall either be selected by the mutual agreement of the parties or by the National Arbitration Forum who shall submit a list of at least three (3) qualified arbitrators and have the parties alternately strike names. The parties shall flip a coin to determine which party shall strike the first name. The parties shall equally share the costs of mediation. The decision of the arbitrator shall be binding and enforceable through a court of competent jurisdiction or any regulatory agency.

TITLE XIII

CHAPTER 130: GENERAL OFFENSES

CHAPTER 131: ADMINISTRATIVE OFFENSES

CHAPTER 130: GENERAL OFFENSES

Section

General Provisions

130.01 Damage to property; graffiti
130.02 Restricting Hunting/Discharge of Firearms
130.03 Curfew for Minors
130.04 Jumping from Public Bridges Prohibited
130.05 Prohibiting Tampering with Security Devices
130.99 Penalty

GENERAL PROVISIONS

130.01 DAMAGE TO PROPERTY; GRAFFITI.

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

GRAFFITI. In addition to its usual and customary meaning of defacing walls or structures with messages or slogans, ***GRAFFITI*** shall also mean any letter, numeral, figure, emblem, insignia, picture, outline, character, spectacle, delineation, announcement, word, phrase, diagram, symbol, sketch, inscription or representation, wherein the contents thereof are visible to any member of the general public and which contains references to sexual activity, diagrams relating to sexual activity or sexual organs, references to criminal activities or groups which promote or are involved in criminal activity, swearing or fighting words, defamatory materials about any person, references to relationships, or any marking of any kind whatsoever which results in damage to, defacing of, marring of, or discoloring of any sidewalk, street, or other public surface, any vehicle, any equipment, lamp, lamp post or other city property, or of the exterior surface of a wall, fence, door, building or other structure, whether publicly or privately owned.

OWNER. Means and includes the owner of record of the subject property, whether public or private, at the time of the placement or discovery of the graffiti or at a subsequent time, the beneficial owner under a land trust, the contract purchaser, or that person or persons or trust in whose name the general taxes for the last preceding year were paid, except that ***OWNER*** shall not include the city.

(B) *Conduct prohibited.*

(1) It is unlawful for any person to inscribe, draw, or otherwise place or cause to be placed any graffiti upon the surface of any building, structure, wall or surface of other property that is publicly or privately owned.

(2) It shall be unlawful for any parent or legal guardian to knowingly permit any minor child in his or her custody or control to violate division (B)(1) of this section.

(3) The parent or legal guardian of a minor defendant who resides with the parent or legal guardian at the time of the offense may be held liable for any fine or condition of restitution or reparation imposed by a court upon a minor for violation of this section; provided, that minor has not paid the fine or made restitution or reparation within the time ordered by the court; and further provided that the parent or legal guardian has been served with summons or notice to appear whether in the original cause or in any subsequent proceedings arising therefrom, including sentencing or collection actions, as provided by law.

(C) *Removal by owner.*

(1) *Owners responsibility.* It shall be the duty of the owner of the structure or wall or other private property upon which any graffiti is placed or made to remove, eradicate, or eliminate the inscription or representation within 30 days of the occurrence unless granted additional time by the City Council.

(2) *Notice to remove graffiti.* In the event the owner has failed to eliminate the graffiti, the owner shall be notified by certified mail or personal notice that he or she has 30 days from the date of the notice in which to remove the graffiti. In the event that charges have been filed against the person believed responsible for placement of the graffiti and the owner can show to the city that there is a reasonable likelihood that the person will be required to make restitution or restore the premises to its previous condition, the owner may be given additional time to meet the removal requirements. In no event shall the owner be granted more than a total of six months time to remove graffiti, but any extensions shall be based solely upon a reasonable likelihood of apprehension and conviction of the person responsible. In the absence of the reasonable likelihood, the owner is responsible for removal within the time allowed in divisions (C)(1) and (2) of this section.

(3) *List of contractors and cleaning materials.* The city may make available a list of contractors in the business of removing graffiti and list of cleaning materials generally recognized in the industry as effective in the removal of graffiti. By providing lists of contractors and cleaning materials, the city does not guarantee the quality or adequacy of work performed by anyone selected by owner or the effectiveness or safety of the materials

listed, and the city expressly disclaims responsibility or liability for the quality or adequacy of the work or materials or any claims for damage or injury arising therefrom.

(D) *Removal by the city.*

(1) The city shall have the right but not the duty to remove graffiti from the exterior of private property if the owner informs the city of the presence of the graffiti and of the owners inability to remove it. Prior to the city entering any private property to remove graffiti, the owner must sign a statement authorizing removal by the city and agreeing to pay the reasonable costs of the removal and to allow the recording of a lien against the real estate upon which the work was performed if the cost is not paid to the city within 30 days of the date of the invoice sent to the owner. The owner must also sign a release holding the city harmless from any claims or suits brought for damages pursuant to any adverse or injurious effects of such chemicals or from the actions taken by the city or its employees to remove the graffiti prior to the city commencing work on the property. If the property owner does not remove the graffiti within the time specified or extended time requested and granted by the city or if the city is unable to perform the work at the request of the owner, the owner shall be subject to the penalties listed in division (E) of this section.

(2) If the city performs the graffiti removal pursuant to division (D)(1) of this section, it shall be entitled to a lien and to file a notice of lien against the property upon which the work was performed for the cost of the removal.

(E) *Penalty.*

(1) Upon a finding of guilty for violation of division (B) of this section, an offender shall be punished as provided in 130.99. Additionally, the court may, as a condition of probation, supervision, or conditional discharge, require that the party guilty of violating the provisions of division (B) of this section make full and complete restitution to the owner of the property for expenses incurred in the removal of the graffiti or, with the consent of the owner, restore the structure, wall, building or surface to its previous condition. In addition, the court may order as a further penalty community service in the form of time to be spent in cleaning property that has been defaced by graffiti in any location in the city.

(2) Upon a finding of guilty for violation of division (C)(1) of this section, an offender shall be punished as provided in 130.99. Each and every day that graffiti is permitted to remain beyond the time specified in division (C)(2) of this section shall constitute a separate violation.

(F) *Compliance by the city.*

(1) It is the intention of the city that graffiti discovered upon city property or public property under the jurisdiction and control of the city will be removed within the time periods for graffiti removal imposed upon other governmental bodies and owners of private property under this section. The City Council shall have the authority to order and direct the removal of graffiti.

(2) A designated city officer, or his or her designee, shall provide, no less than semi-annually, a written report to the City Council of graffiti incidents involving city property and removal efforts by the city. The report shall include at a minimum the location of the graffiti, charges filed against or convictions of offenders where relevant, the date and methods of graffiti removal undertaken by the city and the cost of the removal. Penalty, see 130.99

130.02 RESTRICTING HUNTING/DISCHARE FIREARMS

(A) Definitions

(1) "**take"** take means to get possession of by killing or capturing.

(2) **"dangerous weapon"** dangerous weapon has the definition given in Minnesota State Statute 609.02 Subd. 6.

(3) "**property of another"** property of another has the definition given in Minnesota State Statute 609.556 Subd. 2.

(4) **"protected game"** protected game includes any animal protected and regulated under MN Statute Chapter 97B

(B) Hunting/Trapping Restricted. Except as provided in (C) below, a person may not take, or attempt to take any protected game by any means, within the City Limits of Bigfork.

(C) Hunting/Trapping Allowed**.** A person may take protected game (in accordance with Federal Law, State Law, and Bigfork City Ordinances) in the City Limits of Bigfork within the boundaries zoned Agricultural**.**

(D) Discharge of Firearms/Dangerous Weapons**.**

(1) A person may not discharge a firearm within the City Limits of Bigfork except as allowed in (C) above.

(2) A person may not discharge, or use any Dangerous Weapon within the City Limits of Bigfork in a careless or negligent manner that would likely endanger human life, or property of another.

(E) Law Enforcement Exceptions. No provisions of this ordinance shall apply to any Licensed Law Enforcement Officer or their authorized agent in regards to the performance of their duties.

(F) Penalties. Any person found to be in violation of any provision of this Ordinance shall be sentenced in accordance with Minnesota State Statute 609.034.

130.03 CURFEW FOR MINORS.

(A) Curfew Imposed

(1) No person under the age of 18 years except as provided in (2) below, shall be on any public street or alley or in any park or other public grounds or building, place of amusement, entertainment, or refreshment, vacant lot or any other unsupervised place between the hours of 10:00 p.m. and 6:00 a.m. on school nights and between the hours of 12:00 midnight and 6:00 a.m. on non-school nights.

(2) The restrictions of (1) above do not apply when the minor

(a) is accompanied by the minor's parent, guardian or other person having the minor's lawful care, custody or control;

(b) is returning home by a direct route from and within 30 minutes after a school activity or an activity of a religious or other voluntary association when prior notice of the activity and its place and probably time of termination has been given to the police department by an adult person authorized by the school or the religious or voluntary association to do so;

(c) is carrying a certified card of employment or other proof of employment and is on his way to or from his place of employment; or

(d) is upon an emergency errand or other legitimate business directed by the minor's parent, guardian or other adult having the lawful custody of the minor.

(B) RESPONSIBILITY OF PARENT, etc. No parent, guardian or other adult having custody and control of a minor less than 18 years of age shall knowingly permit the minor to violate the provisions of Section 1.

(C) RESPONSIBILITY OF OTHER PERSONS. Whenever the owner or person in charge or control of any place of amusement, entertainment, refreshment or other place of business shall find any person under the age of 18 in such place in violation of (A) above, he shall immediately order such person to leave, and if such person refuses to leave, the owner or person in charge shall immediately inform the police department of the violation.

(D) PENALTIES. Any person under the age of 18 on a street or other place in violation of (A) above shall be ordered to go home immediately. After investigation, if responsible City authorities determine that court action should be initiated, the minor shall be dealt with in accordance with juvenile court law and procedure. Any minor who is convicted of a violation of this ordinance after the case has been referred for prosecution in the trail court under Minnesota Statues Section 260.15 and any person who is convicted of a violation of any provision of (B) above is guilty of a petty misdemeanor and shall be punished by a fine of not to exceed $100.

130.04 JUMPING FROM PUBLIC BRIDGES PROHIBITED

(A) No person shall dive, jump or fall from any public bridge within the City limits of Bigfork.

(B) Any pedestrian use of any public bridge within the City limits of Bigfork shall be limited solely to that portion of the public bridge specifically designed for or intended for pedestrian use.

(C) Any vehicular use of any public bridge within the City limits of Bigfork shall be limited solely to the public bridge or that portion of the public bridge specifically designed for or intended for vehicular use.

(D) Any person who violates any provision of this ordinance shall be guilty of a petty misdemeanor.

130.05 PROHIBITING TAMPERING WITH SECURITY DEVICES

(A) Definitions.

(1) **"security device"** means any physical property which is used for the purpose of surveillance, safety, security, crime prevention, and criminal

apprehension. These devices may include, but are not limited to cameras, computers, alarm systems, and video recorders.

(2) **"tampering"** means any interference, meddling, altering, disruption, or touching of the Security Device.

(B) Offense. Any person who intentionally tampers with or attempts to tamper with any security device without the permission of the person in charge of this security device is guilty of a petty misdemeanor.

130.06 PROHIBITING CONSUMPTION OF PRODUCTS LABELED NOT FOR HUMAN CONSUMPTION

(A) Findings of Fact and Statement of Purpose

(3) The Bigfork City Council finds the following facts to exist:

a. The consumption of products labeled not for human consumption is a public health hazard, creates public nuisances and results in an increased need for public safety services; and

b. Health hazards associated with the consumption fo these products include addiction, psychosis, strokes, anxiety, stimulation, and other physical and mental disorders; and

c. Prohibiting the consumption of products labeled not for human consumption will provide for better public health and safety.

(B) Other Applicable Law

This Ordinance is intended to complement state and federal laws regulating products labeled not for human consumption including synthetic drugs.

(C) Violation and Definition

(1) It is a violation of this Ordinance for any person to intentionally consume any product labeled not for human consumption.

(2) It is a violation of this Ordinance to intentionally aid another in violation of this Ordinance.

(3) For the purpose of this Ordinance, consume or consumption shall include eating, drinking, smoking, injecting, inhalation, or any other manner of introducing a substance into the body.

(4) It is not a violation of this Ordinance if a person is acting under the written direction and supervision of a medical doctor

(D) Severability

If any portion of this Ordinance, or its application to any circumstances, is held invalid, the remaining provisions shall be considered severable and shall be given effect to the maximum extent possible.

130.99 PENALTY.

(A) *Generally*. Whoever violated any provision of this chapter for which no other penalty has been established shall be punished as provided in 10.99.

CHAPTER 131: ADMINISTRATIVE OFFENSES

Section

131.01 Purpose
131.02 Administrative Offense Defined
131.03 Notice
131.04 Payment
131.05 Contested Case
131.06 Failure to Pay
131.07 Disposition of Penalties
131.08 Offenses and Penalties
131.09 Subsequent Offenses

131.01 PURPOSE.

Administrative offense procedures established pursuant to this chapter are intended to provide the public and the city with an informal, cost effective and expeditious alternative to traditional criminal charges for violations of certain ordinance provisions. The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses. At any time prior to the payment of the administrative penalty as is provided for hereafter, the individual may withdraw from participation in the procedures, in which event the city may bring criminal charges in accordance with the law. Likewise, the city, in its discretion, may choose not to initiate an administrative offense and may bring criminal charges in the first instance. In the event a party participates in the administrative offense procedures, but does not pay the monetary penalty which may be imposed, the city will seek to collect costs of the administrative offense procedures as part of a subsequent criminal sentence in the event the party is charged and is adjudicated guilty of the criminal violation.

131.02 ADMINISTRATIVE OFFENSE DEFINED.

An administrative offense is a violation of a provision of this Code and is subject to the administrative penalties set forth in the schedule of offenses and penalties as periodically set by the City Council.

131.03 NOTICE.

Any officer of the Bigfork Police Department, or any other person employed by the City,

authorized by the City Council, and having authority to enforce this code, shall, upon determining that there has been a violation, notify the violator, or in the case of a vehicular violation, attach to the vehicle a notice of the violation. The notice shall set forth the nature, date and time of the violation, the name of the official issuing the notice and the amount of the scheduled penalty.

131.04 PAYMENT.

Once the notice is given, the alleged violator may, within seven days of the time of issuance of the notice, pay the amount set forth on the schedule of penalties for the violation or notify the city in writing that they contest the violation. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.

131.05 CONTESTED CASE.

Any person contesting an administrative offense pursuant to this Chapter may, within 14 days of the time of issuance of an administrative penalty notice request an appeal before the administrative penalty review board. The review board shall have the authority to dismiss the violation or reduce or waive the penalty. If the review board sustains the violation, the violator shall pay the penalty imposed within 7 days. The administrative penalty review board shall be a 2-member panel as appointed by the Mayor. Any administrative review resulting in a tie by the board shall be governed by a tie-breaking vote by the Mayor.

131.06 FAILURE TO PAY.

In the event a party charged with an administrative offense fails to pay the penalty and does not notify the city that they are contesting the violation, a misdemeanor or petty misdemeanor charge may be brought against the alleged violator in accordance with applicable statutes and, if applicable, the fine may be levied as an assessment against the property owner. If the penalty is paid or if an individual is found to not have committed the administrative offense by the courts, no such charge may be brought by the city for the same violation.

131.07 DISPOSITION OF PENALTIES.

All penalties collected pursuant to this chapter shall be paid to the City Clerk/Treasurer and will be deposited in the City’s general fund.

131.07 OFFENSES AND PENALTIES.

Offenses which may be charged as administrative offenses and the penalties for such offenses may be established by resolution of the City Council from time to time. Copies of such resolutions shall be maintained in the office of the City Clerk.

131.08 SUBSEQUENT OFFENSES.

In the event a party is charged with a subsequent administrative offense within a 24-month period of paying an administrative penalty for the same or substantially similar offense, the subsequent administrative penalty shall be subject to an increased penalty as provided for in this section. First offenses shall have a penalty as specified by resolution periodically determined by the City Counsel. Second offenses within 24 months of the first violation shall have a penalty subject to a 25% increase over the penalty as set by resolution. Third offenses shall have a penalty subject to a 50% increase. Any additional violation in a 24 month period shall be subject to the same penalty as a third violation.

TITLE XV: ZONING

150. ZONING

Chapter 150: ZONING

Section

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§ 150.01 PREAMBLE AND TITLE

(A) *Preamble.* An ordinance establishing zoning regulations for the City of Bigfork, Minnesota in pursuance of the authority granted by Chapter 462, Minnesota Statutes, to promote the health, safety, morals and general welfare of the inhabitants by dividing the City into zoning districts and regulating the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open space, the density and distribution of population, the uses of buildings and structures for trade, industry, recreation, public activities, agriculture, forestry, soil conservation, water supply conservation, conservation of shore lands, access to direct sunlight for solar energy systems, and flood control.

(B) *Title.* This ordinance shall be known as the Zoning Ordinance of the City of Bigfork, Minnesota.

§ 150.02 INTENT AND PURPOSE

This ordinance is adopted for the purpose of:

(A) Protecting the public health, safety, morals, comfort, convenience and general welfare.

(B) Dividing the City into zoning districts restricting and regulating therein the location, construction, reconstruction, alteration, and use of structures and land.

(C) Promoting orderly development of the residential, business, industrial, recreational and public areas.

(D) Providing adequate light, air, access to direct sunlight, and convenience of access to property.

(E) Limiting congestion in the public right-of-ways.

(F) Preventing overcrowding of land and undue concentration of structures by regulating the use of land, buildings and the bulk of buildings in relation to the land and buildings surrounding them.

(G) Providing for the compatibility of different land uses and the most appropriate use of land throughout the City.

(H) Providing for the administration of this ordinance and amendments thereto.

(I) Defining the powers and duties of the administrative officers and bodies, as provided hereinafter.

(J) Prescribing penalties for the violations of this ordinance or any amendment thereto.

(K) Regulating land use in accordance with the ordinances of the City of Bigfork.

§ 150.03 RULES, GENERAL PROVISIONS, PERFORMANCE STANDARDS AND DEFINITIONS

(A) RULES OF CONSTRUCTION

(1) The word person includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

(2) Words used in the present tense include the future tense and the singular includes the plural unless the context clearly indicates the contrary.

(3) The word building includes the work structure.

(4) The word shall is mandatory and the word may is permissive.

(5) The word lot includes the words plot or parcel.

(6) The words used or occupied include the words intended, designed or arranged to be used or occupied.

(7) Any word or term not interpreted or defined shall be used with a meaning of common or standard utilization.

(B) GENERAL PROVISIONS

These provisions shall apply to all districts

(1) SCOPE, APPLICATION AND INTERPRETATION

(a) Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals and general welfare and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

(b) Conflicting Regulations. Whenever any provision of this ordinance is found to be in conflict with the provision of any other city ordinance, the ordinance containing the more restrictive requirements shall govern. It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions.

(c) Scope. 1. No structure, or part thereof, shall be erected, converted, enlarged, reconstructed, altered or moved and no structure or land shall be used for any purpose or in any manner which is not in conformity with the provisions of this ordinance. 2. No site or lot or part thereof, shall be converted, enlarged, reconstructed, altered or used for any purpose or in any manner which is not in conformity with the provisions of this ordinance.

(2) SEPARABILITY

It is hereby declared to be the intention of the City that the several provisions of this ordinance are separable in accordance with the following:

(a) Validity, General Application. If any court of competent jurisdiction shall adjudge any provision of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included in said judgment.

(b) Validity, Specific Application. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this ordinance to a particular property, building, or other structure, such judgment shall not affect the application of said provision to any other property, building, or structure included in judgment.

(3) LOT PROVISIONS

(a) Lots of Record.

1. Reduction in Lot Area. No lot of record shall be reduced in size below the district requirements of this chapter.

2. Use. A lot of record existing upon the effective date of this ordinance in the residential district (R) which does not meet the requirements of this ordinance as to area or width may be utilized for a single family dwelling, provided the area of such a lot or width are within sixty-five (65) percent of the requirements of this ordinance. A permit for the construction

of a single family dwelling upon such undersized lot may be issued only upon the application for a variance from the City of Bigfork. It is further conditioned that said lot of record shall not be more intensively developed, unless combined with adjoining property so as to create a lot meeting the following requirements of this ordinance:

a. It fronts on a public right-of-way;

b. all other requirements of the district are met;

c. where adjacent land is owned, lots shall be combined so as to create a lot meeting the requirements of this ordinance; and

d. that any lot so excepted shall be no less than 50 feet in width.

(b) Contiguous Lots. Two (2) lots of record when contiguous and when held in common ownership may be treated together as a single lot for purposes of this chapter, provided such lots are located in the same district or if in different districts, the use proposed for either is allowed in both districts.

(c) One Principal Building Per Lot. Except for a PUD, or a multiple-family project as provided for herein, not more than one principal building shall be located on a lot in the R District.

(4) REQUIRED YARD AND OPEN SPACE

(a) Reduction. No yard or other open space shall be reduced in area or dimension so as to make such yard or other open space less than the minimum required by this ordinance. If the existing yard or other open space as existing is less than the minimum required, it shall not be further reduced.

(b) Relative to Other Buildings. No required yard or other open space allocated to a building or dwelling group shall be used to satisfy yard, other open space or minimum lot area requirements for any other building.

(5) TRAFFIC VISIBILITY AND PEDESTRIAN ACCESS

(a) Intersection Visibility. No structure or planting in excess of thirty (30) inches above the curb line shall be permitted within an area, encompassed by the legs and the hypotenuse of a triangle, the legs

of which are measured along and beginning at the intersecting curb lines a distance of thirty (30) feet.

(b) Hedges, Bushes and Trees. Trees adjacent to the above mentioned triangle and along a public sidewalk shall be pruned so as not to impede vision or the movement of pedestrians on such public sidewalk.

(6) STRUCTURES ON THE PUBLIC RIGHT-OF-WAY

No buildings, structures, signs or uses may be located in or on any public land or right-of-way unless otherwise specifically permitted by City of Bigfork Ordinance.

(7) RELOCATION OF STRUCTURES

No building shall be moved into or within the Bigfork City Limits without first obtaining a permit from the City.

(8) ACCESS TO A STREET REQUIRED

Every building hereafter erected shall be located on a lot having frontage on a public street as defined herein.

(9) KEEPING OF ANIMALS

Only domestic animals shall be kept but not raised or boarded for profit in the City of Bigfork, except as otherwise provided by this ordinance. The keeping of wild and exotic animals shall not be permitted in the City of Bigfork.

(10) PERMITS REQUIRED

(a) Land Use Permit. A land use permit is required for the construction of buildings or building alterations that change the exterior dimensions of the structure, including such related activities as construction of decks and signs, parking lots, fences and other miscellaneous site improvements, and those grading and filling activities not exempted by Section 150.14(H) of this ordinance. Application for a permit shall be made to the Zoning Administrator on the forms provided. The application shall include the necessary information from the list below so that the Zoning Administrator can determine the site's suitability for the

intended use. The application will require a project completion date to be given.

1. Property owner(s) and applicant(s) name and address;

2. Preparer's name and address and date prepared.

3. Legal description, property lines, setback lines, and property dimensions;

4. A topographic survey of the property with a contour interval of not greater than 10 feet (10'), showing existing and proposed grades;

5. The location of all of the following:

   a. Principal and accessory buildings;

   b. Easements or right-of-ways for utility or service lines;

   c. Access drives, parking, and loading areas, with stalls clearly delineated;

   d. Sidewalks and pedestrian ways;

   e. Required screens, fences, or required buffers;

   f. Proposed/required landscaping;

   g. Signs, with information about height and size;

   h. Nearest existing or proposed fire hydrant;

   i. Streets adjacent to site. Indicate curb line in relation to property line.

(b) Existing Structures. A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Section 150.03(B)(11) below, shall be reconstructed or replaced in accordance with the provisions of this ordinance.

(c) Certificate of Zoning Compliance. On the project completion date provided on the land use permit application form, the Zoning Administrator shall verify compliance and issue a certificate of zoning compliance for each activity requiring a permit as specified

in Section 150.03(B)(10) above of this ordinance. This certificate will specify that the use of land conforms to the requirements of this ordinance. Any use, arrangement, or construction that varies from that authorized by permit shall be deemed a violation of this ordinance and shall be punishable as provided in Section 150.04 of this ordinance. If the project will not be completed by the date provided, the applicant must notify the Zoning Administrator and provide a new completion date.

(d) Failure to Obtain. When failure to obtain a permit is either discovered by, or brought to the attention of, the Zoning Administrator, the Zoning Administrator shall notify the persons responsible of the requirements of this ordinance. If a structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the City. If the construction or development is already completed, then the Zoning Administrator shall notify the responsible party to apply for an after-the-fact permit. If no permit application is submitted within ten (10) days of the date of the notice, a penalty of $10.00 will be added to the original permit fee amount and another notice will be sent. If a permit application is not submitted within 30 days of the second notice, an additional $50.00 penalty will be added to the fee amount and a third notice will be sent. If a permit application is not submitted within 30 days of the date of the third notice, an additional $150.00 will be charged, plus any applicable attorney fees related to the issue.

(11) WATER SUPPLY AND SEWAGE TREATMENT REQUIRED

(a) Water Supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health.

(b) Sewage Treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment as follows:

1. Publicly owned sewer systems must be used where available. Also see the Sewer Ordinance (Title V, Section 51) of the City of Bigfork.

2. All private sewage treatment systems must meet or exceed the Minnesota State standards (Minnesota Rules 7080) for individual sewage treatment systems.

3. In shoreland districts, on-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setback contained in Section 150.14 (D,E,F&G) of this ordinance.

4. In shoreland districts, nonconforming sewage treatment systems shall be regulated and upgraded in accordance with section 150.14(L) of this ordinance.

(C) PERFORMANCE STANDARDS

In addition to the requirements of this chapter, uses shall comply with all of the provisions of any existing City of Bigfork codes, and all State and Federal laws.

(D) DEFINITIONS

ACCESSORY BUILDING. A subordinate building or structure on the same lot with a principal or main building, or the part of the main building occupied or devoted exclusively to an accessory use. In a shoreland district, an "Accessory structure" or "facility" means any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

ACCESSORY USE. A use on the same lot with the principal use of building that is customarily incidental and subordinate to the principal use of building.

ADULT BUSINESS. Any place, establishment, or business which offers, advertises, or is engaged in any activity, service, sale, or display of any commodity which is prohibited by statute or ordinance to minors, or which otherwise forbids sales, or excludes minors by virtue of age. The term *ADULT BUSINESS* shall include, but is not limited to massage parlors, tattoo parlors, adult arcades, adult bookstores, adult motion picture theaters, and adult cabarets.

AGRICULTURE. The use of the land for agricultural purpose, including farming, dairying, pasturage, horticulture, animal and poultry husbandry and the necessary accessory uses for packing, treating or storage of produce, provided, however, that the operation of any such accessory uses shall be secondary to that of normal agriculture and provided further that the above uses shall not include the commercial feeding of garbage or offal to swine or other animals.

AIRPORT OR HELIPORT. Any land or structure which is used or intended for use, for the landing and take-off of aircraft, and appurtenant land or port building or other port structures or right-of-ways.

AIRSPACE ZONES A, B, & C. Refer to Airport Zoning Ordinance.

ALLEY. A public right-of-way, which affords a secondary means of access to abutting property.

ALTERATIONS. Any modification, additions, or change in construction or type of occupancy, any enlargement of a building, either horizontally or vertically, or the moving of a structure from one location to another.

ANIMALS, DOMESTIC. Fish, dogs, cats, birds and similar household pets.

ANIMALS, FARM. Cattle, hogs, horses, sheep, goats, rabbits, chickens and other farm animals.

ANIMALS, WILD AND EXOTIC. Animals other than domestic and farm animals that are customarily found in the wild and including snakes, wolves, tigers and other such animals.

APARTMENT. A room or suite of rooms, including bath and kitchen facilities, in a multiple-family building designed for occupancy by a single-family.

APARTMENT, ACCESSORY. An apartment that is secondary and incidental to a principal use or building.

ASSISTED LIVING. A type of living arrangement in which personal care services such as meals, housekeeping, transportation, and assistance with activities of daily living are available as needed to people who still live on their own in a residential facility. In most cases, the "assisted living" residents pay a regular monthly rent. Then, they typically pay additional fees for the services they get.

ATTORNEY. The City Attorney of Bigfork, Minnesota or their designated representative.

AUTO TRUCK FLEET STORAGE. The storage of 3 or more operable vehicles that are generally used for the conduct of a business.

BALCONY/TERRACE. A platform projecting from the wall of a building and surrounded by a railing.

BASEMENT. A portion of a building located partly underground, but having less the half (½) its floor-to-ceiling height below the average grade of the adjoining ground.

BED AND BREAKFAST. A facility where for compensation and by prearrangement for definite periods of time not to exceed two (2) weeks, morning meal and lodging are provided for not more than eight (8) guest rooms.

BLUFF. A topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):

1. Part or the entire feature is located in a shoreland area;
2. the slope rises at least 25 feet above the ordinary high water level of the waterbody;
3. the grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
4. the slope must drain toward the waterbody.

BLUFF IMPACT ZONE. A bluff and land located within 20 feet from the top of a bluff.

BOARDING HOUSE. A building other than a motel or hotel, where, for compensation and by prearrangement for definite periods, meals and lodging are provided for not less than three (3) or more than eight (8) persons.

BOATHOUSE. A structure designed and used solely for the storage of boats or boating equipment.

BUILDING. Any structure having a roof which may provide shelter or enclosure of persons, animals or chattel, and when said structure is divided by party walls without opening, each portion of such building so separated shall be deemed a separate building.

BUILDING HEIGHT. The distance between the average ground level at the building line and the highest point of the roof or flat roof, to the deck line of a mansard or to the highest gable on a pitched or hipped roof. In a shoreland district, the "height of building" means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.

BUILDING LINE. That line measured across the width of the lot at the point where the main structure is placed in accordance with setback provisions. It means a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

BUILDING, PRINCIPAL. A building in which is conducted the main or primary use of the lot on which it is located.

CABIN. A small building, not usually intended for year round living.
CARPORT. An open-sided roofed automobile shelter, usually formed by extension of the roof from the side of a building.

CARWASH. A principal building which is equipped with a conveyor system or other mechanical equipment and facilities for washing motor vehicles.

CARWASH, ACCESSORY. An accessory building or part of a principal building equipped with mechanical equipment for washing autos (not a conveyor system) which is accessory to an automobile service or gasoline station and comprises only one normal service bay of the gas station.

CELLAR. That portion of the building having more than one-half (½) of the floor-to-ceiling height below the average grade of the adjoining ground.

CEMETERY. A designated area of land dedicated to burial of the dead.

CHURCH. A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

CITY ENGINEER. The professional engineer appointed by the City of Bigfork or person otherwise authorized by the City.

CLINIC. An establishment where human patient(s) who are not lodged overnight are admitted for examination and treatment by a group of physicians, dentists, mental health specialists or similar professionals.

CLUB, LODGE. A non-profit organization catering exclusively to members and their guests.

CLUSTER HOUSING. The grouping of housing units which results in higher density clusters while maintaining approximately the same overall allowable site density. Cluster housing shall include townhouses, zero lot line houses, row houses and similar housing types.

COMMERCIAL PLANNED UNIT DEVELOPMENTS. "Commercial Planned Unit Developments" are typically uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, resorts, recreational vehicle and camping parks, and other primarily service-oriented outdoor activities are commercial planned unit development.

COMMERCIAL USE. The principal use of land or buildings for the sale, lease, rental, or trade of products, goods and services.

COMMISSION. The Planning & Zoning Commission of the City of Bigfork.
COMMISSIONER. The Commissioner of the Department of Natural Resources.

COMPREHENSIVE PLAN. A compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development of the City and including a land use plan, a community facilities plan, and a transportation plan which has been prepared and adopted by the City of Bigfork.

CONDITIONAL USE. A use that is permitted in a district only upon issuance of a Conditional Use Permit (CUP). It means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.

CONGREGATE HOUSING. Housing for three (3) or more individuals not related by blood, marriage or adoption on a weekly or longer basis. Typical uses include retirement homes and boarding houses.

COUNCIL. Shall refer to the City Council of the City of Bigfork.

CURB LEVEL. The level of established curb front of a building measured at the center of such front. Where no curb elevation has been established, the mean elevation of the finished lot grade immediately adjacent to a building shall be considered the "curb level" for purposes of the ordinance.

DAY CARE CENTER. A use defined by, Minnesota Rules, parts 9502.0315 to 9502.0445 which is operated for profit for the daytime only care of children and adults.

DECK. A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site.

DENSITY. The number of dwelling units residing upon, or to be developed upon, an acre of land.

DISTRICT. An area of land for which there are uniform regulations governing the use of buildings and premises.

DUPLEX, TRIPLEX AND QUAD. A dwelling structure on a single lot having two, three, and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

DWELLING. Any building or portion thereof, which is designed or used exclusively for residential purposes but not including rooms in motels, hotels, nursing homes, boardinghouses, nor trailers, tents, cabins or trailer coaches.
DWELLING, ATTACHED. A dwelling which is joined to another dwelling at one (1) or more sides by a party wall or walls.

DWELLING, DETACHED. A single-family dwelling.

DWELLING, SINGLE-FAMILY. A detached building designed for or occupied exclusively by one (1) family.

DWELLING, MULTIPLE-FAMILY. A residential building, or portion thereof, containing three (3) or more dwelling units.

DWELLING, UNIT. A building, or portion thereof, which includes complete kitchen and toilet facilities and is designed exclusively for one (1) family.

EQUAL DEGREE OF ENCROACHMENT. a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

ESSENTIAL SERVICES. Services provided by the public and private utilities, necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface, and overhead gas, electrical, steam, water, sanitary sewerage, storm water drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, traffic signals, pumps, lift stations, and hydrants, but not including buildings.

EXTRACTIVE USE. The use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, sections 93.44 to 93.51.

FAMILY. An individual, or two (2) or more persons related by blood, marriage or adoption, or a group of not more than four (4) persons not so related, living together as a single housekeeping unit using common cooking and kitchen facilities.

FLOOD. A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

FLOOD FREQUENCY. The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

FLOOD FRINGE. That portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe".

FLOOD PLAIN. The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

FLOOD-PROOFING. A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

FLOODWAY. The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

FLOOR AREA. The sum of the gross horizontal areas of the floors of a building or dwelling unit, measured from the exterior walls, or from the centerline of party walls separating buildings, excluding cellars but including basements.

FOREST LAND CONVERSION. The clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

FRONT LOT LINE. See Lot, Line.

GARAGE, PRIVATE. An accessory building or an accessory portion of a principal building designed or used solely for the storage of non-commercial motor vehicles, boats, and similar vehicles which are owned and used by the occupants of the building to which it is accessory.
GARAGE/YARD SALE. The temporary display and sale of goods within the garage and/or driveway of a residence.

GASOLINE STATION. A structure plus an area of land that is used or designed for the supply of motor vehicle fuels. For the purpose of this ordinance, this term shall also mean an area or structure used for greasing, changing the oil, washing or repairing automobiles when such uses are accessory to the principal gasoline station use.

GENERAL RETAIL SALES. See Retail.

GROSS FLOOR AREA (GFA). For the purpose of computing required parking, Gross Floor Area is the Floor Area for the building excluding

accessory garages, underground parking, areas not enclosed by exterior walls, mechanical rooms, patios, decks, restrooms, elevator shafts, or stairwells.

GROUP USABLE OPEN SPACE. Open space associated with a multiple-family development that is not part of a required yard, is relatively free of buildings and is available for recreational usage by the residents.

GROUP OR FOSTER HOME. A residential use defined by Chapter 462, Minnesota Statutes, which provides housing for the mentally retarded, physically handicapped and those in need of rehabilitation, except mental rehabilitation.

GUEST COTTAGE. A structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

GUEST ROOM. A room or group of rooms occupied, arranged or designed for occupancy by one (1) or more guests for compensation.

HARDSHIP. The property in question cannot be put to a reasonable use if used under conditions allowed by the official control, the plight of the landowner is due to circumstances unique to the property not created by the landowner and the variance if granted will not alter the essential character of the locality. Economic considerations alone will not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance. Undue hardship also includes but is not limited to inadequate access to direct sunlight for solar energy system.

HEIGHT OF BUILDING. The vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof

HOME OCCUPATION. A gainful occupation conducted in a residential building which is clearly secondary and incidental to the principle residential use of said building and generates no appreciable increase in traffic at any time over that customarily associated with a residential use. The occupation shall not be visible or audible from the property line.

HOSPITAL. An institution whose primary function is to provide inpatient and outpatient services, diagnostic and therapeutic, for a variety of medical conditions, both surgical and non-surgical.

HOTEL. A building containing eight (8) or more guest rooms in which lodging is provided with or without meals for compensation and which is open to transient or permanent guests or both, and where no provision is made for

cooking in any guest room, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge.

INDUSTRIAL USE. The use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

INTENSIVE VEGETATION CLEARING. Removal of trees, brush or shrubs in a way that would greatly reduce the natural screening and decrease the aesthetic and ecological values of the property.

IMPERVIOUS SURFACE. Refers to improvements on or to the land which prevent precipitation from percolating into the soil. It includes buildings, concrete or asphalt pavement, compacted Class V (gravel), or other similar hard surfaces. It does not include naturally occurring surface bedrock. Porous decks or paving systems over unpaved or uncompacted surfaces are not considered impervious.

JUNK YARD. An area where used, waste, discarded, or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled or handled, including but not limited to scrap iron, other metals, paper, rags, rubber products, bottles and lumber. Storage of such material in conjunction with a permitted manufacturing process when within an enclosed area or building shall not be included.

KENNEL. Any lot or premises used for the presence, sale, boarding or breeding of dogs, cats or other household pets. Kennel shall mean three (3) or more animals over six (6) months of age.

LIMITED CLEARING. Means the removal of trees, brush or shrubs in a noncontiguous pattern to allow visibility and other permitted uses. Limited clearing shall not greatly reduce the natural screening assuming summer leaf on conditions. For the purpose of this definition, tree(s) are a woody plant that attains a height of 20 feet (20') or more, with a single woody stem and definite crown. Bushes/shrubs are smaller than trees, usually with multiple woody stems, and seldom exceed twelve feet (12') in height.

LOT. Land occupied or to be occupied by a building, land use or group of buildings together with such open spaces or yards as are required by this ordinance and having its principal frontage on a public street.
LOT AREA. The area of a horizontal plane in square feet as bounded by the lot lines.

LOT AREA PER DWELLING UNIT. The number of square feet of lot area required for each dwelling unit.

LOT, CORNER. A lot which has at least two (2) contiguous sides abutting upon a street for their full length.

LOT COVERAGE. Lot coverage shall include all structures, driving surfaces including gravel surfaces, and parking areas regardless of type of surface.

LOT, INTERIOR. A lot other than a corner lot.

LOT LINE. The lines bounding a lot as herein described.

LOT LINE, FRONT. The line abutting a public right-of-way having the least width.

LOT OF RECORD. A lot which is part of a subdivision or plat, an Auditor's Subdivision or a Registered Land Survey; or a parcel of land not so platted, for which a deed has been recorded in the Itasca County Recorder's office.

LOT, THROUGH. A lot where opposite lot lines abut two (2) parallel streets and which is not a corner lot.

LOT WIDTH. The width measured along the front lot line of street line, or the shortest distance between lot lines measured at the midpoint of the building line.

MANUFACTURED HOME. A manufactured home is factory built to meet the performance standards or the HUD code, must have a chassis, rarely moved once placed.

MANFACTURED HOME PARK. Any premises on which are parked two (2) or more occupied manufactured homes.

MINING. The extraction of sand, gravel or other such material from the land in the amount of four hundred (400) or more cubic yards.

MOBILE HOME. Typically refers to units built before 1976 and most similar to a trailer; occasionally used to refer to units built after 1976, despite the fact these units are technically (and legislatively) defined as manufactured homes.

MODULAR HOME. Factory built with some on-site assembly and some on-site construction, built to meet prescriptive standards of state and local code. Chassis is optional.

MONUMENT. A structure erected to commemorate persons or events

MOTEL. A building or group of attached or detached buildings under common ownership containing eight (8) or more guest or sleeping rooms which is used or intended to be used primarily for the accommodation of

transient automobile travelers. This term shall include buildings designated as auto courts, tourist courts, motor courts, motor hotels and similar names.

MOTOR FREIGHT TERMINAL. A building or area in which freight brought by motor truck is assembled and/or stored for routing in intra-state or inter-state shipment.

MULTIPLE-FAMILY DWELLING. See Dwelling, Multiple-Family.

NON-CONFORMING USE / NONCONFORMITY. A building or use of land existing at the time of adoption of this ordinance which does not conform to the regulations of the district or zone in which it is situated.

NURSERY SCHOOL. A school for children of preschool age.

OBSTRUCTION. Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

OFFICES, PROFESSIONAL. A building in which professional and management duties and services are carried out, including medical and dental clinics and offices; psychiatrists and psychologists offices, architectural, engineering, planning and legal offices; and similar uses.

OFFICES, BUSINESS. A building in which business of a non-retail low traffic generating nature and clerical services and duties are carried out, including corporate offices, insurance and real estate offices and similar uses.

OPEN SPACE. Any unoccupied space, open to the sky on the same lot with a building.

ORDINARY HIGH WATER LEVEL. The boundary of public waters and wetlands, an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

OUTDOOR STORAGE. The practice and keeping of materials/supplies/equipment on a lot but not within the confines of a structure.

PATIO. An impervious surface at grade that is designed and intended for recreational use by people rather than as a parking space.

PERFORMANCE STANDARD. A criterion established to control noise, odor, toxic or noxious matter, vibration, fire and explosive hazards, glare or heat generated by or inherent in uses of land or buildings.

PLANNED UNIT DEVELOPMENT. A type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density, increases, and a mix of structure types and land uses. These developments may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these, or cluster subdivision of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses.

PRINCIPAL USE OF STRUCTURE. The main use to which the premises are devoted and the principal purpose for which the premises exist.

PUBLIC HEARING. An official public meeting for which notice has been published in the official newspaper.

PUBLIC WATERS. Any waters as defined in Minnesota Statutes, section 103.005, Subd. 15.

PUBLICATION. A notice placed in the official newspaper.

REACH. A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

REGIONAL FLOOD. A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

REGULATORY FLOOD PROTECTION ELEVATION. The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

RESIDENTIAL PLANNED UNIT DEVELOPMENT. A use where the nature of residency is nontransient and the major or primary focus of the development is not service-oriented. For example, residential apartments, manufactured home parks, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit development. To qualify as a residential planned unit development, a development must contain at least five dwelling units or sites.

RETAIL – GENERAL SALES AND SERVICES. Refers to a broad range of commercial activities operating out of a permanent structure catering to the general public. It does not include other land uses referred to in Table 1 (Permitted Uses) of this ordinance.

RIGHT-OF-WAY. A street, alley or easement permanently established for the passage of persons and vehicles including the traveled surface and lands adjacent that are formally dedicated to such usage.

ROOMERS. A tenant in someone's house.

SEMIPUBLIC USE. The use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

SENIOR CITIZEN HOUSING. Housing that is exclusively for occupancy of elderly persons over sixty-five (65) years of age.

SENSITIVE RESOURCE MANAGEMENT. The preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

SETBACK. The minimum horizontal distance between a structure, including the overhang, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, or property line.

SEWAGE TREATMENT SYSTEM. A septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Title V of the City of Bigfork Code of Ordinances.

SEWER SYSTEM. Pipelines or conduits, pumping stations, force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

SHORE IMPACT ZONE. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

SHORELAND. Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shoreland may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner.

SIGNIFICANT HISTORIC SITE. Any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

SINGLE-FAMILY DWELLING. See Dwelling, Single-Family.

SOLAR COLLECTOR. A device, structure or part thereof that transfers direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.

SOLAR ENERGY. Radiant energy, direct, diffuse and reflected, received from the sun.

SOLAR SKYSPACE. The space between a solar collector and the sun that shall be free of obstructions so the collector is not shaded to an extent that precludes its cost-effective operation.

STACKING SPACE. The area required to serve as a waiting area as in a line of vehicles.

STAIRS. A series of steps, leading from one level of floor to another, including any landings between floors. All landings shall be a maximum size of nine square feet.

STEEP SLOPE. Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance. Where specific information is not available, steep slopes are lands having average slopes over 2 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

STREET. A public thoroughfare which affords the principal means of access to abutting property.

STREET LINES. The legal line of demarcation between a street and abutting land.

STRUCTURE. Anything constructed or erected, the use of which requires a location on the ground, or attached to something having a location on the ground.

SUBDIVISION. Land that is divided for the purpose of sale, rent, or lease, including planned unit developments.

SURFACE WATER-ORIENTED COMMERCIAL USE. The use of land for commercial purposes, where access to and use of surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

TERRACE. See Balconies.

THROUGH LOTS. See Lot, Through.

TOE OF THE BLUFF. The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope from gentler to steeper slope above. If no break in the slope is apparent, the toe of the bluff shall be determined to be the lower end of a 50-foot segment with an average slope exceeding 18 percent.

TOP OF THE BLUFF. The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from steeper to gentler slope above. If no break in the slope is apparent, the top of the bluff shall be determined to be the upper end of a 50-foot segment with an average slope exceeding 18 percent.

TRAILER HOME. Can be hitched to an automobile and moved, not built to federal code.

TRUCK. Any vehicle or combination of vehicles or trailers whose total weight loaded or unloaded exceeds 10,000 pounds, or is registered with a GVW of 12,000 pounds or more, except recreational vehicles shall not be considered trucks for the purpose of the zoning ordinance.

USE. The purpose or activity for which the land or building thereon is designated, arranged, or intended, or for which it is occupied or maintained and shall include any manner of performance of such activity with respect to the performance standards of this ordinance.

USE, CONDITIONAL. A permitted use which is potentially detrimental to a neighborhood or area which requires special treatment and the issuance of a CUP.

USE, PERMITTED. A use which is permitted in a particular zone.

USE, RESTRICTED. A use which is permitted in the particular district under which it is listed in Section 150.06 subject to all of the restrictions listed.

VARIANCE. Instances where the ordinances strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be keeping with the spirit and intent of the ordinance.

VIDEO ARCADE. A place equipped with five (5) or more machines which play video games when you put money into them.

WATER-ORIENTED ACCESSORY STRUCTURE OR FACILITY. A small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

WETLAND. A surface water feature classified as a wetland by the Wetland Conservation Act of 1991.

YARD OR SETBACK. A required open space on a lot which is unoccupied and unobstructed from the ground upward, except as otherwise provided for herein. The measurement of a yard shall be construed as the minimum horizontal distance between the lot line and the building line.

YARD, INTERIOR SIDE. A side yard that is not adjacent to a street.

YARD, REAR. A yard extending along the full width of the rear lot line between the side lot lines and extending toward the front lot line for a depth as specified in the yard regulations for the district in which said lot is located.

YARD, SIDE. A yard extending along a side lot line between the front and rear yards, having a width as specified in the yard regulations for the district in which such lot is located.

YARD, STREET SIDE. A side yard that is adjacent to a street.

ZERO LOT LINE HOUSING. Single-family detached dwellings located on individual lots which are designed to have little or no setback from lot lines.

§ 150.04 ADMINISTRATION

(A) AUTHORITY.

The provisions of this ordinance shall be administered and enforced by the Zoning Administrator who shall be appointed by the City Council.

(B) DUTIES AND RESPONSIBILITIES.

The Zoning Administrator shall have the following duties and responsibilities.

(1) Determine that all land use permits comply with the terms of this ordinance.

(2) Conduct or arrange for inspections of use of land to determine compliance with the terms of this ordinance.

(3) Maintain permanent and current records of this ordinance, including but not limited to, all maps, amendments, conditional uses, variances, appeals and applications therefore.

(4) Receive, file and forward all applications for appeals, variances, conditional uses and other matters to the designated official bodies.

(5) Initiate in the name of the City of Bigfork any appropriate actions or proceedings against a violator as provided by law.

(6) Interpret when an interpretation question arises about literal provisions of this ordinance, or whether a specific land use fits within a given "use" category. The interpretation shall be made by the Zoning Administrator, with the approval of the Planning & Zoning Commission. When a question arises as to whether a land use district's

boundaries are properly delineated on the Official Zoning Map, this decision shall be made by the City Council.

(C) ENFORCEMENT

(1) Inspection. The Zoning Administrator shall inspect or order the inspection of each alleged violation and order correction of all conditions found to be in violation of this ordinance.

(2) Violations and Penalties. Any person(s), firm(s), corporation(s), or voluntary association(s) which violates or refuses to comply with any of the provisions of this ordinance shall be guilty of a misdemeanor. Each day that a violation is permitted to exist shall constitute a separate offense.

(D) VARIANCE PROCEDURES

(1) Applications for Variances. The owner(s) of land may file a signed application with the Zoning Administrator on forms provided by the City. The Application shall be accompanied by plans drawn to scale and illustrations, which accurately reflect existing conditions and the improvements to be made if the variance is granted.

(2) Hearing and Mailed Notices. The Zoning Administrator shall cause to be published, a notice of public hearing before the Planning & Zoning Commission in the official newspaper not less than ten (10) days prior to the hearing date. Notices shall also be mailed to all owners of property within three hundred and fifty (350) feet of the parcel included in the request not less than ten (10) days prior to the hearing.

(3) Planning & Zoning Commission Decisions. Within sixty (60) days after receipt of the application, the Committee shall conduct a public hearing and decide on the variance or appeal.

(4) Findings for Variances.

(a) General Requirements: The Planning & Zoning Commission shall not grant a petition for a variance unless it determines that the strict enforcement of the ordinance would cause undue hardship because of circumstances unique to the individual property under consideration and that the granting of such variance(s) will be in keeping with the spirit and intent of this ordinance. “Undue Hardship” as used in connection with the granting of a variance means the property in question can not be put to reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to

circumstances unique to their property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance. Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems. Under no circumstances shall a variance be granted where prohibited by Minnesota Law.

(b) ADA Improvements: Variations from building setbacks may be permitted where necessary to allow existing buildings to comply with the Americans With Disabilities Act (ADA) accessibility requirements.

(5) Appeals of Planning & Zoning Commission Decisions. Any person(s) who deems them self aggrieved by the Planning & Zoning Commission's decision including, but not limited to, the petitioner, an affected property owner or an administrative officer of the City, may appeal the decision of the Planning & Zoning Commission to the City Council within fifteen (15) days after the decision by the Planning & Zoning Commission.

(6) City Council Public Hearing. Following the above prescribed notice procedures, the City Council shall decide the appeals upon the record and findings of the Planning & Zoning Commission within sixty (60) days after the appeal date, unless the City Council's decision is continued for a period not to exceed forty-five (45) days. The City Council may affirm the decision of the Planning & Zoning Commission, reverse the decision, or remand the matter back to the Planning & Zoning Commission for additional findings. If the action of the Council results in the variance being granted, the Council may impose such conditions as it deems necessary to ensure compliance with the intent of this ordinance.

(7) Resubmissions. No application which has been denied by the Planning & Zoning Commission or City Council, on appeal, shall be resubmitted for a period of one (1) year from the date of denial.

(8) Lapse and Extension. If, within one (1) year after the date the variance was granted, a land use permit was not obtained, the variance shall become null and void. Requirements for an extension shall be the same as for a CUP. Refer to Section 150.05(I)(8).

(9) Additional Steps Necessary for issuing a variance in the Shoreland Zones.

(a) The Planning & Zoning Commission shall hear and decide requests for variances in accordance with the rules that it has adopted for the conduct of business. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Section 150.04(D)(9)(c)2. below shall also include the Planning & Zoning Commission's summary of the public record/testimony and findings of facts and conclusions which supported the issuance of the variance.

(b) For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

(c) Notifications to the Department of Natural Resources.

1. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the Commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivision/plats must include copies of the subdivision/plat.

2. A copy of approved amendments and subdivision/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the Commissioner or the commissioner's designated representative and postmarked within ten days of final action

(E) AMENDMENTS/REZONING PROCEDURES

(1) Authority. The City Council upon the recommendation of the City Planning & Zoning Commission shall have the authority to amend this ordinance by a four-fifth (4/5) vote of the City Council.

(2) Initiation. The City Council of Bigfork or the Planning & Zoning Commission may, upon their own motion, initiate a request to amend the text or the zoning map of this ordinance. Any person(s), firm or corporation owning real estate in the City of Bigfork may initiate a request to amend the district boundaries or the text of this ordinance. No application for an amendment which has been denied wholly or in part shall be resubmitted for a period of one (1) year from the date of said denial except on the grounds of new evidence or a change in conditions.

(3) Referral to the Planning & Zoning Commission. Except where initiated by the Planning & Zoning Commission, any proposed change shall be submitted to the Planning & Zoning Commission and its recommendation shall be submitted to the City Council within sixty (60) days after the acceptance of the application. If the Planning & Zoning Commission transmits no recommendation within sixty (60) days as prescribed, the City Council may take action without further awaiting such recommendation.

(4) Notice and Hearing. The City Council upon receiving the recommendation of the Planning & Zoning Commission or after sixty (60) days from the submission thereof to the Planning & Zoning Commission without a recommendation, shall review the application, and if a majority of the City Council are in favor, set a public hearing. Notice of a regular or special meeting, at which a public hearing will be held shall be given by publication at least once in the official newspaper, not less than ten (10) days prior to said hearing, stating the time and place. Notice shall also be mailed to all owners of property within three hundred fifty (350) feet of the parcel included in the request not less than ten (10) days prior to the meeting. Failure to give such notice or defects or errors in the notice shall not invalidate the proceedings, provided a good faith attempt to comply with notice requirements was made.

§ 150.05 DISTRICTS

(A) ESTABLISHMENT OF ZONING DISTRICTS AND SPECIAL OVERLAY DISTRICTS

For the purpose of this ordinance, the City of Bigfork, Minnesota, is hereby divided into the following zoning districts and special overlay districts:

Zoning Districts:

R-1	LOW-DENSITY RESIDENTIAL DISTRICT
R-2	MODEST-DENSITY RESIDENTIAL DISTRICT
GB	GENERAL BUSINESS DISTRICT
M	MEDICAL DISTRICT
I	INDUSTRIAL DISTRICT
AG	AGRICULTURAL DISTRICT

Special Overlay Districts:

Floodplain Overlay District: refer to Section 150.13 of this ordinance for specific regulations

Shoreland Overlay District: refer to Section 150.14 of this ordinance for specific regulations

(B) ZONING MAP

The location and boundaries of the districts herein established are shown upon the Official Zoning Map, together will all notations, references and other information shown thereon, and all amendments thereto, shall be as much a part of this ordinance as if fully set forth and described herein. The Zoning Map shall be kept on file in the office of the City Clerk.

(C) INTERPRETATION OF ZONING MAP

(1) District boundary lines on said map are intended to follow lot lines, the center lines of streets, alleys, highways and right-of-ways projected, the Ordinary High Water Level of lakes, ponds and water courses or the corporate limits, all as they exist upon the effective date of this ordinance or changed by a specific amendment thereto.

(2) Where district boundaries are so indicated that they are approximately parallel to the centerline of a street, alley, highway or right-of-way, such district boundary shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale on said zoning map.
Any future widening or realignment of the adjacent streets or highways shall not affect the location of such boundaries unless provisions are made therefore by amendment to this ordinance.

(3) Where district boundaries cross property that is not subdivided into lots, and other provisions herein are not applicable, the location of the district line shall be determined by use of the scale on the said zoning map.

(4) Where a zoning district boundary line divides a parcel of land or lot which was of record into two (2) or more districts, any portion of such lot within fifty (50) feet on either side of such a dividing district boundary line may be used for any use of either district provided the distance does not exceed fifty (50) feet. If it should, the zoning district boundary line shall remain as drawn, and the actual location of the boundary line shall be determined by use of the scale on said zoning map.

(5) Whenever any street, alley or other public way is vacated by official action of the City, the zoning district on each side of such street, alley or public way shall automatically be extended to the centerline.

(6) Appeals from the Zoning Administrator's determination concerning the exact location of district boundary lines shall be determined by the City Council.

(D) ANNEXATION

Land hereafter annexed to the City of Bigfork shall automatically be reclassified R-1 (Low-Density Residential District) upon the effective date of said annexation. Within ninety (90) days thereafter, the City may elect to study the subject annexation area and, based upon the City Comprehensive Plan, surrounding land use, timing of development, availability of public services, etc., may rezone said annexation area to another classification. If the land owner(s) wishes to have the subject property reclassified, it shall be their responsibility to petition the City for rezoning within ninety (90) days after the effective date of the annexation.

(E) PURPOSE OF DISTRICTS

The City of Bigfork is divided into the following districts. These districts further the general intent of this ordinance and, in addition, are established for the specific purposes provided herein.

(1) R-1 LOW-DENSITY RESIDENTIAL DISTRICT
Purpose and Intent. These are low-density residential districts that generally correlate with the existing close-in neighborhoods that were originally divided into town size lots. While they are primarily for single-family detached dwellings at densities lower than the R-2 District, they are also intended to be used for two-family (2) dwellings (duplexes). For site development design standards refer to Section 150.06, District Development Regulations. For uses permitted by right refer to Section 150.05(F) and Table 1.

(2) R-2 MODEST-DENSITY RESIDENTIAL DISTRICT
Purpose and Intent. These are modest density residential districts that are primarily intended to provide families with efficient alternatives to traditional single-family living. They are intended to provide for a variety and a mixture of multiple family housing including townhouses, condominiums, apartments and other group housing types. They may also serve a transitional function in sensitive areas along major streets and railroad tracks and in areas where the land use changes from high to low intensity (e.g. commercial to single-family residential). In such locations, rental housing at low densities may offer a more feasible alternative than owner occupied housing. Such zoning would allow the conversion of existing and the construction of new dwellings provided all

district development regulations are met. For site development design standards refer to Section 150.06, District Development Regulations. For uses permitted by right refer to Section 150.05(F) and Table 1.

(3) GB GENERAL BUSINESS DISTRICT

Purpose and Intent. These districts are intended to accommodate a broad range of retail goods and services, land uses, and generally serve the entire community. Though not exclusively so, businesses in this district are relatively free standing and tend to occupy independent building sites. They may enjoy close proximity to like businesses but depend primarily on good accessibility, high visibility and a relatively large volume of passing traffic. For site development design standards refer to Section 150.06, District Development Regulations. For uses permitted by right refer to Section 150.05(F) and Table 1.

(4) M MEDICAL DISTRICT

Purpose and Intent. These districts are intended to accommodate the development of medical, office, multifamily residential and related uses in the area surrounding a hospital complex. For site development design standards refer to Section 150.06, District Development Regulations. For uses permitted by right refer to Section 150.05(F) and Table 1.

(5) I INDUSTRIAL DISTRICT

Purpose and Intent. These districts are established and preserved areas for industrial and related uses of such a nature that they do not create serious problems of compatibility with other kinds of land uses. These districts make provision for certain kinds of commercial uses which are most appropriately located as neighbors of industrial uses or which are necessary to service the immediate needs of people in these areas. For site development design standards refer to Section 150.06, District Development Regulations. For uses permitted by right refer to Section 150.05(F) and Table 1.

(6) AG AGRICULTURAL DISTRICT

Purpose and Intent. These districts are intended to allow for the continuation of agricultural practices and activities especially in areas that may be annexed into the City of Bigfork where public services are not yet available, an alternative use is not imminent, and the owner desires to continue to farm the land. For uses permitted by right, refer to Section 150.05(F)

(F) TABLE OF USES PERMITTED IN ZONING DISTRICTS

For the purpose of this ordinance, a comprehensive list of uses is presented in Table 1, Uses Permitted in Zoning Districts. This table is hereby incorporated into the ordinance generally and into the regulations of each district, as

appropriate, the same as if the uses were listed separately and for each district. Table 1 identifies four types of uses: uses permitted by right (Permitted Uses), uses with special restrictions (Restricted Uses), Conditional Uses, and those uses which are not permitted (Not Permitted Uses).

(1) Permitted Uses: These uses are identified as permitted in a particular district by the placement of a "P" in the column bearing the heading of that district.

(2) Restricted Uses: These uses are permitted in a particular district subject to certain special restrictions. These uses are identified by the placement of an "R" in the column bearing the heading of that district. For details on the types of restrictions, please refer to Section 150.05(G).

(3) Conditional Uses: Certain uses, because of their unique characteristics, must be considered individually as to their impact upon neighboring land, and the public welfare and their compatibility at the particular location. Conditional uses must go through a special approval process prior to their establishment. These uses are identified by the placement of a "CUP" in the column bearing the heading of that district. For details on the conditional use process, please refer to Section 150.05(H).

(4) Not Permitted Uses: These uses are identified as not permitted in a particular district by a blank in the column bearing the heading of that district.

(G) USES WITH RESTRICTIONS

(1) Accessory Buildings (within all Districts except AG District). Accessory buildings may be erected as part of the principal building or may be connected to it by a roofed-over porch, patio, breezeway or similar structure or it may be completely detached.

(a) If attached to the principal building, an accessory building shall be structurally a part of it and shall comply in all respects with the requirements applicable to the principal building.

(b) An accessory building not attached and not made part of the principal building shall not be nearer than six (6) feet from any other separate structure on the same lot.

In addition to the requirements established by Sections 150.06 and 150.07, the following shall apply:

(a) Garages in R-1 District.

1. The building height does not exceed the height of the principal structure or twenty-four (24) feet, whichever is greater, and the wall height does not exceed sixteen (16) feet; and

2. The total building coverage shall not exceed the limits outlined in the attached Tables 2 or 3.

3. An accessory building shall not be located any closer to a lot line than the height of the side wall.

(2) Bed And Breakfast Facilities (within R & AG Districts) provided:

(a) One (1) off-street parking space be provided for each guestroom in addition to the minimum number required for residential and any other permitted uses.

(b) The facility shall be limited to providing service to four (4) persons per guest room (excluding children under twelve (12) accompanied by a parent).

(c) The facility shall not have more than eight (8) guestrooms.

(3) Auto/Truck/Equipment Wash (within GB District): subject to the following:

(a) Minimum front yard of thirty (30) feet;

(b) All operations shall be conducted within the principal building except for vacuuming and gas pumps;

(c) The site shall be planned so as not to permit water from a car wash to run into a public street or access thereto. A drainage system shall be installed subject to the approval of the City Engineer;

(d) Pump islands, canopies, and tank vents shall conform to yard requirements or a minimum of twenty (20) feet from a street right-of-way, whichever is greater; and

(e) Vehicle entrance door shall be no more than sixteen (16) feet high.

(4) Churches/Places of worship (within R & AG Districts): subject to the following:

(a) No principal building shall be located within thirty (30) feet of any lot line of an abutting lot in a R-1 or R-2 District, and;

(b) The site shall be at least one (1) acre in size, and;

(c) The use shall be subject to the site development standards defined in Section 150.06.

(5) Contractor's Yard, Material Storage (within GB & I Districts). All outdoor storage of equipment (except automobiles and trucks up to two (2) tons), materials and supplies shall be screened from public view as per the requirements of Section 150.06(D)(7). No repair work shall take place outside of the principle structure.

(6) Day Care Centers for 14 or less persons (within all except I District). Provided it is licensed by the State of Minnesota and must comply with State laws, if any.

(7) Day Care Centers for 15 or more persons (within all except I District). Provided it is licensed by the State of Minnesota and within an elementary, junior high or senior high school, religious institution or medical facility and must comply with State laws, if any.

(8) Equipment/Tool Rental (within GB & AG Districts). All outdoor storage of equipment (except automobiles and trucks up to two (2) ton) and materials/supplies shall be subject to the following:

(a) All outdoor storage shall be accommodated within a central storage area;

(b) Such outdoor storage area shall not be within a setback; and,

(c) The storage area shall be screened from view from all public streets and R Districts by a wall, fence and/or plant materials providing ninety percent (90%) opacity during all seasons of the year to a height above the ground of six (6) feet, in such a manner as described in Section 150.06(D)(7).

(9) Fraternal Clubs/Lodges (within GB District). Fraternal Clubs/Lodges may not be located closer than three hundred (300) feet to any school.

(10) Garage/Yard Sales – Temporary (within all Districts except I Districts): provided as follows:

(a) The sale is not more than four (4) successive days in duration;

(b) Not more than three (3) such sales are conducted on the premises in a calendar year.

(11) Auto/Truck and Fuel Sales (within GB District): subject to all of the following:

(a) Minimum front yard of thirty (30) feet;

(b) All operations shall be conducted within the principal building except for vacuuming and gas pumps;

(c) The site shall be planned so as not to permit water from a car wash to run into a public street or access thereto. A drainage system shall be installed subject to the approval of the City Engineer; and

(d) Pump islands, canopies, and tank vents shall conform to yard requirements or a minimum of twenty (20) feet from a street right-of-way, whichever is greater.

(12) Group and Foster Homes, for any number of persons (within R & AG Districts): must be licensed by the State of Minnesota and comply with State laws, if any.

(13) Home Occupations (within R & AG Districts) subject to all of the following conditions:

(a) There shall be no alteration to the exterior of the residential dwelling, accessory building or yard that in any way alters the residential character of the premises;

(b) Signs, displays, or devices identifying the occupation shall be subject to Section 150.08;

(c) The occupation shall not be visible or audible from any property line;

(d) no vehicle used in the conduct of the occupation shall be parked, stored or otherwise present at the premises other than such as is customarily used for domestic or household purposes such as a van or three-quarter (3/4) ton truck;

(e) only on-site off-street parking facilities normal for a residential use shall be used; and

(f) the use of substances that may be hazardous to the health, safety or welfare of neighbors and neighboring property shall not be used in the conduct of a home occupation.

(14) Land Reclamation < 10,000 cubic yards (within all Districts): The placement or rearrangement of fill on any lot shall require a fill permit. Applications for the placement or rearrangement of more than two hundred fifty (250) cubic yards but less than ten thousand (10,000) cubic yards of fill on any lot during a three hundred sixty five (365) day time span shall require payment of a fee as set forth in the Ordinance Establishing Fees and Charges. An application for a fill permit shall be supported by the following information:

(a) The correct legal description of the premises.

(b) The name and address of the applicant and owner of land.

(c) The purpose of the excavation or filling.

(d) The estimated time required to complete the work. (Starting date and days to completion.)

(e) Method and schedule for restoration and measures to control erosion during and after work.

(f) A topographical map or plat of the proposed excavation or filling showing the limits of the proposed work together with the existing and proposed finished elevations based on sea level datum.

(g) The method of controlling drainage both during the proposed work and the final drainage plan.

(h) The estimated quantity of excavation or fill material.

(i) Type of material to be utilized.

(j) Signature of the applicant, verifying that the application is made with the express approval of all owners of the land.

Refer to Section 150.05(I)(3) for land reclamation in excess of ten thousand (10,000) cubic yards.
Refer to Section 150.14(H)(2) for land reclamation in shoreland districts.

(15) Manufacturing (within GB Districts): subject to the following:

(a) Not to exceed a gross floor area of six thousand (6,000) square feet with at least one-third (1/3) of said space to be used for retail sales and display purposes;

(b) No hazardous materials or processes used in the fabrication of materials; and

(c) Subject to the requirements of 150.07(D).

(16) Outdoor Storage (within R Districts): subject to the following:

(a) Not more than two (2) portable recreation buildings or vehicles;

(b) Provided they are owned by the resident(s); and,

(c) Maintained in a neat, safe and orderly fashion.

(17) Outdoor Storage (within GB, M and I Districts): Those items not normally considered to be retail display items, including but not limited to construction materials, tires, packaged inventory, salvaged / discarded materials, and damaged or disassembled vehicles.

Such items shall be subject to the following:

(a) All outdoor storage shall be accommodated within a central storage area;

(b) Such outdoor storage area shall not be within a setback area, and;

(c) The storage area shall be screened from view from all public streets and R Districts by a wall, fence and/or plant materials providing ninety percent (90%) opacity during all seasons of the year to a height above the ground of six (6) feet.

(18) Private Recreation (within R Districts). This includes tennis courts and swimming pools provided they are located not less than ten (10) feet from a property line. Swimming pools shall be completely enclosed with a six (6) foot high protective fence.

(19) Recycling Center (within I District). All outdoor storage of equipment, except automobiles and trucks up to two (2) tons, and materials/supplies shall be subject to all of the following:

(a) Screened from public view as per the requirements of Section 150.06(D)(7).

(b) All materials shall be secured on site to prevent wind dispersion.

(20) Roomers (within R and AG Districts): The leasing of rooms to not more than two (2) roomers provided no signs are displayed, the rooms are not equipped with kitchen facilities of any kind and one (1) on-site parking space is provided for each roomer in addition to the minimum number required for the residence.

(21) Satellite Dishes/Solar Collectors (within all Districts except AG Districts). Provided they comply with the yard and height requirements for principal buildings. See Table 2.

(22) Schools – Elementary through Secondary (within R & AG Districts): subject to the following:

(a) Small Schools within Existing Buildings: Schools for twenty-five (25) or less students shall be permitted within an existing principle building provided that:

1. Alterations – There shall be no external alteration of the building(s) or grounds to reflect school usage;

2. Parking – There shall be sufficient parking within the existing parking lot to accommodate off-street parking as required by Section 150.07(H).

(b) New Elementary or Secondary Schools:

1. Minimum Site Area – One (1) acre;

2. Minimum Yards – Thirty (30) feet from all R District lot lines or the minimum for the District, whichever is greater; and

(23) Temporary Buildings (within all Districts except AG Districts): Buildings incidental to construction work on the premises shall be removed upon completion or abandonment of said work or within the period of one (1) year from the establishment of the building, whichever is the lesser.

(24) Temporary Outdoor Sales (within GB & AG Districts): subject to all of the following:

(a) The sale is conducted by the owner or lessee of the premises, or with his written permission and is conducted immediately adjacent to the business; and

(b) The sale is no longer than four (4) months in duration;

(25) Vending Machines (within all Districts except R Districts): subject to the following:

(a) Must be accessory to a permitted principal use;

(b) Must conform to setback requirements of principal structure; and

(c) Must be located adjacent to principal structure.

(26) Vet Clinics (within GB, I and AG Districts): Vet clinics are limited to domestic animals only. All animals shall be housed indoors.

(27) Video Arcades (within GB District): subject to the following:

(a) Any arcade with fifteen (15) or more machines shall have an adult supervisor on the premises during all hours of operation; and

(b) No arcade shall be operated within five hundred (500) feet of a daycare, group home, school, church or residence.

(28) Woodpiles (within all Districts except AG Districts): subject to the same restrictions as 150.06(D)(7).

(H) CONDITIONAL USE PERMITS (CUP)

(1) Purpose and Intent: The development and execution of this ordinance is based upon the division of the City into districts within which the regulations are specified. It is recognized, however, that there are special or conditional uses, which, because of their unique characteristics, must be considered individually as to their impact upon neighboring land, and the public welfare and their compatibility at the particular location. To provide for these needs, the City Council may approve a Conditional Use Permit for those uses and purposes listed and may impose conditions and safeguards in such permits to ensure that the purpose and intent of this ordinance is carried out.

(2) Application Requirements: An application signed by the landowner for a CUP shall be filed with the Zoning Administrator together with a filing fee as established by the City Council in the Ordinance Establishing Fees and Charges. Said application shall be accompanied by the following information:

(a) A site plan drawn to scale according to Section 150.06(G)

(b) A written description of the use to be made of the property and buildings including the number of employees, students, etc., as may be appropriate.

(c) Information regarding soil conditions, water supply, on-site sewage treatment. (Mandatory for property within shoreland areas and optional for all others)

(d) Information regarding the type, uses and number of watercraft that the project will generate and the ability of the impacted waterbody to accommodate these watercraft. (Mandatory for property within shoreland areas and optional for all others)

(e) Plans drawn to scale showing flood-proofing measures and specifications for building construction and materials, filing, dredging, grading, channel improvement, and storage of materials. (Mandatory for property deemed within the floodplain area)

(f) Any other information which, in the opinion of the Zoning Administrator, is required to evaluate the application and it's consistency with the City's expressed goals.

(3) Waiver Authority. The Zoning Administrator shall have the authority to waive any of the above information not deemed to be necessary and appropriate to evaluate the application.

(4) Hearing and Mailed Notices. The Zoning Administrator shall cause to be published a notice of the public hearing before the Planning & Zoning Commission in the official newspaper at least ten (10) days prior to the hearing date. Notices shall also be mailed to all owners of property within three hundred fifty (350) feet of the parcel included in the request not less than ten (10) days prior to the hearing. In the AG District, notices shall be mailed to all owners of property within fifteen hundred (1,500) feet of the parcel included in the request not less than ten (10) days prior to the hearing. Failure to give such notice or defects or errors in the notice shall not invalidate the proceedings, provided a good faith attempt to comply with notice requirements was made.

(5) Planning & Zoning Commission Review. The Planning & Zoning Commission shall conduct a public hearing on the application and make its determination with findings and conditions. For Conditional Uses within shoreland districts refer to Section 150.14(L) for additional evaluation and condition criteria. The Planning & Zoning Commission shall not approve a CUP unless it shall find that the establishment, maintenance and operation of the use:

(a) Will not be detrimental to the public health, safety, morals or general welfare;

(b) Will not cause undue traffic congestion or hazards and will not result in a parking shortage;

(c) Will not be injurious to the use and enjoyment or result in a decrease in value of other property in the area;

(d) Will not impede the orderly development of other property in the area;

(e) Will not impose an excessive burden on parks and other public facilities and utilities; and

(f) Is consistent with the City's goals and objectives.

Approval shall require a majority vote of the Planning & Zoning Commission.

(6) Conditions and Restrictions. The Planning & Zoning Commission may impose such conditions and restrictions as it deems necessary on the establishment, location, construction, maintenance, operation and duration of the use to ensure compliance with the requirements of this ordinance.

(7) Resubmission. No application which has been denied by the Planning & Zoning Commission shall be resubmitted by the applicant for a period of one (1) year following the date of denial by the Planning & Zoning Commission.

(8) Lapse and Extension. If within one (1) year after the date of issuance the use for which the CUP was issued has not commenced, the CUP shall become null and void. If the applicant requests an extension in writing within one (1) year after issuance, the Planning & Zoning Commission shall conduct a public hearing and consider an extension utilizing the same notice procedures as required for the original application. The Planning & Zoning Commission may extend the CUP for up to one (1) year upon finding that: (1) a good faith effort has been made to use the permit, 2) there is reasonable expectation that the permit will be used, and; 3) the facts upon which the original permit was issued are essentially unchanged.

(9) Permit Period. Conditional Use Permits shall be valid for a period of one year from the date of approval. The Planning & Zoning Commission shall review all CUPs annually to ensue continued compliance. CUPs

will be automatically renewed at no additional fee annually unless violations are found.

(10) Periodic Review. If additional periodic review is imposed as a condition of a CUP, the CUP shall be reviewed at a public hearing prior to the expiration of the review period. It shall be the responsibility of the Zoning Administrator to schedule the public hearing and inform the owner of the review. A fee shall not be required to be paid.

(11) Revocation. If any person is found in violation of any condition or restriction imposed by the Planning & Zoning Commission, the City may revoke said CUP utilizing the procedures established in this ordinance.

(12) Special Considerations for Shoreland Areas. The following additional evaluation criteria and conditions apply within shoreland areas:

(a) Such conditions may include, but are not limited to, the following:

1. Increased setbacks from the ordinary high water level;

2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted, and

3. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

(13) Appeals of Planning & Zoning Commission Decisions. Any person(s) who deems themself aggrieved by the Planning & Zoning Commission's decision including, but not limited to, the petitioner, an affected property owner or an administrative officer of the City, may appeal the decision of the Planning & Zoning Commission to the City Council within fifteen (15) days after the decision by the Planning & Zoning Commission.

(I) USES PERMITTED BY CONDITIONAL USE PERMIT (CUP)

The following uses or any expansion of an existing use requiring a CUP shall require the issuance by the City of a CUP. Each such use shall comply with these stated conditions.

(1) Cemeteries-public/private (within R1 & AG District): subject to the following minimum conditions:

(a) Site plan for all public cemeteries shall be in accordance with procedures set forth in Title XVIII of the City of Bigfork Code of Ordinances; and

(b) site plan for all private cemeteries shall be in accordance with procedures set forth in the MN Statutes Chapter 307.

(2) Junk and Salvage Operations (within I District): subject to the following minimum conditions:

(a) Minimum site area shall be one (1) acre;

(b) All activities shall be enclosed within a wall or fence at least eight (8) feet in height so as to screen the site from surrounding property. Such fence shall be of sound construction and shall be properly maintained;

(c) All materials shall be secured on site to prevent wind dispersion; and

(d) All activities shall have a front setback of not less than fifty (50) feet. A yard abutting an R District shall be at least one hundred (100) feet in width.

(3) Land Reclamation > 10,000 cubic yards (within all Districts): subject to the following minimum conditions:

(a) Applicant shall submit a site plan in accordance with the procedures set forth in Section 150.06(G) of this ordinance:

1. A site plan in accordance with Section 150.06(G) shall be submitted

2. The purpose of the excavation or filling.

3. The estimated time required to complete the work. (Starting date and days to completion.)

4. Method and schedule for restoration and measures to control erosion during and after work.

5. The estimated quantity of excavation or fill material.

6. Type of material to be utilized.

7. Signature of the applicant, verifying that the application is made with the express approval of all owners of the land.

(b) Protection of Water Resources. No material shall be used for reclamation which will have a detrimental effect on ground or surface waters quality.

(c) Financial Guarantee. The City shall require a bond, letter of credit, or certified cashier's check in the amount of 150% of the expense of restoring any land reclamation site to a reasonable condition. The City Engineer shall determine the expense of restoration.

(4) Manufactured Home Community/Trailer Park (within R2 & AG Districts): subject to the following minimum conditions:

(a) State Law Compliance. All parks shall comply with State laws, if any.

(5) Mining of Sand and Gravel-extractive uses, gravel pits, borrow areas, and similar uses (within I and AG Districts): subject to the following minimum conditions:

(a) Applicant shall submit a site plan in accordance with the procedures set forth in Section 150.06(G) of this ordinance:

1. A site plan in accordance with Section 150.06(G) shall be submitted

2. The purpose of the excavation.

3. The estimated time required to complete the work. (Starting date and days to completion.)

4. Method and schedule for restoration and measures to control erosion during and after work.

5. The estimated quantity of excavation.

6. Type of material to be extracted.

7. Signature of the applicant, verifying that the application is made with the express approval of all owners of the land.

8. An end use plan showing all uses of land, access, hazard control, future ownership intent, etc.;

9. An operations plan identifying the number and routing of trucks, the amount of material to be excavated annually, phasing, the number of years of expected operation, the

location of buildings and equipment, and the levels of noise, dust and vibration that can be expected at all property lines.

(b) Protection of Water Resources. No material shall be used for reclamation which will have a detrimental effect on ground or surface waters quality. Refer to Section 150.14(K)(4) for land within shoreland districts.

(c) State Law Compliance. All uses shall comply with State laws, if any.

(d) Fencing Required. The property shall be properly fenced to prevent trespass.

(e) Maintenance. The operation shall be maintained in a neat and orderly fashion so as to prevent injury to any single property, to any individual or to the community in general.

(f) Compliance. The approved plan shall govern the operation and any deviation thereafter shall constitute a violation warranting revocation of the CUP.

(g) Financial Guarantee and Insurance. The City shall require a bond, letter of credit, or certified cashier's check in the amount of 150% of the expense of restoring the disturbed area to a reasonable condition. The City Engineer shall determine the expense of restoration. The applicant shall also file with the City a liability insurance policy or certificate of insurance issued by the company authorized to do business in the State of Minnesota in the amount of two hundred thousand dollars ($200,000) per person and six hundred thousand dollars ($600,000) per accident and at least fifty thousand dollars ($50,000) for property damage.

(6) Recreation, Commercial-Indoor (within I & AG Districts): subject to the following minimum conditions:

(a) Proposed facility shall be compatible with surrounding uses; and

(b) No facilities are closer than fifty (50) feet to an R District boundary.

(7) Recreation, Commercial-Outdoor (within GB & AG Districts): subject to the following minimum conditions:

(a) All improvements shall conform to setback requirements for principal buildings in the district;

(b) No structure shall exceed twenty-five feet (25') in height;

(c) Proposed facility shall be compatible with surrounding uses; and

(d) No facilities are closer than fifty (50) feet to an R District boundary.

(8) Restaurants (within AG Districts): subject to the following minimum conditions:

(a) Applicant shall submit a site plan in accordance with the procedures set forth in Section 150.06(G) of this ordinance.

(9) Retail/General Sales and Services (within AG District):

(a) Applicant shall submit a site plan in accordance with the procedures set forth in Section 150.06(G) of this ordinance.

§ 150.06 SITE DEVELOPMENT DESIGN STANDARDS

(A) YARD AND BUFFERYARD REQUIREMENTS

Please refer to Table 2 for a listing of the yard and bufferyard requirements. Refer to Table 3 for yard and bufferyard requirements for shoreland districts. These tables are hereby incorporated into the ordinance generally and into the regulations of each district, as appropriate, the same as if the requirements were listed separately for each district.

(B) SUPPLEMENTARY HEIGHT REGULATIONS

(1) Permitted Exceptions. The following structural appurtenances shall be permitted to exceed the building height restrictions for the district provided they do not impair the solar access of buildings on adjoining properties and are not used for human occupancy or commercial enterprise:

(a) Ornamentation such as church spires, belfries, bell towers, cupolas, domes, monuments and flagpoles.

(b) Mechanical appurtenances such as solar collectors, chimneys, smoke stacks, public utility facilities, elevator and stairwell penthouses, private aerials or television antennae and cooling towers.

(c) Security fences or walls in the R-2, GB & I Districts shall be permitted to a height of twelve feet (12') provided that any fence or wall over 6 feet (6') in height meets the setback requirements for buildings. No barbed wire shall be permitted on any fence at a height of less than seven feet (7') from the finished grade level.

(2) Required Reduction. Refer to Minnesota Airport Zoning Ordinance for Bigfork Municipal Airport.

(C) SUPPLEMENTARY YARD REGULATIONS

(1) Permitted Yard Encroachments. No yard or required open space shall be so reduced in area or dimension so as to make any such area or dimension less than required by this ordinance. If already less than the minimum required, a yard shall not be further reduced. The following encroachments into required yards shall be permitted:

(a) Special structural elements attached to the principal building such as chimneys, solar collectors, flues, belt courses, sills, pilasters, lintels, ornamental features, cornices, eaves and gutters provided they do not extend more than two and one half (2 ½) feet into a yard.

(b) Yard lights in R Districts not closer than five (5) feet to the front lot line and lights in all districts for illuminating parking areas, loading areas or yards for safety and security purposes provided the direct source of light is not visible from the public right-of-way or adjacent residential property.

(c) Planting and ornamental landscape features.

(d) Stairs and patios at the same level as the height of the ground floor level of the principal building provided as follows:

1. The highest elevation shall not exceed a height of three (3) feet above the ground at the ground floor level

2. No portion of the terrace, stairs or patio is closer than two (2) feet to any lot line. Railings shall not exceed the maximum height above grade allowed for walls and fences.

(e) Fences, walls and hedges:

1. up to three and one half (3 ½) feet in height:

a. provided they are no closer to a street or alley line (property line) than two (2) feet.

2. up to six (6) feet in height:

a. provided they are no closer than two (2) feet to an alley line;

b. and are no closer to a street line than the minimum distance required for a building.

3. Any border fence located within two (2) feet of the common lot line shall be within six (6) inches of said common line.

4. The finished side of all fences must face the exterior of the lot.

5. Barbed wire or similar materials on fences shall be prohibited within R Districts except as permitted in Section 150.06(B)(1)(c).

(f) Balconies/terrace may project into a required yard a distance not to exceed five (5) feet.

(g) Detached picnic shelters, open arbors and trellises, recreation equipment, and fire escapes shall conform to setback requirements for accessory buildings (see Table 2 & 3).

(2) <u>Required Side and Rear Yard Enlargement:</u>

(a) Corner Lots. Where a side yard abuts a street, such side yard shall be a minimum of thirty-five (35) feet.

(b) Through lots shall provide the required front yard on both streets.

(3) <u>Permitted Yard Reduction and Required Expansion.</u>

(a) In an R District where forty percent (40%) or more of the lots on any block are developed with buildings, the average front yard for the block shall be computed. Where the average is less than the required front yard, the average or twenty (20) feet, whichever is greater, shall be the required front yard. Where the average is greater than the required front yard, the average shall be the required front yard.

(b) In a GB District where forty percent (40%) or more of the lots on any block are developed with buildings, the average front yard for the block shall be computed. Where the average front yard for the block is less than the required front yard, the average yard shall be the required yard for the front of a lot, for buildings. The same shall apply for parking lots.

(4) Surface Parking in R Districts.

Surface Parking shall not be permitted within the setbacks required for accessory buildings except within a normal driveway area.

(D) SUPPLEMENTARY LANDSCAPING AND BUFFERYARD REQUIREMENTS:

(1) Purpose and Intent. The inclusion of landscaping standards in this ordinance is designed to promote the health, safety and general welfare of Bigfork residents and property owners. Effective landscaping and buffering can greatly enhance an area's visual appeal. Buffering can minimize the adverse impacts of intensive land uses; it can protect adjacent land uses from excessive noise, light, litter and traffic.

(2) Scope of Applicability. The requirements of this ordinance shall apply to all uses, structures, or properties constructed, extended, enlarged, moved, or altered, with the exception of properties zoned R1 or R2. All open areas not used or required for buildings, off-street parking, drives or storage shall be landscaped with a combination of conifers and deciduous trees, shrubs, flowers, ground covers and grass. One and two family dwellings permitted in any zone shall be exempt from the requirements of Section 150.06(D).

(3) Bufferyards: Plant materials and fencing in the installation of bufferyards shall be located within the required front, side and rear yards. As part of the land use permitting process, the Planning and Zoning Commission, upon receipt of a written plan, will determine the sufficiency of the bufferyard components based on the area and type of use.

(4) Maintenance of Bufferyards: Shall consist of all acts necessary to ensure that areas remain useable as originally designed and that no hazards, nuisances or unhealthy conditions exist. Where screening with landscape materials is proposed in lieu of required walls or fences, all materials shall have a minimum opacity of ninety percent (90%) year round. The owner shall have the responsibility to maintain all such screening.

(5) Bufferyards and Street Tree Credits: When existing trees, buffers or other landscape materials exist, the developer may receive credit for such trees, buffers, or landscape materials, provided they are maintained in accordance with the requirements of Section 150.06(D)(4). The Zoning Administrator, upon receipt of a written request and submittal of a survey of existing trees, landscaping or buffers, may waive the landscaping and bufferyard requirements to the degree that the waiver is consistent with the intent of this ordinance.

(6) Dumpster/Trash Can Screening: All dumpsters, trash cans, incinerators, etc. shall be screened from public view with a fence, wall or other enclosure six (6) feet in height with a minimum of 90% opacity. The dumpster area may not extend into a front yard or street side yard space, but may extend into any other required yard provided it is at least five (5) feet from the property line.

(7) Outdoor Storage of Materials/Merchandise: Any outdoor storage of materials and merchandise shall be screened from public view with a fence, wall, other enclosure, or vegetative screening with a minimum of 90% opacity. Said storage area shall not encroach into the required yard space specified for that zoning district.

(E) PARKING LOT DESIGN AND MAINTENANCE STANDARDS

(1) Intent and Scope of Applicability: It is the intent of these standards to promote the safe and efficient storage, circulation and channelization of motor vehicle development on-site. The following standards shall apply to the design of all parking areas with the exception of those for one (1) and two (2) family dwellings.

(2) Permits Required. A land use permit is required for the construction of parking lots. Application for a permit shall be made to the zoning administrator on the forms provided. Application shall include a site plan in accordance with Section 150.06(G).

(3) Street Access: Each parcel shall be granted at least one (1) curb cut per street which abuts that parcel. However, up to three (3) curb cuts may be permitted on any one (1) street provided that the location and design of the curb cuts are subject to the following:

(a) No closer than twenty-five (25) feet to any existing curb cut;

(b) No closer than twenty-five (25) feet to the nearest point of any street/alley intersection;

(c) No curb cut shall exceed thirty-three (33) feet in width.

(d) One-way curb cuts shall not exceed sixteen (16) feet in width.

(4) Setbacks/Landscaping: All parking lots shall be set back from the property lines as prescribed by Table 2 of this ordinance. The following landscape requirements shall also apply:

(a) Two property owners may jointly develop a parking lot overlapping a common lot line without meeting the required setbacks on their respective side of the lot line, provided the following conditions are met:

1. The entire parking lot is developed as a single project, and;

2. Jointly developing a parking lot will result in an increase in the number of parking places over two individually developed lots meeting the setback requirements, or would result in safer traffic patterns, and;

3. The property owners file, with the County Recorder's Office, a binding agreement addressing joint use.

(b) Two or more property owners who have their parcels separated by an alley may jointly develop a parking lot on both sides of the alley allowing vehicles to back into the alley, provided all of the following conditions are met:

1. Additional ROW easements must be granted to the City on both sides of the existing alley to increase its width to twenty-four feet (24'). It shall be the responsibility of the property owner(s) to obtain the necessary easements for the City. The easements shall cover the entire width of the owner's lot, as well as the lot(s) across the alley from the owner(s)', and must extend to a connection with a developed public street. The easements must be approved by the City Attorney prior to acceptance by the City.

2. The parking lot design must provide for "head in" parking.

3. It shall be the responsibility of the adjacent property owners to develop the alley in accordance with the City's standards. The development of the alley, in its required width, shall extend to the public street.

4. Other setbacks, landscaping requirements, and design requirements shall still apply to this type of parking lot. The required rear bufferyard shall be constructed at the head of the proposed parking stalls. The parking stalls shall be limited to nineteen feet (19') deep.

5. This parking lot design option will not be applicable in situations where an alley is the dividing line between a commercial and a residential zoning district.

(5) Surfacing: All parking lots other than for a single or two-family residential use shall be surfaced with concrete, bituminous, or compacted Class V aggregate.

(6) Maneuvering Lanes: All maneuvering lanes shall permit only one-way traffic movements with the exception of the ninety degree (90°) pattern where two-way traffic will be permitted. Each parking space shall have direct unimpeded access to a maneuvering lane and dead-end maneuvering lanes shall only be permitted with the ninety degree (90°) pattern which is designed to accommodate two-way traffic. Backing from a parking lot directly into a street shall be prohibited.

(7) Drainage: All parking lots shall have a drainage system which is approved by the City Engineer.

(8) Lighting: Shall be so arranged to deflect the light away from R Districts so that the source is not visible. All lighting cable shall be placed underground and shall be installed in compliance with the State Electrical Codes.

(9) Maintenance: It shall be the joint responsibility of the operator and owner(s) of any principal use to maintain, in a neat and aesthetic manner, the parking space, access way, landscaping and required fences and walls.

(10) Drive-Up Window and Car Wash Stacking Spaces Required: No stacking space shall encroach into any drive aisle necessary for the circulation of vehicles on the lot. All stacking shall comply with setbacks required for parking spaces. The minimum size of stacking space shall be nine feet (9') by eighteen feet (18').

(11) Bumper Overhang: The minimum parking space length may be decreased by up to three feet (3') for spaces which allow the bumper of the auto to project beyond the terminus of the parking space without obstructing other parking spaces or vehicle circulation.

(12) Exceptions for Compact Cars: Up to thirty-three percent (33%) of the parking required for a given use may be designed specifically for compact cares, provided:

(a) Signage is erected at appropriate locations indicating "For Compacts Only";

(b) Compact stalls are located in one contiguous area;

(c) The minimum design and construction standards apply.

(13) Parking Stall & Maneuvering Lane Standards.

FULL SIZE CARS						
Parking Angle	0° Parallel	30°	45°	60°	75°	90° Head-In
Maneuvering Lane Width	12	12	14	18	21	24
Parking Space Width (ft)	8	8.5	8.5	8.5	8.5	8.5
Parking Space Length (ft)	22	17	18	18	18	19
Bay Dimension (One Tier)	20	29	32	36	39	43
Bay Dimension (Two Tiers)	28	46	50	54	57	62
COMPACT CARS						
Parking Angle	0° Parallel	30°	45°	60°	75°	90° Head-In
Maneuvering Lane Width	12	12	14	18	21	24
Parking Space Width (ft)	7.5	8	8	8	8	8
Parking Space Length (ft)	20	16	16	16	16	17
Bay Dimension (One Tier)	19.5	28	30	34	37	41
Bay Dimension (Two Tiers)	27	44	46	50	53	59

(14) Handicapped Parking: Shall be provided as required by the applicable Building Code and shall be located as near the main entrance of the principal use as possible. Each space shall be at least four feet (4') wider than the minimum design standards for conventional spaces. Each handicapped space shall be clearly designated.

(F) OFF-STREET LOADING DESIGN STANDARDS AND REQUIREMENTS

(1) Intent: It is the intent of these regulations to provide needed on-site facilities for the loading and unloading of motor vehicles in addition to and in a manner that does not interfere with required off-street parking areas and the capacity and function of public streets. It is also intended that these facilities not be so located as to negatively impact residential areas.

(2) Access: Each required loading zone shall be located with appropriate means of vehicular access to a street or public alley in a manner which will least interfere with traffic.

(3) Construction: All loading zones and access ways shall be surfaced with concrete, bituminous, or compacted Class V aggregate.

(4) Accessory Use: Any space allocated as a loading zone or access drive so as to comply with the terms of this ordinance shall not be used for the storage of goods, vehicles or be included as a part of the space necessary to meet off-street parking requirements.

(5) Minimum number of Required Loading Berths.

USE	**GFA (SqFt)**	**# BERTHS REQUIRED**
Auditoriums, Convention Halls, Armories, Exhibition Halls, Sports Arenas	0-3,000	0
	3,001 – 15,000	1 Small
	15,001 – 50,000	1 Large
	50,001 – 100,000	1 Large + 1 Small
	Over 100,000	1 Small Berth fo reach 25,000 or fraction thereafter
Retail Sales, Office, Public Administration, Buildings, Hospitals, School, Hotels	0-5,000	1 Small
	5,001 – 50,000	1 Large
	50,001 – 100,000	1 Large + 1 Small
	Over 100,000	1 Small berth for each 50,000 or fraction thereafter
Manufacturing, Warehousing, Fabricating, Assembly	0-10,000	1 Small
	10,001- 50,000	1 Large
	Over 50,000	1 Large Berth for each 50,000 or fraction thereafter

(G) SITE PLAN REQUIREMENTS

(1) Scope of Applicability: The requirements of this ordinance shall apply to all uses, structures, or properties constructed, extended, enlarged, moved, or altered.

(2) Application Requirements: A land use permit is required for the construction of buildings or building alterations that change the exterior dimensions of the structure, including such related activities as construction of decks and signs, parking lots, fences and other miscellaneous site improvements, and those grading and filling activities not exempted by Section 150.14(H) of this ordinance. The application shall be accompanied by six (8) copies of a site plan showing the following information in graphic and written form:

(a) Property owner(s) and applicant(s) name and address

(b) Preparer's name and address and date prepared

(c) Existing and proposed zoning classification including special overlay districts;

(d) Legal description, property lines and dimensions, setback lines, existing and proposed easements, and adjacent right-of-ways, streets and sidewalks;

(e) A topographic survey of the property with a contour interval of not greater than five feet (5'), showing existing and proposed grades;

(f) A drainage plan showing existing and proposed topography, slopes, surface drainage, vegetation, and surface treatments.

(g) Specifications for all improvements including, but not limited to, underground utilities, pavement, sidewalks, curb/gutter, and driveway aprons

(h) The location of all of the following that are applicable:

1. Principal and accessory buildings plans showing elevation and footprint;

2. Access drives, parking, and loading areas, with stalls clearly delineated

3. Proposed screens, fences, or signs;

4. Nearest existing or proposed fire hydrant;

(i) Proof of compliance of Individual Sewage Treatment System, for all new construction or replacement of houses, buildings or properties used for human occupancy, employment, recreation or

other purposes from which wastewater is discharged. Contact Itasca County Land Department for permit issuance.

(3) Waivers: The Zoning Administrator may waive any site plan requirements that are deemed unnecessary for the issuance of a permit.

(4) Enforcement: The site plan materials must be approved by the Zoning Administrator prior to the issuance of any land use permit. Once approved, they become the working plans for the proposed project. No deviations from approved plans will be allowed without written approval of the Zoning Administrator.

§ 150.07 OFF-STREET PARKING REQUIREMENTS

(A) Purpose and Intent: It is the intent of these regulations that off-street parking be provided and maintained by each property owner for the use of occupants, employees and patrons. These regulations are further intended to promote the safe and efficient storage, circulation and channelization of motor vehicles on-site to avoid undue congestion of the public streets.

(B) Compliance Required: In all districts except where exempt by Section 150.06(F), off-street parking shall be provided as follows:

(1) New Construction: Full off-street parking compliance is required for all newly erected buildings.

(2) Enlargement: Whenever a use of building requiring off-street parking is increased in floor area or when interior building modifications or structural alterations result in an increase in effective capacity for any use, additional parking shall be provided in proper ratio to the increase in floor area or capacity.

(3) Change in Use: Whenever a building or use or part thereof is changed in usage, such that the new use requires more parking than the old, the extent to which the use is changed shall be required to comply fully with the provisions of this ordinance.

(4) Parking Lot Construction and Expansion: All new parking lots and improvements and extensions to existing lots shall comply fully with the requirements of this ordinance.

(C) Permits Required: Land use permits shall be required for parking lot construction in all districts except for one (1) and two (2) family homes within the R districts.

(D) Limitations on Use:

(1) No commercial repair work or service of any kind, or sale or display thereof, or the storage of new or used vehicles which are not for the use of the occupant, employees and patrons shall be conducted in such parking area.

(2) Any area once designated as required off-street parking shall not be changed to any other use until equal facilities as required by this ordinance are provided elsewhere.

(3) Off-Street Parking existing at the date of adoption of this ordinance in connection with the operation of an existing building or use shall not be reduced to an amount less than hereinafter required for a similar new building or use.

(E) Joint Use of Parking Areas: Two (2) or more buildings or uses may collectively provide off-street parking in which case the required number of parking spaces shall not be less than the sum of the requirements for the individual uses computed separately. In the case of the joint use of off-street parking spaces where operating hours do not overlap, the Planning & Zoning Commission may approve an exception to allow the total parking required to be reduced below the sum total of the individual uses provided a copy of an agreement between joint users is filed with the application.

(F) Location and Lease Agreements: All off-street parking required by this ordinance for other than R Districts shall be located on the same lot or within three hundred feet (300') as measured from the nearest point of the parking lot to the nearest point of the property intended to be served. Said off-street parking shall be located in the same district as the use it is intended to serve. In R Districts, all required parking shall be located on the lot it is intended to serve.

(G) Backing into a Street: Except for one (1) and two-family (2) dwellings, backing from a parking lot directly into a street shall be prohibited.

(H) Off-Street Parking Required: The minimum number of off-street parking spaces by type of use shall be required in accordance with the following table. When determining the number of required parking spaces results in a fractional space, any fraction up to and including one-half (½) shall be disregarded and fractions over one-half (½) shall require one parking space.

RESIDENTIAL USES	**MINIMUM PARKING REQUIRED**
1. One and Two Family Units	2/Dwelling Unit (DU)
2. Multiple-Dwellings	2/DU[1]

[1] In the R-2 District, 25% of the required parking shall be enclosed.

3. Senior Citizens Housing	.05/DU
4. Boarding and Rooming Houses	1/Sleeping room
5. Accessory Apartments	1/Unit
6. Bed & Breakfast	1/Room[2]
7. Day Care/Nursery Schools	Same as one-two family units
8. Group and Foster Homes	Same as one-two family units
9. Mobile Home Parks	2/DU
PUBLIC AND QUASI-PUBLIC USES	**MINIMUM PARKING REQUIRED**
1. Churches	¼ Seats (72 inches of pew) in largest assembly room
2. Elementary School	2/Classroom
3. Junior High School	2/Classroom
4. High School	6/Classroom plus 1/6 seats in main auditorium
5. Post High School	10/Classroom
6. Stadiums, Arenas, Auditoriums (accessory to a school)	1/6 Seats
7. Stadiums, Arenas, Theaters & Auditoriums	1/3 Seats
8. Museums, Libraries, & Art Galleries	1/500 sq. ft Gross Floor Area (GFA)
9. Golf & Country Clubs	6/Hole
10. Government Offices	1/200 sq. ft GFA
11. Hospitals	2/bed
12. Nursing Homes	1/3 Beds
13. Clubs & Lodges, Social & Fraternal	½ persons based on occupancy rating
BUSINESS USES	**MINIMUM PARKING REQUIRED**
1. Business, Ins. & General Offices	1/250 sq. ft GFA
2. Medical, Dental Offices & Clinics	1/200 sq ft. GFA
3. Agricultural/Animal Sales	1/400 sq. ft. GFA
4. Automotive Sales/Repair	1/300 sq. ft. GFA
5. Beauty/Barber Shop	3/Chair
6. Bank/S&L/Loan Agency	1/250 sq. ft GFA[3]
7. Car Washes (principal use)	3 plus[4]
8. Car Washes (accessory)	4 stacking spaces/bay
9. Restaurants, Cafes, Bars	1/75 sq. ft. GFA
10. Drive-Up Restaurants	1/50 sq. ft. GFA plus 6 stacking spaces/drive up window
11. Athletic Facilities Racquetball/Tennis	6/Court

[2] Plus minimum requirement for other permitted uses.
[3] Plus 4 stacking spaces per drive up window
[4] a) 4 stacking spaces/manual self-serve bay; and b) 8 stacking spaces/automatic bay; and c) 1/140 sq. ft GFA of retail space. In addition, one (1) detailing space shall be provided for each car wash bay of any type, plus one (1) detail space for each vacuum machine if machines are not located within the stacking spaces. If machines are located within the stacking spaces, no additional detail space is required.

All Other	1/200 sq. ft. GFA
12. Movie Theaters	¼ Seats
13. Gasoline Stations	3 plus 2/Service Stall plus 1/100 sq. ft GFA of retail space
14. Bowling Alleys	5/Lane
15. Hotels, Motels	7/5 Guest Rooms (or fraction thereof)
16. Funeral Homes & Mortuaries	1/3 Seats in largest parlor or chapel
17. Home Furnishings Stores	1/500 sq. ft. GFA
18. Hardware/Home Improvement	1/300 sq. ft. GFA
19. Daycare/Group Homes (commercial)	1/5 persons enrolled
20. Pool Halls, Roller and Ice Rinks, Exhibition Halls	½ persons based on occupancy rating
21. Mini-warehouse	1/10 Units
22. General Retail Sales (not listed)	1/175 sq. ft. GFA (minimum 5)
23. Retail Services (not listed)	1/200 sq. ft. GFA (minimum 3)
INDUSTRIAL USES	**MINIMUM PARKING REQUIRED**
1. Custom Manufacturing	1/300 sq. ft retail space plus 1/employee major shift
2. Other Manufacturing	2/3 employees or 1/2000 sq. ft GFA, whichever is greater

(I) Off-Street Parking Exceptions:

(1) Proof of Parking Required. Establishments shall be capable of providing the number of on-site parking spaces required by this ordinance at any time said parking is needed. However, all such required parking need not be constructed initially if it is demonstrated by the owner to be in excess of his/her real parking demand. Future parking sufficient in quantity to meet the ordinance requirement shall be shown on the official site plan for which a land use permit request is made and said parking shall be constructed at the discretion of the Zoning Administrator if it proves to be needed later.

§ 150.08 SIGNS

(A) PURPOSE AND INTENT

The purpose of this ordinance is to protect and promote the health, safety, morals and general welfare of the inhabitants of the City of Bigfork through the establishing of impartial standards, regulations and procedures which govern the erection, use and/or display of devices, signs, or symbols serving as means of visual communication to persons situated within, upon or adjacent to public rights-of-way of properties.

Because of Bigfork's unique environmental setting and awareness and its reliance on tourism, it is further the intent of this ordinance to encourage quality and aesthetics in the size, design and the materials used for sign construction; to enhance the overall appearance and image of the City; and to assure that the public is not endangered or distracted by the unsafe, disorderly or unnecessary use of this communication medium.

(B) DEFINITIONS

(1) Abandoned Sign: Any sign that becomes vacant, unoccupied, or unused for a period of six (6) months or more, or a sign that pertains to an event, time, or purpose that no longer applies to a business or an activity shall not be deemed to be an abandoned sign unless that business or activity ceases to be conducted on the premises on which the sign is located for a period of more than six (6) months.

(2) Animated Sign: Any sign that has any moving or rotating part, or gives the illusion of movement by means of illumination, provided that a changing sign shall not be considered an animated sign.

(3) Changing Sign: Any electronically controlled and lighted sign such as a message center or reader board that displays messages of an informative nature that flashes on and off or travels across the area on which the message is displayed without the lighting of such message changing in intensity.

(4) Erect: "Erect" shall mean to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way to bring into being or establish, but it shall not include any of the foregoing activities when performed as customary maintenance of an outdoor advertising structure or device.

(5) Flashing Sign: Any illuminated sign that does not maintain a uniform light intensity or color, provided that a changing sign shall not be considered a flashing sign.

(6) Free-Standing Sign: Any sign that is attached directly to the ground or is supported vertically by any structurally sound support having its source of support independent of any building existing on the premises on which the sign is located.

(7) Height: The height of a sign shall be measured from the centerline of the street or highway toward which the sign is principally displayed to the top of the sign.

(8) Multiple-Faced or Back-To-Back Sign: Any sign that has one or more faces as a result of being constructed back-to-back or of "V" type construction.

(9) Name Plate Sign: A sign that contains only the name and/or address of the occupant.

(10) Non-Conforming Sign: Any sign lawfully in existence on the effective date of this ordinance or any sign lawfully in existence on the date of any amendment to this ordinance which does not conform to the regulations affecting signs for the district in which the sign is situated.

(11) Off-Premise Sign: Any sign that directs attention to a business, product, service, activity, or entertainment not conducted upon the premises on which such sign is located.

(12) On-Premise Sign: Any sign that directs attention to the name of the building, premises, or the name of the principal product, service, entertainment, or activity conducted, sold or offered upon the premises on which such sign is located.

(13) Political Sign: Any sign that advertises a candidate or an issue that is to be voted on in a local, state or federal election process.

(14) Premises: The contiguous land in the same ownership or control that is not divided by a street.

(15) Projecting Sign: Any sign which is affixed to the outside of the exterior wall of any building and which extends more than twelve inches (12") from the building wall face.

(16) Real Estate Sign: A temporary sign advertising the real estate upon which the sign is located as being for rent, lease, or sale.

(17) Safety Control Sign: Warning signs, notices, or markers that are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operation.

(18) Sign: Any letter, work, symbol, model, printed, projected, or affixed device, poster, picture, reading matter, or other representation in the nature of an advertisement, announcement, direction, or informative device including structural and component parts, that is located outdoors and is larger than one (1) square foot in area.

(19) Sign Area: The area of a sign includes the space inside a continuous line drawn around and enclosing all letters, designs and background materials exclusive of border, trim and structural supports. For the purpose of calculating the sign area of multiple-faced or back-to-back signs, the stipulated maximum sign area shall refer to a single face.

(20) Temporary Sign: A promotional sale sign, fund-raising sign, special event sign, garage sale sign, or similar sign displayed no more than fourteen (14) days in any six (6) month period

(21) Traffic Control Signs: Signs and notices erected and maintained by public officers or public agencies within their territorial jurisdiction and pursuant to and in accordance with direction or authorization contained in federal or state law for the purposes of carrying out an official duty or responsibility.

(22) Wall Sign: Any sign that is affixed to the outside of an exterior wall or other part of any building.

(C) SIGN EXEMPTIONS

The following signs shall be exempt from the provisions of this ordinance:

(1) Any sign erected and maintained pursuant to and in the discharge of any governmental function or required by any law, ordinance or governmental regulation.

(2) Signs that are not visible beyond the boundaries of the lot or parcel upon which they are located.

(3) Works of fine art that in no way identify or advertise a product or business.

(4) Temporary decorations or displays when such are clearly incidental to and are customarily and commonly associated with any national, local or religious holiday or celebration.

(5) Safety Control Signs

(6) Traffic Control Signs

(7) Political Signs provided they are removed within one week after the date of the election to which they pertain. The owner or occupier of the property on which said sign is placed shall be responsible for its removal. Political signs shall not be placed in the public right-of-way.

(8) Temporary Signs provided they are not displayed for more than fourteen (14) days in a six (6) month period.

(a) Temporary signs advertising garage and similar sales are also subject to the following restrictions:

1. signs shall be located on private property and shall not be placed on the public right-of-way

2. the maximum size for said signs shall be 24” x 24”

3. signs may be placed one (1) day prior to sale and shall be removed within one (1) day of termination of sale

(9) Real Estate Signs provided they are twenty-five (25) square feet or less in area and are removed within seven (7) days following the lease or sale of the property.

(10) Signs, merchandise, pictures or models of products or services that are incorporated as an integral part of a window display.

(11) Signs on vehicles, including trailers and trucks; provided such vehicles shall not be utilized as parked or stationary outdoor display signs, or as a structure from which to hang a sign.

(12) Signs such as corner stones, commemorative tablets and historical signs.

(13) National, State or Local governmental flags or symbols, provided that the display of such does not impair public safety.

(D) PROHIBITED SIGNS

The following signs shall not be permitted or erected in the City of Bigfork:

(1) Signs that emit sound.

(2) Any sign or structure that is unsafe or constitutes a hazard.

(3) Any sign which in any way obstructs the view of, may be confused with, purports to be, or contains a facsimile f an official traffic sign, signal or device.

(4) Signs with rotating or revolving beacon lights.

(5) Abandoned signs.

(6) Signs that contain any indecent or offensive picture or written material.

(7) Any sign which violates Minnesota Statutes 173.15 as it may be amended from time to time, or any other state or federal law or regulation.

(8) Any sign that advertises, identifies or pertains to any activity or business that has not been in existence for a period of thirty (30) days from the date the activity or business ceased to exist.

(9) Animated Signs.

(10) Flashing Signs.

(11) Name Plate Signs larger than three (3) square feet.

(12) Any sign larger than thirty-two (32) square feet.

(13) Any off-premise advertising sign along the TH 38 Corridor

(E) GENERAL DESIGN AND CONSTRUCTION STANDARDS

(1) All signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure.

(2) Color: All colors used must be approved by the Planning and Zoning Commission as part of the permitting process.

(3) Materials: All sign materials must be approved by the Planning & Zoning Commission as part of the permitting process.

(4) Distance from Roadways: All signs shall be located a minimum of 10 feet from the edge of any adjacent roadway.

(5) Sign Area: The maximum sign area for any free-standing sign shall not exceed thirty-two (32) square feet. The maximum sign area for any wall sign shall not exceed twelve percent (12%) of the area of the face of the building it is to be attached to.

(6) Sign Height: The maximum height of any free-standing sign shall not exceed the district requirements for building height or twenty-five feet (25’), whichever is the lesser.

(7) Illumination: The lighting sources from any sign shall not cause up-light, spill light, or glare above, below, or alongside the sign. Exposed lighting

sources such as bulbs, tubes, and the like are prohibited. All lighting sources shall be shielded from view by shrubbery or some other permitted material.

(8) All signs shall be maintained in good structural condition.

(F) DESIGN AND CONSTRUCTION STANDARDS FOR SPECIFIC TYPES OF SIGNS

(1) Changing Signs. Changing signs will only be allowed to display public information such as time and temperature.

(2) Projecting Signs. Projecting signs that overhang a sidewalk or other pedestrian way shall provide a minimum clearance above the said pedestrian way of ten feet (10').

(G) OFF-PREMISE SIGNS.

(1) Description of Ownership: Every off-premise sign shall indicate plainly the owner of such sign.

(2) Location: Off-premise signs are permitted in all Districts but are prohibited along the TH 38 Corridor (see § 150.08(D)(13) above). Any off-premise sign shall be located at least ten feet (10') from the edge of any adjacent roadway.

(3) Height: The maximum height of an off-premise sign shall not exceed the district requirements for building height or twenty-five feet (25'), whichever is the lesser.

(4) Sign Area: The maximum sign area of an off-premise sign shall not exceed thirty-two (32) square feet.

(5) Spacing: No off-premise sign shall be placed within one hundred feet (100') of another off-premise advertising sign. Said one hundred feet (100') to be measured along the nearest edge of the street or highway to which an off-premise advertising sign is displayed and between points directly opposite the centers of the off-premise signs. For the purpose of calculating the one hundred feet (100'), multiple-faced or back-to-back type signs shall be considered as one (1) sign.

(6) Setback Requirements: All off-premise signs shall be set back in conformance with the setback requirements for buildings in the district in which the sign is located.

(7) Interference with Traffic: No off-premise sign shall be placed on a site or constructed or maintained in such a manner that the sign will substantially obstruct the vision of pedestrians and motorists entering and leaving any street or highway intersection so as to create a dangerous traffic hazard. Off-premise signs shall be constructed and maintained so as to prevent beams or rays of light from being directed at any portion of a street or highway with such brilliance, intensity, or glare so as to impair the vision of pedestrians and motorists.

(8) Proximity to Natural Features: No off-premise sign shall in any way obstruct the view from any public street or the view of natural features.

(9) Permitted Arrangements: Off-premise sings are permitted as multiple-faced and back-to-back type signs provided, however, not more than two (2) displays are allowed on each face of a sign structure. Off-premise signs shall not be constructed as wall signs.

(H) ADMINISTRATION AND ENFORCEMENT

(1) Permits and Fees: Except as hereinafter provided, no person, partnership, firm or corporation shall erect, cause to be erected, or allow to be erected on property owned by them any sign unless a sign permit has been issued by the Zoning Administrator at the direction of the Planning & Zoning Commission and the fee as set forth in the Ordinance Establishing Fees and Charges has been paid.

(2) Review of Application: The Planning & Zoning Commission shall review all applications for sign permits and holds the authority to grant or deny the application. The Planning & Zoning Commission reserves the right to deny any application based on their findings in the review of such application. The Planning & Zoning Commission also reserves the right to place conditions on the granting of any sign permit.

(3) Exceptions: All applicable provisions of this ordinance shall apply except that no permit or permit fee shall be required for the following:

(a) Any sign designated as exempt in Section 150.08(C)(1-13)

(b) The replacement of any permitted sign with an exact duplicate of the original sign. The replacement sign must be identical in size, color, and copy to the original sign. If any changes to the sign are desired, a new sign permit application must be submitted before the sign may be erected.

(4) Permit Requirements: Forms for application for a sign permit may be obtained from the Zoning Administrator. The application must be completed in full and shall contain the following information.

(a) An artist's sketch of what the sign will look like when completed, including samples or a listing of the colors to be used;

(b) The exact location of the proposed sign, including distances from the edge of any adjacent roadways or property lines, and distances from any other signs in the area;

(c) The dimensions of the proposed sign;

(d) A listing of the materials with which the proposed sign will be constructed;

(e) Whether the sign will be illuminated or use any type of artificial light source;

(f) The name and address of the owner of the property on which the sign is to be constructed, including proof of permission to erect the sign if the property is not owned by the person requesting the sign permit; and

(g) The name and address of the person that is to construct the proposed sign.

The Zoning Administrator may require additional suitable information consistent with the provision of this ordinance. All signs shall be constructed and placed in substantial compliance with the permit and the data submitted by the applicant.

(5) Gopher State One Call Required: No person shall begin the construction of a permitted sign for which digging must take place without first placing a Gopher State One Call ("Call Before You Dig"). Calls must be made two days prior to the start of any digging or construction.

(6) Certification by Structural Engineer: The Planning & Zoning Commission may order certification of the structural design of any sign by an Engineer or Architect registered in the State of Minnesota. The application is responsible for the cost of this certification.

(7) Inspection after Installation: Upon installation of the sign, the applicant must notify the Zoning Administrator of the installation. The Zoning Administrator may then order inspection of the sign to ensure the installation was in keeping with the granting of the permit. If any

discrepancies are found between the restrictions of the permit and the actual installation of the sign, the applicant must make the necessary corrections immediately or the sign must be removed until such corrections are made.

(8) Maintenance: All signs shall be maintained so as not to threaten danger to persons or property. Abandoned signs and signs that have become damaged, dangerous, or dilapidated shall be repaired or removed immediately. The City shall have the right and shall follow the procedures set forth in Minnesota Statutes 463.15 as it is amended from time to time with respect to any abandoned, dangerous, or dilapidated sign.

(9) Area Around Signs: The owner, or lessee, or any sign or the owner of the land on which the sign is located shall keep the grass, weeds and other growth cut and the area free from refuse between the sign and the street and also for a distance of six feet (6') behind and at the ends of said sign.

(10) Violations and Penalties: Any person convicted of violating any provision of this Section shall be guilty of a petty misdemeanor and shall be subject to the penalties as provided by law.

(I) NON-CONFORMING SIGNS

(1) Permitted Maintenance: Non-conforming signs existing on the effective date of this ordinance shall be allowed to continue and reasonable maintenance of non-conforming signs shall be allowed. If the Zoning Administrator is of the opinion that a sign is not secure, safe, or in good state of repair, written notice of this fact shall be given to the person responsible for the maintenance of the sign. If the defect in the sign is not corrected within thirty (30) days, the Zoning Administrator may revoke the sign permit, thus placing the sign owner in violation of this ordinance.

(2) Modifications. Any lawfully existing nonconforming sign cannot be enlarged, redesigned, or altered in any way including the repainting in a different color, except to conform to the requirements of this ordinance.

(3) Replacement. Any sign replacing a non-conforming sign shall conform with the provisions of this ordinance and the non-conforming sign shall no longer be displayed.

(4) Relocating Signs. Non-conforming signs shall not be relocated without being brought into compliance with all of the requirements of this ordinance.

§ 150.09 PLANNED UNIT DEVELOPMENT (PUD)

(A) PURPOSE, OWNERSHIP, USES, ELIGIBILITY

(1) Purpose and Intent: There may be certain areas within the City of Bigfork that have very unique natural characteristics (wooded), are environmentally sensitive (wetlands), or are marginally developable due to such adverse external influences as high traffic volumes and/or non-residential uses. It is very desirable to encourage the clustering of development within these areas in an effort to preserve larger expanses of open space. It is the intent of a PUD to provide a process for rezoning which results in real property development utilizing a comprehensively prepared site plan which allows for flexibility and variances in building sites, densities and yards; allows for the mixing of uses and housing types and provides for usable open space as well as the preservation of natural features.

(2) Eligibility Requirements: A PUD may be applied within any district provided the following requirements are met:

(a) The site shall be not less than two (2) acres in size,

(b) Land to be incorporated in a PUD shall be under the control of one (1) owner or group of owners and shall be capable of being planned and developed as one integral unit.

(3) Uses Permitted: As a process, a PUD conveys no right to the use of land other than permitted by the district within which it is located.

(4) Development Guidelines: Within a PUD, the basic zoning district regulations may be negotiated and variances granted by mutual consent of the City and the land owner(s) in accordance with the uses established by the City of Bigfork. The following shall apply:

(a) No variance shall be negotiated for yards adjacent to exterior property lines or public streets;

(b) No variances shall be negotiated for off-street parking or screening except as provided for in Section 150.07(E); and

(c) A maximum variance from basic density requirements of up to twenty-five percent (25%) may be negotiated provided the findings under Section 150.09(B)(7) can be made.

(B) PLANNED UNIT DEVELOPMENT PROCEDURES

(1) Preliminary Discussion: Prior to filing a application for a PUD, the applicant must request a meeting with the Planning & Zoning Commission to discuss the potential for a PUD approval, consistency with City plans, etc. Such requests shall be made by addressing a letter to the City Planning & Zoning Commission. The proposed PUD will be discussed at the next regularly scheduled Planning & Zoning Commission meeting provided the letter is received at least fourteen (14) days prior to the meeting date. Said letter shall be accompanied by a preliminary sketch plan that indicates the density; street pattern; building square footage, height and type and a time schedule. Guidance will be provided in concept by the Planning & Zoning Commission to assist the applicant with the preparation of a Preliminary Development Plan.

(2) Application and Fees: Depending on the outcome of the preliminary discussion, the applicant shall initiate the PUD process by filing an application signed by the owner and paying the required fee to the Zoning Administrator not less than fourteen (14) days prior to the Planning & Zoning Commission meeting on a form provided by the City and including the information required in Section 150.09(B)(3).

(3) Plan Requirements: Eight (8) copies of the following information shall be provided to the Zoning Administrator in a neat package stapled together and accompanied by the application. The following information shall be provided in graphic and written form.

(a) A site plan in accordance with Section 150.06(G);

(b) A map showing existing natural features; including trees, watercourses and ponds, and soil conditions;

(c) A Preliminary Development Plan indicating the proposed uses of land, densities, recreation areas and facilities, and any other information that will be necessary to evaluate the proposal;

(d) A Staging Plan indicating the proposed sequence of development and a general grading scheme;

(e) Final Development Plan for Phase I.

(4) Plan Application Acceptance and Public Hearing: The Zoning Administrator shall distribute the materials to the Planning & Zoning Commission for review at the next Planning & Zoning Commission meeting. If the proposal is within a Shoreland District, the plans will also be forwarded to the Commissioner of the Department of Natural Resources for review and comment. At the next regularly schedule

meeting, the Planning & Zoning Commission shall consider the completeness of the plan and if deemed complete, the plan shall be considered officially submitted and the following procedure shall be followed:

(a) The Planning and Zoning Commission shall set a public hearing on the proposed PUD within 45 days.

(b) The Zoning Administrator shall cause notice of the hearing to be published in the official newspaper at least ten (10) days prior to the hearing.

(c) The Zoning Administrator shall notify the applicant of the public hearing.

(d) The Zoning Administrator shall cause written notice of the public hearing to be sent to all property owners within three hundred and fifty (350) feet of the exterior boundaries of the proposed plan.

(5) Planning & Zoning Commission Action and Findings: The Planning & Zoning Commission shall consider the recommendations of the public, the Commissioner of the Department of Natural Resources, the City Engineer and the City Surveyor and shall do one of the following:

(a) Approve the Preliminary Development Plans and Final Development Plans for Phase I. The Planning & Zoning Commission shall not approve a PUD unless it finds as follows:

1. The proposed development is consistent with the city Comprehensive Plan;

2. The development is more compatible, having used PUD, with surrounding development than if PUD had not been used; and

3. The open space gain warranted the use of PUD to grant variances.

(b) Deny the plan and state in writing the reasons for denial.

(c) Table the plan for future study and review or give recommendations for modifications provided, however, the plan is placed back on the Planning & Zoning Commission's agenda at their next meeting.

(6) Conditions and Records: The Planning & Zoning Commission may impose such conditions as it deems necessary on the Preliminary and Final Development Plans and shall maintain a record of all approved plans, amendments and conditions for continuing reference.

(7) Final Development Plans – Subsequent Phases: As rezoning is needed for subsequent development phases, the applicant shall prepare Final Development Plans for each phase and shall petition the City for rezoning in accordance with the above procedures. The application for rezoning shall be accompanied by the information specified for final development plans in Section 150.09(B)(3)(e) above. The Planning & Zoning Commission shall review and recommend on each development phase and the City Council shall, prior to action on the request, hold a public hearing in accordance with the procedures established for rezoning. Each proposed Phase shall be in substantial conformance with the approved Preliminary Development Plan.

(8) Resubmission: No application for PUD that has been denied by the Planning & Zoning Commission shall be resubmitted by the applicant for a period of one (1) year following the date of denial.

(9) Lapse and Extension: If within one (1) year after the date of rezoning, a land use permit has not been issued, the Planning & Zoning Commission shall conduct a public hearing and notice shall be given in the same manner as the original petition. The Planning & Zoning Commission may extend or rescind the zoning previously granted and the Preliminary and Final Development Plans for up to one (1) year upon finding that:

(a) A good faith effort has been made to use the PUD,

(b) There is reasonable expectation that the PUD will be used, and;

(c) The facts upon with the original PUD was issued are essentially unchanged.

(10) Land Use Permits: At the time of land use permit approval, the building plans shall be reviewed by the Zoning Administrator to establish their compliance with the approved Preliminary and Final Development Plans. If they do not comply, the plans shall be reviewed by the Planning & Zoning Commission and a public hearing shall be conducted all in accordance with the procedures established in Section 150.09(B).

§ 150.10 NON-CONFORMING USES

(A) CLASSIFICATION

(1) Class 1: Those where the use of the building or land does not conform to the District Use Regulations of Section 150.05 of this ordinance. Class 1 non-conforming uses include but are not limited to a single-family residence in a GB District, or a multi-family home in an R1 District.

(2) Class 2: Those where the use of the building or land does comply with the District Use Regulations of this ordinance, but said use does not meet in its entirety the Site Development and Design Standards and Off-Street Parking and Loading requirements set forth in Section 150.06 and 150.07 respectively. Class 2 non-conforming uses include but are not limited to a structure located in a required setback or more than two portable recreation buildings or vehicles stored outside in a residential district.

(B) PURPOSE AND INTENT

It is the intent of this ordinance to permit the continuance of a lawful use of any building or land existing at the effective date of this ordinance though such use may not conform with the provisions of this ordinance. It is also recognized that Class 1 uses are incompatible with the permitted uses in the districts in which located and it is the intent of this ordinance not to encourage their continuation or expansion. Class 2 uses are generally compatible, in terms of use, with the district in which located. It is, therefore, the intent of this Section to encourage their continuance, allow for their expansion, and to encourage, over time, ever greater compliance with the requirements of this ordinance.

(C) NON-CONFORMING USE REGULATIONS

Non-conforming uses of building, structures and land shall be subject to the following regulations:

(1) Structural Alterations, Replacement or Enlargement:

(a) Class 1 non-conforming uses shall not be structurally altered or enlarged unless the resultant altered or enlarged building or use shall conform in terms of usage to the provisions of this ordinance. Single family dwellings and owner-occupied duplexes damaged or destroyed by fire, explosion, or other act of nature may be reconstructed or replaced with a building of similar size and value of the original building.

(b) Class 2 non-conforming uses shall be allowed to be structurally altered or replaced provided there is no further violation of said requirements that lawfully exists at the time of said alteration or replacement.

(2) Site Development Compliance Requirements: (Class 2 Non-Conforming Uses): Lawful Class 2 non-conforming uses existing at the time of adoption of this ordinance shall be "grandfathered," provided however, that any modification to an existing structure, or the addition of any structure valued at equal to or greater than five thousand dollars ($5,000) shall require compliance with the Site Development Standards (Section 150.06) subject to the following standards:

(a) An additional fifteen percent (15%) of the value of a proposed building improvement project must be added to the project and applied towards site improvements;

(b) The proposed site improvements required to satisfy the requirements of this section shall be submitted for approval to the Zoning Administrator;

(c) Written cost estimates shall be provided for any site improvements being proposed;

(d) With the understanding that the "15%" improvement requirements will not bring many sites up to full compliance, the required improvements shall be prioritized by the Zoning Administrator;

(e) "Phasing In" Improvements: Where the estimated site improvement costs exceed $2,000 the Zoning Administrator may allow the owner to phase in the required improvement over a 3-year period provided that:

1. The property owner(s) file a binding agreement, in a form acceptable to the City, committing the owners to making said improvement within three (3) years, and

2. At least one-third of the improvement costs must be spent in the first year; and

(3) Repair of Non-Conforming Buildings.: Nothing in this ordinance shall prohibit the repair, improvement, or modernizing of a lawful non-conforming building to correct deterioration, obsolescence, depreciation and wear provided that such repair to Class 1 non-conforming uses shall not exceed and aggregate cost of thirty percent (30%) of the replacement value of the building.

(4) Reconstruction and Restoration: Any lawful non-conforming use damaged by fire, explosion, an act of God, or by other causes may be restored, rebuilt or repaired provided such restoration for Class 1 non-

conforming uses does not exceed fifty percent (50%) of its replacement value, exclusive of land and foundations. Owner occupied Class 1 non-conforming single family dwellings and duplexes damaged or destroyed by fire, explosion or act of nature may be reconstructed or replaced with a building of similar size and value as the original building.

(5) Discontinuance or Abandonment: Whenever a non-conforming use of either class has been discontinued for six (6) or more consecutive months or for eighteen (18) months during any three (3) year period, such discontinuance shall be considered conclusive evidence of the intention to abandon the non-conforming use and shall not be reestablished. Any future use shall be in conformity with the provisions of this ordinance.

(6) Changing of Uses: Whenever a Class 1 non-conforming use had been changed to a more nearly conforming use or to a conforming use, such use shall not revert or be changed back to a non-conforming or less conforming use. Whenever a Class 2 non-conforming use is changed to a use requiring the same or less parking, full ordinance compliance shall not be required but in no case shall existing parking be diminished.

(7) Prior Construction Approval: Nothing in this ordinance shall prohibit the completion of construction and use of a non-conforming building for which a land use permit has been issued prior to the effective date of this ordinance, provided that construction is commenced within ninety (90) days after the date of issuance of the permit and that the entire building shall have been completed according to plans filed with the permit application within one (1) year after the issuance of the building permit.

(8) District Changes: Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of another classification, the provision of this Section shall also apply to any existing uses that become non-conforming as a result of the boundary changes.

§ 150.11 PLANNING & ZONING COMMISSION

See Title III of the Bigfork Code of Ordinances, Section 31.45.

§ 150.12 FEES

Refer to the Ordinance Establishing Fees and Charges for the City of Bigfork.

§ 150.13 FLOODPLAIN REGULATIONS

(A) STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

(1) Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 104 and 462 (Zoning Enabling Statute) delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Bigfork, Minnesota does ordain as follows:

(2) Findings of Fact: The flood hazard areas of the City of Bigfork, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(3) Methods Used to Analyze Flood Hazards: This ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.

(4) Statement of Purpose: It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in 150.13(A)(2) by provisions contained herein.

(B) GENERAL PROVISIONS

(1) Lands to Which Ordinance Applies: This ordinance shall apply to all lands within the jurisdiction of the City of Bigfork as shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe or General Flood Plain Districts. The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this ordinance. The attached material shall include the Flood Insurance Study for the City of Bigfork prepared by the Federal Insurance Administration dated April 17, 1989, and the Flood Insurance Rate Map dated April 17, 1989 therein. The Official Zoning Map shall be on file in the Office of the City Clerk.

(2) Regulatory Flood Protection Elevation: The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

(3) Interpretation: In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes. The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown of the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Planning & Zoning Commission shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Planning & Zoning Commission and to submit technical evidence.

(4) Abrogation and Greater Restrictions: It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

(5) Warning and Disclaimer of Liability: This ordinance does not imply that areas outside the flood plain district or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Bigfork or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(6) Severability: If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

(C) ESTABLISHMENT OF ZONING DISTRICTS

(1) Districts:

(a) Floodway District: The Floodway District shall include those areas designated as floodway on the Flood Insurance Rate Map.

(b) Flood Fringe District: The Flood Fringe District shall include those areas designated as floodway fringe. The Flood Fringe shall constitute those areas shown on the

Flood Insurance Rate Map as adopted in Section 150.03(B)(1) as being within Zone AE but being located outside of the floodway.

(c) General Flood Plain District: The General Floodplain District shall include those areas designated as unnumbered A Zones on the Flood Insurance Rate Map adopted in Section 150.03(B)(1).

(2) Compliance:

No new structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations which apply to uses within the jurisdiction of this ordinance. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in 150.13(D), (E) and (F) that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this ordinance and specifically 150.13(I);

Modifications, additions, structural alterations or repair after damage to existing non-conforming structures and nonconforming uses of structures of land are regulated by the general provisions of this ordinance and specifically 150.13(K); and

As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as

(D) FLOODWAY DISTRICT (FW)

(1) Permitted Uses:

General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

Industrial/Commercial loading areas, parking areas, and airport landing strips.

Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks,

wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

Residential lawns, gardens, parking areas, and play areas.

(2) Standards for Floodway Permitted Uses:

The use shall have a low flood damage potential.

The use shall be permissible in the underlying zoning district if one exists.

The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

(3) Conditional Uses:

Structures accessory to the uses listed in 150.13(D)(1) above and the uses listed below.

Extraction and storage of sand, gravel, and other materials.

Marinas, boat rentals, docks, piers, wharves, and water control structures.

Railroads, streets, bridges, utility transmission lines, and pipelines.

Storage yards for equipment, machinery, or materials.

Placement of fill.

Travel trailers and travel vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of 150.13(I)(3) of this ordinance.

Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

(4) Standards for Floodway Conditional Uses:

(a) All Uses:

No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a Conditional Use that will cause any increase in the state of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.

All floodway Conditional Uses shall be subject to the procedures and standards contained in(J)(4) of this ordinance.

The conditional use shall be permissible in the underlying zoning district if one exists.

(b) Fill:

1. Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.

2. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term

3. As an alternative, and consistent with Subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials form the floodway based upon the flood warning time available. The Conditional Use Permit must be title registered with the property in the Office of the Itasca County Recorder.

(c) Accessory Structures:

1. Accessory structures shall not be designed for human habitation.

2. Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters.

a. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and,
b. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

3. Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards, as appropriate:

   a. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and
   b. Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or property flood proofed.

(d) <u>Storage of Materials and Equipment:</u>

1. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

(e) Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 105. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

(f) A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

(E) FLOOD FRINGE DISTRICT (FF)

(1) Permitted Uses:
Permitted Uses shall be those uses of land or structures listed as Permitted Uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a Permitted Use in the Flood Fringe provided such use does not constitute a public nuisance. All Permitted Uses shall comply with the standards for Flood Fringe "Permitted Uses" listed in 150.13(E)(2) and the standards for all Flood Fringe "Permitted and Conditional Uses" listed in 150.13(E)(5).

(2) Standards for Flood Fringe Permitted Uses:
All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one foot (1') below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen feet (15') beyond the outside limits of the structure erected thereon.

As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed five hundred (500) square feet for the outside dimension at ground level may be internally flood proofed in accordance with 150.13(D)(4)(c).

The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a Conditional Use, unless said fill is specifically intended to elevate a structure in accordance with section 150.13(E)(2) of this ordinance.

The storage of any materials or equipment shall be elevated on fill to the Regulatory Flood Protection Elevation.

The provisions of section 150.13(E)(5) of this ordinance shall apply.

(3) Conditional Uses:
Any structure that is not elevation on fill or flood proofed in accordance with section 150.13(E)(2) or any use of land that does not comply with the standards in section 150.13(E)(2) shall only be allowable as a Conditional Use. An application for a Conditional Use shall be subject to the

standards and criteria and evaluation procedures specified in sections 150.13(E)(4-5) and 150.13(J)(4) of this ordinance.

(4) Standards for Flood Fringe Conditional Uses:
Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the Regulatory Flood Protection Elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) is designed to internally flood and is constructed with flood resistant materials; and 3) is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

(a) Design and Certification – The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.

(b) Specific Standards for Above-grade, Enclosed Areas – Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:

1. The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structure's walls to provide for entry of floodwaters to equalize pressures, the bottom of all openings shall be no higher than one foot (1') above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

2. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

Basements, as defined by section 150.13(B)(8) of this ordinance, shall be subject to the following:

1. Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.

2. Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with section 150.13(E)(4) of this ordinance

All areas of non-residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 of FP-4 classification shall not be permitted.

When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.

(c) Storage of Materials and Equipment:

1. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available

after a flood warning and in accordance with a plan approved by the Governing Body.

The provision of section 150.13(E)(5) of this ordinance shall also apply.

(5) Standards for all Flood Fringe Uses:
All new principal structures must have vehicular access at or above an elevation not more than two feet (2') below the Regulatory Flood Protection Elevation. If a variance to this requirement is granted, the Planning & Zoning Commission must specify limitation on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

Commercial Uses – accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two feet (2') or be subject to flood velocities greater than four feet (4') per second upon occurrence of the regional flood.

Manufacturing and Industrial Uses – measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in section 150.13(E)(5) above. In considering permit application, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation – FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

Standards for travel trailers and travel vehicles are contained in section 150.13(I)(3).

All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

(F) GENERAL FLOOD PLAIN DISTRICT

(1) Permissible Uses:

(a) The uses listed in Section 4.1 of this ordinance shall be permitted uses.

(b) All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Section 6.2 below. Section 4.0 shall apply if the proposed use is in the Floodway District and Section 5.0 shall apply if the proposed use is in the Flood Fringe District.

(2) Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District:

(a) Upon receipt of an application for a Conditional Use Permit for a use within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the Regulatory Flood Protection Elevation and whether the proposed use is within the Floodway or Flood Fringe District.

1. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development and high water information.

2. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets; photographs showing existing land uses and vegetation upstream and downstream; and soil type.

3. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.

(b) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the Regulatory Flood Protection Elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000-6120.6200 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:

1. Estimate the peak discharge of the regional flood.

2. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

3. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.

(c) The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analysis to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this ordinance.

(G) SUBDIVISIONS

(1) Review Criteria: No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain district shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labeled on al required subdivision drawings and platting documents.

(2) Requirements for Floodway/Flood Fringe Determinations in the General Flood Plain District: In the General Flood Plain District, applicants shall provide the information required in Section 6.2 of this ordinance to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the Regulatory Flood Protection Elevation for the subdivision site.

(3) Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

This Section is not intended as a substitute for a comprehensive city or county subdivision ordinance. It can, however, be used as an interim control until the comprehensive subdivision ordinance can be amended to include necessary flood plain management provisions.

(H) PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

(1) Public Utilities. All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood-proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.

(2) Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with section 150.13(D) and 150.13(E) of this ordinance. Elevation to the Regulatory Flood Protection Elevation shall be provided here failure or interruption of these

transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

(3) On-site Sewage Treatment and Water Supply Systems. Where public utilities are not provided:

(a) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and

(b) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

(I) MANUFACTURED HOMES AND MANUFACTURED HOME PARKS AND PLACEMENT OF TRAVEL TRAILERS AND TRAVEL VEHICLES

New manufactured home parks and expansions to existing mobile manufactured home parks shall be subject to the provisions placed on subdivisions by section 150.13(G) of this ordinance.

The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in the flood plain district will be treated as a new structure and may be placed only if elevated in compliance with section 150.13(E) of this ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with section 150.13(E)(5), then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Governing Body.

All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

Travel trailers and travel vehicles that do not meet the exemption criteria specified in section 150.13 (I)(1) below shall be subject to the provisions of this ordinance and as specifically spelled out in section 150.13(I)(3-4) below.

(1) Exemption. Travel trailers and travel vehicles are exempt from the provisions of this ordinance if they are placed in any of the areas listed in section 150.13(I)(2) below and further they meet the following criteria:

(a) Have current licenses required for highway use.

(b) Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the travel trailer/travel vehicle has no permanent structural type additions attached to it.

(c) The travel trailer or travel vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

(2) Areas Exempted For Placement of Travel/Recreation Vehicles:

(a) Individual lots or parcels of record.

(b) Existing commercial recreational vehicle parks or campgrounds.

(c) Existing condominium type associations.

(3) Travel trailers and travel vehicles exempted in section 150.13(I)(1) lose this exemption when development occurs on the parcel exceeding $250.00 dollars for a structural addition to the travel trailer/travel vehicle or an accessory structure such as a garage or storage building. The travel trailer/travel vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in sections 150.13(D) and 150.13 (E) of this ordinance.

(4) New commercial travel trailer or travel vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:

(a) Any new or replacement travel trailer or travel vehicle will be allowed in the Floodway or Flood Fringe District provided said trailer or vehicle and its contents are placed on fill above the Regulatory Flood Protection Elevation and proper elevated road access to the Site exists in accordance with section 150.13(E)(5) of this ordinance. Any fill placed in a floodway for the purpose of elevating a travel trailer shall be subject to the requirements of section 150.13(D).

(b) All new or replacement travel trailers or travel vehicles not meeting the criteria of (a) above may, as an alternative, be allowed as a Conditional Use if in accordance with the provisions of section 150.05(J) of this ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement travel trailers or other recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with section 150.13(H)(3) of this ordinance.

(J) ADMINISTRATION

(1) Zoning Administrator: A Zoning Administrator designated by the Governing Body shall administer and enforce this ordinance. If the Zoning Administrator finds a violation of the provisions of this ordinance the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in section 150.13(L) of this ordinance.

(2) Permit Requirements:

(a) A Permit issued by the Zoning Administrator in conformity with the provisions of this ordinance shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

(b) Application for a Permit shall be made to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.

(c) Prior to granting a Permit or processing an application for a Conditional Use Permit or Variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal Permits.

(d) It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.

(e) Permits, Conditional Use Permits, or Certificates of Zoning Compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance, and punishable as provided by section 150.13(L) of this ordinance.

(f) The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.

(g) The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures and alterations or additions to structures are flood-proofed.

(3) Variances and Appeals

(a) The Planning & Zoning Commission may authorize upon appeal in specific cases such relief or variance from the terms of this ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities. In the granting of such variance, the Planning & Zoning Commission shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in the respective enabling legislation which justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for

the particular area, or permit standards lower than those required by State law.

(b) Upon filing with the Planning & Zoning Commission of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Planning & Zoning Commission shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Planning & Zoning Commission shall submit by mail to the Commissioner of Natural Resources, a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.

(c) The Planning & Zoning Commission shall arrive at a decision on such appeal or variance within sixty (60) days. In passing upon an appeal, the Planning & Zoning Commission may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance the Planning & Zoning Commission may prescribe appropriate conditions and safeguards such as those specified in section 150.13(J)(4)(f), which are in conformity with the purposes of this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance punishable under section 150.13(L). A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

(d) Appeals from any decision of the Planning & Zoning Commission may be made, and as specified in Section 150.03(J)(3)(a) and also Minnesota Statutes.

(e) The Zoning Administrator shall notify the applicant for a variance that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and

2. Such construction below the 100-year or regional flood level increases risks to life and property. Such notification

shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

(4) Conditional Uses: The Planning & Zoning Commission shall hear and consider applications for Conditional Uses permissible under this ordinance. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning & Zoning Commission for consideration.

(a) Upon filing with the Planning & Zoning Commission an application for a Conditional Use Permit, the Planning & Zoning Commission shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.

(b) The Planning & Zoning Commission shall arrive at a decision on a Conditional Use within sixty (60) days. In granting a Conditional Use Permit the Planning & Zoning Commission shall prescribe appropriate conditions and safeguards, in addition to those specified in section 150.13(J)(4)(f), which are in conformity with the purposes of this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of this ordinance punishable under section 150.13(L). A copy of all decision s granting Conditional Use Permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

(c) Procedures to be followed by the Planning & Zoning Commission in Passing on Conditional Use Permit Application within the Flood Plain District.

1. Require the applicant to furnish such of the following information and additional information as deemed necessary by the Zoning Administrator for determining the suitability of the particular site for the proposed use:

a. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the

relationship of the above to the location of the stream channel.

b. Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities

2. Transmit one copy of the information described in subsection a. to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluation the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.

3. Based upon the technical evaluation of the designated engineer or expert, the Planning & Zoning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

(d) Factors upon which the decision of the Planning & Zoning Commission shall be based.

In passing upon Conditional Use application, the Planning & Zoning Commission shall consider all relevant factors specified in other sections of this ordinance, and:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.

2. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.

3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

5. The importance of the services provided by the proposed facility to the community.

6. The requirements of the facility for a waterfront location.

7. The availability of alternative locations not subject to flooding for the proposed use.

8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

9. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.

10. The safety of access to the property in times of flood for ordinary and emergency vehicles.

11. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.

12. Such other factors which are relevant to the purposes of this ordinance.

(e) Upon consideration of the factors listed above and the purpose of this ordinance, the Planning & Zoning Commission shall attach such conditions to the granting of Conditional Use Permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

1. Modification of waste treatment and water supply facilities.

2. Limitations on period of use, occupancy, and operation.

3. Imposition of operational controls, sureties, and deed restrictions.

4. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

5. Flood-proofing measures, in accordance with the State Building Code and this ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

(K) NON-CONFORMING USES

A structure or the use of a structure or premises which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

Any alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 through FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted below.

The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the Community's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of section 150.13(D) or 150.13(E) of this ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe, respectively.

If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of 12 months.

If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more if its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in section 150.13(D) or 150.13(E) will apply depending upon whether the use or structure is in the Floodway or Flood Fringe District, respectively.

(L) PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in

connection with grants of Variances or Conditional Uses) shall constitute a misdemeanor and shall be punishable as defined by law.

Nothing herein contained shall prevent the City of Bigfork from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:

In responding to a suspected ordinance violation, the Zoning Administrator and Local Government may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The community must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.

The Zoning Administrator shall notify the suspected party of the requirements of this ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either

(1) Issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or

(2) Notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed thirty (30) days.

    If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this ordinance.

(M) AMENDMENTS

The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commission of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this ordinance, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and criteria and must receive prior FEMA approval before adoption. The Commission of Natural Resources must be given ten (10) days written notice of all hearings to consider an amendment to this ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.

§ 150.14 SHORELAND MANAGEMENT PROVISIONS

(A) STATUTORY AUTHORIZATION AND POLICY

(1) Statutory Authorization

(a) This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103G, Minnesota Regulations, Parts 6120.2500 – 6120.3900, and the planning and zoning enabling legislation in Minnesota Statues, Chapter 462.

(2) Policy

(a) The uncontrolled use of shorelands of the City of Bigfork, Minnesota affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City of Bigfork.

(B) GENERAL PROVISIONS AND DEFINITIONS

(1) Jurisdiction

(a) The provisions of this ordinance shall apply to the shorelands of the public water bodies as classified in Section 150.14(D)(1) of this ordinance. Pursuant to Minnesota Regulations, Parts 6120.2500 – 6120.3900, no lake, pond, or flowage less than 10 acres in size in municipalities or 25 acres in size in unincorporated areas need to be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this ordinance.

(2) Compliance

(a) The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this ordinance and other applicable regulations.

(3) Enforcement

(a) The City of Bigfork is responsible for the administration and enforcement of this ordinance. Any violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances of conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to Section 150.14(C)(1) of this ordinance.

(4) Interpretation

(a) In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

(5) Severability

(a) If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

(6) Abrogation and Greater Restrictions

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

(C) ADMINISTRATION

(1) Permits Required

A permit is required for the construction of buildings or building alterations that change the exterior dimensions of the structure, including such related activities as construction of decks and signs, parking lots, fences and other miscellaneous site improvements, and those grading and filling activities not exempted by Section 150.14(E)(4) of this ordinance. Application for a permit shall be made to the City Council on the forms provided. The application shall include the necessary information so that the City Council can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.

(2) A permit authorizing any change to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Section 150.14(E)(9)(b)2., shall be reconstructed or replaced in accordance with the provisions of this ordinance.

(3) Certificate of Zoning Compliance

(a) The City Council shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Section 150.14(C)(1) of this ordinance. This certificate will specify that the use of land conforms to the requirements of this ordinance. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this ordinance and shall be punishable as provided in Section 150.14(B)(3) of this ordinance.

(4) Variances

(a) Variances may only be granted in accordance with Minnesota Statutes, Chapter 462. A variance may not circumvent the general purposes and intent of this ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the Planning & Zoning Commission must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.

(b) The Planning & Zoning Commission shall hear and decide requests for variances in accordance with the rules that it has adopted for the conduct of business. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Section 150.14(C)(5)b. below shall also include the Planning & Zoning Commission's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

(c) For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

(5) Notifications to the Department of Natural Resources

(a) Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

(b) A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked within ten days of final action.

(D) SHORELAND CLASSIFICATION SYSTEM AND LAND USE DISTRICTS

(1) Shoreland Classification System

The public waters of the City of Bigfork have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the Protected Waters Inventory Map for Itasca County, Minnesota.

(a) The shoreland area for the waterbodies listed in sections 150.14(D)(1)(b) and (c) below shall be as defined in Section 150.03(D) and as shown on the Official Zoning Map.

(b) Lakes

1. Natural Environment Lakes:

Cemetery Lake (37-712)

2. Recreational Development Lakes:

Bustic Lake (31-713)

(c) Rivers and Streams

1. Big Fork River: Refer to Big Fork River Management Ordinance for additional development standards within the Big Fork River corridor
2. Tributary Streams:

Unnamed to Big Fork River (BFR) (Coon Ck)
from 4 61N 26W to 27 61N 26W
Rice River: from 25 60N 26W to 27 61N 26W
Unnamed to BFR from 26 61N 26W to 23 61N 26W

(2) Land Use District Descriptions

(a) Criteria for Designation. The land use districts in Table 4, and the delineation of a land use district's boundaries on the Official Zoning Map, must be consistent with the goals, policies, and objectives of the comprehensive land use plan (when available) and the following criteria, considerations, and objectives.

1. General consideration and criteria for all land uses:

a. Preservation of natural areas;

b. Present ownership and development of shoreland areas;

c. Shoreland soil types and their engineering capabilities;

d. Topographic characteristics;

e. Vegetative cover;

f. In-water physical characteristics, values, and constraints;

g. Recreational use of the surface water;

h. Road and service center accessibility;

i. Socioeconomic development needs and plans as they involve water and related land resources;

j. The land requirements of industry which, by its nature, requires location in shoreland areas; and

k. The necessity to preserve and restore certain areas having significant historical or ecological value.

2. Factors and Criteria for Planned Unit Developments:

a. Existing recreational use of the surface waters and likely increases in use associated with planned unit developments;

b. Physical and aesthetic impacts of increased density;

c. Suitability of lands for the planned unit development approach;

d. Level of current development in the area; and

e. Amounts and types of ownership of undeveloped lands

(b) Land Use District Descriptions. The land use districts provided in Table 4, and the allowable land uses therein for the given classifications of waterbodies, shall be properly delineated on the Official Zoning Map for the shorelands of this community. These land use districts are in conformance with the criteria specified in Minnesota Regulation, Part 6120.3200, Subp. 3:

(c) Use and Upgrading of Inconsistent Land Use Districts

1. If the land use districts adopted in the City of Bigfork Zoning Ordinance as they apply to shoreland areas, and their delineated boundaries on the Official Zoning Map, are not consistent with the land use district designation criteria specified in Table 4. These inconsistent land use district designations may continue until revisions are proposed to change either the land use district designation within an existing land use district boundary shown on the Official Zoning Map or to modify the boundary of an existing land use district shown on the Official Zoning Map.

2. When a revision is proposed to an inconsistent land use district provision, the following additional criteria and procedures shall apply:

    a. For Lakes. When a revision to a land use district designation on a lake is considered, the land use district boundaries and use provisions therein for all the shoreland areas within the jurisdiction of this ordinance on said lake must be revised to make them substantially compatible with the framework in Sections 150.14(D)(2)(a) and Table 4 of this ordinance.

    b. For Rivers and Streams. When a revision to a land use district designation on a river or stream is proposed, the land use district boundaries and the use provisions therein for all shoreland on both sides of the river or stream within the same classification within the jurisdiction of this ordinance must be revised to make them substantially compatible with the framework in Sections 150.14(D)(2)(a) and Table 4 of this ordinance. If the same river classification is contiguous for more than a five-mile segment, only the shoreland for a distance of 2.5 miles upstream and downstream, or to the class boundary if closer, need be evaluated and revised.

3. When an interpretation question arises about whether a specific land use fits within a given “use” category, the interpretation shall be made by the Planning & Zoning Commission. When a question arises as to whether a land

use district's boundaries are properly delineated on the Official Zoning Map, this decision shall be made by the City Council.

4. When a revision is proposed to an inconsistent land use district provision by an individual party or landowner, this individual party or landowner will only be responsible to provide the supporting and/or substantiating information for the specific parcel in question. The Planning & Zoning Commission will provide such additional information for this waterbody as is necessary to satisfy Sections 150.14(D)(2)(c)1. and 2.

5. The Planning & Zoning Commission must made a detailed finding of fact and conclusion when taking final action that this revision, and the upgrading of any inconsistent land use district designations on said waterbody, are consistent with the enumerated criteria and use provisions of Section 150.14(D)(2).

(E) ZONING AND WATER SUPPLY/SANITARY PROVISIONS

(1) Lot Area and Width Standards.

The lot area (in square feet) and lot width standards (in feet) for single, duplex, triplex and quad residential lots created after the date of enactment of this ordinance for the lake and river/stream classifications are shown in Table 5.

(2) Additional Special Provisions

(a) Residential subdivisions with dwelling unit densities exceeding those for sewered lakes and rivers and streams in Table 5 can only be allowed if designed and approved as residential planned unit developments under Section 150.14(H) of this ordinance. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building line. The lot area dimensions for sewered lakes in Table 5 can only be used if publicly owned sewer system service is available to the property.

(b) Subdivisions of duplexes, triplexes, and quads on Natural Environment Lakes must also meet the following standards:

1. Each building must be set back at least 200 feet from the ordinary high water level;

2. Each building must have common sewage treatment and water systems in one location and serve all dwelling units in the building;

3. Watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units in the building; and

4. No more than 25 percent of a lake's shoreline can be in duplex, triplex, or quad developments.

(c) One guest cottage may be allowed on lots meeting or exceeding the duplex lot area and width dimensions presented in Section 150.14(E)(1) (a-c), provided the following standards are met:

1. For lost exceeding the minimum lot dimensions of duplex lots, the guest cottage must be located within the smallest duplex-sized lot that could be created including the principal dwelling unit;

2. A guest cottage must not cover more than 700 square feet of land surface and must not exceed 15 feet in height; and

3. A guest cottage must be located or designed to reduce its visibility as viewed from public waters and adjacent shorelands be vegetation, topography, increased setbacks or color, assuming summer leaf-on conditions.

(d) Lots intended as controlled accesses to public waters or as recreation areas for use by owners of nonriparian lots within subdivisions are permissible and must meet or exceed the following standards:

1. They must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots.

2. If docking, mooring, or over-water storage of more than six (6) watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

Controlled Access Lot Frontage Requirements	
io of lake size to shore length (acres/mile)	quired increase in frontage (percent)
Less than 100	25
100-200	20
201-300	15
301-400	10
Greater than 400	5

3. they must be jointly owned by all purchasers of lots in the subdivision or by all purchasers of nonriparian lots in the subdivision who are provided riparian access rights on the access lot; and

4. covenants or other equally effective legal instruments must be developed that specify which lot owners have authority to use the access lot and what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, or docking. They must also include other outdoor recreational activities that do not significantly conflict with general public use of the nonsignificant conflict activities include swimming, sunbathing, or picnicking. The covenants must be continuously moored, docked, or stored over water, and must require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. They must also require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf-on conditions.

(3) Placement, Design, and Height of Structures.

(a) Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone of in a bluff impact zone. Structures shall be located as follows.

1. Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level*.

ses of Public Waters	acks* ctures ewered	ered	age Treatment System
Lakes			
Natural Environment	150	150	150
Recreational Development	100	75	75
Rivers/Stream	100	50	75

*One water-oriented accessory structure designed in accordance with Section 150.14(E)(3)(b) of this ordinance may be set back a minimum distance of ten (10) feet from the ordinary high water level.

2. Additional Structures Setback. The following additional structure setbacks apply, regardless of the classification of the waterbody.

ack From:	Setback (in feet)
op of bluff;	30
nplatted cemetery;	50
ight-or-way line of federal, state, or county highway; and	50
ight-or-way line of town road, public street, or other roads or streets not classified	20

3. Bluff Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

4. Uses Without Water-oriented Needs. Uses without water-oriented needs must be located on lots or parcels without public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

(b) Design Criteria for Structures.

1. High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where there controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows:

a. For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;

b. For rivers and streams, by placing the lowest floor at least three feet above the flood or records, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with parts Minnesota Rules 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and

c. Water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

2. Water-oriented Accessory Structures. Each lot may have one water-oriented accessory structure not meeting the normal structure setback in Section 150.14(E)(3) of this ordinance if this water-oriented accessory structure complies with the following provisions:

a. The structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. Detached decks must not exceed eight feet above grade at any point;

b. The setback of the structure or facility from the ordinary high water level must be at least ten feet;

c. The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions.

d. The roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area;

e. The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and

f. As an alternative for general development and recreational development waterbodies, water-oriented accessory structures used solely for watercraft storage, and including storage of related boating and water-oriented sporting equipment, may occupy an area up to 400 square feet provided the maximum width of the structure is 20 feet as measured parallel to the configuration of the shoreline.

3. Stairways, Lifts, and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

a. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned unit developments;

b. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open-space recreational properties, and planned unit developments;

c. Canopies or roofs are not allowed on stairways, lifts, or landings;

d. Stairways, lifts, and landing may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;

e. Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and

f. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of subitems (1) to (5) are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.

4. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.

5. Steep Slopes. The Planning & Zoning Commission must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

(c) Height of Structures. All structures in residential districts, except churches and nonresidential agricultural structures, must not exceed 25 feet in height.

(4) Shoreland Alterations

Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.

(a) Vegetation Alterations.

1. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 150.14(E)(5) of this Ordinance are exempt from the vegetation alteration standards that follow.

2. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Sections 150.14(E)(7)(b) and (c), respectively, is allowed subject to the following standards:

    a. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.

    b. In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:

        (i) the screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;

        (ii) along rivers, existing shading of water surfaces is preserved; and

        (iii) the above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

(b) Topographic Alterations/Grading and Filling

1. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.

2. Public roads and parking areas are regulated by Section 150.14(E)(5) of this ordinance.

3. Notwithstanding Items 1. and 2. above, a grading and filling permit will be required for:

    a. The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and

    b. The movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.

4. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:

    a. Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland.*

        (i) Sediment and pollutant trapping and retention;

        (ii) Storage of surface runoff to prevent or reduce flood damage;

        (iii) Fish and wildlife habitat;

        (iv) Recreational use;

        (v) Shoreline or bank stabilization; and

(vi) Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.

*This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United State Army Corps of Engineers. The applicant will be so advised.

b. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;

c. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;

d. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;

e. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United State Soil Conservation Service;

f. Fill or excavated material must not be placed in a manner that creates an unstable slope;

g. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;

h. Fill or excavated material must not be placed in bluff impact zones;

i. Any alterations below the ordinary high water level of public waters must first be authorized by the

commissioner under Minnesota Statutes, Section 105.42;

j. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and

k. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.

5. Connections to public waters. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the Commissioner has approved the proposed connection to public waters.

(5) Placement and Design of Roads, Driveways, and Parking Areas

(a) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

(b) Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternative exist, they may be placed within there areas, and must be designed to minimize adverse impacts.

(c) Public and private watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met. For private facilities, the

grading and filling provisions of Section 150.14(E)(4)(b) of this Ordinance must be met.

(6) Stormwater Management.

The following general and specific standards shall apply:

(a) General Standards:

1. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

2. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

3. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

(b) Specific Standards

1. Impervious surface coverage of lots must not exceed 25 percent of the lot area.

2. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local Soil and Water Conservation Districts.

3. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

(7) Special provisions for commercial, industrial, public/semipublic, agricultural, forestry and extractive uses and mining of metallic minerals and peat.

(a) Standards for commercial, industrial, public, and semipublic uses.

1. Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards:

a. in addition to meeting impervious coverage limits, setbacks, and other zoning standards in this ordinance, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures;

b. uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need; and

c. uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:

(i) No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the county sheriff;

(ii) Signs must be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten feet above the ground, and must not exceed

thirty two (32) square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and

(iii) Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

2. Uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

(b) Agriculture Use Standards.

1. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan (Resource Management Systems) consistent with the field office technical guides of the local Soil and Water Conservation Districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and fifty (50) feet from the ordinary high water level.

2. Animal feedlots must meet the following standards:

a. New feedlots must not be located in the shoreland of watercourses or in bluff impact zones and must meet a minimum setback of three hundred (300) feet from the ordinary high water level of all public waters basins; and

b. Modifications or expansions to existing feedlots that are located within three hundred (300) feet of the ordinary high water level or within a bluff impact zone are allowed if they do not further encroach into the existing ordinary high water level setback or encroach on bluff impact zones.

(c) Forest Management Standards. The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Nonpoint Source Pollution Assessment-Forestry and the provisions of Water Quality in Forest Management "Best Management Practices in Minnesota."

(d) Extractive Use Standards.

1. Site Development and Restoration Plan. An extractive use site development and restoration plan must be developed, approved, and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion, and must clearly explain how the site will be rehabilitated after extractive activities end.

2. Setbacks for Processing Machinery. Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.

(e) Mining of Metallic Minerals and Peat. Mining of metallic minerals and peat, as defined in Minnesota Statutes, Sections 93.44 to 93.51, shall be a permitted use provided the provisions of Minnesota Statutes, Sections 93.44 to 93.51 are satisfied.

(8) Conditional Uses

Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

(a) Evaluation criteria. A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:

1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;

2. The visibility of structures and other facilities as viewed from public waters is limited;

3. The site is adequate for water supply and on-site sewage treatment; and

4. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

(b) Conditions attached to conditional use permits. The Planning & Zoning Commission, upon consideration of the criteria listed above and the purposes of this ordinance, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

1. Increased setbacks from the ordinary high water level;

2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and

3. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

(9) Water Supply and Sewage Treatment

(a) Water Supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota department of Health and the Minnesota Pollution Control Agency.

(b) Sewage treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:

1. Publicly-owned sewer systems must be used where available.

2. All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080", a copy of which is hereby adopted by reference and declared to be a part of this ordinance.

3. On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Section 150.14(E)(3)(a) of this ordinance.

4. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in subitems a.-d. below. If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

Evaluation criteria:

a. Depth to the highest known or calculated ground water table or bedrock;

b. Soil conditions, properties, and permeability;

c. Slope;

d. The existence of lowlands, local surface depressions, and rock outcrops;

5. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with section 150.14(F)(3) of this ordinance.

(F) NONCONFORMITIES

All legally established nonconformities as of the date of this ordinance may continue, but they will be managed according to applicable state statutes and other regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland areas:

(1) Construction on nonconforming lots of record.

(a) Lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of Section 150.14(E)(1) of this ordinance may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this ordinance are met.

(b) A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the Planning & Zoning Commission shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

(c) If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Section 150.14(E)(1) of this ordinance the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 150.14(E)(1) of this ordinance as much as possible.

(2) Additions/expansions to nonconforming structures.

(a) All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Section 150.14(E) of this ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Section 150.14(C)(4).

(b) Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:

1. The structure existed on the date the structure setbacks were established;

2. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure

or does not encroach closer than thirty (30) feet, whichever is more restrictive; and

3. The deck is constructed primarily of wood, and is not roofed or screened.

(3) Nonconforming sewage treatment systems.

(a) All residential structures within the shoreland areas of the City of Bigfork will be provided with access to municipal sewer where feasible. Any nonconforming onsite sewage disposal systems that are found to exist will be referred to the Itasca County Zoning Administrator for upgrading in accordance with the Minnesota Pollution Control Agency's Chapter 7080 standards for design of onsite sewage treatment systems.

(G) SUBDIVISION/PLATTING PROVISIONS

(1) Land suitability. Each lot created through subdivision, including planned unit developments authorized under Section 150.14(H) of this ordinance, must be suitable in its natural state for the proposed susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

(2) Consistency with other controls. Subdivisions must conform to all official controls of this community. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with Section 150.14(E)(3) and 150.14(E)(9) can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Section 150.14(E), including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks must not be approved.

(3) Information requirements. Sufficient information must be submitted by the applicant for the community to make a determination of land suitability. The information shall include at least the following:

(a) Topographic contours at ten-foot intervals or less from united States Geological Survey maps or more accurate sources, showing limiting site characteristics;

(b) The surface water features required in Minnesota Statues, section 505.02 subdivision 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;

(c) Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;

(d) Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;

(e) Location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and

(f) A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

(4) Dedications. When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

(5) Platting. All subdivisions that create five or more lots or parcels that are 2-1/2 acres or less in size shall be processed as a plat in accordance with Minnesota Statues, Chapter 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.

(6) Controlled Access or Recreational Lots. Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision must meet or exceed the sizing criteria in Section 150.14(E)(2) of this ordinance.

(H) PLANNED UNIT DEVELOPMENTS (PUD'S)

(1) Types of PUDs Permissible

(a) Planned unit developments (PUDs) are allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. The land use districts in which they are an allowable use are identified in the land use district descriptions in Section 150.14(D)(2) of this ordinance and the Official Zoning Map.

(2) Processing of PUDs

(a) Planned unit developments must be processed as a conditional use, except that an expansion to an existing commercial PUD involving 6 or less new dwelling units or sites since the date this ordinance was adopted is permissible as a permitted use provided the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Section 150.14(H)(5). Approval cannot occur until the environmental review process (EAW/EIS) is complete. All residential planned unit developments must contain at least five dwelling units or sites.

(3) Application for a PUD

(a) The applicant for a PUD must submit the following documents prior to final action being taken on the application request:

1. A site plan and/or plat for the project showing locations of property boundaries, surface water features, existing and proposed structures and other facilities, land alterations, sewage treatment and water supply systems (where public systems will not be provided), and topographic contours at ten-foot intervals or less. When a PUD is a combined commercial and residential development, the site plan and/or plat must indicate and distinguish which buildings and portions of the project are residential, commercial, or a combination of the two.

2. A property owners association agreement (for residential PUDs) with mandatory membership, and all in accordance with the requirements of Section 150.14(5)(a)4. of this ordinance.

3. Deed restrictions, covenants, permanent easements or other instruments that: 1) properly address future vegetative and

topographic alterations, construction of additional buildings, beaching of watercraft, and construction of commercial buildings in residential PUDs; and 2) ensure the long-term preservation and maintenance of open space in accordance with the criteria and analysis specified in Section 150.14(5)(a)4. of this ordinance.

4. When necessary, a master plan/drawing describing the project and the floor plan for all commercial structures to be occupied.

5. Those additional documents as requested by the City Council that are necessary to explain how the PUD will be designed and will function.

(4) Site "Suitable Area" Evaluation

(a) Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit/dwelling site density evaluation in Section 150.14(H)(5).

(b) The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high water level at the following intervals, proceeding landward:

Shoreland Tier Dimensions		
	nsewered (feet)	ewered (feet)
Recreational development lakes	267	267
Natural environment lakes	400	320
All river classes	300	300

(c) The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high water level of public waters. This suitable area and the proposed project are then subjected to either the residential or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.

(5) Residential and Commercial PUD Density Evaluation

(a) The procedures for determining the "base" density of a PUD and density increase multipliers are as follows. Allowable densities

may be transferred from any tier to any other tier further from the waterbody, but must not be transferred to any other tier class.

1. Residential PUD “Base” Density Evaluation:

    a. The suitable area within each tier is divided by the single residential lot size standard for lakes, or for rivers, the single residential lot width standard times the tier depth, unless the local unit of government has specified an alternative minimum lot size for rivers which shall then be used to yield a base density of dwelling units or sites for each tier. Proposed locations and numbers of dwelling units or sites for the residential planned unit developments are then compared with the tier, density, and suitability analyses herein and the design criteria in Section 8.6.

2. Commercial PUD “Base” Density Evaluation:

    a. Determine the average inside living area size of dwelling units or sites within each tier, including both existing and proposed units and sites. Computation of inside living area sizes need not include decks, patios, stoops, steps, garages, or porches and basements, unless they are habitable space.

    b. Select the appropriate floor area ratio from the following table:

Commercial Planned unit Development Floor Area Ratios* Public Waters Classes			
erage unit floor area (sq. ft.)	ered general development lakes; first tier on unsewered general development lakes, urban, agricultural, tributary river segments	ond and additional tiers on unsewered general development lakes; transitions and forested river segments	ral environment lakes and remote river segments
200	.040	.020	.010
300	.048	.024	.012

400	.056	.028	.014
500	.065	.032	.016
600	.072	.038	.019
700	.082	.042	.021
800	.091	.046	.023
900	.099	.050	.025
1000	.108	.054	.027
1100	.116	.058	.029
1200	.125	.064	.032
1300	.133	.068	.034
1400	.142	.072	.036
1500	.150	075	.038

*For average unit floor areas less than shown, use the floor area rations listed for 200 square feet. For areas greater than shown, use the ratios listed for 1500 square feet. For recreational camping areas, use the ratios listed at 400 square feet. Manufactured home sites in recreational camping areas shall use a ratio equal to the size of the manufactured home, or if unknown, the ratio listed for 1000 square feet.

c. Multiply the suitable area within each tier by the floor area ratio to yield total floor area for each tier allowed to be used for dwelling units or sites.

d. Divide the total floor area by the tier computed in Item c. above by the average inside living area size determined in Item a. above. This yields a base number of dwelling units and sites for each tier.

e. Proposed locations and numbers of dwelling units or sites for the commercial planned unit development are then compared with the tier, density and suitability analyses herein and the design criteria in Section 150.14(5)(a)4.

3. Density Increase Multipliers:

a. Increases to the dwelling unit or dwelling site base densities previously determined are allowable if the dimensional standards in Section 150.14(E) are met or exceeded and the design criteria in Section 150.14(5)(a)4. are satisfied. The allowable density increases in Item b. below will only be allowed if structure setbacks from the ordinary high water level are increased to at least 50 percent greater than the minimum setback, or the impact on the waterbody is reduced an equivalent amount through

vegetative management, topography, or additional means acceptable to the local unit of government and the setback is at least 25 greater than the minimum setback.

b. Allowable Dwelling Unit or Dwelling Site Density Increases for Residential or Commercial Planned Unit Developments:

Density evaluation tiers	Maximum density increase Within each tier (percent)
First	50
Second	100
Third	200
Fourth	200
Fifth	200

4. Maintenance and Design Criteria

a. Maintenance and Administration Requirements.

(i) Before final approval of a planned unit development, adequate provisions must be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.

(ii) Open space preservation. Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means must be provided to ensure long-term preservation and maintenance of open space. The instruments must include all of the following protections:

i. Commercial uses prohibited (for residential PUDs)

ii. Vegetation and topographic alterations other than routine maintenance prohibited

iii. Construction of additional building or storage of vehicles and other materials prohibited; and

iv. Uncontrolled beaching of watercraft prohibited

(iii) Development organization and functioning. Unless an equally effective alternative community framework is established, when applicable, all residential planned unit developments must use an owners association with the following features:

i. Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers;

ii. Each member must pay a pro rata share of the association's expenses, and unpaid assessments cam become liens on unites or sites;

iii. Assessments must be adjustable to accommodate changing conditions; and

iv. The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

b. Open Space Requirements. Planned unit developments must contain open space meeting all of the following criteria:

(i) At least 50 percent of the total project area must be preserved as open space;

(ii) Dwelling units or sites, road rights-of-way, or land covered by road surfaces, parking areas, or structures, except water-oriented accessory structures or facilities, are developed areas and shall not be included in the computation of minimum open space;

(iii) Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries;

(iv) Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public;

(v) Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems;

(vi) Open space must not include commercial facilities or uses, but may contain water-oriented accessory structures or facilities:

(vii) The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means, and

(viii) The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PUDs, at least 50 percent of the shore impact zone area of existing developments or at least 70 percent of the shore impact zone area of new developments must be preserved in its natural or existing state. For commercial PUDs, at least 50 percent of the shore impact zone must be preserved in its natural state.

c. Erosion Control and Stormwater Management. Erosion control and stormwater management plans must be developed and the PUD must:

(i) Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer

strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant; and

(ii) Be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within any tier must not exceed 25 percent of the tier area, except that for commercial PUDs 35 percent impervious surface coverage may be allowed in the first tier of general development lakes with an approved stormwater management plan and consistency with Section 150.14(E)(4).

d. Centralization and Design of Facilities. Centralization and design of facilities and structures must be done according to the following standards:

(i) Planned unit developments must be connected to publicly owned water supply and sewer systems, if available. On site-water supply and sewage treatment systems must be centralized and designed and installed to meet or exceed applicable standards or rules of the Minnesota Department of Health and Sections 150.14(E)(3) and 150.14(E)(9) of this ordinance. On-site sewage treatment systems must be located on the most suitable areas of the development, and sufficient lawn area free of limiting factors must be provided for a replacement soil treatment system for each sewage system;

(ii) Dwelling units or sites must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following areas of the development. They must be designed and

located to meet or exceed the following dimensional standards for the relevant shoreland classification: setback from the ordinary high water level, elevation above the surface water features, and maximum height. Setbacks form the ordinary high water level must be increased in accordance with Section 150.14(H)(5)(a)3. of this ordinance for development with density increases;

(iii) Shore recreation facilities, including but not limited to swimming areas, docks, and watercraft mooring areas and launching ramps, must e centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier (notwithstanding existing mooring sites in an existing commercially used harbor). Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers;

(iv) Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shoreland by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided;

(v) Accessory structures and facilities, except water oriented accessory structures, must

meet the required principal structure setback and must be centralized; and

(vi) Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in Section 150.14(E)(3)of this ordinance and are centralized.

e. Conversions

Existing resorts or other land uses and facilities may be converted to residential planned unit developments if all of the following standards are met:

(i) Proposed conversions must be initially evaluated using the same procedures for residential planned unit developments involving all new construction. Inconsistencies between existing features of the development and these standards must be identified.

(ii) Deficiencies involving water supply and sewage treatment, structure color, impervious coverage, open space, and shore recreation facilities must be corrected as part of the conversion or as specified in the conditional use permit.

(iii) Shore and bluff impact zone deficiencies must be evaluated and reasonable improvement made as part of the conversion. These improvements must include, where applicable, the following:

i. Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;

ii. Remedial measures to correct erosion sites and improve vegetative cover and screening of buildings and other facilities as viewed from the water; and

iii. If existing dwelling units are located in shore or bluff impact zones, conditions are attached to approvals of conversions that preclude exterior expansions in any dimension or substantial alterations. The conditions must also provide for future relocation of dwelling units, where feasible, to other locations, meeting all setback and elevation requirements when they are rebuilt or replaced.

(b) Existing dwelling unit or dwelling site densities that exceed standards in Section 150.14(H)(5) may be allowed to continue but must not be allowed to be increased, either at the time of conversion or in the future. Efforts must be made during the conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems, or other means.

§ 150.15 RENTAL UNITS

All rental units shall be required to be registered annually with the City of Bigfork. Registration to be completed prior to the first of the calendar year. No fee is required.

§ 150.16 REPEALS

The Zoning Ordinance enacted by the City of Bigfork prior to September 1, 2002 and all amendments and extensions thereof are hereby repealed. Parts of other ordinances in conflict with the ordinance, to the extent of the conflict and no further, are hereby repealed.

TITLE XVII: CEMETERY REGULATIONS

170. CEMETERY REGULATIONS

CHAPTER 170: CEMETERY REGULATIONS

Section

170.01 Description: Name
170.02 Officers and Duties
170.03 Sale of Cemetery Lots
170.04 Burial Procedures
170.05 Markers and Monuments
170.06 Plantings and Decorations
170.07 Permanent Plantings and Trees
170.08 Care and Maintenance
170.09 Conduct in Cemetery

§170.01 DESCRIPTION: NAME

A cemetery has been established and is continued upon land owned by the City of Bigfork, in the County of Itasca, State of Minnesota, described as follows:

The Southeast Quarter of the Southeast Quarter (SE ¼ of SE ¼) of Section Twenty-seven (27), Township Sixty-one (61) North, Range Twenty-six (26) West,

and the same shall be called the Bigfork City Cemetery.

§170.02 OFFICERS AND DUTIES

The City of Bigfork shall manage, operate and maintain the Bigfork City Cemetery and additions thereto subject to any limitations and restrictions as set forth here or as contained in M.S. 306 or any other applicable law. The City Council shall be trustees of said cemetery. The Council shall perform all duties required as trustees of cemeteries as defined by the laws of the State of Minnesota. The Cemetery Sexton, as appointed by the City Council each year, along with the City Clerk, shall perform all the duties required as secretaries of cemeteries as defined by the statues of the State of Minnesota.

§170.03 SALE OF CEMETERY LOTS

(A) The charge for a burial plot in the Bigfork City Cemetery shall be fixed and established in the ordinance setting fees and charges pursuant to § 30.11. Different charges may be set for residents and non-residents of the City. A resident of the City is defined as someone who is either currently listed on the city tax roll or who is currently renting within city limits.

(B) Conveyance of burial plots shall be made by deed from the City of Bigfork to the purchaser which deed shall be recorded in the office of the Itasca County Recorder.

(C) No title to any burial plot, or portion thereof, shall be transferred by the owner thereof except as authorized by Minnesota Statutes 306.29 as it may be amended from time to time.

(D) A fee for the recording of cemetery deeds shall be charged and will be set forth in the ordinance setting fees and charges pursuant to § 30.11.

§170.04 BURIAL PROCEDURES

(A) No deceased person shall be interred in the Bigfork City Cemetery until the Cemetery Sexton has located the plot in which burial is to be made and verified that such plot is not being used beyond its capacity. The Cemetery Sexton shall make a proper record of the name and age of the deceased person and the exact location of the burial plot.

(B) All burials will be done at the direction of the Cemetery Sexton.

(C) The owner of a burial plot, his or her spouse or children may be buried in the plot without written approval. No other burials shall be permitted in a plot without first obtaining the written consent of the owner and filing a copy thereof with the City, subject, however, to rules, regulations or City ordinance to the contrary. The owner, for this purpose shall be the owner as the same appears on the cemetery records of the City.

(D) Parties requesting burial transfers within the City Cemetery will incur the actual costs associated with such transfer. All requests are subject to the approval of the Cemetery Sexton.

§170.05 MARKERS AND MONUMENTS

(A) Markers and monuments are permitted in the City Cemetery subject to the provisions listed herein and must be placed as directed by the Cemetery Sexton.

(B) The City is not responsible for the purchase or installation of any marker or monument.

(C) No marker or monument or any part thereof may be constructed of wood, limestone, sandstone, or any other material which is not approved by the Cemetery Sexton.

(D) Installation of the marker or monument shall be performed by the marker manufacturer or the manufacturer's agent. All markers shall be placed in accordance with the instructions and conditions of the Cemetery Sexton.

(E) Markers or monuments, including the required six (6) inch concrete border, shall not exceed the dimensions of the plot upon which they rest.

(F) No burial site shall be graded higher than the general level of the cemetery, except so as to allow for one-year settling.

(G) No mound shall be built over any grave.

(H) No fence shall be constructed around any burial plot without the permission of the Cemetery Sexton. The owner of the plot will be responsible for any maintenance of or around the fence.

§170.06 PLANTINGS AND DECORATIONS

(A) All plants must be contained in plant holders. Shepard hooks and hanging plants will be allowed on upright monuments.

(B) One plant stand is permitted per burial plot.

(C) Plant stands shall be placed at the direction of the Cemetery Sexton.

(D) The City is not responsible for maintenance and care of plants and plant stands. The City is not responsible for stolen plants or plant stands. Plant stands that are vacant for more than one year are subject to removal.

(E) Wreaths must be mounted on above-ground stakes.

(F) Permanent flags must be mounted in flag holders.

(G) Vases or containers integrated into a monument or marker may be allowed subject to approval by the Cemetery Sexton

(H) Artificial flowers may be placed in approved plant stands and must be securely fastened so that they will not fall or be blown from the container. No artificial flowers, flags or decorations of similar nature shall be placed upon or attached to any grassed area, any tree or shrub, or any monument or marker. Such flowers improperly placed may be removed by the City.

(I) Flowers may be placed on gravesite for Memorial Day one week before and may remain until June 15th. If they are not removed after one week, they will be removed by the City.

(J) All objects not described above are prohibited and subject to immediate removal.

§170.07 PERMANENT PLANTINGS AND TREES

(A) Permanent plantings and trees are not permitted within the City Cemetery except those authorized in writing by the Cemetery Sexton.

(B) The Cemetery Sexton shall select appropriate locations for and quantities of authorized plantings and trees.

(C) The City may refuse to sell a burial plot adjacent to a lot or pathway containing a tree if the City determines excavating a grave on the plot is detrimental to the tree.

(D) The City reserves the right to prohibit plantings or trees on a burial plot if the City determines it will interfere with routine maintenance of the Cemetery or will adversely affect an adjoining lot, path or roadway.

(E) The City reserves the right to remove any planting or tree which interferes with routine maintenance of the cemetery or which is unsightly, overgrown, dangerous, or diseased on the plot in which it is situated or to any other plot, path, or roadway. All unauthorized plantings and trees are subject to immediate removal.

§170.08 CARE AND MAINTENANCE

(A) The City of Bigfork Public Works Department shall provide general care for the cemetery, which shall include maintenance of roadways, mowing grass, trimming and caring for trees and removing fallen trees. This shall not include providing special care such as watering lawns or vases temporarily placed on burial plots. The City shall have the right to remove trees, shrubs, plants or any structures now located upon any burial site which has or shall become by reason of age or otherwise, unsightly or detrimental to the site upon which they are located or any adjacent site or avenue and shall have the right to remove any such which may be placed on a site contrary to the provisions of these regulations.

(B) The City shall be responsible for filling sunken gravesites.

(C) All work in the City cemetery is subject to the direction and control of the Cemetery Sexton and the City Council. Contractors and other engaged in such work must notify the Cemetery Sexton prior to beginning any work.

§170.09 CONDUCT IN CEMETERY

(A) The City Cemetery shall be open from sunrise to sunset. No person will be allowed to occupy the cemetery grounds except during these hours except for authorized City personnel.

(B) No person shall deface, mutilate or otherwise injure any monument, trees, plants, flowers, or any other decorations on the cemetery grounds.

Penalty, see § 10.99

(C) The discharge of firearms in prohibited in the cemetery except at military funerals and ceremonies.

(D) Children will not be permitted to run at will in the cemetery.

(E) Any person guilty of unseemly conduct in the cemetery will be subject to removal from the premises.

(F) No unattended animals will be permitted in the cemetery.

(G) Common rules of courtesy and proper conduct in a cemetery must be followed at all times, including, but not limited to, refraining from making any unnecessary loud noise, refraining from walking over gravesites, and refraining from any other behavior that may be seen as disrespectful or damaging.

Exceptions to the regulations hereby set forth may be made with the approval of the Cemetery Sexton and/or the Public Works Department.