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PUBLIC WORKS, GARBAGE, SEPTIC AND STORM SEWER REGULATIONS

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TITLE V

CHAPTER 50: GARBAGE AND RUBBISH

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50.1 DEFINITIONS .

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

GARBAGE. Organic refuse resulting from the preparation of food, and decayed and spoiled food from any source.

RUBBISH. All inorganic refuse matter such as tin cans, glass, paper, ashes and the like.

50.2 SANITATION COLLECTION SERVICE REQUIRED.

Every person owning, managing, operating, leasing or renting any premises or any place where garbage or rubbish accumulates shall subscribe to a sanitation collection service.

50.3 CONTAINER REQUIRED; PLACEMENT.

A. It shall be the duty of every person whose garbage and refuse is collected by a sanitation collection service to provide a container or containers for garbage and refuse, sufficient in size and number to accommodate and securely keep all garbage and refuse that may accumulate between collections . Garbage containers shall be watertight and constructed of a solid and durable grade of metal or plastic.

B. It shall be the duty of every person whose garbage and refuse is collected by a sanitation collection service to place their garbage containers directly behind the curblines of the street abutting their property or in the absence of a curb directly behind the ditch line abutting their property. In no event shall 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. It shall be the responsibility of the subscriber to place the containers no earlier than 6:00 p.m. of the afternoon preceding the collection day.

50.4 MEDDLING WITH TRASH RECEPTACLES PROHIBITED.

a) It shall be unlawful to meddle with garbage cans, trash or rubbish receptacles or in any way pilfer, search or scatter contents of garbage cans or rubbish receptacles in or upon any street or alley within the City limits.

b) This section shall not apply to persons authorized by the City or persons authorized by state or federal law to search or otherwise meddle with trash receptacles.

50.5 CONTAINERS TO BE KEPT SANITARY AND SECURE.

All containers shall be kept clean and free from accumulation of any substance remaining attached to the inside of the container which would attract or breed flies, mosquitoes or other insects. The area surrounding garbage containers shall be maintained in a clean and sanitary condition. The contents of all receptacles shall be protected so that the wind cannot scatter the contents over the streets, alleys or other property within the City. All containers shall be securely closed in a manner as to prevent the scattering of contents and to make them inaccessible to insects, rodents and other animals.

50.6 UNAUTHORIZED PRIVATE COLLECTION PROHIBITED.

A) It shall be unlawful for any person to transport garbage or refuse for hire which has been collected from any premises within the City over any public street within the City.

B) This section shall not apply to any person who at the time of the activity is operating under a valid contract or franchise granted by the City which authorizes that person to use the public streets to conduct that activity.

50.7 SANITATION SERVICE: CITY OPTIONS.

The City Council may provide for sanitation collection services within the City by use of licenses under the terms and conditions of Section 50.12, or it may contract with one or more contractors for the provision of these services under the terms and conditions negotiated with the contractors, except that the provisions for insurance under 50.12 shall always apply.

50.9 REMOVAL OF BUILDING MATERIALS.

Waste from building operations, rock waste, building materials or other refuse resulting from building or remodeling operations or resulting from a general cleanup of vacant or improved property shall be removed by the building contractor, owner or occupant of the building at his or her own expense . It

shall be unlawful for any person to place those material in any dumpster or other trash receptacle for disposal by the City or any agent or contractor of the City.

50.10 PROHIBITED ACTS.

A) It shall be unlawful for any person to sweep, throw or deposit any garbage, trash, debris, stagnant water or dead animals, bird or fish, into, upon or along any public property or private property of another, except as specifically provided by this chapter.

B) It shall be unlawful for any person owning or otherwise in control of any premises within the City to permit any of the conditions described in division (A) to exist upon property owned or controlled by him or her after having actual or constructive notice thereof .

C) It shall be unlawful for any person to place in any container any material other than as specifically provided in this chapter .

D) It shall be unlawful for any person to deposit or maintain garbage or trash except as provided for by this chapter.

E) It shall be unlawful for any person to deposit any burning match, charcoal, ember or other material in any container used for the disposal of garbage.

50.11 NONRESIDENTIAL CUSTOMERS; CONTAINER TYPES; COLLECTION SCHEDULES.

A) It shall be the duty of the owner or person otherwise in charge of business premises within the City to cause all garbage and trash accumulated on the premises to be placed in disposable containers, or commercial type containers. Commercial type containers may be used and may be placed at a location on the premises so arranged between the customer and the collector, but subject to review by the City at any time.

B) Disposal containers shall be placed at a location on the premises which his readily accessible to the collector.

C) The amount and character of garbage shall be considered in establishing size of commercial containers and frequency of pickup. The City shall have final authority to establish the size and frequency based on the history of amount and type of garbage generated by the customer. The collection and removal of garbage and trash from premises used for commercial, institution, or industrial purposes shall be made as often as necessary in order to maintain the premises

free of accumulations . Garbage, except dry trash in contractor supplied containers , shall be collected not less than one time each week , except for roll-off containers which shall not be subject to this provision so long as they are used solely for brush and dry trash.

50.12 MANNER OF COLLECTION AND TRANSPORTATION.

a) The collection, removal and disposal of all garbage , trash and brush shall be carried on in a systematic, efficient manner to keep the City in a clean and sanitary condition.

b) All vehicles used for the collection and transportation of garbage and trash shall be equipped with suitable covers which shall be used to prevent blowing and scattering of refuse which garbage and trash are being transported for disposal.

50.13 LICENSING FOR COLLECTION.

A) Purpose. In order to provide for a continuous system of refuse collection and disposal in a manner which meets the needs and convenience of resident of the City and in order to protect the area from the problems of uncoordinated, unsanitary and improper solid waste disposal, the City Council may determine

that it is in the best interests of the residents of the City to require licenses of persons collecting or hauling garbage and rubbish for hire, reserving to the City the right and authority to contract with one more operators to provide these services .

B) Licensing. No person may collect or haul garbage or rubbish with the City without first obtaining a written license from the City Council. An application for a license shall be submitted in writing to the City Clerk, and shall contain the following information:

- 1) Name and address of the applicant.
- 2) Description of the equipment which will be used within the City by the Applicant.
- 3) A schedule of the rate that will be charged by the applicant for the various categories of customers within the City.
- 4) Evidence of compliance with the other applicable sections of this chapter .

C) Franchise. The City Council may exercise its reserved right to contract with one or more operators for the collection of garbage and rubbish within the City.

D) Suspension of License or Contract. A contract or license issued under the provisions of this section may be revoked or suspended for a violation of this chapter or other applicable regulations of law upon a showing that the contractor or licensee has failed to comply with that regulation.

E) Financial Responsibility. The licensee or contractor shall show financial responsibility or a certificate of insurance coverage prior to obtaining the license or franchise whereby each vehicle to be used by the licensee or contractor shall be covered against loss or injury in the following amounts:

\$300,000 when the claim is one for death or wrongful act or omission and
\$300,000 to any claimant in any other case; \$1,000,000 for any number of claims arising or of a single occurrence .

The licensee or contractor shall hold the City harmless and agrees to defend and indemnify the City, and the City's employees and agents, for any claims, damages, losses, and expenses related to the work under the license or contract. The City shall be named as an additional insured under the insurance for the services provided under the licenses or contract. The licensee's or contractor's insurance shall be the primary insurance for the City and the licensee or contractor shall provide a certificate of insurance on the City's approved form which verifies the existence of the insurance required, including provisions to hold the City harmless and defend and indemnify the City. The licensee or contractor shall also provide evidence of workers compensation insurance for employees . These insurance policies shall be for the full term of the license or franchise and shall provide for the giving of ten days prior notice to the City of any termination or cancellation of these policies. In case any policies are terminated or cancelled, the license or contract shall be automatically revoked upon receipt by the City Clerk of the termination or cancellation.

F) Design of Equipment. All trucks or motor vehicles under the licensee or contractor shall be water tight so as not to allow leakage of liquids or refuse while hauling the same and shall be covered with a covering to prevent the scattering of its contents upon the public streets or private properties in the City.

G) Inspections . All vehicles used for garbage or rubbish shall be made available for inspection within the City at the times and places as the City Council may designate.

H) Bond. The contractor or licensee may be required to furnish a surety bond in an amount as the City Council deems necessary running to and approved by the City Council, guaranteeing the franchisee's or licensee's faithful and continuous performance of the terms of the franchise , license or contract of this

chapter.

50.14 COLLECTION OF LEAVES, TREES AND TREE LIMBS.

Nothing in this chapter shall be construed to prevent the collection for hire by other persons of leaves , trees or tree limbs.

PRIVATE WASTEWATER DISPOSAL

51.2 PUBLIC SEWER NOT AVAILABLE.

The 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.

51.3 PERMITS.

(A) *Required.* 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.

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

(C) *Fees.* Permit fees shall be paid to the City in the amounts established by Resolution of the City Council from time to time.

51.4 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.

51.5 OPERATION AND MAINTENANCE BY OWNER.

The owner shall operate and maintain the private septic system and/or wastewater disposal facilities in a sanitary manner at all times at no expense to the city.

51.6 SURFACE RUNOFF OR GROUNDWATER CONNECTIONS PROHIBITED.

No person shall make connection of roof downspouts , sump pumps, foundation drains, areaway drains or other sources of surface runoff or groundwater to a septic system or indirectly to the wastewater disposal system.

51.7 WELL ABANDONMENT.

All well abandonment shall be done in accordance with M.S. 1031.345 and Minnesota Rules Chapter 4725, Wells and Borings, as it may be amended from time to time.

CHAPTER 51

REGULATIONS FOR INDIVIDUAL SEPTIC SYSTEMS; ABANDONED WELLS

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51.01

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Public sewer not available Permits

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GENERAL PROVISIONS

51.01 DEFINITIONS.

For the purpose of this chapter, 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 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 representative.

MPCA. The Minnesota Pollution Control Agency.

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

SEWAGE. See Wastewater.

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

WASTEWATER. The spent water referred to as sewage. It may be a combination of the liquid and water-carried wastes from residences and commercial buildings together with any ground water, surface water and storm water that may be present.

51.8 MINNESOTA RULES CHAPTER 7080.

The Minnesota Pollution Control Agency Water Quality Division minimum standards and criteria for the design, location, installation, use and maintenance of individual sewage treatment systems, contained in Minnesota Rules Chapter 7080, effective January 23, 1996, are hereby adopted as the Sewer Ordinance and Code of the City of Dellwood, and incorporated into this Ordinance as completely as if set forth in full herein. A Copy of Minnesota Rules 7080 is on file in the office of the City Clerk.

The provisions of Minnesota Statute Section 115.55, as amended , entitled "Individual Sewage Treatment Systems", are hereby adopted by reference thereto and are incorporated into this Ordinance and the Code of the City of Dellwood completely as if set forth in full herein. A copy of Minnesota Statutes Section 115.55, as amended, is on file in the office of the City Clerk.

51.9 ADDITIONAL PROVISIONS.

In addition to the provisions of Minnesota Rules Chapter 7080, the provisions of this Ordinance shall apply. In case of a conflict or inconsistency, the provisions set forth in this Ordinance shall take priority over the provisions of Chapter 7080.

A. Capacity of Septic Tanks:

DWELLINGS . There shall be two septic tanks in series with the liquid capacity based on the number of bedrooms contemplated in the dwelling served and shall be at least as large as the capacities given below:

| NUMBER OF BEDROOMS | TANK LIQUID CAPACITIES (gallons) |
|--------------------|-------------------------------------|
| 2 or less | |
| 3 or 4 | |
| 5 or 6 | |
| 7, 8 or 9 | |
| 1,000 and 500 | |
| 1,000 and 1,000 | |
| 1,500 and 1,000 | |
| 2,000 and 1,000 | |

For ten or more bedrooms, the septic tank shall be sized as another establishment with the second tank in series being at least 50 percent capacity of the first tank . For multiple family dwellings containing two (2) or more dwelling units, the size shall be the sum of the individual dwelling unit requirements.

B. For non-residential uses, the minimum capacity of the septic tanks and the minimum area of the drainfield shall be determined by the City Septic System Inspector or the City Engineer after review of the plans and specifications, soil reports and inspections. The area of the drainfield is based on 12 inches of drainfield rock below the distribution pipe. The required area of the drainfield may be reduced for trench bottom areas as follows:

- 1) A reduction of 20% where there is 18 inches or more of drainfield rock below the distribution pipe.

2) A reduction of 34% where there is 24 inches, or more, of drainfield rock below the distribution pipe.

C. An alternative location for a drainfield having a minimum area of 2500 square feet shall be required in all cases where a new septic system is installed. This provision is to ensure a suitable location for a second system in case of failure of the original or existing system.

D. All pumpers, installers, site evaluators, and designers must have a current Individual Sewage Treatment System Business License issued by the Minnesota Pollution Control Agency. A design for the septic system must be submitted and approved by the City prior to commencement of any work.

E. All subdivisions or developments must demonstrate to the City that each lot contains not less than 10,000 square feet of designated suitable area for an individual sewage treatment system and alternative site. This area may consist of two non-contiguous areas of 5000 square feet each. Each area designated for septic system purposes shall contain at least four satisfactory soil borings and at least two satisfactory percolation tests.

F. Each individual sewage treatment system in the City of Dellwood must have not less than three feet of vertical separation between the bottom of the treatment system and the saturated soil or bedrock.

Systems in place on or before September 9, 1997 having at least two feet but less than three feet of vertical separation, and which in the opinion of the City Sewer Inspector do not present an imminent threat to public health or safety, may be allowed by variance.

51.10 ALTERNATIVE SYSTEMS.

A. Replacement of existing systems. On previously developed sites where system replacement is required by virtue of existing system failure and where site and soil conditions do not permit installation of a standard system, an alternative system as provided by this section may be considered subject to the following conditions:

- 1) The engineering design and substantiation of performance of proposed system shall be submitted for approval.
- 2) There shall be no discharge allowed to the ground surface or surface water.
- 3) Method of treatment and disposal of wastes shall provide protection to the public health and general welfare equal to that provided by a standard system.
- 4) Proposed alternative systems shall be required to comply with State rules and standards.

B) Modified Standard System. On any site where soil conditions may reasonably be altered by placing fill to provide suitable conditions as required for a standard system, a modified standard system may be considered subject to the following conditions:

- 1) Soil and site conditions shall be evaluated and system sized and located as prescribed by this Ordinance for a standard system.
- 2) Modified soil areas shall be adequate in size to accommodate a minimum of two (2) complete systems. On specific sites, area requirements may be increased when appropriate under the long range sewer plan for the location.
- 3) Proposed fill projects shall require engineered design to be submitted for review and approval by the permitting authority prior to the start of work, and the issuance of a grading permit as required by the Zoning Ordinance.
- 4) Fill material shall be selected and placed under competent supervision.
- 5) Existing soils shall be protected from compaction and properly prepared by scarifying or plowing, prior to placement of fill.
- 6) Where trench bottoms terminate entirely in natural soils, fill to achieve required cover may be placed at the time of system installation.
- 7) Where trench bottoms are required to terminate in fill shall be placed without compaction and allowed to settle through a frost cycle. After settlement, the soil shall be tested and data submitted for approval by the City Sewer Inspector. The total settlement period shall be determined by the City Sewer Inspector.
- 8) Where fill is placed to achieve adequate separation from the water table, a minimum of three observation wells shall be placed within the fill area as follows:
 - a) Install one (1) inch to four (4) inch diameter, solid pipe, to a minimum depth of six (6) feet below final grade and three (3) feet below design depth of system, capped above ground surface.
 - b) Bore hole for pipe a minimum of four (4) inches larger than the diameter of the pipe.
 - c) Set pipe in two (2) inches pea gravel, with six (6) inches of gravel extending up around outside of pipe bottom.
 - d) Fill around remainder of pipe and compact at ground surface.
 - e) In appropriate cases, observation wells may not be required. The City Sewer Inspector may waive this requirement based on the soil tester's findings and recommendations .
- f) Observations shall be made by a certified soil tester as follows :
 - 1) First observation to be made within two weeks after frost is absent and every seven days thereafter until June 1st, or until the site is determined to be unacceptable, whichever comes first.
 - 2) If water is observed after the first frost is absent,

or at any other time, an observation shall be made one week later. If water is present at both observations, monitoring can cease since the site is unacceptable.

3) If water is not present at the second observation, monitoring shall continue until June 1st. If any two successive observations show the presence of water above the critical depth, the site is unacceptable.

4) The occurrence of rainfall(s) on one-half (1/2) inch intensity or more during the monitoring period may necessitate observations at more frequent intervals.

5) A site which is saturated at or above the critical depth for seven consecutive days or more in a normal spring season (preceded by six months of precipitation which is at a minimum normal for the area) is an unacceptable site.

All "mound" system and fill sites must be pressurized systems approved by the City Engineer or City Septic Sewer Inspector.

51.11 MAINTENANCE AND INSPECTIONS.

A. Each year the City will cause an individual sewage treatment system to be inspected by a duly licensed inspector. The inspector shall report to the City his findings and recommendations. The City will issue to the property owner within 30 days after completion of the inspection, a Certificate of Compliance for all systems which comply with this Ordinance, or a Notice of Non-Compliance for all systems which do not comply with this Ordinance. Each system must have a manhole or other suitable structure for measuring and sampling of waste material.

B. A system shall be deemed to be a "failing system" as defined in Minnesota Rules Chapter 7080.0020 subpart 16a, if such system discharges sewage into a seepage pit, cesspool, drywell or leaching pit, or if such system has less than three feet of soil or sand between the bottom of the distribution medium and the saturated soil level or bedrock. An existing system that is not otherwise considered an imminent threat to

public health which was constructed under a permit need not be upgraded, repaired, replaced, or its use disconnected notwithstanding the fact that at no time of a compliance inspection, there appears to be less than the required three foot separation between the system bottom and saturated soil or bedrock. In all such cases, the determination whether or not to require upgrade, repair, replacement or discontinuance of use shall be within the discretion of the City Sewer Inspector or the City Engineer.

C. Any system which constitutes an "imminent threat to the public health or safety" as that term is defined in Minnesota Rules Chapter 7080.0020 subpart 19a, shall be deemed to be a failing system.

D. The owner shall have a period of 10 months following the date of the Notice of Non compliance in which to bring the system into compliance with the Ordinance. IN cases where the system constitutes an imminent threat with the potential to immediately and adversely impact the public health or safety, the owner shall within 30 days after receipt of such Notice, cause such system to be pumped, cleaned and repaired as necessary to remove the threat to public health and safety. The owner shall certify to the City that such cleaning and repairs have been completed. The City may conduct further inspections to

determine whether the system is no longer an imminent threat to public health or safety.

E. Individual servicing of septic tanks and absorption units shall require a permit from the City and shall conform to the Minnesota Department of Health and Minnesota Pollution Control Agency specifications. Disposal of sludge and scum removed from the system shall be:

- 1) Into a municipal sewer disposal system where practical.
- 2) In the absence of a public sewer, at a disposal site approved by the Minnesota Pollution Control Agency.

F. Owners of sanitary disposal systems shall be required to cooperate with and assist the City in taking water samples, as required to test the adequacy of such systems.

51.12 GRAVELESS PIPE TRENCH SYSTEMS.

The Hancor Graveless Pipe Trench System, or other graveless systems for treating sewage have been determined by the City Sewer Inspector and the County of Washington be inadequate systems. No such systems will be allowed in the City of Dellwood unless specifically required by the designer of an individual sewage treatment system and approved in writing by the Dellwood Sewer Inspector.

51.13 LICENSING.

A. No person, firm or corporation shall engage in the business of inspecting, altering, repairing, installing, constructing, pumping or cleaning of sewer disposal systems within the City without having the proper current license to do so, and without first obtaining the proper Permit from the City.

B. Prior to the commencement of work, the contractor shall file with the City Clerk a copy of the contractor's license. Applicant shall file with the City Clerk policies of public liability and property damage insurance which shall remain in force and effect during the entire term of said license and which shall contain a provision that they shall not be canceled without ten days written notice to the City. Public liability insurance shall not be less than one hundred thousand (\$100,000.) dollars for injuries including accidental death to any one person and subject to the same limit for each person in an amount of not less than three hundred thousand (\$300,000.) dollars on account of any one accident, and property damage insurance in the amount of not less than one hundred thousand (\$100,000.) dollars aggregated. No work shall be done under license until said insurance policies have been filed and approved by the City.

51.14 PENALTY.

(A) (1) Any person found to be violating any provisions of 51.01 through 51.13 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.

(2) Any person who shall continue any violation beyond the time limit provided for in division (A) of this section shall be guilty of a misdemeanor punishable by law. Each day in which any violation occurs shall be deemed as a separate offense.

(3) If the violation is such as to constitute a nuisance, the City may take steps to prosecute the offense under a nuisance ordinance or statute and to abate the nuisance as provided by law.

(4) Any person violating any of the provisions of 51.01 through 51.13 shall

become liable to the city for any expense, loss or damage occasioned by the city by reason of that violation.

(B) (1) Each and every sewer service charge levied by and pursuant to 51.01 through 51.13 is made a lien upon the lot or premises served, and all charges which are on October 31 of each year past due and delinquent shall be certified to the County Auditor by November 29, for collection.

CHAPTER 52

WATER / WELLS REGULATIONS

Section:

52.1 SUPPLY FROM ONE SERVICE.

No more than one single family dwelling shall be supplied from one private well except by Conditional Use Permit.

52.2 WELL ABANDONMENT.

All wells not in use must be sealed in accordance with Minnesota Statute section 1031.345, as amended and Minnesota Rules Chapter 4725 , Wells and Borings, as amended, unless a maintenance permit has been issued by the State of Minnesota.

52.3 ADOPTION BY REFERENCE.

All of the applicable provisions of Minnesota Statutes 2008, Chapter 1031 entitled "Wells and Borings, and Underground Uses" are adopted and incorporated into this Ordinance by reference thereto , as if the same were herein set forth in their entirety.

CHAPTER 53 STORM WATER DRAINAGE

53.01

This Ordinance is adopted pursuant to Minnesota Statutes Section 462.351.

53.2 FINDINGS.

The City of Dellwood hereby finds that uncontrolled and inadequately planned use of wetlands, woodlands, natural habitat areas, areas subject to soil erosion and areas containing restrictive soils adversely affects the public health, safety and general welfare by impacting water quality and contributing to other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the City of Dellwood to provide adequate water, sewage, flood control, and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas which may be affected by unplanned land usage.

53.3 PURPOSE.

The purpose of this Ordinance is to provide, preserve and promote the natural resources with in the City of Dellwood and protect them from adverse effects occasioned by poorly sited development or incompatible activities by regulating land disturbing or development activities that would have an adverse and potentially irreversible impact on water quality and unique and fragile environmentally sensitive land ; by minimizing conflicts and encouraging compatibility between land disturbing and development activities and water quality and environmentally sensitive lands; and by requiring detailed review standards and procedures for land disturbing or

development activities proposed for such areas, thereby achieving a balance between urban growth and development and protection of water quality and natural areas.

53.4 DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and third derivatives shall have the meaning stated below. When not inconsistent with the content, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

1) Applicant. Anyone who wishes to obtain a building permit, zoning or subdivision approval.

2) Control Measure. A practice or combination of practices to control erosion and attendant pollution.

3) Detention Facility. A permanent natural or man-made structure, including wetlands, for the temporary storage of runoff which contains a permanent pool of water .

4) Flood Fringe. The portion of the floodplain outside of the floodway.

5) Floodplain. The area adjoining a watercourse or water basin that have been or may be covered by a regional flood.

6) Floodway. The channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains that are reasonably required to carry and discharge floodwater and provide water storage during a regional flood.

7) Hydric Soils. Soils that are saturated, flooded, or podded long enough during the growing season to develop anaerobic conditions in the upper part.

8) Hydrophilic Vegetation. Macrophytic plant life growing in water , soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

9) Land Disturbing or Development Activities. Any change of the land surface including removing vegetative cover, excavating , filling, grading, and the construction of any structure.

10) Person Any individual, firm, corporation, partnership, franchisee, association or subdivision 15.

11) Public Waters . Waters of the state as defined in Minnesota Statutes section 103G.005, Subd. 15.

12) Regional Flood. A flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a 100 year recurrence interval.

13) Retention Facility. A permanent natural or man made structure that provides for the storage of storm water runoff by means of a permanent pool of water.

14) Sediment. Solid matter carried by water, sewage , or other liquids .

15) Structure. Anything manufactured, built, constructed or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas, pools, patios, courts, recreational facilities, docks and decks.

16. Wetlands . Lands transitionally between terrestrial and aquatic systems where the water table is equally at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands include all types of 3,4 and 5 wetlands as defined in U.S. Fish and Wildlife service circular number 39 (1971 edition). Not included within the definition of public waters and having an area of 2.5 acres or more.

53.5 SCOPE AND EFFECT.

Applicability. Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities must submit a stormwater management plan. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until approval for the storm water management plan or a waive of the approval requirements has been obtained in strict conformance with the provisions of this Ordinance. The provisions of this Ordinance apply to all land, public or private, located within the City of Dellwood.

53.6 EXEMPTIONS. The provisions of this Ordinance do not apply to:

- a) Any part of a subdivision in a plat for the subdivision has been approved by the City on or before the effective date of this Ordinance.
- b) Any land disturbing activities for which plans have been approved by the Rice Creek Watershed District within six months prior to the effective date of this Ordinance and not withdrawn or revoked.
- c) A lot for which a building permit has been approved on or before the effective date of this Ordinance.
- d) Installation of fence, sign, telephone, and electric poles and other kinds of posts, poles, or communications equipment.
- e) Emergency work to protect life, limb or property.

53.7 STORMWATER MANAGEMENT PLAN AND APPROVAL PROCEDURES. Application . A written application for storm water management approval, along with the proposed stormwater management plan, shall be filed with the City and shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted by right or as an exception in the underlying zoning district, and adequate evidence showing that the proposed use will conform to the standards set forth in this Ordinance. Prior to applying for approval of a stormwater management plan, an applicant may have the stormwater management plans reviewed by the appropriate departments of the City.

Two sets of clearly legible, blue or black lined copies or drawings and required information shall be submitted together with payment of all required fees for processing and approval as set forth in this Ordinance and a bond when required, in the amount to be calculated in accordance with that section. Drawings shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed. As a minimum it shall be 1 inch equals 100 feet.

53.8 STORMWATER MANAGEMENT PLAN. At a minimum, the stormwater management plan shall contain the following information:

- A) Existing site map. A map of existing site conditions showing the site and immediately adjacent areas,

including:

- 1) The name and address of the applicant, the section, township and range, north point, date and scale of the drawing and number of sheets.
- 2) Location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns and districts or other landmarks.
- 3) Existing topography with a contour interval appropriate to the topography of the land but in not case having a contour interval greater than 2 feet.
- 4) A delineation of all streams, rivers, public waters and wetlands located on and immediately adjacent to the site, including depth of water, a description of all vegetation which may be found in the water, a statement of general water quality and any classification given to the water body or wetland by the Minnesota DNR, the MPCA and/or the United State Army Corps of Engineers.
- 5) Location and dimensions of existing storm water drainage systems and natural drainage patterns on and immediately adjacent to the site delineating in which direction and at what rate storm water is conveyed from the site, identifying the receiving stream, river, public water or wetland and setting forth those areas of the unaltered site where stormwater collects.
- 6) A description of the soils of the site, including a map indicating soiltypes of areas to be disturbed as well as a soil report containing information on the suitability of the soils for the type of development proposed and the type of sewage disposal proposed and describing any remedial steps to be taken by the developer to render the soils suitable.
- 7) Vegetative cover and clearly delineating any vegetation proposed for removal; and
- 8) 100 year flood plains, flood fringes and floodways.

B) Site Construction Plan. A site construction plan including:

- 1) Locations and dimensions of all proposed land disturbing activities and any phasing of those activities.
- 2) Locations and dimensions of all temporary soil or dirt stockpiles.
- 3) Locations and dimensions of all construction site erosion control measures necessary to meet the requirements of this Ordinance.

CITY OF DELLWOOD ORDINANCE NO. 53.085

ILLICIT DISCHARGE AND CONNECTION ORDINANCE SECTION I.

PURPOSE/INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Dellwood through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.

This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- (2) To prohibit illicit connections and discharges to the MS4.
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

SECTION 2. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency. The City of Dellwood, Minnesota.

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

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and any subsequent amendments thereto.

Construction Activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 8 of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following:

- Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,
- Any drain or conveyance connected from a commercial land use to the storm drain system that has

not been documented in plans, maps, or equivalent records and approved by the City of Dellwood.

Municipal Separate Storm Sewer System (MS4). The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

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

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

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

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System. Publicly-owned or privately owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Management Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

SECTION 3. APPLICABILITY.

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Dellwood.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The City of Dellwood shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Dellwood may be delegated in writing by the Mayor of the City of Dellwood to persons or entities acting in the beneficial interest of or in the employ of the City.

SECTION 5. COMPATIBILITY WITH OTHER REGULATIONS.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

SECTION 6. SEVERABILITY.

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

SECTION 7. ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

SECTION 8. DISCHARGE PROHIBITIONS.

8.1. Prohibition of Illegal Discharges.

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.

(2) Discharges or flow from firefighting, and other discharges specified in writing by the City of Dellwood as being necessary to protect public health and safety.

(3) Discharges associated with dye testing, however this activity requires a verbal notification to the City of Dellwood prior to the time of the test.

(4) The prohibition shall not apply to any non-storm water discharge permitted under an

NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

The City of Dellwood may evaluate and remove any of the above exemptions if it is determined that they are causing an adverse impact.

8.2. Prohibition of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(4) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City of Dellwood.

(5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of Dellwood requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Dellwood.

SECTION 9. WATERCOURSE PROTECTION.

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

SECTION 10. CONSTRUCTION ACTIVITY DISCHARGES.

10.1. Submission of NOI.

(1) Any person subject to a construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Dellwood prior to the allowing of discharges to the MS4.

(2) The operator of a facility, including construction sites, required to have an NPDES permit to

discharge storm water associated with construction activity shall submit a copy of the Notice of Intent (NOI) to the City of Dellwood at the same time the operator submits the original Notice of Intent to the EPA as applicable.

(3) The copy of the Notice of Intent may be delivered to the City of Dellwood either in person or by mailing it to:

Notice of Intent to Discharge Storm Water City of Dellwood
111 Wildwood Road Willernie, MN 55090

(4) A person commits an offense if the person operates a facility that is discharging storm water associated with construction activity in a manner which is not in compliance with such permit.

SECTION 11. COMPLIANCE MONITORING

11.1. Right of Entry: Inspection and Sampling.

The City of Dellwood shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

Unreasonable delays in allowing the City of Dellwood access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with construction activity commits an offense if the person denies the City of Dellwood reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

11.2. Search Warrants.

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

SECTION 12. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The City of Dellwood will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with construction activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

SECTION 13. NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Dellwood in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of

Dellwood within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

SECTION 14. VIOLATIONS, ENFORCEMENT, AND PENALTIES.

14.1. Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the City of Dellwood is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City of Dellwood is authorized to seek costs of the abatement as outlined in Section 17.

14.2. Warning Notice.

When the City of Dellwood finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the City of Dellwood may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the City of Dellwood to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

14.3. Notice of Violation.

Whenever the City of Dellwood finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the City of Dellwood may order compliance by written notice of violation to the responsible person.

The Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed to the City of Dellwood by filing a written notice of appeal within ten (10) days of service of notice of violation; and
- (7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Such notice may require without limitation :

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

14.5. Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the City of Dellwood may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

14.6. Suspension Of MS4 Access.

14.6.1. Emergency Cease and Desist Orders

When the City of Dellwood finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present

an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City of Dellwood may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

(1) Immediately comply with all ordinance requirements; and

(2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the City of Dellwood may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The City of Dellwood may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the City of Dellwood that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the City of Dellwood within five (5) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

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

14.6.3. Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Dellwood will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Dellwood for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Dellwood.

14.7. Civil Penalties.

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the City of Dellwood shall deem appropriate, after the City of Dellwood has taken one or more of the actions described above, the City of Dellwood may impose a penalty not to exceed \$500.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation. The amount of the maximum

penalty may be increased from time to time by resolution of the City Council.

14.8. Criminal Prosecution .

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$1,000.00 per violation per day and/or imprisonment for a period of time not to exceed 90 days or both . Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

SECTION 15. APPEAL OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination of the City of Dellwood . The notice of appeal must be received within 5 business days from the date of the Notice of Violation.

SECTION 16. ENFORCEMENT MEASURES AFTER APPEAL .

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation , the City of Dellwood shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 17. COST OF ABATEMENT OF THE VIOLATION.

Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

SECTION 18. VIOLATIONS DEEMED A PUBLIC NUISANCE.

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

SECTION 19. REMEDIES NOT EXCLUSIVE.

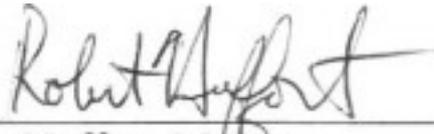
The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Dellwood to seek cumulative remedies.

The City of Dellwood may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 20. ADOPTION OF ORDINANCE.

This ordinance shall be in full force and effect upon its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

PASSED AND ADOPTED this *i.2* day of *December* 20*11*.



Robert Nuffort, Mayor

Attest:

CI. F

Joanne Frane, City Clerk

Summary 12
Published in the
White Bear Press 12-28-11

- 4) Schedule of anticipated starting and completion dates of each land disturbing activity including the installation of construction site erosion control measures needed to meet the requirements of this Ordinance; and
- 5) Provisions for maintenance of the construction site erosion control measures during construction .

C. Plan of final site conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes including:

- 1) Finished grading shown at contours at the same intervals as provided above or as required to clearly indicate the relationship of proposed changes to existing topography and remaining features.
- 2) A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size and description of all proposed landscape materials which will be added to the site as part of the development.
- 3) A drainage plan of the developed site delineating in which direction and at what rate storm water will be conveyed from the site and setting forth the areas of the site where storm water will be allowed to collect.
- 4) The proposed size, alignment and intended use of any structures to erected on the site.
- 5) A clear delineation and tabulation of all areas which shall be paved or surfaced, including a description of the surfacing material to be used, and

6) any other information pertinent to the particular project which in the opinion of the applicant is necessary for the review of the project.

53.9 PLAN REVIEW PROCEDURES.

53.91 PROCESS.

Stormwater management plans meeting the requirements of Section 53.08 shall be submitted to the Planning Commission for review in accordance with the standards of Section 53.10. The Commission shall recommend approval, recommend approval with conditions, or recommend denial of the stormwater management plan. Following Planning Commission action, the stormwater management plan shall be submitted to the City Council at its next regular meeting. City Council action for the stormwater management plan must be accomplished within 120 days following the date application for approval is filed with the City.

53.92 DURATION.

Approval of plans submitted under the provisions of this Ordinance shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of the approval, the applicant makes a written request to the City for an extension of time to commence constructing setting forth the reasons for the requested extension, the City may grant one extension of not greater than one single year. The City shall make a decision on the extension within 30 days of receipt. Any plan may be revised in the same manner as originally approved.

53.93 CONDITIONS.

A stormwater management plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this Ordinance are met. Such conditions may, among other matters, limit the size, kind, or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alternation of the site design to insure buffering, and require the conveyance to the City of Dellwood or other public entity of certain lands and interests therein.

53.94 PERFORMANCE BOND.

Prior to approval of any stormwater management plan, the applicant shall submit an agreement to construct such required physical improvements, to dedicate property or easement, or to comply with such conditions as may have been agreed to. Such agreement shall be accompanied by a bond to cover the amount of the established cost of complying with the requirement. The agreement and the bond shall guarantee completion and compliance with conditions within a specific time, which time may be extended in accordance with section 53.092.

The adequacy, condition and acceptability of any agreement and bond shall be determined by the City Council or any official for the City as may be designated by resolution of the City Council.

53.95 FEES.

All applications for stormwater plan approval shall be accompanied by a processing and approval fee as determined by City Council Resolution.

53.10 APPROVAL STANDARDS .

No storm water management plan which fails to meet the standards contained in this section shall be approved by the City Council.

53.101 SITE DEWATERING.

Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, swirl concentrators or other appropriate controls as appropriate. Water may not be discharged in a manner that causes erosion or flooding of the site or receiving channels or a wetland.

53.102 WASTE AND MATERIAL DISPOSAL.

All water and unused building materials (including garbage, debris, clearing wastes, wastewater, toxic materials or hazardous materials) shall be properly disposed of off site and not allowed to be carried by runoff into a receiving channel or storm sewer system.

53.103 TRACKING .

Each site shall have gravel roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning (not flushing) before the end of each workday .

53.104 DRAIN INLET PROTECTION.

All storm drain inlets shall be protected during construction until control measures are in place with a straw bale, silt fence or equivalent barrier meeting accepted design criteria, standards and specifications contained in the MPCA publication "Protecting Water Quality in Urban Areas".

53.11 SITE EROSION CONTROL.

The following criteria (a through d) apply only to construction activities that result in runoff leaving the site.

a) Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below. Sheet flood runoff from adjacent areas greater than 10,000 square feet in area shall be diverted around disturbed areas, unless shown to have resultant runoff rates of less than 0.5 ft./sec. across the disturbed area for the one year storm. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels.

b) All activities on the site shall be conducted in a logical sequence to minimize the area of bare soils exposed at any one time.

c) Runoff from the entire disturbed area on the site shall be controlled by meeting either subsection 1 and 2 or 1 and 3:

1) All disturbed ground left inactive for fourteen or more days shall be stabilized by seeding or sodding or by mulching or covering or other equivalent control measure.

2) For sites with more than 10 acres disturbed at one time, or if a channel originates in the disturbed area, one or more temporary or permanent sedimentation basins shall be constructed. Each sediment basin shall have a surface area of at least one percent of the draining to the basin and at least three feet of depth and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three

feet. The basin

discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel of the receiving water.

3) For site with less than ten acres disturbed at one time, silt fences, straw bales, or equal control measures shall be placed along all side slope and down slope sides of the site. If a channel or areas of concentrated runoff passes through the site, silt fence shall be placed along the channel edges to reduce sediment reaching the channel. The use of silt fences, straw bales or equivalent control measures must include a maintenance and inspection schedule.

d) Any soil or dirt storage piles containing more than ten cubic yards of material should not be located with a down slope drainage length of less than 25 feet from the toe of the pile to a roadway or drainage channel. If remaining for more than 7 days, they shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from piles which will be in existence for less than 7 days shall be controlled by placing straw bales or silt fence barriers around the pile. In street utility repair or construction soil or dirt storage piles located closer than 25 feet to a roadway or drainage channel must be covered with tarps or suitable alternative control, if exposed for more than 7 days, and the storm drain inlets must be protected with straw bales or other appropriate filtering barriers.

53.12 STORM WATER MANAGEMENT CRITERIA FOR PERMANENT FACILITIES.

A. An applicant shall install or construct on or for the proposed land disturbing or development activities, all storm water management facilities necessary to manage increased runoff so that the two year, ten year, and 100 year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion shall not occur as a result of the proposed land disturbing or development activity. An applicant may also make an in-kind or monetary contribution to the development and maintenance community storm water management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons including the applicant.

B. The applicant shall give consideration to reducing the need for storm water management facilities by incorporating the use of natural, topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity of quality of the wetland or pond.

C. The following storm water management practices shall be investigated in developing a storm water management plan in the following descending order of preference:

- 1) Natural filtration of precipitation on-site;
- 2) Flow attenuation by use of open vegetated swales and natural depressions.
- 3) Storm water retention facilities, and
- 4) Storm water detention facilities.

D) A combination of successive practices may be used to achieve the applicable minimum control requirements specified in subsection a) above. Justification shall be provided by the applicant for the method selected.

53.13 DESIGN STANDARDS.

Storm water detention facilities construction in the City of Dellwood shall be designed according to the most current technology as reflects in the MPCA publication "Protecting Water Quality in Urban Areas" and shall contain, at a minimum, the following design factors:

A) A permanent pond surface area equal to two percent of the impervious area draining to the pond or one percent of the entire area draining to the pond, whichever amount is greater.

B) An average permanent pool depth of four to ten feet.

C) A permanent pool length to width ratio of 1:1 or greater.

D) A minimum protective shelf extending ten feet into the permanent pool with a slope of 10:1, beyond which slopes should not exceed 3:1.

E) A protective buffer strip of vegetation surround the permanent pool at a minimum width of one rod (16.5 feet) (this width is consistent with the draft rules developed by the board of Water and Soil Resources under the Wetland Conservation Act of 1991).

F) All storm water detention facilities shall have a device to keep oil, grease, and other floatable material from moving downstream as a result of normal operations .

G) Storm water detention facilities for new development must be sufficient to limit peak flows in each subwatershed to those that existed before the development for the 10 year storm event. All calculations and hydrologic models/information used in determining peak flow shall be submitted along with the storm water management plan.

H) All storm water detention facilities must have as a forebay to remove coarse grained particles prior to discharge into as a watercourse or storage basin.

53.14 WETLANDS.

A) Runoff shall not be discharged directly into wetlands without presettlement of the runoff. .

B) A protective buffer strip of natural vegetation at least one rod in width shall surround all wetlands.

C) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value. Replacement must be guided by the following principals in descending order of priority:

a) Avoid the direct or indirect impact of the activity that may destroy or diminish the wetland.

b) Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation .

c) Rectifying the impact by repairing, rehabilitat ing, or restoring the affected wetland environment.

d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity, and

e) Compensating for the impact by replacing or providing suitable wetland resources or environments.

53.141 STREET SLOPES.

No land disturbing or development activities shall be allowed on slopes or 10 percent or more without a Conditional Use Permit.

53.142 CATCH BASINS.

All newly installed and rehabilitated catch basins shall be provided with a sump area for the collection of coarse grained material. Such basins shall be cleared when they are half filled with material.

53.143 DRAIN LEADERS.

All newly constructed and reconstructed building will route drain leaders to pervious areas wherein the runoff can be allowed to infiltrate. The flow rate of water exiting the leaders shall be controlled so erosion occurs in the pervious areas.

53.144 INSPECTION AND MAINTENANCE.

All storm water management facilities shall be designed to minimize the need of maintenance, to provide access for maintenance purposes not structurally sound. All storm water management facilities shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in storm water runoff. The director of public works , or designated representative , shall inspect all storm water management facilities during construction, during the first year of operation, and at least once every five years thereafter . The inspection records will be kept on file at the public works department for a period of 6 years. It shall be the responsibility of the applicant to obtain any necessary easement or other property interests to allow access to the stormwater management facilities for inspection and maintenance purposes.

53.145 MODELS/METHODOLOGIES/COMPUTATIONS.

Hydrologic models and design methodologies used for the determination of runoff and analysis of stormwater management structures shall be approved by the director of public works . Plans, specifications and computations for storm water management facilities submitted for review shall be sealed and signed by a registered professional engineer. All computations shall appear on the plan submitted for review, unless otherwise approved by the director of public health.

53.146 WATERSHED MANAGEMENT PLAN.

Groundwater management plans. Stormwater management plans shall be consistent with adopted watershed management plans and groundwater management plans prepared in accordance with M.S. section 1038.231, and 1038.255, respectively , and as approved by the Minnesota Board of Water and Soil Resources in accordance with state law.

53.147 EASEMENTS.

If a storm water management plan involves direction of some or all runoff of the site, it shall be the responsibility of the applicant to obtain from the adjacent property owners any necessary easements or other property interests concerning flowage of water.

53.15 LAWN FERTILIZER REGULATIONS.

53.151 USE OF IMPERVIOUS SURFACES.

Adoption by reference of Minnesota Statute entitled "Fertilizer , Soil Amendment and Plant Amendment Law".

All of the applicable provisions of Minnesota Statutes, 2008, Chapter 18C.001, through 18C.71, as amended, entitled "Fertilizer, Soil Amendment and Plant Amendment Law"

are hereby adopted and incorporated into this Ordinance by reference thereto, as if the same were herein set forth in their entirety. A complete and current copy of M.S. 18C.01 through 18C.71 is on file and available for inspection and copying in the office of the Dellwood City Clerk.

53.152 PHOSPHOROUS TURF FERTILIZER USE RESTRICTIONS.

53.1521 Definitions.

For the purpose of this section, "turf" means noncrop land planted in closely mowed, managed grasses, including but not limited to, residential and commercial residential property, private golf courses, and property owned by federal, state or local units of government, including parks, recreation areas, and public golf courses. Turf does not mean pasture, hayland, hay, turf grown on turf farms, or any other form of agricultural production.

53.1522 Phosphorus Use Restrictions.

a) A person may not apply a fertilizer containing the plant nutrient phosphorus to turf statewide, except under conditions listed in paragraph b.

b) Paragraph (a) does not apply when:

1) a tissue, soil, or other test by a laboratory or method approved by the commissioner is performed within the last 3 years indicates that the level of available phosphorus in the soil is insufficient to support healthy turf growth.

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

3) the fertilizer containing the plant nutrient phosphorus is used on a golf course under the direction of a person licensed, certified, or approved by an organization with an on going training program approved by the commissioner .

c) Application of phosphorous fertilizer authorized under paragraph b) must not exceed rates recommended by the University of Minnesota and approved by the commissioner.

53.1523 CONSUMER INFORMATION.

The commissioner, in consultation with the University of Minnesota Extension Service, fertilizer industry representative, lakes groups and other interested or affected parties, must produce consumer information on use restrictions and recommended best practices for lawn fertilizer containing phosphorus, and on best management practices for other residential sources of phosphorus in the urban landscape. The information must be in a format and of a content suitable for posting and distribution at retail points of sale of fertilizer that contains phosphorus and is for use on turf.

53.1524 RESEARCH EVALUTION; REPORT.

The commissioner, in cooperation with the University of Minnesota and the University of Minnesota Extension Service, and, after consultation with representatives of the fertilizer industry, lakes groups, and other interested or affected parties, shall evaluate research needs and encourage targeted research opportunities to investigate the effects of phosphorus fertilization of turf on urban stormwater quality. The commissioner must evaluate the effectiveness of the restrictions on phosphorus fertilizers under this section and report the legislature by 01/15/2007 .

53.153 ENFORCEMENT.

Sections 53.152 and 53.153 are enclosed by local units of government under their existing authority. Violation of a provision in either of these sections is a petty misdemeanor.

53.16 PENALTY.

Any person, firm or corporation violating any provision of this section is guilty of a misdemeanor offense, upon conviction thereof may be punished by a fine or imprisonment or both, according to law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

53.16 OTHER CONTROLS.

In the event of any conflict between the provisions of this ordinance and the provisions of the zoning subdivision erosion control or shoreland protection ordinance adopted by the City the more restrictive standard prevails.

53.17 SEVERABILITY.

The provisions of this section are severable. If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of the application of this section which can be given effect with the invalid provision or application.

CHAPTER 54

ADOPTION OF RICE CREEK WATERSHED RULES FOR SHORELAND AND WETLAND AREAS

SECTION 54

54.1 PURPOSE.

The Rice Creek Watershed District (District) is a political subdivision of the State of Minnesota established under the Minnesota Watershed Law. The District is also a watershed management organization as defined under the Minnesota Metropolitan Surface Water Management Act, and is subject to the directives and authorizations of that act. Under the Watershed Law and the Metropolitan Surface Water Management Act, the District exercises a series of powers to accomplish its statutory purposes. The District's general statutory purpose is to conserve natural resources through development planning, flood control, and other conservation projects, based upon sound scientific principles.

As required under the Metropolitan Surface Water Management Act, the District has adopted a Watershed Management Plan, which contains the framework and guiding principles for the District in carrying out its statutory purposes. It is the intent of the City of Dellwood (City) to implement the Plan's principles and objectives in these rules.

By adopting these rules the City seeks to protect the public health and welfare and the natural resources of the City by providing reasonable regulation of the modification or alteration of the City's lands and waters to reduce the severity and frequency of flooding and high water, to preserve floodplain and wetland storage capacity to improve the chemical, physical and biological quality of surface water, to reduce sedimentation, to preserve waterbodies' hydraulic and navigational capacity, to preserve natural wetland and shoreland features, and to minimize public expenditures to avoid or correct these problems in the future.

The District rules include certain rules adopted to implement area-specific resource

management plans (RMP's) developed by the District. RMP's are designed to achieve identified water resource management needs within specific drainage areas of the watershed. Each set of such rules (labeled sequentially as Rule RMP-1, Rule RMP-2, and so on) applies to a delineated geographic area. Activity within an area governed by an RMP rules will be subject to that rule in place of the general District rules. Accordingly, a property owner intending an activity subject to District permitting requirements first should determine whether the activity will be governed by an RMP rule or by the general District rules.

54.2 APPOINTMENT OF REGULATORY / PERMITTING AUTHORITY

The City of Dellwood designates the Rice Creek Watershed District as the regulatory/permitting authority for the City with regard to all land use project within the City which involve shoreland and wetland areas (as defined in Dellwood's Shoreland Management Ordinance).

54.3 ADOPTION OF RULES.

The rules, policies and regulations of the Rice Creek Watershed District, adopted by the District on February 13, 2008, three copies of which are on file in the Office of the Dellwood City Clerk, are hereby adopted as the rules, policies and regulations of the City of Dellwood applicable to all land use requests and projects which involve shoreland or wetland areas (as defined in Dellwood's Shoreland Management Ordinance).

Every provision contained in the Rules of the Rice Creek Watershed District adopted on February 13, 2008 are hereby adopted and made a part of this Ordinance as if fully set forth herein.

54.4 PENALTIES

Any person who violates any provision of this Ordinance is guilty of a misdemeanor offense and upon conviction thereof, may be punished by a fine and imprisonment, or both, according to law.

CHAPTER 55

ESCROW FUND TO BE ESTABLISHED IN CONNECTION WITH CONSTRUCTION WORK IN THE CITY OF DELLWOOD

55.01

A. Where a permit is issued by the City for construction work, landscaping, excavation and/or filling operations on private property, any damage caused within the street right-of-way by reason of said work shall be promptly repaired by the person obtaining the building permit, and all debris deposited on the street right-of-way by reason of said work shall be promptly removed. Such repairs and removal shall be done to the satisfaction of the City as determined by the Road Commissioner.

B. To insure compliance with the above, every person applying for a permit shall pay a fee of \$1,000.00, prior to receiving a permit. This fee shall be deemed to have been paid by the property owner, and may be refunded only to the property owner.

C. If the person obtaining the permit complies with the requirements in paragraph A above, the amounts set forth in paragraph B above shall be refunded by the City upon completion and inspection of all work for which any permits has been issued for said property. Any costs incurred by the City in restoring streets to their original condition before construction shall be subtracted from the

above fee.

D. If the above fees do not cover all of the costs incurred by the City in restoring the streets, the City will bill the additional amount to the property owner who received the permit and the additional amount shall be payable by that person within 30 days from such billing date.

55.02 SEVERABILITY .

Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by an Court of competent jurisdiction, such decision will not affect the validity of the Ordinance as a whole or of any part thereof, other than the part held to be invalid.

CITY OF DELLWOOD ROAD ESCROW AGREEMENT

DATE: - - - - -

PROPERTY ADDRESS: - - - - -

(type of work)

PERMIT ISSUED FOR: - - - - -

PROPERTY OWNERS NAME / ADDRESS: _ - - - -

CONTRACTOR'S NAME / ADDRESS: _ - - - -

AMOUNT OF ROAD ESCROW DEPOSITED WITH CITY: \$ _

Pursuant to Ordinance Number: _ --

The road escrow funds deposited with the City may be refunded to the property owner only, after final completion of all work to be done at the property address, and final inspection by the City Building Inspector and City Road Commissioner.

The provisions of Ordinance Number: , attached hereto, are made a part of this agreement.

Property Owners: X _

X. _ _

City Clerk:----- Final Inspection Date: _

Payment Refund Date:----- Amount Refunded:

RIGHT-OF-WAY ORDINANCE

SECTION:

56.01 FINDINGS AND PURPOSE.

General. In order to provide for the health, safety and well-being of its citizens, as well as to insure the structural integrity of its streets and the use of the Right-of-way, the City strives to keep its Rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the Rights-of-way, a primary cause for the early and excessive deterioration of its Rights-of-way is their frequent excavation by persons whose equipment is located therein.

Right-of-way obstruction is a source of frustration for the general population which must avoid these Obstructions or change travel plans because of them and has detrimental effects on the general public. Persons whose equipment is located within the Right-of way are the primary cause of these frequent obstructions.

The City holds its Rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested public funds to build and maintain the Right of way. The City recognizes that some Persons, by placing their Equipment in the Right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this public property for private gain and profit.

The Minnesota Legislature has recognized that it is in the public's interest that the use and regulation of Rights-of-way be carried on in a fair, efficient, competitively neutral, and substantially uniform manner, while recognizing such regulation must reflect distinct engineering, construction, operation, maintenance, and public and worker safety requirements and standards applicable to various users of Rights of way. Further, the Legislature has determined that because increasing numbers of persons may seek usage of Right of way, municipalities such as the city must be and have been

authorized to regulate use of Rights of Way. Consistent with this mandate, the City has endeavored to model its Right of Way regulations consistent with those models enacted or under consideration by municipalities throughout the state. Further, the City has endeavored to create competitively neutral Right of Way standards and regulations of general applicability.

In response to the foregoing, the City hereby enacts this Ordinance relating to Right of Way Permits and management. This Ordinance imposes fair, efficient, competitively neutral, uniform, and reasonable regulations on the placement and maintenance of Equipment currently within its Rights of Way or to be placed therein. This Ordinance is intended to complement the regulatory roles of state and federal agencies. Under this Ordinance, Persons disturbing and obstructing the Rights of Way will bear a fair share of the financial responsibility for their integrity. Finally, this Ordinance provides for recovery of out of pocket and projected costs from Persons using the Rights of Way.

56.2 LEGISLATIVE POWER.

By enactment of this Ordinance, the Council hereby exercises its lawful police power and common law authority, and all statutory authority which is available to it, including, but not limited to, the powers conferred on it under M.S. 237.162 and 237.163, while preserving all power and authority to further require franchises from Right of Way users under M.S. 2168.36, 222.37, 300.03, and 412.11, and other provisions of law.

56.3 DEFINITIONS.

The following definitions apply:

a) "Applicant" means any Person requesting permission to Excavate or Obstruct a Right of Way.

b) "City" means the City of Dellwood, Minnesota. For purposes of Section 1.30, City means its elected officials, officer, employees , agents or any commission, committee or subdivision acting pursuant to lawfully delegated authority.

c) "City Cost" means the actual costs incurred by the City for managing Rights of Way including, but not limited to costs associated with registering of applicants; issuing, processing, and verifying Right of Way Permit Applications; revoking Right of Way permits, inspecting job sites; creating and updating mapping systems; determining the adequacy of Right of Way restoration; restoring work inadequately performed; maintaining, supporting, protecting, or moving user equipment during Right of Way work ; budget analysis; record keeping; legal assistance; systems analysis; and performing all of the other tasks required by this Ordinance including other costs the City may incur in managing the provision of this Ordinance except as expressly prohibited by law.

d) "City Inspector" means any person authorized by the City to carry out inspections related to the provision of this Ordinance.

e) "Degradation" means the accelerated depreciation of the Right of Way caused by Excavation in or disturbance of the Right of way, resulting in the need to reconstruct such Right of way earlier than would be required if the Excavation did not occur.

f) "Emergency" means a condition that (a) poses a clear and immediate danger to the life or health, or of a significant loss of property; or (b) requires immediately repair or replacement in order to restore Service to a customer.

g) "Equipment" means any tangible thing located in any Right of Way , but shall not include boulevard plantings or gardens planted or maintained in the Right of Way between a person's property and the street curb.

h) "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a Right of Way, except horticultural practices of penetrating the boulevard area to a depth of less than 12 inches.

i) "Excavation Permit" means the Permit, which pursuant to this Ordinance, must be obtained before a person may excavate in a Right of Way. An excavation permit allows the holder to Excavate that part of the Right of Way described in such permit.

j) "Excavation Permit Fee" means money paid to the City by an Applicant to cover the costs associated with the permit application.

k) "In", when used in conjunction with Right of Way, means over, above, in, within, on, or under a Right of Way.

l) "Local Representative" means the person or persons, or designee of such person or persons, authorized by a Registrant to accept Service and to make decision for that Registrant regarding all matters within the scope of this Ordinance.

m) "Obstruct" means to place any tangible object in a Right of Way so as to hinder free and open passage over any part of the Right of Way.

n) "Obstruction Permit" means the Permit which must be obtained before a person may obstruct a Right of Way, allowing the holder to hinder free and open passage over the specified portion of a Right of Way by placing equipment described therein on the Right of Way for the duration specified therein.

o) "Performance and Restoration Bond" means a performance bond or letter of credit posted to ensure the availability of sufficient funds to assure that all obligations pursuant to this Ordinance including , but not limited to, Right of Way Excavation and Obstruction work, is timely and properly completed.

p) "Permittee" means any person to whom a permit to excavate or obstruct a Right of Way has been granted by the City.

q) "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor assign or any of the foregoing, or any other legal entity which has or seeks to have equipment located in any Right of Way.

r) "Probation" means the status of a person that has not complied with the condition of this Ordinance.

s) "Probation Period" means one (1) year from the date a person has been notified in writing that they have been put on Probation.

t) "Registrant" means any person who (1) has or seeks to have its equipment located in any Right of way, or (2) in any way occupies or uses, or seeks to occupy or use, the right of way, or any equipment located in the right of way, and accordingly, is required to register with the City.

u) "Restore" or "Restoration" means the process by which the Excavation or Obstructed Right of Way and surrounding area, including, but not limited to, pavement and foundations, is returned to the same condition that existed before the commencement of Excavation.

v) "Restoration Fee" means an amount of money paid to the City by a Permittee to cover the cost of restoration.

w) "Right of Way" means the area on, below, or above any real property in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area or real property owned by or under the control of the City, including other dedicated Rights of Way for travel purposes and utility easements.

x) "Right of Way Permit" means either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this Ordinance.

y) "Service" or "Utility Service" includes, but is not limited to, (i) those services provided by a public utility as defined by M.S. 2168.02, Subd. 4 and 6 (1996), (ii) a Telecommunications right of way user, pipeline, community antenna television, cable communications systems as defined in 14.5. Chap. 238, fire and alarm communications, water , electricity, light, heat, cooling energy, or power services, (iii) the services provided by a corporation organized for the purposes set forth in M.S. 300.03 (1996) and (iv) the Services provided by a district heating or cooling system.

z) "Supplementary Application" means an application made to Excavate or Obstruct more of the Right of Way than allowed in, or to extend, a Permit that had already been issued.

aa) "Telecommunications Right of Way User" means a person owning or controlling a facility in the right of way, or seeking to own or control the same, that is used or intended to be used for transporting telecommunications or other voice or data information. A cable communications system defined and regulated under M.S. Chap. 238, and telecommunications activities related to providing natural gas or electric energy services are not included in this definition for purposes of the Ordinance. This definition shall not be inconsistent with M.S. 237.162, Subd.4.

bb) "Unusable Equipment" means Equipment located in the right of way which has remained unused for one (1) year and for which the Registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the Equipment.

56.4 ADMINISTRATION.

The City may designate a principal City official responsible for the administration of the rights of way, right of way permits, and the ordinances related thereto. The City may delegate any or all of the duties hereunder.

56.5 REGISTRATION, BONDING AND RIGHT OF WAY OCCUPANCY.

Each person who occupies, uses or seeks to occupy or use, the right of way or any equipment located in the right of way, including by lease, sublease or assignment, or who has, or seeks to have, equipment located in any right of way must register with the city. Registration will consist of providing application information to and as required by the City, paying a registration fee, and posting a Performance and Restoration Bond.

The Performance and Restoration Bond required in this Section, shall be in an amount determined in the City's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this Chapter, including any costs, expenses, damages or loss the City pay or incurs because of any failure to comply with this Chapter or any other applicable laws, regulations and standards. During the periods of construction , repair or restoration of rights of way or equipments in rights of way, the Performance and Restoration Bond shall be in an amount sufficient to cover 125% of the estimated cost of such work, as documented by the Person proposing to perform such work . The bond may be in such lesser amount as may be determined by the City and taking into account the amount of equipment in the right of way, the location and method of

installation of the equipment, the conflict or interference of such equipment and the equipment of other persons, and the purposes and policies of this Chapter. Sixty (60) days after completion of the work, the Performance and Restoration Bond may be released or reduced in the sole determination of the City.

No person may construct, install, remove, relocate or perform any other work on, or use any equipment or any part thereof located in any right of way without first being registered by the City.

Nothing herein shall be construed to repeal or amend the provisions of City Ordinance permitting persons to plant or maintain boulevard plantings or gardens or in the area of the right of way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right of way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens. However, excavations deeper than 12 inches are subject to the permit requirements of this Ordinance.

56.6 RIGHT TO OCCUPY RIGHTS OF WAY; PAYMENT OF FEES.

Any person required to register under this Ordinance which occupies, uses or places its equipment in the Right of way, is hereby granted a right to do so if and only so long as it (1) timely pays all fees as provided herein and (2) complies with any other requirements of law.

The grant of right in this Ordinance is expressly conditioned on, and is subject to, the police powers of the City, continuing compliance with all provisions of law now or hereinafter enacted, and as it may be from time to time amended and, further, is specifically subject to the obligation to obtain any and all additional required authorizations, whether from the City or other body or authority.

56.7 FRANCHISE; FRANCHISE SUPREMACY

The City may, in addition to the requirements of this Ordinance, require any person which has or seeks to have equipment located in any right of way to obtain a franchise to the full extent permitted by law, now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this Ordinance, whether granted prior or subsequent to enactment to this Ordinance, shall control and supersede the conflicting terms of this Ordinance, provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the City may be cumulative in the sole determination of the City or unless otherwise negotiated by the City and the franchise grantee. All other terms of this Ordinance shall be fully applicable to all Persons whether franchised or not.

56.8 REGISTRATION INFORMATION .

The information provided to the City at the time of registration shall include, but not be limited to:

(a) The Registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, telephone and facsimile numbers.

(b) The name, address and e-mail address and telephone and fax number 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.

(c) A Certificate of Insurance or Self Insurance:

(1) Shall be on a form approved by the City,

(2) Shall verify that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Minnesota; or is covered by self insurance which the City determines to provide the City with protection equivalent to that of a Minnesota licensed insurance company , legally independent from Registrant.

(3) Shall verify that the Registrant is insured against 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 registrant, its officers, agents, employees and permittees, and (ii) placement and use of equipment in the right of way by registrant, its officers, agents, employees and Permittee, including but not limited, to, protection against liability arising from completed operations, damage of underground equipment and collapse of property.

(4) Shall name the City as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage.

(5) Shall require the City be notified 30 days in advance of cancellation of the policy, and

(6) Shall indicate comprehensive liability coverage , automobile liability coverage, workers compensation and umbrella coverage in amounts established by the City.

(d) If the Registrant is a corporation , a copy of the certificate required to be filed under M.S. 300.06 (1996) as recorded and certified to by the Secretary of State.

(e) A copy of Registrant's certificate of authority from the Minnesota Public Utilities Commission, where the Registrant is lawfully required to have such certificate from said Commission.

(f) Such other information as the City may require.

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

56.9 REPORTING OBLIGATIONS .

Operations. Each Registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan with the City. Registrants must use commercially reasonable efforts to anticipate and plan for all upcoming projects and include all such projects in a

construction and major maintenance plan. Such plan shall contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights of way.

The plan shall include, but not be limited to, the following information:

- (1) The specific locations and estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this Section, a "Next year project") ; and
- (2) The tentative locations and beginning and ending dates for all projects contemplated to be commenced during the five years following the next calendar year.

The term "Project" in this Section shall include both Next Year projects and Five Year Projects.

By January 1 of each year the City will have available for inspection in its offices a composite list of all Projects of which it has been informed in the annual plans. All registrants are responsible for keeping themselves apprised of the current status of the list.

Thereafter , by February 1, each registrant may change any Project in its list of next year projects, and must notify the City and all other Registrants of all such changed in said list. Notwithstanding the foregoing , a Registrant may at any time join in a next year project of another registrant that was listed by the other registrant.

Additional Next Year Projects. Notwithstanding the foregoing, the City may, for good cause shown, allow a registrant to submit additional next year projects. Good cause includes, but is not limited to, the criteria set forth concerning the discretionary issuance of permits.

56.9 PERMIT REQUIREMENT.

Except as otherwise provided in this Code, no person may obstruct or excavate any right of way without first having obtained the appropriate right of way permit from the City to do so.

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

(b) Obstruction Permit. An Obstruction Permit is required to allow the holder to hinder free and open passage over the specified portion of right of way by placing equipment, vehicles, or other obstructions described therein on the right of way for the duration specified therein.

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.

Permits issued under this Ordinance shall be conspicuously displayed at all time at the indicated work site and shall be available for inspection by the City Inspector and authorized City Personnel.

56.10 PERMIT APPLICATIONS.

Application for a Permit is made to the City. Right of Way Permit Applications shall contain,

and will be considered complete only upon compliance with, the requirements of the following provisions:

- (a) Registration with the city pursuant to this Ordinance.
- (b) Submission of completed permit application form, including all required attachments , and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment.
- (c) Payment of all money due to the City for:
 - (1) Permits fees and costs due;
 - (2) Prior obstructions or excavations.
 - (3) Any loss, damage, or expense suffered by the City as a result of applicant's prior excavations or obstructions of the right of way or any emergency actions taken by the City; and
 - (4) Franchise fees, if applicable.

When an excavation permit is requested for the purpose of installing additional equipment, and a performance and restoration bond which is in existence is insufficient with respect to the additional equipment in the sole determination of the City, the permit applicant may be required by the City to post an additional performance and restoration bond in accordance with Section 1.04, Subd. 1.

56.11 ISSUANCE OF PERMIT; CONDITIONS.

If the City determines that the applicant has satisfied the requirements of this Ordinance the City may issue a permit.

The City may impose any reasonable conditions upon the issuance of a Permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the right of way, to protect the property and safety of other users of the right of way, to minimize the disruption and inconvenience to the traveling public, and to otherwise efficiently manage use of the right of way.

56.12 PERMIT FEES.

Excavation Permit Fee. The Excavation Permit Fee shall be established by the City in an amount sufficient to recover the following costs:

- (1) The City cost;
- (2) The Degradation of the right of way that will result from the Excavation.
- (3) Restoration, if done or caused to be done by the City.

Obstruction Permit Fee. The Obstruction Permit Fee shall be established by the City and shall be in an amount sufficient to recover the City cost.

Disruption Fees. The City may establish and impose a disruption fee as a penalty for unreasonable delays in excavation, obstructions or restorations.

Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of all fees required prior to the issuance of such a permit unless the applicant shall agree (in a manner, amount and substance acceptable to the City) to pay such fees within thirty (30) days of billing therefore. All permit fees shall be doubled during a probationary period. Permit fees that were paid for a permit which was revoked for a breach are not refundable. Any refunded permit fees shall be less all city cost up to and including the date of refund.

Use of Permit Fees. All obstruction and excavation permit fees shall be used solely for City management, construction, maintenance and restoration costs of the right of way.

56.13 RIGHT OF WAY RESTORATION.

1. The work to be done under the permit, and the 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 circumstance constituting force majeure or when work was prohibited as unseasonal or unreasonable under Section 1.16, Subd 2 all in the sole determination of the City. In addition to repairing its own work, the Permittee must restore the general area of the work, and surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for thirty six (36) months thereafter.

2. The Permittee shall perform the work according to the standards and with the material specified by the City. The City shall have the authority to prescribe the manner and extent of the restoration, and may do in written procedure of general application or on case by case basis. The City, in exercising this authority, shall be guided but not limited by the following standards and considerations:

- a) the number, size, depth and duration of the excavations, disruptions or damage to the right of way.
- b) the traffic volume carried by the right of way, the character of the neighborhood surrounding the right of way.
- c) the pre-excavation condition of the right of way; the remaining life expectancy of the right of way affected by the excavation;
- d) whether the relative cost of the method of restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the right of way that would otherwise result from the excavation, disturbance or damage to the right of way, and
- e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the right of way that would otherwise take place.

3. The Permittee guarantees its work and shall maintain it for thirty six (36) months following its completion. During this 36 month period, it shall, upon notification by the City, correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five calendar days of the receipt of notice by the City, 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, all in the sole determination of the City.

4. If the Permittee fails to restore the right of way in the manner and to the condition required by the City or fails to satisfactorily complete all repairs required by the City, the City at its option may perform or cause to be performed such work . In the event the Permittee shall pay to the City, within 30 days of billing, the cost of restoring the right of way. If Permittee fails to pay as required the City may exercise its rights under the Performance and Restoration Bond.

56.14 JOINT APPLICATIONS.

1. Registrants may jointly make applications for Permits to Excavate or Obstruct the right of way at the same place and time.

2. Registrants who join in and during a scheduled Obstruction or Excavation performed by the City, whether or not it is a joint application by two or more registrants or a single applicant , are not required to pay the Obstruction and Degradation portions of the Permit Fee.

3. Registrants who apply for permits for the same obstruction or excavation may share in the payment of the Obstruction and Excavation Permit Fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application.

56.15 SUPPLEMENTARY APPLICATIONS.

1. A right of way permit is valid only for the area of the right of way specified in the Permit. No Permittee may perform any work outside the area specified in the permit, except as provided therein. 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 (1) make application for a permit extension and pay any additional fees necessitated thereby, and (2) be granted a new permit or permit extension.

2. 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 the Permittee does not finish the work by the permit end date, it must be make application 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 done before the permit end date.

56.16 OTHER OBLIGATIONS.

1. Obtaining a right of way permit does not relieve permittee of its duty to obtain all other necessary permits, license, franchises or other authorizations and to pay all fees required by the City, and other City, County, State or Federal Rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including M.S. 2160.0109 ("One Call Excavation Notice System"). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right of way pursuant to its permit, regardless of who performs the work.

2. Except in the case of an emergency, and with approval by the City, no right of way obstruction may be performed when seasonally prohibited or when conditions are unreasonable or such work .

3. A permittee shall not so obstruct a right of way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles may not be parked with or adjacent to a permit area. The loading and unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.

56.17 DENIAL OF PERMIT.

The City may, in accordance with M.S. 237.163, Subd. 4, deny any application for permit as provided in this Section.

2. Mandatory Denial. Except in the case of an emergency, no right of way permit will be granted:

- a) To any person required to be registered who has not done so;
- b) To any person required by Section 56.10 to file an annual report but has failed to do so;
- c) For any next year project not listed in the construction and major maintenance plan required unless the person used commercially reasonable efforts to anticipate and plan for the project.
- d) For any project which requires the Excavation of any portion of a right of way which was constructed or reconstructed within the preceding five years.
- e) To any person who has failed within the past three (3) years to comply or is presently not in full compliance, with the requirements of this Ordinance.
- f) To any person to whom there exist grounds for the revocation of a permit; and
- g) If, in the sole discretion of the City, the issuance of a permit for the particular date and or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The City, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right of way, and by considerations relating to the public health, safety and welfare.

2. Permissive Denial. The City may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right of way, or when necessary to protect the right of way and its users. The City may consider one or more of the following factors:

- a) the extent to which right of way space where the permit is sought is available;
- b) the competing demands for the particular space in the right of way;
- c) the availability of other locations in the right of way or in other rights of way for the equipment of the permit applicant;
- d) the applicability of ordinance and other regulations over the right of way that affect location of Equipment in the right of way;
- e) the degree of compliance of the applicant and the terms and conditions of its franchise, if any, this chapter, and other applicable ordinances and regulations;
- f) The degree of disruption to surrounding communities and business that will result from the use of that part of the right of way.
- g) The condition and age of the right of way, whether and when it is scheduled for total or partial reconstruction; and
- h) the balancing of costs of disruptions to the public and damage to the right of way, against the benefits to that part of the public served by the expansion into additional part of the rights of way.

3. Discretionary Issuance. The City may issue a Permit in any case where the permit is necessary (a) to prevent substantial economic hardship to a customer of the permit applicant, or (b) to allow such customer to materially improve its Utility Service or (C) to allow a new economic development project; and where the Permit Applicant did not have knowledge of the hardship, the plans for improvements of service, or the development project when said applicant was required to submit its list of next year projects.

4. Permits for Additional Next Year Projects. The City may issue a Permit to a Registrant who was allowed to submit an additional Next Year Project, or in the event the Registrant demonstrates that it used commercially reasonable efforts to anticipate and plan for the project, such Permit to be subject to all other conditions and requirements of the law, including such conditions as may be imposed under Section 56.10.

56.18 INSTALLATION REQUIREMENTS.

In accordance with M.S. 237.162, Subd.8(3); and other provisions of the law, and until the Public Utilities Commission adopts uniform statewide standards, excavation and restoration and all other work performed in the right of way shall be done in conformance with specifications as promulgated by the City and at a location as may be designated by the City

The City may enforce local standards prior to adoption of mandatory, preemptive, statewide standards pursuant to its inherent and historical police power authority.

56.19 INSPECTION.

1. When the work under any permit hereunder is completed, the Permittee shall notify the City.
2. Permittee shall make the work site available to the City Inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work .
3. At the time of inspection the City Inspector may order the immediate cessation of any such work which poses a serious threat to the life, health, safety or well being of the public. The City Inspector may issue an order to the Registrant for any work which does not conform to the 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 registrant shall present proof to the City that the violation as been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to Section 1.22.

56.20 WORK DONE WITHOUT A PERMIT

1. Emergency Situations.

Each registrant shall immediately notify the City or the City's designee of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. Within 2 business days after the occurrence of an emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the emergency .

In the event the City becomes aware of an emergency regarding a registrant's equipment, the City may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

2. Non Emergency Situations.

Except in the case of any emergency, any person who, without first having obtained the necessary permit, obstructs or excavated a right of way must subsequently obtain a permit, pay double the normal fee for said Permit, pay double all the other fees required by City Ordinance, including, but not limited to criminal fines and penalties, 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 Ordinance.

56.21 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 City of the accurate information as soon as this information is known.

56.22 REVOCATION OF PERMITS.

1. Registrants hold permits issued pursuant to this Code as a privilege and not as a right. the City reserves its right, as provided herein and in accordance with M.S. 237.163, Subd. 4 to revoke any right of way permit, without fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any condition of the permit. A substantial breach by Permittee shall include, but shall not be limited to, the following :

- a) The violation of any material provision of the right of way permit.
- b) an evasion or attempt to evade any material provision of the right of way permit, or the perpetrating or attempt to perpetrate any fraud or deceit upon the City or its citizens.
- c) Any material misrepresentation of fact in the Application for right of way permit.
- d) The failure to maintain the required bonds or insurance.
- e) The failure to complete work in a timely manner, or
- f) The failure to correct a condition indicated on an order issued pursuant to Section 1.19, Subd. 3.

2. If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the City shall make a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit.

Further, a substantial breach, as stated above, will allow the City, at the City's discretion, to place additional or revised conditions on the permit.

3. Within 24 hours of receiving notification of the breach, permittee shall contact the City with a plan, acceptable to the City Inspector , for its correction. Permittee's failure to so contact the City Inspector, the Permittee's 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. Further, Permittee's failure to so contact the City Inspector , of the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan shall automatically place the permittee on probation for one full year.

4. From time to time, the City may establish a list of conditions of the Permit which, if breached, will automatically place the Permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right of way outside of the permit.

5. If a Permittee, while on probation, commits a breach as outlined above, Permittee's permit will automatically be removed and Permittee will not be allowed further permits for one full year, except for emergency repairs.

6. If a permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the cost of collection and reasonable attorney's fees incurred in connection with such revocation.

56.23 APPEALS .

1. A person that:

- a) has been denied registration;
- b) has been denied right of way permit;
- c) has had its right of way permit revoked; or
- d) believes that the fees imposed on the user by the City do not conform to the requirements of law, may have the denial, revocation, or fee position reviewed, upon written notice required 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 must be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon affirmation by the City Council of the denial, revocation or fee imposition, the right of way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City and the person. If the parties cannot agree on an arbitrator, the matter must be resolved by a three person arbitration panel made up of one arbitrator selected by the City, arbitrator or selected by the person, and one arbitrator selected by the other two arbitrators . The costs and fees of a single arbitrator shall be borne equally by the City and the Person.

In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

3. Each party to the arbitration shall pay its own costs, disbursements and attorney's fees.

56.24 MAPPING DATA.

1. Except as provided in this Ordinance, each registrant shall provide to the City information indicating the horizontal and vertical locations , relative to boundaries of the right of way, all equipment which it owns or over which it has control and which is located in any right of way ("Mapping Data"). Mapping Data shall be provided with the specific information and in the format requested by the City for inclusion in the mapping system used by the City.

Within six months of the acquisition, installation or construction of additional equipment or any relocation, abandonment , or disuse of existing equipment, each registrant shall supplement the Mapping Data required herein.

Each registrant shall, within 6 months after the passage of this Ordinance, submit a plan to the City specifying in detail the steps it will take to comply with the requirements of this Section. Said plan shall provide for the submission of all Mapping Data for the City as early as may be reasonable and practical,

but not later than 5 years after the date of passage of this Ordinance.

Notwithstanding the foregoing, Mapping Data shall be submitted by all Registrants for all equipment which is to be installed or constructed after the date of passage of this Ordinance at the time any permits are sought under this Ordinance.

After six months of the passage of this ordinance, a new registrant, or a registrant who has not submitted a plan as required above, shall submit complete and accurate Mapping Data for all its equipment at the time any permits are sought under this Ordinance.

2. Information regarding Equipment and Telecommunications right of way users constructed or located prior to May 10, 1997, need only be supplied in the form maintained, however, all telecommunications right of way users must submit some type of documentary evidence regarding the location of equipment within the rights of way of the City.

3. At the request of any registrant, any information requested by the city, which qualifies as a "trade secret" under M.S. 13.37(b) shall be treated as trade secret information as detailed therein. With respect to the provisions of Mapping Data, the City may consider unique circumstances from time to time required to obtain Mapping Data.

56.25 LOCATION OF EQUIPMENT.

1. Undergrounding. Unless otherwise permitted by an existing franchise or M.S. 2168.34, or unless existing above ground equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment, and the replacement of old equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes unless otherwise agreed to by the City in writing, and such agreement is reflected in applicable permits.

2. 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 equipment that is, or pursuant to current technology, the City expect will someday be located within the right of way. Excavation, Obstruction or other permits issued by the City involving the installation or replacement of equipment may designate the proper corridor for the equipment at issue and such equipment must be located accordingly.

Any registrant whose equipment is located prior to enactment of this Ordinance in the right of way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the areas where is equipment is located, move that equipment to its assigned position within the right of way, unless this requirements is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

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

4. Limitation of Space. To protect health, safety and welfare, the City shall have the power to prohibit or limit the placement of new or additional equipment within the right of way if

there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right of way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the right of way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular service, the condition of the right of way, the time of year with respect to essential utilities, the protection of existing equipment 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.

56.26 RELOCATION OF EQUIPMENT.

The person must promptly and at its own expense, with due regard for reasonable working conditions, permanently remove and relocate its equipment and facilities in the right of way whenever the City requests such removal and relocation, and shall restore the right of way to the same condition it was in prior to said removal or relocation . The

City may make such requests in order to prevent interference by the Company's equipment or facilities with (i) a present or future City use of the Right of way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment (iv) when the public health, safety and welfare requires it, (v) or when necessary to prevent interference with the safety and convenience of ordinary travel over the right of way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its equipment from any right of way which has been vacated in favor of a non governmental entity unless and until the reasonable costs thereof are first paid by such non-governmental entity to the person therefore.

56.27 PRE-EXCAVATION EQUIPMENT LOCATION.

In addition to complying with the requirements of M.S. 2160.0109 ("One Call Excavation Notice System") before the start date of any right of way excavation, each registrant who has equipment located in the area to be excavated shall mark the horizontal and approximate vertical placement of all said equipment. Any registrant whose equipment is less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish the exact location of its equipment and the best procedure for excavation .

56.28 DAMAGE TO OTHER EQUIPMENT.

When the City performs work in the right of way and finds it necessary to maintain, support, or move registrants equipment in order to protect it, the City shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that Registrant and must be paid within 30 days from the date of billing.

Each registrant shall be responsible for the cost of repairing any equipment in the right of way which it or its equipment damages. Each registrant shall be responsible for the cost of repairing any damage to the equipment of another registrant caused during the City's response to an emergency occasioned by that registrant's equipment.

56.29 RIGHT OF WAY VACATION.

1. If the City vacates a right of way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant or permittee equipment, the City shall reserve, to and for itself and all registrants having equipment in the vacated right of way, the right to install, maintain and operate any equipment in the vacated right of way and to enter upon such right of way any time for the purpose of reconstructing, inspecting, maintaining or

repairing the same.

2. If the vacation requires the relocation of Registrant or Permittee Equipment and: (a) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant or Permittee must pay the relocation costs unless otherwise agreed to by the City and the Registrant or permittee; or (c) if the vacation proceedings are initiated by person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

56.30 INDEMNIFICATION AND LIABILITY.

1. By reason of the acceptance of a registration or the grant of a right of way permit, the City does not assume any liability (a) for injuries to person, damage to property, or loss of service claims by parties other than the registrant or the city, or (b) for claims or penalties of any sort resulting from installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

2. By registering with the City, a registrant agrees, or by accepting a permit under this Ordinance, a permittee is required to defend, indemnify and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance or repair or operation of its equipment, or out of any activity undertaken in or near the right of way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right of way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance, or operation of its equipment, or any activity undertaken in or near a right of way, whether or not the act or omission complained is authorized, allowed or prohibited by a right of way permit.

The forgoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arising out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf, including, but not limited, to the issuance of permits and inspection of plans or work. This Section is not, as to their parties, a waiver of any defense or immunity otherwise available to the registrant or to the City, and the registrant, in defending any action on behalf of the City, shall be entitled to assets in any action every defense or immunity that the City could assert in its own behalf.

56.31 FUTURE USES.

In placing any equipment, or allowing it to be placed, in the right of way, the City is not liable for any damages caused thereby to any registrant's equipment which is already in place. No registrant is entitled to rely on the provisions of this Ordinance, and no special duty is created as to any registrant. This Ordinance is enacted to protect the general health, safety and welfare of the public at large.

56.32 ABANDONED AND UNUSABLE EQUIPMENT.

1. A registrant who has determined to discontinue its operations with respect to any equipment in any right of way, or segment or portion thereof, in the City must either:

(a) provide information satisfactory to the City that the Registrants obligations for its

equipment in the right of way under this chapter have already been lawfully assumed by another registrant, or

(b) Submit to the City a proposal and instruments for transferring ownership of its equipment to the City. If a registrant proceeds under this clause, the City may, at its option:

- (1) purchase the equipment, or
- (2) require the registrant, at its own expense, to remove it, or
- (3) require the registrant to post an additional bond or an increased bond amount sufficient to reimburse the City for reasonably anticipate costs to be incurred in removing the equipment.

2. Equipment of a registrant which fails to comply with the preceding paragraph and while for two years remains unused shall be deemed to be abandoned . Abandoned equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has to law or in equity, including, but not limited to, (i) abating the nuisance, (ii) taking possession of the equipment and restoring it to useable condition (iii) requiring removal of the equipment by the registrant or by the registrant's surety; or (iv) exercising its rights pursuant to the Performance and Restoration Bond.

3. Any registrant who has unusable equipment in any right of way shall remove it from the right of way unless this requirement is waived by the City.

56.33 RESERVATION OF REGULATORY AND POLICE POWERS.

The City by the granting of the right of way permit, or by registering a person under this Ordinance does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has now or may hereafter be vested in the City under the Constitution and statutes of the State of Minnesota to regulate the use of the right of way by Permittee. The Permittee by its acceptance of a right of way permit or of registration agrees that all lawful powers and rights, regulatory power, policy power, or otherwise as the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provision of a registration or of a right of way permit and any other present or future lawful exercise of the City regulatory or police powers shall be resolved in favor of the latter.

56.34 SEVERABILITY.

If any section, subsection, sentence, clause or phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final non appealable order that any permit, right or registration issued under this Ordinance or any

portion of this Chapter is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with mutual right in either party to terminate without cause upon given 60 days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions set forth in the permit, right or regulation, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit, right or registration shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the City Council to issue such revocable permit and the power to revoke it. Nothing in this Ordinance shall preclude the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to the requirements set forth herein.

56.35 NON-EXCLUSIVE REMEDY.

The remedies provided in this Ordinance and other Ordinances are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public rights of way, including damages to the right of way, whether or not caused by violation of any of the provisions of this chapter or other provisions of law.

RESOLUTION OF THE COUNCIL CITY OF DELLWOOD

The following Resolution was duly adopted at the regular meeting of the City Council on April 9, 2002.

WHEREAS, the Council has determined that an official policy should be established governing the City's rights of way throughout the City, and that such policy is necessary to define the respective responsibilities of the City and owner of abutting properties.

NOW THEREFORE, Upon motion duly made and seconded, it was Resolved as follows:

- 1) Where property irons are found in place, they will control the location of the right of way.
- 2) Where no property irons or official markers or monuments are found, the property lines may be determined by a survey provided by the property owner.
- 3) In the absence of a survey, the right of way lines will be determined as follows :

a) Apple Orchard Road, Meadow Lane, and Echo Street have 66 foot rights of way, assumed to be 33 feet on either side of the

centerline of the roadway as laid out and traveled.

b) Roadways and streets located North of 5TH 96, except Apple Orchard Road, all streets located in Pine Tree Hills and Dwinell Avenue have 60 foot rights of way, assumed to be 30 feet on either side of the centerline of the roadway or street as laid out and traveled.

c) Ordway Street has a 30 foot right of way assumed to be 5 feet on either side of the outer edges of the surfaced street as it is laid

out and traveled.

d) Streets located on the Peninsula have rights of way ranging from 30 feet to 50 feet. The widths of the rights of way will be assumed to extend 5 feet on either side of the outer edges of the surfaced street as laid out and traveled.

e) STH 96 and Highway 244 have varying widths of right of way, which will be assumed to extend a distance of 30 feet on either side of the centerline of the highway as laid out and traveled.

Dated: 5/14/2002

ATTEST: */s/*

Ron Hance, Mayor

/s/

Joanne Frane, City Clerk

CITY OF DELL WOOD RIGHT OF WAY - PERMIT FEES

The City of Dellwood has established an Excavation Permit Fee of \$500.00 for any work done within the right-of-way of public streets.

The fee is payable upon Application and Registration with the City, at which time the City may determine from the Application what sort of Performance Bond may be required.

In the event the project may involve substantial obstruction or disruption of the street or right-of-way, the City may impose additional fees.